

AGENDA

ARIZONA JUDICIAL COUNCIL

Camelback Inn
5402 E. Lincoln Drive
Town Hall Meeting Room
Scottsdale, AZ 85253

June 24, 2013

1:00 p.m. Welcome/Opening Remarks Chief Justice Rebecca White Berch

Tab No.

(1) Approval of Minutes Chief Justice Rebecca White Berch

Action Items:

1:05 p.m. (2) eAccessMr. Marcus Reinkensmeyer

1:45 p.m. (3) Commission on Technology Update ..Vice Chief Justice Scott Bales
- FY14 Project Priorities..... Mr. Karl Heckart
- JCEF Allocations for FY 2014 Mr. Kevin Kluge
- eBench Award

Study / Update Sessions: *Possible Adoption of Various Reports/Forms*

2:00 p.m. (4) NICS Presentation Mr. Anthony J. Coulson
..... Mr. Jerry Landau and Mr. Karl Heckart

3:00 p.m. Budget Update Mr. Kevin Kluge

3:10 p.m. BREAK

3:25 p.m. (5) Judicial Branch Legislative Update Mr. Jerry Landau
.....Ms. Amy Love

3:45 p.m. Veterans Court InitiativeMr. Marcus Reinkensmeyer

4:00 p.m. (6) Case Filing Trends/Budget..... Mr. Bert Cisneros

4:30 p.m. (7) Evidence-Based Pre Trial Services..... Ms. Kathy Waters

5:00 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:
June 24, 2013	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Approval of Minutes

FROM:

Lorraine Smith, Staff to the Arizona Judicial Council

DISCUSSION:

The minutes from the March 28, 2013, meeting of the Arizona Judicial Council are attached for your review.

RECOMMENDED COUNCIL ACTION:

Approve the minutes as written.

ARIZONA JUDICIAL COUNCIL
Arizona State Courts Building
1501 W. Washington, Suite 119
Phoenix, AZ 85007

March 28, 2013

DRAFT Meeting Minutes

Council Members Present:

Chief Justice Rebecca White Berch
Jim Bruner
David Byers
Judge Peter Cahill
José A. Cárdenas
Judge Rachel Torres Carrillo
Amelia Craig Cramer
Judge Norman Davis
Athia Hardt
Mike Hellon
Judge Joseph Howard
Yvonne R. Hunter

Michael Jeanes
Emily Johnston
Gary Krcmarik
Judge David Mackey
William J. Mangold, M.D., J.D.
Janet K. Regner
Judge Antonio Riojas, Jr.
Judge Sally Simmons
Judge Roxanne Song Ong
George Weisz
Judge David Widmaier
Judge Lawrence Winthrop

Council Members Absent:

Judge Robert Carter Olson

Marilyn R. Seymann, Ph.D.

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Theresa Barrett
Karl Heckart
Susan Hunt
Janet Johnson
Jerry Landau
Jennifer Liewer

Amy Love
Kay Radwanski
Marcus Reinkensmeyer
Lorraine Smith
Mark Wilson
David Withey
Amy Wood

Presenters and Guests Present:

Vice Chief Justice Scott Bales
Allie Bones
Whitney Cunningham
Leah Meyers
Wendy Million

John Osborn
John Phelps
Colleen Reider
Scott Rodgers
Jodi Rogers

Chief Justice Rebecca White Berch, Chair, called the meeting to order at 10:30 a.m. at the State Courts Building, 1501 W. Washington, Suite 119 in Phoenix, Arizona. The Chair welcomed those in attendance.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the December 13, 2012, meeting of the Arizona Judicial Council. Judge Winthrop noted that the minutes refer to Judge Anne Segal as providing public comment in her capacity as a doctor. Judge Winthrop asked that the minutes clarify that Judge Segal has a doctorate in education.

MOTION: To approve the minutes from the December 13, 2012, meeting of the Arizona Judicial Council, with the clarification that Judge Anne Segal has a doctorate in education. The motion was seconded and passed. AJC 2013-01.

Arizona Code of Judicial Administration (ACJA) § 1-602: Digital Recording of Court Proceedings

Mr. David Withey, Chief Legal Counsel for the AOC, presented ACJA § 1-602: Digital Recording of Court Proceedings. Mr. Withey noted the code section was previously put on the consent agenda, but was moved off to allow additional discussion. Mr. Byers moved an amendment to the code section to remove the requirement for the format of audio recordings.

MOTION: To approve ACJA § 1-602: Digital Recording of Court Proceedings with the proposed amendment, as presented. The motion was seconded and passed. AJC 2013-02.

Mr. Mark Wilson, Director of the Certification and Licensing Division for the AOC, presented ACJA § 7-208: Legal Document Preparer. Mr. Wilson provided background information. He noted that a comment was received from the law firm of Osborn Maledon suggesting an additional change to the second sentence of ACJA § 7-208(F)(1)(3) to add the word “such” between the words “any” and “document,” i.e., “A certified legal document preparer may not sign any such document he or she prepares for or provides to a person or entity” Mr. Wilson noted that his staff does not favor of this change, as they are not sure what the effect of this change would be.

Mr. Scott Rodgers of Osborn Maledon, PA, representing AAM LLC, provided public comment regarding the inclusion of the word “such.” He noted his concern is that when you have an entity that is certified as a certified legal document preparer, this language could be interpreted literally to prohibit the president of the company from signing paychecks because someone is preparing that document to be signed by the president. He noted their proposed language to add the word “such” will make it clearer that the second sentence refers to the first sentence.

Judge Howard asked about the issue of demand letters. Mr. Rodgers suggested the Court and this Council look at how the entity definition of a certified legal document preparer is

dealt with in the rules. Mr. Rodgers clarified that their position is that certified legal document preparers should be allowed to sign documents that non-certified legal document preparers may sign.

Discussion took place regarding the addition of the word “such” and its interpretation. Ms. Amelia Craig Cramer noted the State Bar supports the exception for the 20-day notices. She suggested, in her own capacity, that rather than adding the word “such,” that we add language to the fourth line to read “A certified legal document preparer may not sign any document he or she prepares for or provides to a person or entity in his or her capacity as a document preparer.” She noted this will limit it to the documents that are prepared in the capacity as a document preparer, not paychecks, etc., and will allow the expansion we want without being over broadened. Mr. Rodgers noted this amendment still does not address entities that employ individual legal document preparers. Ms. Cramer clarified that the intent of the language is that it would be in their capacity as a statutory agent that they would be able to sign for a document rather than as a document preparer.

Judge Simmons suggested amended language to read “or any document which he/she could otherwise sign in a capacity other than as a certified document preparer.”

Judge Mackey suggested the need to vet the alternatives proposed. He moved that we adopt the proposed amendments as written in the materials.

Ms. Coleen Reider from Ballard Spahr LLP, representing City Property Management Company, provided public comment noting that she supports adding the word “such.” She raised another example of signing cover letters for HOAs. Ms. Reider noted their suggestion was to use the same language as is in Rule 31(b) to read “a certified legal document preparer may not sign any legal form or legal document he or she prepares for or provides to a person or entity for use in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process ...”, but this provision does not prohibit the signing of the 20-day notices, HOA liens, or mechanic’s liens.

Mr. Byers noted this needs to be done correctly, as it affects millions of documents. He stated the question for the Council is if they want to allow document preparers to sign documents in different capacities than other people can sign or not. Judge Howard stated this depends on which document we are talking about. He noted he approves of Ms. Cramer’s language and suggested some additional work can be done on this issue.

The Chair suggested that we put some language in place for the time being, but continue to work on the language, and come back at the next meeting with new, compromise language. She noted that in the meantime, it’s a good idea to have a rule in place to provide guidance.

Ms. Hunter raised concern with staff being able to provide a level of assurance that we will get to the place we need to go to manage this issue. She suggested the stakeholders work together to develop new language.

Judge Howard offered a friendly amendment to the motion on the floor to include the language proposed by Ms. Cramer.

Judge Mackey, the motion maker, did not accept the friendly amendment.

MOTION: To approve ACJA § 7-208: Legal Document Preparer, as presented, without any proposed amendments as discussed today. The motion was seconded and passed (16 approved; 4 opposed). AJC 2013-03.

Order of Protection Form Modification

Ms. Kay Radwanski, staff to the Committee on the Impact of Domestic Violence and the Courts (CIDVC) and Domestic Violence Specialist with the Court Services Division of the AOC, presented the issue regarding Brady Bill compliance.

Ms. Radwanski noted that three members of CIDVC were present: Judge Wendy Million, Ms. Allison Bones, and Ms. Leah Meyers.

Ms. Radwanski stated they are asking for approval of proposed modifications to the Order of Protection form, as proposed by CIDVC. She provided background information and explained the proposed revisions. Ms. Radwanski reported that CIDVC is asking that Arizona courts continue to facilitate enforcement of orders of protection by crafting them so they meet the Brady criteria.

Mr. George Weisz inquired about the “No Crimes” section and asked if we did not change that part, would it affect funding or cause legal ramifications. Ms. Radwanski noted it would not affect money coming to this state, but it would affect whether the order met the Brady criteria.

Mr. Jim Bruner asked what happens if we don’t follow the Brady rule. Ms. Radwanski noted that nothing would happen, but we do need to follow the warning and a few other requirements that affect the STOP grants, but there would be no financial effects on the state if we don’t have explicit language.

Mr. Byers noted if a person does possess, they could be charged with a federal crime.

Judge Riojas stated the need to include the Brady material and the importance of adopting these recommendations, which he strongly supports.

Mr. Michael Jeanes commented on the format and the need to allow sufficient space for file stamps, and that margins are adequate to avoid losing language with digitizing.

Ms. Allison Bones, Executive Director of the Arizona Coalition Against Domestic Violence, provided public comment. She provided a fact sheet on firearms and domestic violence. She reiterated what was said by Ms. Radwanski.

A motion was moved and seconded to adopt the proposed recommendations offered by CIDVC to restore language detailing the legal standard for issuance of an Order of Protection (The statutory language in A.R.S. § 13-3602 had been removed from the form to save space when the form was revised to fit the Project Passport model.), to include a limited list of some of the 29 acts of domestic violence specified in A.R.S. § 13-3601 in the

"No Crimes" section (The full list had been removed in the Project Passport revision.), and add a statutory reference to A.R.S. § 13-3602(G)(4) to the "Firearms" section to make it clear that this section refers to a firearms prohibition under Arizona law, not federal law. The Council also adopted a staff recommendation to include enhanced warning language regarding 18 U.S.C. § 922(g)(8), recommending that the defendant consult an attorney if the defendant has questions about whether the Order of Protection results in a firearms prohibition. It was noted that states receiving federal funding under the Violence Against Women Act (VAWA) must certify that their courts provide notice to offenders of laws that may limit possession or use of firearms.

Judge Mackey asked about the authority to approve these changes. Mr. Byers stated he has the authority to approve, but given the seriousness, he thought it would be appropriate for the Council to vote before he adopted the recommendations.

MOTION: To approve the adoption of modifications to the Order of Protection form as proposed by CIDVC, as presented. The motion was seconded and passed. AJC 2013-04.

Law Day Activity

Ms. Jennifer Liewer, Chief Communication Officer for the AOC, briefed the Council members on the Supreme Court's Law Day activity scheduled for May 1. She noted this annual event gives us the opportunity to tell our story of what we do in the courts and celebrate our system of justice in this country. Ms. Liewer reported that this year, we will celebrate Law Day by honoring volunteers within the Judiciary and thanking them for their time and service. She stated the lunch-time event will be held in the State Courts building and public members of the many committees of the Supreme Court and AOC staff will be invited. Ms. Liewer noted that invitations will be sent out, and we will take this opportunity to share with the Press what volunteers do within the court system.

Ms. Liewer reported that Chief Justice Berch will be taping a message/statement to volunteers thanking them for their service and help celebrate the work that goes on every day in every town in Arizona. She added that this message can then be available for Volunteer Appreciation Week, which takes place the week prior.

Legislative Update

Mr. Jerry Landau, AOC Director of Government Affairs, and Legislative Liaison Amy Love, provided a legislative update on the status of Council bills.

Ms. Love presented information on other bills of interest:

HB2240: Small Claims; Jurisdiction; Limits

Discussion: Mr. Hellon noted that he is comfortable with the compromise of \$3,500 and moved that the Council support the bill.

MOTION: To support HB2240: Small Claims; Jurisdiction; Limits, as presented. The motion was seconded and passed. AJC 2013-05.

HB2459: Justice of the Peace Courts

Discussion: Mr. Byers noted this is a modernization of language without substantive changes. He stated he is not aware of any controversy or objection.

MOTION: To approve HB2459: Justice of the Peace Courts, as presented. The motion was seconded and passed. AJC 2013-06.

HB2516: Peace Officers; Firearms; Court

Discussion: Judge Mackey noted the Presiding Judges agreed to remain neutral on this bill. Ms. Hunter moved to support the bill, given the political nature of the legislation. She stated it would send a better message and strengthen our legislative staff's position. The motion was seconded.

Judge Howard asked if the language "Presiding Judge" includes the Chief Judge of the Court of Appeals. Mr. Landau noted the language is subject to interpretation, but believes it would include any presiding judge of a court. It was noted it is too late to include specific language, but this could be fleshed out by rule or administrative order later.

MOTION: To support HB2516: Peace Officers; Firearms; Court, as presented. The motion was seconded and passed. AJC 2013-07.

HB2600: Judicial Nominees; Minimum Requirements; Records

Discussion: Ms. Love noted the Presiding Judges voted to oppose this bill. A motion was moved and seconded to oppose this bill. The Chief Justice stated she would call for a vote, but would not be voting on any legislative bills.

MOTION: To oppose HB2600: Judicial Nominees; Minimum Requirements; Records, as presented. The motion was seconded and passed. AJC 2013-08.

SB1072: Parenting Time; Relocation of Child

Discussion: Ms. Love noted staff continues to work on the language and issues, but no changes have been made to the original version provided in the materials. A motion was moved to oppose the bill in its current form and direct staff to continue to work with the sponsor to fix it and make it work, and if not, continue to oppose it.

Mr. Jeanes raised concern from the Clerks regarding a comment made by some legislators that they would specify there would not be a fee for this. He stated this creates a training issue for Clerks at the filing counter when you charge for some filings and not for others, and a filing fee should not be exempted.

Ms. Hunter asked if there were any consequences for a fiscal note. Ms. Love indicated she didn't know if this was necessary.

Judge Mackey expressed concern with judicial resources for rural counties, if this passes as written. Mr. Jeanes noted it's fairly proportional throughout the state in terms of workload and will have statewide impact.

MOTION: To oppose SB1072: Parenting Time; Relocation of Child, in its current form and direct staff to continue to work with the sponsor to fix it and make it work, and if not, continue to oppose it. The motion was seconded and passed. AJC 2013-09.

Mr. Landau presented an update on the following retirement bill:

HB2608: EORP; closure; defined contribution which shuts down the Elected Official Retirement Plan (EORP) for all new officials effective July 1, 2013 and establishes a defined contribution plan with a 5% employer and 8% employee match. Mr. Landau stated he and legislative staff continue to have discussions with legislators on the judiciary's concerns regarding this bill.

eFiling Update

Mr. Karl Heckart, Chief Information Officer for the AOC, reported on the eFiling project. He stated that about 10 months ago, we were approaching the end of a 4-year contract with incumbent vendor Intresys. He noted we weren't pleased with the way the project was proceeding and issued an RFP. Mr. Heckart stated that over the summer, we evaluated and negotiated a new contract with a product called eUniversa, and in the fall, Intresys lodged a protest on that procurement process. He noted that after careful review, it was determined to uphold that protest, as there were procedural flaws on how the procurement process was conducted. Mr. Heckart stated we voided the contract with AmCad and subsequently signed a two-year contract extension with Intresys until May 2015 to continue to move forward with eFiling. He noted that the provisions of the extension are that we will finish up a number of enhancements, extend the service contract to bring electronic service into existence for attorneys, and prop up an area of concern regarding disaster recovery, as well as allow us to optionally continue to expand filing types or expand into more courts (optional services).

Mr. Heckart reported our long-term strategy over the next two years is to determine where to go with this project. He noted we will be moving away from a revenue-sharing model.

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

A motion was made to adjourn the meeting at 1:14 p.m.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:

June 24, 2013

Type of Action Requested:

Formal Action/Request
 Information Only
 Other

Subject:

ELECTRONIC ACCESS
TO DOCUMENTS
PROJECT

FROM:

Marcus W. Reinkensmeyer, Director, Court Services Division of the AOC
Eric Ciminski, Project Director, Court Services Division of the AOC

DISCUSSION:

ACJA 1-604 (C)(4)(b)(1) directs the Commission on Technology (COT) to recommend to the Arizona Judicial Council the establishment of fees for remote access to court documents. The Council then recommends the establishment of fees and disbursement of revenue to the Supreme Court. At the February 15, 2013 COT meeting the commission unanimously approved a motion to recommend the following **MONTHLY** fee schedule, with the proviso that usage data be reported back to COT within a year for reconsideration of the pricing.

Subscription Type	Monthly Fee
Per Document	\$10
50 Documents	\$200
100 Document	\$360
200 Documents	\$640
375 Documents	\$1,050
5,000 Documents	\$10,000
Certified Documents	\$39

Proposed policies and procedures for the implementation of the first phase of the e-access project will also be presented to the Council, addressing the following areas:

1. Electronically Certified Copies
2. User Authentication and Access

RECOMMENDED COUNCIL ACTION:

1. Based on the recommendation of the COT, recommend the establishment of fees to the Supreme Court.
2. Provide direction on the proposed policies and procedures governing the eAccess project.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:
June 24, 2013

Type of Action Requested:
 Formal Action/Request
 Information Only

 Other

Subject:
Commission on
Technology Update

FROM:

Vice Chief Justice Scott Bales, COT Chair
Mr. Kevin Kluge, AOC Chief Financial Officer

DISCUSSION:

Vice Chief Justice Bales, COT's chair, will deliver the project prioritization from the recent COT annual meeting as background to the items contained in the Judicial Collections Enhancement Fund (JCEF) budget request.

ACJA 1-109 specifies that AJC approves the amount of JCEF monies to be spent. Typically, the COT Chair requests approval of specific funding for operations, ongoing projects, and new projects to ensure AJC sets aside sufficient monies in the upcoming fiscal year.

Mr. Kevin Kluge, AOC's chief financial officer, will brief the Council on the JCEF revenues, on-going commitments, comparison of revenue to expense, and the projected fund balances in out years, subject to action of the Legislature. He will also discuss the impact of current project commitments.

RECOMMENDED COUNCIL ACTION:

Approve the JCEF operating budget, including spending on previously approved technology projects, as recommended by the Commission on Technology.

Commission on Technology's strategic information technology projects for FY2014-2016, in categories of priority are:

Top Tier eCourt

- Civil eFiling Maricopa/Pima
- Judge Automation
- 2nd Generation eFiling
- eAccess

Top Tier Court Automation

- AJACS-LV/Mesa
- JOLTSaz
- FARE - Infrastructure
- AJACS-AZTEC Replacement
- AJACS- GJ Enhancements
- Technology Refresh

Second Tier

- APETS Integration
- eWarrants
- Disaster Recovery Study
- Appellate CMS Needs

Arizona Judicial Council

Date Action Requested:	Type of Action Requested:	Subject:
June 24, 2013	<input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	NICS Presentation

FROM:

Mr. Anthony J. Coulson, Consultant
Mr. Jerry Landau, Government Affairs Director, AOC
Mr. Karl Heckart, Information Technology Director, AOC

DISCUSSION:

The group will present an update regarding NICS.

RECOMMENDED ACTION:

NICS – Proposed Rule Changes

1 **Rule 11.5. Hearing and Orders**

2 **a. {No Change}**

3 **b. Orders.**

4 (1) – (3) {No Change}

5 (4) Information regarding persons found incompetent shall be maintained in the Mental
6 Health Repository Maintained by the Supreme Court. Access may be granted to law
7 enforcement through the Department of Public Safety for purposes of enforcing an
8 order, assisting in an investigation and return of property. Upon request the court shall
9 provide certified copies of the finding a person is incompetent to law enforcement and
10 prosecuting agencies for the purposes of investigating and prosecuting persons who are
11 prohibited possessors pursuant to 13-3101.

12 (5) If the court determines that the defendant is incompetent the court shall transmit the
13 person's name, sex, date of birth, social security number, court case number, court
14 originating agency identification number and date of incompetency finding to the
15 Department of Public Safety. The Department of Public Safety shall enter the
16 information into the National Instant Criminal Background Check system.

17 **c. – e {No Change}**

6/10/13@3:25pm

NICS – Proposed Statutory Changes

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Section 1. 13-925. Restoration of right to possess a firearm; mentally ill persons; petition

A. A person may petition the court that entered an order, finding or adjudication that resulted in the person being a prohibited possessor as defined in section, paragraph 7, subdivision (a) or subject to 18 United States Code section 922(d)(4) or (g)(4) to restore the person's right to possess a firearm.

B. The person or the person's guardian or attorney may file the petition. The petition shall be served on the attorney for the state who appeared in the underlying case.

C. On filing of the petition the court shall set a hearing. At the hearing, the person shall present psychological or psychiatric evidence in support of the petition. The state shall provide the court with the person's criminal history records, if any. The court shall receive evidence on and consider the following before granting or denying the petition:

1. The circumstances that resulted in the person being a prohibited possessor as defined in section 13-3101, subsection A, paragraph 7, subdivision (a) or subject to 18 United States Code section 922(d)(4) or (g) (4).

2. The person's record, including the person's mental health record and criminal history record, if any.

3. The person's reputation based on character witness statements, testimony or other character evidence.

4. Whether the person is a danger to self or others, is persistently, acutely or gravely disabled or whether the circumstances that led to the original order, adjudication or finding remain in effect.

5. Any change in the person's condition or circumstances that is relevant to the relief sought.

6. Any other evidence deemed admissible by the court.

D. The petitioner shall prove by clear and convincing evidence both of the following:

1. The petitioner is not likely to act in a manner that is dangerous to public safety.

NICS – Proposed Statutory Changes

1 2. Granting the requested relief is not contrary to the public interest.

2 E. At the conclusion of the hearing, the court shall issue findings of fact and conclusions of
3 law.

4 F. If the court grants the petition for relief, the original order, finding or adjudication is
5 deemed not to have occurred for the purposes of applying section 13-3101, subsection A,
6 paragraph 7, subdivision (a), Public Law 110-180, § 105(a) or 18 United States Code section
7 922(d)(4) or (g) (4) to that person.

8 G. The granting of a petition under this section only restores the person's right to possess a
9 firearm and does not apply to and has no affect on any other rights or benefits the person
10 receives.

11 H. The court shall promptly notify the department of public safety of an order granting a
12 petition under this section. As soon thereafter as practicable the **PERSON'S RECORD**
13 **department** shall **BE update, correct, modify or remove the person's record-UPDATED,**
14 **CORRECTED, MODIFIED OR REMOVED in any THE MENTAL HEALTH**
15 **REPOSITORY MAINTAINED BY THE SUPREME COURT database that—the**
16 **department maintains—and THE COURT SHALL TRANSMIT THE INFORMATION TO**
17 **THE DEPARTMENT OF PUBLIC SAFETY TO BE ENTERED makes-available to INTO**
18 the national instant criminal background check system consistent with the rules pertaining
19 to the **database REPOSITORY**. Within ten business days after receiving the notification
20 from the court, the department shall notify the United States attorney general that the
21 person no longer falls within the provisions of section 13-3101, subsection A, paragraph 7,
22 subdivision (a) or 18 United States Code section 922(d)(4) or (g)(4).

23 **Section 2. 13-3101. Definitions**

24 A. In this chapter, unless the context otherwise requires:

25 1. "Deadly weapon" means anything that is designed for lethal use. The term includes a
26 firearm.

27 2. "Deface" means to remove, alter or destroy the manufacturer's serial number.

NICS – Proposed Statutory Changes

1 3. "Explosive" means any dynamite, nitroglycerine, black powder, or other similar
2 explosive material, including plastic explosives. Explosive does not include ammunition or
3 ammunition components such as primers, percussion caps, smokeless powder, black
4 powder and black powder substitutes used for hand loading purposes.

5 4. "Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or
6 other weapon that will expel, is designed to expel or may readily be converted to expel a
7 projectile by the action of an explosive. Firearm does not include a firearm in permanently
8 inoperable condition.

9 5. "Improvised explosive device" means a device that incorporates explosives or
10 destructive, lethal, noxious, pyrotechnic or incendiary chemicals and that is designed to
11 destroy, disfigure, terrify or harass.

12 6. "Occupied structure" means any building, object, vehicle, watercraft, aircraft or place
13 with sides and a floor that is separately securable from any other structure attached to it,
14 that is used for lodging, business, transportation, recreation or storage and in which one or
15 more human beings either are or are likely to be present or so near as to be in equivalent
16 danger at the time the discharge of a firearm occurs. Occupied structure includes any
17 dwelling house, whether occupied, unoccupied or vacant.

18 7. "Prohibited possessor" means any person:

19 (a) **WHO HAS BEEN PLACED UNDER A GUARDIANSHIP PURSUANT TO TITLE 14,**
20 **CHAPTER 5, ARTICLE 3. THIS SUBDIVISION DOES NOT APPLY TO A PERSON**
21 **PLACED UNDER A GUARDIANSHIP SOLELY DUE TO A PHYSICAL ILLNESS OR**
22 **DISABILITY.**

23 (b) Who has been found to constitute a danger to self or to others or to be persistently or
24 acutely disabled or gravely disabled pursuant to court order ~~under~~ **PURSUANT TO**
25 **section 36-540, and whose right to possess a firearm has not been restored pursuant to §**
26 **13-925.**

27 (c) **WHO HAS BEEN FOUND INCOMPETENT PURSUANT TO ARIZONA RULES OF**
28 **CRIMINAL PROCEDURE, RULE 11.**

NICS – Proposed Statutory Changes

- 1 **(b d)** Who has been convicted within or without this state of a felony or who has been
2 adjudicated delinquent for a felony and whose civil right to possess or carry a gun or
3 firearm has not been restored.
- 4 **(e e)** Who is at the time of possession serving a term of imprisonment in any correctional or
5 detention facility.
- 6 **(d f)** Who is at the time of possession serving a term of probation pursuant to a conviction
7 for a domestic violence offense as defined in section 13-3601 or a felony offense, parole,
8 community supervision, work furlough, home arrest or release on any other basis or who is
9 serving a term of probation or parole pursuant to the interstate compact under title 31,
10 chapter 3, article 4.1.
- 11 **(e g)** Who is an undocumented alien or a nonimmigrant alien traveling with or without
12 documentation in this state for business or pleasure or who is studying in this state and
13 who maintains a foreign residence abroad. This subdivision does not apply to:
- 14 **(i)** Nonimmigrant aliens who possess a valid hunting license or permit that is lawfully
15 issued by a state in the United States.
- 16 **(ii)** Nonimmigrant aliens who enter the United States to participate in a competitive target
17 shooting event or to display firearms at a sports or hunting trade show that is sponsored by
18 a national, state or local firearms trade organization devoted to the competitive use or
19 other sporting use of firearms.
- 20 **(iii)** Certain diplomats.
- 21 **(iv)** Officials of foreign governments or distinguished foreign visitors who are designated by
22 the United States department of state.
- 23 **(v)** Persons who have received a waiver from the United States attorney general.
- 24 **8. "Prohibited weapon":**
- 25 **(a)** Includes the following:
- 26 **(i)** An item that is a bomb, grenade, rocket having a propellant charge of more than four
27 ounces or mine and that is explosive, incendiary or poison gas.
- 28 **(ii)** A device that is designed, made or adapted to muffle the report of a firearm.

NICS – Proposed Statutory Changes

- 1 (iii) A firearm that is capable of shooting more than one shot automatically, without
2 manual reloading, by a single function of the trigger.
- 3 (iv) A rifle with a barrel length of less than sixteen inches, or shotgun with a barrel length
4 of less than eighteen inches, or any firearm that is made from a rifle or shotgun and that, as
5 modified, has an overall length of less than twenty-six inches.
- 6 (v) An instrument, including a nunchaku, that consists of two or more sticks, clubs, bars or
7 rods to be used as handles, connected by a rope, cord, wire or chain, in the design of a
8 weapon used in connection with the practice of a system of self-defense.
- 9 (vi) A breakable container that contains a flammable liquid with a flash point of one
10 hundred fifty degrees Fahrenheit or less and that has a wick or similar device capable of
11 being ignited.
- 12 (vii) A chemical or combination of chemicals, compounds or materials, including dry ice,
13 that is possessed or manufactured for the purpose of generating a gas to cause a
14 mechanical failure, rupture or bursting or an explosion or detonation of the chemical or
15 combination of chemicals, compounds or materials.
- 16 (viii) An improvised explosive device.
- 17 (ix) Any combination of parts or materials that is designed and intended for use in making
18 or converting a device into an item set forth in item (i), (vi) or (viii) of this subdivision.
- 19 (b) Does not include:
- 20 (i) Any fireworks that are imported, distributed or used in compliance with state laws or
21 local ordinances.
- 22 (ii) Any propellant, propellant actuated devices or propellant actuated industrial tools that
23 are manufactured, imported or distributed for their intended purposes.
- 24 (iii) A device that is commercially manufactured primarily for the purpose of illumination.
- 25 9. "Trafficking" means to sell, transfer, distribute, dispense or otherwise dispose of a
26 weapon or explosive to another person, or to buy, receive, possess or obtain control of a
27 weapon or explosive, with the intent to sell, transfer, distribute, dispense or otherwise
28 dispose of the weapon or explosive to another person.

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1 **B. SUBSECTION A, PARAGRAPH 7 DOES NOT APPLY IF THE PERSON’S RIGHT**
2 **TO POSSESS A FIREARM HAS BEEN RESTORED PURSUANT TO SECTION 13-925.**

3 **B C.** The items set forth in subsection A, paragraph 8, subdivision (a), items (i), (ii), (iii)
4 and (iv) of this section do not include any firearms or devices that are registered in the
5 national firearms registry and transfer records of the United States treasury department or
6 any firearm that has been classified as a curio or relic by the United States treasury
7 department.

8 Section 3. **13-3112. Concealed weapons; qualification; application; permit to carry; civil**
9 **penalty; report; applicability**

10 A. The department of public safety shall issue a permit to carry a concealed weapon to a
11 person who is qualified under this section. The person shall carry the permit at all times
12 when the person is in actual possession of the concealed weapon and is required by § 4-229
13 or 4-244 to carry the permit. If the person is in actual possession of the concealed weapon
14 and is required by § 4-229 or 4-244 to carry the permit, the person shall present the permit
15 for inspection to any law enforcement officer on request.

16 B. The permit of a person who is arrested or indicted for an offense that would make the
17 person unqualified under section 13-3101, subsection A, paragraph 7 or this section shall
18 be immediately suspended and seized. The permit of a person who becomes unqualified on
19 conviction of that offense shall be revoked. The permit shall be restored on presentation of
20 documentation from the court if the permittee is found not guilty or the charges are
21 dismissed. The permit shall be restored on presentation of documentation from the county
22 attorney that the charges against the permittee were dropped or dismissed.

23 C. A permittee who carries a concealed weapon, who is required by section 4-229 or 4-244
24 to carry a permit and who fails to present the permit for inspection on the request of a law
25 enforcement officer commits a violation of this subsection and is subject to a civil penalty of
26 not more than three hundred dollars. The department of public safety shall be notified of
27 all violations of this subsection and shall immediately suspend the permit. A permittee shall
28 not be convicted of a violation of this subsection if the permittee produces to the court a

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1 legible permit that is issued to the permittee and that was valid at the time the permittee
2 failed to present the permit for inspection.

3 **D. A law enforcement officer shall not confiscate or forfeit a weapon that is otherwise**
4 **lawfully possessed by a permittee whose permit is suspended pursuant to subsection C of**
5 **this section, except that a law enforcement officer may take temporary custody of a firearm**
6 **during an investigatory stop of the permittee.**

7 **E. The department of public safety shall issue a permit to an applicant who meets all of the**
8 **following conditions:**

9 **1. Is a resident of this state or a United States citizen.**

10 **2. Is twenty-one years of age or older.**

11 **3. Is not under indictment for and has not been convicted in any jurisdiction of a felony**
12 **unless that conviction has been expunged, set aside or vacated or the applicant's rights**
13 **have been restored ~~and the applicant is currently not a prohibited possessor under state or~~**
14 **federal law.**

15 **4. ~~Does not suffer from mental illness and has not been adjudicated mentally incompetent~~**
16 **~~or committed to a mental institution.~~ THE APPLICANT IS CURRENTLY NOT A**
17 **PROHIBITED POSSESSOR UNDER STATE OR FEDERAL LAW,**

18 **5. Is not unlawfully present in the United States.**

19 **6. Has ever demonstrated competence with a firearm as prescribed by subsection N of this**
20 **section and provides adequate documentation that the person has satisfactorily completed**
21 **a training program or demonstrated competence with a firearm in any state or political**
22 **subdivision in the United States. For the purposes of this paragraph, "adequate**
23 **documentation" means:**

24 **(a) A current or expired permit issued by the department of public safety pursuant to this**
25 **section.**

26 **(b) An original or copy of a certificate, card or document that shows the applicant has ever**
27 **completed any course or class prescribed by subsection N of this section or an affidavit**

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1 from the instructor, school, club or organization that conducted or taught the course or
2 class attesting to the applicant's completion of the course or class.

3 (c) An original or a copy of a United States department of defense form 214 (DD-214)
4 indicating an honorable discharge or general discharge under honorable conditions, a
5 certificate of completion of basic training or any other document demonstrating proof of
6 the applicant's current or former service in the United States armed forces as prescribed
7 by subsection N, paragraph 5 of this section.

8 (d) An original or a copy of a concealed weapon, firearm or handgun permit or a license as
9 prescribed by subsection N, paragraph 6 of this section.

10 F. The application shall be completed on a form prescribed by the department of public
11 safety. The form shall not require the applicant to disclose the type of firearm for which a
12 permit is sought. The applicant shall attest under penalty of perjury that all of the
13 statements made by the applicant are true, that the applicant has been furnished a copy of
14 this chapter and chapter 4 of this title and that the applicant is knowledgeable about the
15 provisions contained in those chapters. The applicant shall submit the application to the
16 department with any documentation prescribed by subsection E of this section, two sets of
17 fingerprints and a reasonable fee determined by the director of the department.

18 G. On receipt of a concealed weapon permit application, the department of public safety
19 shall conduct a check of the applicant's criminal history record pursuant to section 41-
20 1750. The department of public safety may exchange fingerprint card information with the
21 federal bureau of investigation for federal criminal history record checks.

22 H. The department of public safety shall complete all of the required qualification checks
23 within sixty days after receipt of the application and shall issue a permit within fifteen
24 working days after completing the qualification checks if the applicant meets all of the
25 conditions specified in subsection E of this section. If a permit is denied, the department of
26 public safety shall notify the applicant in writing within fifteen working days after the
27 completion of all of the required qualification checks and shall state the reasons why the
28 application was denied. On receipt of the notification of the denial, the applicant has

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1 twenty days to submit any additional documentation to the department. On receipt of the
2 additional documentation, the department shall reconsider its decision and inform the
3 applicant within twenty days of the result of the reconsideration. If denied, the applicant
4 shall be informed that the applicant may request a hearing pursuant to title 41, chapter 6,
5 article 10. For the purposes of this subsection, "receipt of the application" means the first
6 day that the department has physical control of the application and that is presumed to be
7 on the date of delivery as evidenced by proof of delivery by the United States postal service
8 or a written receipt, which shall be provided by the department on request of the applicant.

9 **I.** On issuance, a permit is valid for five years, except a permit that is held by a member of
10 the United States armed forces, including a member of the Arizona national guard or a
11 member of the reserves of any military establishment of the United States, who is on
12 federal active duty and who is deployed overseas shall be extended until ninety days after
13 the end of the member's overseas deployment.

14 **J.** The department of public safety shall maintain a computerized permit record system
15 that is accessible to criminal justice agencies for the purpose of confirming the permit
16 status of any person who is contacted by a law enforcement officer and who claims to hold
17 a valid permit issued by this state. This information and any other records that are
18 maintained regarding applicants, permit holders or instructors shall not be available to any
19 other person or entity except on an order from a state or federal court. A criminal justice
20 agency shall not use the computerized permit record system to conduct inquiries on
21 whether a person is a concealed weapons permit holder unless the criminal justice agency
22 has reasonable suspicion to believe the person is carrying a concealed weapon and the
23 person is subject to a lawful criminal investigation, arrest, detention or an investigatory
24 stop.

25 **K.** A permit issued pursuant to this section is renewable every five years. Before a permit
26 may be renewed, a criminal history records check shall be conducted pursuant to section
27 41-1750 within sixty days after receipt of the application for renewal. For the purposes of
28 permit renewal, the permit holder is not required to submit additional fingerprints.

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- 1 **L. Applications for renewal shall be accompanied by a fee determined by the director of the**
2 **department of public safety.**
- 3 **M. The department of public safety shall suspend or revoke a permit issued under this**
4 **section if the permit holder becomes ineligible pursuant to subsection E of this section. The**
5 **department of public safety shall notify the permit holder in writing within fifteen working**
6 **days after the revocation or suspension and shall state the reasons for the revocation or**
7 **suspension.**
- 8 **N. An applicant shall demonstrate competence with a firearm through any of the following:**
- 9 **1. Completion of any firearms safety or training course or class that is available to the**
10 **general public, that is offered by a law enforcement agency, a junior college, a college or a**
11 **private or public institution, academy, organization or firearms training school and that is**
12 **approved by the department of public safety or that uses instructors who are certified by**
13 **the national rifle association.**
 - 14 **2. Completion of any hunter education or hunter safety course approved by the Arizona**
15 **game and fish department or a similar agency of another state.**
 - 16 **3. Completion of any national rifle association firearms safety or training course.**
 - 17 **4. Completion of any law enforcement firearms safety or training course or class that is**
18 **offered for security guards, investigators, special deputies or other divisions or subdivisions**
19 **of law enforcement or security enforcement and that is approved by the department of**
20 **public safety.**
 - 21 **5. Evidence of current military service or proof of honorable discharge or general**
22 **discharge under honorable conditions from the United States armed forces.**
 - 23 **6. A valid current or expired concealed weapon, firearm or handgun permit or license that**
24 **is issued by another state or a political subdivision of another state and that has a training**
25 **or testing requirement for initial issuance.**
 - 26 **7. Completion of any governmental police agency firearms training course and**
27 **qualification to carry a firearm in the course of normal police duties.**

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1 **8. Completion of any other firearms safety or training course or class that is conducted by**
2 **a department of public safety approved or national rifle association certified firearms**
3 **instructor.**

4 **O. The department of public safety shall maintain information comparing the number of**
5 **permits requested, the number of permits issued and the number of permits denied. The**
6 **department shall annually report this information to the governor and the legislature.**

7 **P. The director of the department of public safety shall adopt rules for the purpose of**
8 **implementing and administering this section including fees relating to permits that are**
9 **issued pursuant to this section.**

10 **Q. This state and any political subdivision of this state shall recognize a concealed weapon,**
11 **firearm or handgun permit or license that is issued by another state or a political**
12 **subdivision of another state if both:**

13 **1. The permit or license is recognized as valid in the issuing state.**

14 **2. The permit or license holder is all of the following:**

15 **(a) Legally present in this state.**

16 **(b) Not legally prohibited from possessing a firearm in this state.**

17 **R. For the purpose of establishing mutual permit or license recognition with other states,**
18 **the department of public safety shall enter into a written agreement if another state**
19 **requires a written agreement.**

20 **S. Notwithstanding the provisions of this section, a person with a concealed weapons permit**
21 **from another state may not carry a concealed weapon in this state if the person is under**
22 **twenty-one years of age or is under indictment for, or has been convicted of, a felony**
23 **offense in any jurisdiction, unless that conviction is expunged, set aside or vacated or the**
24 **person's rights have been restored and the person is currently not a prohibited possessor**
25 **under state or federal law.**

26 **T. The department of public safety may issue certificates of firearms proficiency according**
27 **to the Arizona peace officer standards and training board firearms qualification for the**
28 **purposes of implementing the law enforcement officers safety act of 2004 (P.L. 108-277;**

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1 118 Stat. 865; 18 United States Code sections 926B and 926C). A law enforcement agency
2 shall issue to a law enforcement officer who has honorably retired a photographic
3 identification that states that the officer has honorably retired from the agency. The chief
4 law enforcement officer shall determine whether an officer has honorably retired and the
5 determination is not subject to review. A law enforcement agency has no obligation to
6 revoke, alter or modify the honorable discharge photographic identification based on
7 conduct that the agency becomes aware of or that occurs after the officer has separated
8 from the agency.

9 Section 4. **14-5304. Findings; order of appointment; limitations; filing**

10 A. In exercising its appointment authority pursuant to this chapter, the court shall
11 encourage the development of maximum self-reliance and independence of the
12 incapacitated person.

13 B. The court may appoint a general or limited guardian as requested if the court finds by
14 clear and convincing evidence that:

15 1. The person for whom a guardian is sought is incapacitated.

16 2. The appointment is necessary to provide for the demonstrated needs of the incapacitated
17 person.

18 3. The person's needs cannot be met by less restrictive means, including the use of
19 appropriate technological assistance.

20 C. In conformity with the evidence regarding the extent of the ward's incapacity, the court
21 may appoint a limited guardian and specify time limits on the guardianship and limitations
22 on the guardian's powers.

23 D. The guardian shall file an acceptance of appointment with the appointing court.

24 **E. IF THE COURT APPOINTS A GUARDIAN THE COURT SHALL TRANSMIT THE**
25 **PERSON'S NAME, SEX, DATE OF BIRTH, SOCIAL SECURITY NUMBER, COURT**
26 **CASE NUMBER, COURT ORIGINATING AGENCY IDENTIFICATION NUMBER**
27 **AND THE DATE THE PERSON WAS FOUND TO BE INCAPACITATED TO THE**
28 **DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC SAFETY**

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1 SHALL ENTER THE INFORMATION IN THE NATIONAL INSTANT CRIMINAL
2 BACKGROUND CHECK SYSTEM. INFORMATION REGARDING PERSONS FOUND
3 TO BE INCAPACITATED SHALL BE MAINTAINED IN THE MENTAL HEALTH
4 REPOSITORY MAINTAINED BY THE SUPREME COURT WITH ACCESS
5 GRANTED TO A LAW ENFORCEMENT AGENCY THROUGH THE DEPARTMENT
6 OF PUBLIC SAFETY FOR PURPOSES OF ENFORCING A COURT ORDER,
7 ASSISTING IN AN INVESTIGATION AND RETURNING PROPERTY. UPON
8 REQUEST, THE COURT SHALL PROVIDE CERTIFIED COPIES OF FINDINGS OF
9 INCAPACITATION AND APPOINTMENT OF A GUARDIAN TO A LAW
10 ENFORCEMENT AND PROSECUTING AGENCY FOR THE PURPOSES OF
11 INVESTIGATING AND PROSECUTING A PERSON WHO IS A PROHIBITED
12 POSSESSOR PURSUANT TO SECTION 13-3101. THIS SUBSECTION DOES NOT
13 APPLY TO A PERSON PLACED UNDER A GUARDIANSHIP SOLELY DUE TO A
14 PHYSICAL ILLNESS OR DISABILITY.

15 **Section 5. 32-2612. Qualifications of applicant for agency license; substantiation of work**
16 **experience**

17 **A. Each applicant, if an individual, or each associate, director or manager, if the applicant**
18 **is other than an individual, for an agency license to be issued pursuant to this chapter shall:**

- 19 **1. Be at least twenty-one years of age.**
- 20 **2. Be a citizen or a legal resident of the United States who is authorized to seek employment**
21 **in the United States.**
- 22 **3. Not have been convicted of any felony or currently be under indictment for a felony.**
- 23 **4. Within the five years immediately preceding the application for an agency license, not**
24 **have been convicted of any misdemeanor act involving:**
 - 25 **(a) Personal violence or force against another person or threatening to commit any act of**
26 **personal violence or force against another person.**
 - 27 **(b) Misconduct involving a deadly weapon as provided in section 13-3102.**
 - 28 **(c) Dishonesty or fraud.**

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- 1 (d) Arson.
- 2 (e) Theft.
- 3 (f) Domestic violence.
- 4 (g) A violation of title 13, chapter 34 or 34.1 or an offense that has the same elements as an
5 offense listed in title 13, chapter 34 or 34.1.
- 6 (h) Sexual misconduct.
- 7 5. Not be on parole, on community supervision, on work furlough, on home arrest, on
8 release on any other basis or named in an outstanding arrest warrant.
- 9 6. Not be serving a term of probation pursuant to a conviction for any act of personal
10 violence or domestic violence, as defined in section 13-3601, or an offense that has the same
11 elements as an offense listed in section 13-3601.
- 12 7. Not be **ANY** ~~either~~ of the following:
- 13 (a) ~~Adjudicated—mentally— incompetent.~~ **PLACED UNDER A GUARDIANSHIP**
14 **PURSUANT TO TITLE 14, CHAPTER 5, ARTICLE 3. THIS SUBDIVISION DOES NOT**
15 **APPLY TO A PERSON PLACED UNDER A GUARDIANSHIP SOLELY DUE TO A**
16 **PHYSICAL ILLNESS OR DISABILITY**
- 17 (b) Found to constitute a danger to self or others or to be persistently or acutely disabled or
18 gravely disabled pursuant to section 36-540.
- 19 (c) **FOUND INCOMPETENT PURSUANT TO ARIZONA RULES OF CRIMINAL**
20 **PROCEDURE, RULE 11.**
- 21 8. Not have a disability as defined in section 41-1461, unless that person is a qualified
22 individual as defined in section 41-1461.
- 23 9. Not have been convicted of acting or attempting to act as a security guard or a security
24 guard agency without a license if a license was required.
- 25 10. Not be a registered sex offender.
- 26 B. The qualifying party for an agency license and the resident manager, if a resident
27 manager is required pursuant to section 32-2616, shall have at least three years of full-time
28 experience as a manager, supervisor or administrator of a security guard agency or three

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1 years of full-time supervisory experience with any federal, United States military, state,
2 county or municipal law enforcement agency. The qualifying party for an agency license
3 and the resident manager, if a resident manager is required pursuant to section 32-2616,
4 must substantiate managerial work experience claimed as years of qualifying experience
5 and provide the exact details as to the character and nature of the experience on a form
6 prescribed by the department and certified by the employer. On written request, an
7 employer shall submit to the employee a written certification of prior work experience
8 within thirty calendar days. The written certification is subject to independent verification
9 by the department. If an employer goes out of business, the employer shall provide
10 registered employees with a complete and accurate record of their work history. If an
11 applicant is unable to supply written certification from an employer in whole or in part, the
12 applicant may offer written certification from persons other than an employer covering the
13 same subject matter for consideration by the department. The burden of proving the
14 minimum years of experience is on the applicant.

15 C. The department may deny an agency license if the department determines that the
16 applicant is unfit based on a conviction, citation or encounter with law enforcement for a
17 statutory violation.

18 Section 5. **36-540. Court options**

19 A. If the court finds by clear and convincing evidence that the proposed patient, as a result
20 of mental disorder, is a danger to self, is a danger to others, is persistently or acutely
21 disabled or is gravely disabled and in need of treatment, and is either unwilling or unable
22 to accept voluntary treatment, the court shall order the patient to undergo one of the
23 following:

- 24 1. Treatment in a program of outpatient treatment.
- 25 2. Treatment in a program consisting of combined inpatient and outpatient treatment.
- 26 3. Inpatient treatment in a mental health treatment agency, in a hospital operated by or
27 under contract with the United States department of veterans affairs to provide treatment

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1 to eligible veterans pursuant to article 9 of this chapter, in the state hospital or in a private
2 hospital, if the private hospital agrees, subject to the limitations of section 36-541.

3 **B. The court shall consider all available and appropriate alternatives for the treatment and**
4 **care of the patient. The court shall order the least restrictive treatment alternative**
5 **available.**

6 **C. The court may order the proposed patient to undergo outpatient or combined inpatient**
7 **and outpatient treatment pursuant to subsection A, paragraph 1 or 2 of this section if the**
8 **court:**

9 **1. Determines that all of the following apply:**

10 **(a) The patient does not require continuous inpatient hospitalization.**

11 **(b) The patient will be more appropriately treated in an outpatient treatment program or**
12 **in a combined inpatient and outpatient treatment program.**

13 **(c) The patient will follow a prescribed outpatient treatment plan.**

14 **(d) The patient will not likely become dangerous or suffer more serious physical harm or**
15 **serious illness or further deterioration if the patient follows a prescribed outpatient**
16 **treatment plan.**

17 **2. Is presented with and approves a written treatment plan that conforms with the**
18 **requirements of section 36-540.01, subsection B. If the treatment plan presented to the**
19 **court pursuant to this subsection provides for supervision of the patient under court order**
20 **by a mental health agency that is other than the mental health agency that petitioned or**
21 **requested the county attorney to petition the court for treatment pursuant to section 36-**
22 **531, the treatment plan must be approved by the medical director of the mental health**
23 **agency that will supervise the treatment pursuant to subsection E of this section.**

24 **D. An order to receive treatment pursuant to subsection A, paragraph 1 or 2 of this section**
25 **shall not exceed three hundred sixty-five days. The period of inpatient treatment under a**
26 **combined treatment order pursuant to subsection A, paragraph 2 of this section shall not**
27 **exceed the maximum period allowed for an order for inpatient treatment pursuant to**
28 **subsection F of this section.**

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1 **E. If the court enters an order for treatment pursuant to subsection A, paragraph 1 or 2 of**
2 **this section, all of the following apply:**

3 **1. The court shall designate the medical director of the mental health treatment agency that**
4 **will supervise and administer the patient's treatment program.**

5 **2. The medical director shall not use the services of any person, agency or organization to**
6 **supervise a patient's outpatient treatment program unless the person, agency or**
7 **organization has agreed to provide these services in the individual patient's case and unless**
8 **the department has determined that the person, agency or organization is capable and**
9 **competent to do so.**

10 **3. The person, agency or organization assigned to supervise an outpatient treatment**
11 **program or the outpatient portion of a combined treatment program shall be notified at**
12 **least three days before a referral. The medical director making the referral and the person,**
13 **agency or organization assigned to supervise the treatment program shall share relevant**
14 **information about the patient to provide continuity of treatment.**

15 **4. During any period of outpatient treatment under subsection A, paragraph 2 of this**
16 **section, if the court, on motion by the medical director of the patient's outpatient mental**
17 **health treatment facility, determines that the patient is not complying with the terms of the**
18 **order or that the outpatient treatment plan is no longer appropriate and the patient needs**
19 **inpatient treatment, the court, without a hearing and based on the court record, the**
20 **patient's medical record, the affidavits and recommendations of the medical director, and**
21 **the advice of staff and physicians or the psychiatric and mental health nurse practitioner**
22 **familiar with the treatment of the patient, may enter an order amending its original order.**
23 **The amended order may alter the outpatient treatment plan or order the patient to**
24 **inpatient treatment pursuant to subsection A, paragraph 3 of this section. The amended**
25 **order shall not increase the total period of commitment originally ordered by the court or,**
26 **when added to the period of inpatient treatment provided by the original order and any**
27 **other amended orders, exceed the maximum period allowed for an order for inpatient**
28 **treatment pursuant to subsection F of this section. If the patient refuses to comply with an**

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1 amended order for inpatient treatment, the court may authorize and direct a peace officer,
2 on the request of the medical director, to take the patient into protective custody and
3 transport the patient to the agency for inpatient treatment. When reporting to or being
4 returned to a treatment agency for inpatient treatment pursuant to an amended order, the
5 patient shall be informed of the patient's right to judicial review and the patient's right to
6 consult with counsel pursuant to section 36-546.

7 **5. During any period of outpatient treatment under subsection A, paragraph 2 of this**
8 **section, if the medical director of the outpatient treatment facility in charge of the patient's**
9 **care determines, in concert with the medical director of an inpatient mental health**
10 **treatment facility who has agreed to accept the patient, that the patient is in need of**
11 **immediate acute inpatient psychiatric care because of behavior that is dangerous to self or**
12 **to others, the medical director of the outpatient treatment facility may order a peace officer**
13 **to apprehend and transport the patient to the inpatient treatment facility pending a court**
14 **determination on an amended order under paragraph 4 of this subsection. The patient may**
15 **be detained and treated at the inpatient treatment facility for a period of no more than**
16 **forty-eight hours, exclusive of weekends and holidays, from the time that the patient is**
17 **taken to the inpatient treatment facility. The medical director of the outpatient treatment**
18 **facility shall file the motion for an amended court order requesting inpatient treatment no**
19 **later than the next working day following the patient being taken to the inpatient treatment**
20 **facility. Any period of detention within the inpatient treatment facility pending issuance of**
21 **an amended order shall not increase the total period of commitment originally ordered by**
22 **the court or, when added to the period of inpatient treatment provided by the original**
23 **order and any other amended orders, exceed the maximum period allowed for an order for**
24 **inpatient treatment pursuant to subsection F of this section. If a patient is ordered to**
25 **undergo inpatient treatment pursuant to an amended order, the medical director of the**
26 **outpatient treatment facility shall inform the patient of the patient's right to judicial review**
27 **and to consult with an attorney pursuant to section 36-546.**

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1 **F. The maximum periods of inpatient treatment that the court may order, subject to the**
2 **limitations of section 36-541, are as follows:**

- 3 **1. Ninety days for a person found to be a danger to self.**
- 4 **2. One hundred eighty days for a person found to be a danger to others.**
- 5 **3. One hundred eighty days for a person found to be persistently or acutely disabled.**
- 6 **4. Three hundred sixty-five days for a person found to be gravely disabled.**

7 **G. If, on finding that the patient meets the criteria for court-ordered treatment pursuant to**
8 **subsection A of this section, the court also finds that there is reasonable cause to believe**
9 **that the patient is an incapacitated person as defined in section 14-5101 or is a person in**
10 **need of protection pursuant to section 14-5401 and that the patient is or may be in need of**
11 **guardianship or conservatorship, or both, the court may order an investigation concerning**
12 **the need for a guardian or conservator, or both, and may appoint a suitable person or**
13 **agency to conduct the investigation. The appointee may include a court appointed guardian**
14 **ad litem, an investigator appointed pursuant to section 14-5308 or the public fiduciary if**
15 **there is no person willing and qualified to act in that capacity. The court shall give notice of**
16 **the appointment to the appointee within three days of the appointment. The appointee shall**
17 **submit the report of the investigation to the court within twenty-one days. The report shall**
18 **include recommendations as to who should be guardian or who should be conservator, or**
19 **both, and a report of the findings and reasons for the recommendation. If the investigation**
20 **and report so indicate, the court shall order the appropriate person to submit a petition to**
21 **become the guardian or conservator, or both, of the patient.**

22 **H. In any proceeding for court-ordered treatment in which the petition alleges that the**
23 **patient is in need of a guardian or conservator and states the grounds for that allegation,**
24 **the court may appoint an emergency temporary guardian or conservator, or both, for a**
25 **specific purpose or purposes identified in its order and for a specific period of time not to**
26 **exceed thirty days if the court finds that all of the following are true:**

- 27 **1. The patient meets the criteria for court-ordered treatment pursuant to subsection A of**
28 **this section.**

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- 1 **2. There is reasonable cause to believe that the patient is an incapacitated person as defined**
2 **in section 14-5101 or is in need of protection pursuant to section 14-5401, paragraph 2.**
- 3 **3. The patient does not have a guardian or conservator and the welfare of the patient**
4 **requires immediate action to protect the patient or the ward's property.**
- 5 **4. The conditions prescribed pursuant to section 14-5310, subsection B or section 14-**
6 **5401.01, subsection B have been met.**
- 7 **I. The court may appoint as a temporary guardian or conservator pursuant to subsection H**
8 **of this section a suitable person or the public fiduciary if there is no person qualified and**
9 **willing to act in that capacity. The court shall issue an order for an investigation as**
10 **prescribed pursuant to subsection G of this section and, unless the patient is represented by**
11 **independent counsel, the court shall appoint an attorney to represent the patient in further**
12 **proceedings regarding the appointment of a guardian or conservator. The court shall**
13 **schedule a further hearing within fourteen days on the appropriate court calendar of a**
14 **court that has authority over guardianship or conservatorship matters pursuant to this title**
15 **to consider the continued need for an emergency temporary guardian or conservator and**
16 **the appropriateness of the temporary guardian or conservator appointed, and shall order**
17 **the appointed guardian or conservator to give notice to persons entitled to notice pursuant**
18 **to section 14-5309, subsection A or section 14-5405, subsection A. The court shall authorize**
19 **certified letters of temporary emergency guardianship or conservatorship to be issued on**
20 **presentation of a copy of the court's order. If a temporary emergency conservator other**
21 **than the public fiduciary is appointed pursuant to this subsection, the court shall order that**
22 **the use of the money and property of the patient by the conservator is restricted and not to**
23 **be sold, used, transferred or encumbered, except that the court may authorize the**
24 **conservator to use money or property of the patient specifically identified as needed to pay**
25 **an expense to provide for the care, treatment or welfare of the patient pending further**
26 **hearing. This subsection and subsection H of this section do not:**

NICS – Proposed Statutory Changes

1 **1. Prevent the evaluation or treatment agency from seeking guardianship and**
2 **conservatorship in any other manner allowed by law at any time during the period of**
3 **court-ordered evaluation and treatment.**

4 **2. Relieve the evaluation or treatment agency from its obligations concerning the suspected**
5 **abuse of a vulnerable adult pursuant to title 46, chapter 4.**

6 **J. If, on finding that a patient meets the criteria for court-ordered treatment pursuant to**
7 **subsection A of this section, the court also learns that the patient has a guardian appointed**
8 **under title 14, the court with notice may impose on the existing guardian additional duties**
9 **pursuant to section 14-5312.01. If the court imposes additional duties on an existing**
10 **guardian as prescribed in this subsection, the court may determine that the patient needs to**
11 **continue treatment under a court order for treatment and may issue the order or**
12 **determine that the patient's needs can be adequately met by the guardian with the**
13 **additional duties pursuant to section 14-5312.01 and decline to issue the court order for**
14 **treatment. If at any time after the issuance of a court order for treatment the court finds**
15 **that the patient's needs can be adequately met by the guardian with the additional duties**
16 **pursuant to section 14-5312.01 and that a court order for treatment is no longer necessary**
17 **to assure compliance with necessary treatment, the court may terminate the court order for**
18 **treatment. If there is a court order for treatment and a guardianship with additional**
19 **mental health authority pursuant to section 14-5312.01 existing at the same time, the**
20 **treatment and placement decisions made by the treatment agency assigned by the court to**
21 **supervise and administer the patient's treatment program pursuant to the court order for**
22 **treatment are controlling unless the court orders otherwise.**

23 **K. The court shall file a report as part of the court record on its findings of alternatives for**
24 **treatment.**

25 **L. Treatment shall not include psychosurgery, lobotomy or any other brain surgery**
26 **without specific informed consent of the patient or the patient's legal guardian and an**
27 **order of the superior court in the county in which the treatment is proposed, approving**
28 **with specificity the use of the treatment.**

NICS – Proposed Statutory Changes

1 M. The medical director or any person, agency or organization used by the medical
2 director to supervise the terms of an outpatient treatment plan shall not be held civilly
3 liable for any acts committed by a patient while on outpatient treatment if the medical
4 director, person, agency or organization has in good faith followed the requirements of this
5 section.

6 N. A peace officer who in good faith apprehends and transports a patient to an inpatient
7 treatment facility on the order of the medical director of the outpatient treatment facility
8 pursuant to subsection E, paragraph 5 of this section is not subject to civil liability.

9 O. If a person has been found, as a result of a mental disorder, to constitute a danger to self
10 or others or to be persistently or acutely disabled or gravely disabled and the court enters
11 an order for treatment pursuant to subsection A of this section, the court shall **TRANSMIT**
12 **THE ~~grant access to~~ the person's name, SEX, date of birth, social security number,**
13 **COURT CASE NUMBER, COURT ORIGINATING AGENCY IDENTIFICATION**
14 **NUMBER and date of commitment to the department of public safety to comply with the**
15 **requirements of title 13, chapter 31 and title 32, chapter 26. THE DEPARTMENT OF**
16 **PUBLIC SAFETY SHALL ENTER THE REQUIRED INFORMATION ABOUT**
17 **PERSONS ORDERED INTO TREATMENT INTO THE NATIONAL INSTANT**
18 **CRIMINAL BACKGROUND CHECK SYSTEM. INFORMATION REGARDING**
19 **PERSONS ORDERED INTO TREATMENT SHALL BE ENTERED INTO THE**
20 **MENTAL HEALTH REPOSITORY MAINTAINED BY THE SUPREME COURT WITH**
21 **ACCESS GRANTED TO LAW ENFORCEMENT THROUGH THE DEPARTMENT OF**
22 **PUBLIC SAFETY FOR PURPOSES OF ENFORCING AN ORDER, ASSISTING IN AN**
23 **INVESTIGATION AND RETURN OF PROPERTY. UPON REQUEST THE COURT**
24 **SHALL PROVIDE CERTIFIED COPIES OF COMMITMENT ORDERS TO A LAW**
25 **ENFORCEMENT AND PROSECUTING AGENCY FOR THE PURPOSES OF**
26 **INVESTIGATING AND PROSECUTING PERSONS WHO ARE PROHIBITED**
27 **POSSESSORS PURSUANT TO 13-3101.**

6/10/13@3:24pm

ARIZONA JUDICIAL COUNCIL

Date Action Requested:	Type of Action Requested:	Subject:
June 24, 2013	<input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Legislative Branch Update

FROM:

Jerry Landau, Government Affairs Director
Amy Love, Legislative Liaison

DISCUSSION:

Mr. Landau and Ms. Love will update members on the 2013 Legislative Session.

RECOMMENDED COUNCIL ACTION:

Review of Legislative Session Only

ARIZONA JUDICIAL COUNCIL

LEGISLATIVE REVIEW

June 24, 2013

HB2212: legal holidays; counties; courts (Rep. Brophy McGee)

Chapter 131

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2212&Session_Id=110

<http://www.azleg.gov/legtext/51leg/1r/laws/0131.pdf>

Allows counties to designate the Friday after the fourth Thursday of November as a legal holiday, rather than the fourth Friday.

Sections affected: §11-413, 12-127

HB2231: exoneration; appearance bonds (Rep. Stevens)

Chapter 133

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2231&Session_Id=110

<http://www.azleg.gov/legtext/51leg/1r/laws/0133.pdf>

Requires a surety to be relieved of liability on the appearance bond the defendant is released on if one of the following apply; the surety surrenders the defendant to the county Sherriff on or before the order to appear in court; the Sherriff has custody of the defendant, and the surety provides an affidavit of surrender of the appearance bond to the Sherriff who then reports the affidavit of surrender of the bond to the court or the defendant is transferred to another government agency preventing the defendant from appearing in court and the surety establishes that the surety did not know of the release or transfer that prevented the defendant's appearance in court. When the surety is relieved of liability, the surety must return the premium and any collateral to the bond guarantors and the clerk shall return any money deposited.

A surety will not be relieved of liability on the appearance bond if a detainer was placed on the defendant before the bond was posted, or if the release or transfer to another governmental agency is for twenty-four hours or less.

Section affected: §13-3974

HB2240: small claims division; jurisdiction; limits (Rep. Stevens)

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2240&Session_Id=110

Increases the small claims court jurisdiction to \$3500.

Delayed effective date: January 1, 2014.

Section affected: §22-503

HB 2294: Retirement; EORP; superior court commissioners (Rep. Robson)

Chapter 122

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2294&Session_Id=110

<http://www.azleg.gov/legtext/51leg/1r/laws/0122.pdf>

Repeals the provision of SB 1609 from two sessions ago placing Superior Court Commissioners appointed on or after July 1 of the first fiscal year after the social security administration approves this state's section 218 agreement.

Section affected: §38-727, 38-801

HB2307: post-conviction relief (Rep. Farnsworth)

Chapter 94

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2307&Session_Id=110

<http://www.azleg.gov/legtext/51leg/1r/laws/0094.pdf>

In a capital post-conviction relief case the court is required to review for approval all reasonable attorney fees and costs for appointed counsel. Permits the court to appoint a designee to review and approve the fees and costs. Current law requires the approval of attorney fees for over 200 hours of work.

Section affected: §13-4041

HB2308: probate; omnibus (Rep. Farnsworth)

Chapter 26

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2308&Session_Id=110

<http://www.azleg.gov/legtext/51leg/1r/laws/0026.pdf>

Permits the court to require arbitration of a dispute before the initial appointment of a fiduciary.

Allows the court to require anyone who seeks appointment as a guardian to furnish a full set of fingerprints for a criminal background check, excluding employees of a financial institution and licensed fiduciaries.

Requires the court submit the person's completed fingerprint card to the Department of Public Safety for processing. The person seeking appointment as a guardian must bear the cost of conducting the criminal background check. Prohibits the court from charging more than the actual cost of conducting the check. Modifies the date by which guardians and conservators must submit their written reports to an annual deadline, pursuant to rules adopted by the Supreme Court.

Sections affected: §14-1108, 14-5304, 14-5315, 14-5401, 14-5419, 41-1750

HB2309: criminal offenses; sentencing (Rep. Farnsworth)

Chapter 55

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2309&Session_Id=110

<http://www.azleg.gov/legtext/51leg/1r/laws/0055.pdf>

Amends statutes governing victims' rights for juvenile offenses to encompass petty offenses, violations of local criminal ordinance and any misdemeanor offense, as well as felony offenses. Conforms to the criminal code victims' rights chapter.

Changes category one repetitive offenders' sentencing for a mitigated Class 6 Felony from .3 years to .25 years and category one repetitive offenders' sentencing for an aggravated Class 6 Felony from 1.8 years to 2 years. Changes category two repetitive offenders' sentencing for a mitigated Class 3 Felony from 3.3 years to 3.25 years.

Sections affected: §8-381, 13-3423, 12-116.08, 13-703, 13-4414, 32-109

HB2310: courts; evaluation; mental health; report (Rep. Farnsworth)

Chapter 140

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2310&Session_Id=110

<http://www.azleg.gov/legtext/51leg/1r/laws/0140.pdf>

Session law that requires the AOC evaluate mental health courts and specialized probation caseloads and develop standards for the design, training, and procedures of an accountable mental health court. The standards must include data gathering and reporting procedures for annual evaluations and must ensure comparative data across the state. Requires participation from court administration, probation departments, prosecutors, defense attorneys and other mental health stakeholders.

Directs the AOC to report its findings and recommendations to the Governor, Senate President, Speaker of the House, and the Chief Justice on or before December 31st, 2014.

Allows the AOC to contract with professional consultants for the aforementioned evaluations and development of standards.

Conditional upon the AOC receiving an appropriation on or before the effective date. Requires AOC to notify legislative council of whether or not appropriate funding has been allocated.

HB2459: justice of the peace courts (Rep. Boyer)

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2459&Session_Id=110

The "Title 22 Rewrite" bill from the Maricopa County Justice of the Peace bench. Modernizes language in Title 22 and strives to make the language consistent throughout the Title. Repeals antiquated sections and sections now or more properly addressed by court rule. However, the bill includes substantive changes to Title 22, as noted below.

- A.R.S § 22-201. Jurisdiction of civil actions
Changes the term, "forcible entry and detainer" to "eviction".
- §22-202. Venue of civil actions
Rewrites the venue statute in civil cases to more closely conform to Superior Court.
- §22-204. Change of venue; grounds

Rewrites the change of venue statute in civil cases to more closely conform to Superior Court. The party filing an affidavit alleging grounds for change of venue must provide five days notice to the opposing party.

- §22-216. Allegations required to be made by written and signed pleading

An answer or pleading made in a justice court no longer requires an affidavit as verification.

- §22-224. Oath of Jury

Rewrites the 'oath of jury' to conform what is presently being used by justice courts

- §22-261. Judgments that may be appealed

Any party to a civil action in a Justice of the Peace Court may appeal to the Superior Court from a final judgment; current law is the final judgment must exceed \$20.

- §22-314. Bail; preparation of schedule; collection; civil deposits

Rewrites the "bond schedule" statute for Justice of Peace Courts to eliminate antiquated language. Requires the Justice of the Peace to prepare or adopt a schedule of traffic violations, listing a specific deposit for each violation, and permits the collection of bail or acceptance of proper bond.

- §22-320. Trial by Jury

Removes the requirement that a jury be demanded five days in advance in a criminal Justice Court Case.

- §22-352. Judgment; imprisonment for fine; limitation; lien

Allows the Judge to determine any amount of credit for the defendant toward payment of a fine for jail time served, if the defendant fails to pay the fine. Previously the credit was "a minimum of one dollar per one day".

- §22-424. Bail; preparation of schedule; collection; civil deposits

Rewrites the "bond schedule" statute for Municipal Courts to eliminate antiquated language. The bond schedule is now set by the Presiding Magistrate, not the individual judge.

- §22-429. Judgment; imprisonment of for fine; limitation; lien

Allows the Magistrate to determine any amount of credit for the defendant toward payment of a fine for jail time served if the defendant fails to pay the fine. Previously the credit was "a minimum of one dollar per one day".

- §22-515. Setting of trials; failure to appear; continuances

In small claims court, the standard for granting continuances of hearings is changed from "most serious reasons" to "good cause".

Delayed effective date: January 1, 2014.

Sections amended: §22-112, 22-113, 22-114, 22-116, 22-117, 22-119, 22-120, 22-122, 22-124, 22-134, 22-135, 22-201, 22-202, 22-209, 22-211, 22-212, 22-215, 22-216, 22-219, 22-220, 22-223, 22-224, 22-241, 22-242, 22-261, 22-262, 22-264, 22-301, 22-311, 22-312, 22-313, 22-320,

22-322, 22-352, 22-371, 22-373, 22-405, 22-406, 22-422, 22-424, 22-425, 22-428, 22-429, 22-504, 22-515, 22-517, 22-521, 22-523, 22-601, 22-602

Sections enacted: §22-203, 22-204, 22-303, 22-314.

Sections repealed: §22-203, 22-204, 22-213, 22-214, 22-218, 22-221, 22-222, 22-282, 22-303, 22-314, 22-315, 22-316, 22-318, 22-319, 22-341, 22-342

HB2462: bail bond agents; lists; loitering (Rep. Gowan)

Chapter 21

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2462&Session_Id=110

<http://www.azleg.gov/legtext/51leg/1r/laws/0021.pdf>

Enacts a new subsection to the offense of Loitering, prohibiting a bail bond agent from soliciting bail bond business inside a court building or immediately around or near the entrance of a county or city jail. Defines soliciting as handing out business cards or other printed material, displaying any electronic devices related to bail bonds, verbally inquiring if a person needs a bail bond, or recruiting another person to solicit bail bond business. A violation is a Class 3 Misdemeanor.

Requires the Clerk of the Court monthly instead of annually to update the list of persons authorized to post bail bonds in the county, to rotate the order of names and telephone numbers on the list and to transmit the list electronically to county and city jails.

Prohibits a sheriff from recommending any bail bond agent, whether a private company or person. Requires the sheriff or keeper of a county or city jail to accept money orders, cashier's checks, cash or secured appearance bonds from an employee of a bail bond agent with proper bail agency identification. Directs the sheriff or keeper of a county or city jail to remain open to accept a secured appearance bond for 24 hours every day, including holidays.

Sections affected: §13-2905, 13-3969

HB2516: peace officers; firearms; court (Rep. Pierce)

Chapter 177

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2516&Session_Id=110

<http://www.azleg.gov/legtext/51leg/1r/laws/0177.pdf>

Permits peace officers acting in the officer's official capacity and carrying official peace officer identification to possess a firearm in a court that is established pursuant to the Arizona constitution, a justice court or a municipal court.

Allows a presiding judge to establish rules or policies consistent with the law pertaining to the carrying of firearms by peace officers for the protection of the court.

Section affected: §38-1102

HB2600: judicial nominees; minimum requirements; records (Rep. Pierce)

Chapter 62

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2600&Session_Id=110

<http://www.azleg.gov/legtext/51leg/1r/laws/0062.pdf>

Requires the Commission on Appellate Court Appointments and the Commission on Trial Court Appointments to submit to the Governor the names of at least five persons to fill a vacancy in the office of a Justice or Judge of the Supreme Court or an intermediate appellate court. Not more than 60 percent of the nominees may be from the same political party. The Commission may reject an applicant by a 2/3 vote and submit fewer than five names with no more than 2 names from the same political party.

Requires the Commission on Appellate Court Appointments and Trial Court Appointments to record in the committee minutes how each member voted, and makes the voting record public.

Contains a severability clause

Section affected: §12-3151

HB2608: EORP; closure; defined contribution (Rep. Lovas)

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2608&Session_Id=110

Closes the Elected Officials Retirement Plan (EORP) to new members effective January 1, 2014. Members of EORP as of December 31, 2013 remain members of the plan under the terms and limitations in the law. Elected officials (including judges and commissioners) who are elected or appointed on or after January 1, 2014 are placed in the newly created Elected Officials' Defined Contribution Plan (EODC) administered by the Public Safety Personnel Retirement System (PSPRS). However, an elected official, who is an active or non-active member of the Arizona State Retirement System (ASRS) has the option of continuing or resuming participation in ASRS, in lieu of EODC, by submitting in writing to ASRS an election within 30 days after the official's term begins. The member is not required to be covered by the state's section 218 agreement (relating to social security; in other words, is not required to be covered or pay into social security) in order to select ASRS.

Requires the EODC plan be a qualified government plan under § 401(a) of the IRC and be exempt from taxation under § 501 of the IRC.

Requires a member of the EODC to contribute 8% of gross compensation through salary reduction into the annuity account and the employer to contribute 6% of the member's gross compensation to be credited pro rata to the member's annuity account. Member and employer contributions and earnings immediately vest.

Creates the EODC disability program and requires all EODC members to participate. Employers, beginning January 1, 2014 must contribute a percentage of gross compensation of all members equal to the amount necessary to pay one-half of all benefits (determined by the PSPRS board). Each member, beginning January 1, 2014 must contribute a percentage equal to the employer contribution.

Directs eligibility and continuation of EODC disability benefits to be computed using the same procedures and methods used for EORP as prescribed in ARS §38-806, except that the

credited service used to compute the benefit shall only be the time earned while a member of the EODC.

Enacts a Class 6 Felony for knowingly making a false statement or falsifying a record with the intent to defraud the EODC disability program.

Repeals the provision of SB 1609 from two sessions ago placing Superior Court Commissioners appointed on or after July 1 of the first fiscal year after the social security administration approves this state's section 218 agreement.

Appropriates \$5,000,000 from the general fund in each FY, 2013-14 through 2042-43, to the EORP Fund to supplement the normal cost and to amortize the unfunded accrued liability. Monies may not be used to increase benefits.

Requires each employer, from January 1, 2014 through June 30, 2044, to contribute 23.5% of payroll for all employees who are elected officials and members of EORP, EODC, or ASRS; monies to cover the normal cost of EORP and to amortize the unfunded accrued liability of EORP.

Sections amended: §38-651.01, 38-727, 38-782, 38-801, 38-804, 38-810, 38-810.04, 38-848

Sections enacted: §38-831, 38-832, 38-833, 38-840, 38-840.01, 38-840.02, 38-840.03, 38-840.04, 38-840.05, 38-840.06, 38-840.07, 38-840.08, 38-840.09, 38-840.10, 38-840.11, 38-840.12, 38-840.13

SB1072: parenting time; relocation of child (Sen. Barto)

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=1072&Session_Id=110

Establishes that parenting plans must include relocation procedures.

Requires a moving party to give notice of relocation 45 days in advance to other parties. If the move affects the parenting plan the moving parent must file a petition to modify or revise the parenting plan. Allows the non-moving party to petition for enforcement of a parenting plan if they believe a move will affect their rights.

Contains safeguards for parties with a protected address, for emergency situations, and for parties who do not receive proper notice.

Delayed effective date: January 1, 2014.

Sections affected: §25-401, 25-403.02, 25-408 25-411

SB1294: grand jury; length of term (Sen. Crandell)

Chapter 46

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=1294&Session_Id=110

<http://www.azleg.gov/legtext/51leg/1r/laws/0046.pdf>

Increases the maximum term allowed for grand juries serving in a county with a population less than 20,000 persons from 120 days to 180 days. Optional with the presiding judge.

Section affected: §21-403

SB1346: class action; reform (Sen. Shooter)

http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=1346&Session_Id=110

Requires the court, after a hearing to determine by order whether an action is to be maintained as a class action. Allows the court to alter, amend or withdraw the order at any time before the final verdict. These provisions are similar to Rule 23(c)(1), Rules of Civil Procedure. However, Rule 23(c)(1) does not mention withdrawing the order.

Directs the court to record in writing when certifying a class action, include reasons as to why the action should be maintained as a class action and a description of all evidence in support of that determination.

Permits the court to make the following orders, also in part, codified in Rule 23(d), related to the class:

- Determine the course of the proceedings; and
- Prescribe measures to prevent undue repetition or complication in the presentation of evidence or argument; and
- Require notice to be given to some or all of the members of any step in the action or the proposed entry of judgment; and
- Require notice to be given of the opportunity of members to signify whether they consider the representation to be fair and adequate, to intervene and present claims and defenses or otherwise come into the action; and
- Impose conditions on the representative parties or interveners; and
- Require that the pleadings be amended to eliminate allegations as to representation of absent persons and that the action proceed accordingly; and
- Deal with similar procedural matters; and
- Combine any order with an appropriate pretrial order.

Allows a party to a class action to file an interlocutory appeal as a matter of right after the court's decision as to whether to certify the class. The appeal is entitled to preference. Upon a motion made by a party, the court may permit discovery proceedings to continue during the pendency of an appeal, otherwise all proceedings are stayed.

Sections enacted: §12-1871, 12-1872, 12-1873

ARIZONA JUDICIAL COUNCIL

Request for Council Action

**Date Action
Requested:**

June 24, 2013

**Type of Action
Requested:**

Formal Action/Request
 Information Only
 Other

Subject:

COURT FILING
TRENDS

FROM:

Mr. Bert Cisneros, Court Services Division

DISCUSSION:

Mr. Cisneros will present case filing trends in General and Limited Jurisdiction Courts.

RECOMMENDED COUNCIL ACTION:

Information Only

ARIZONA COURT STATISTICS

STRENGTH IN NUMBERS



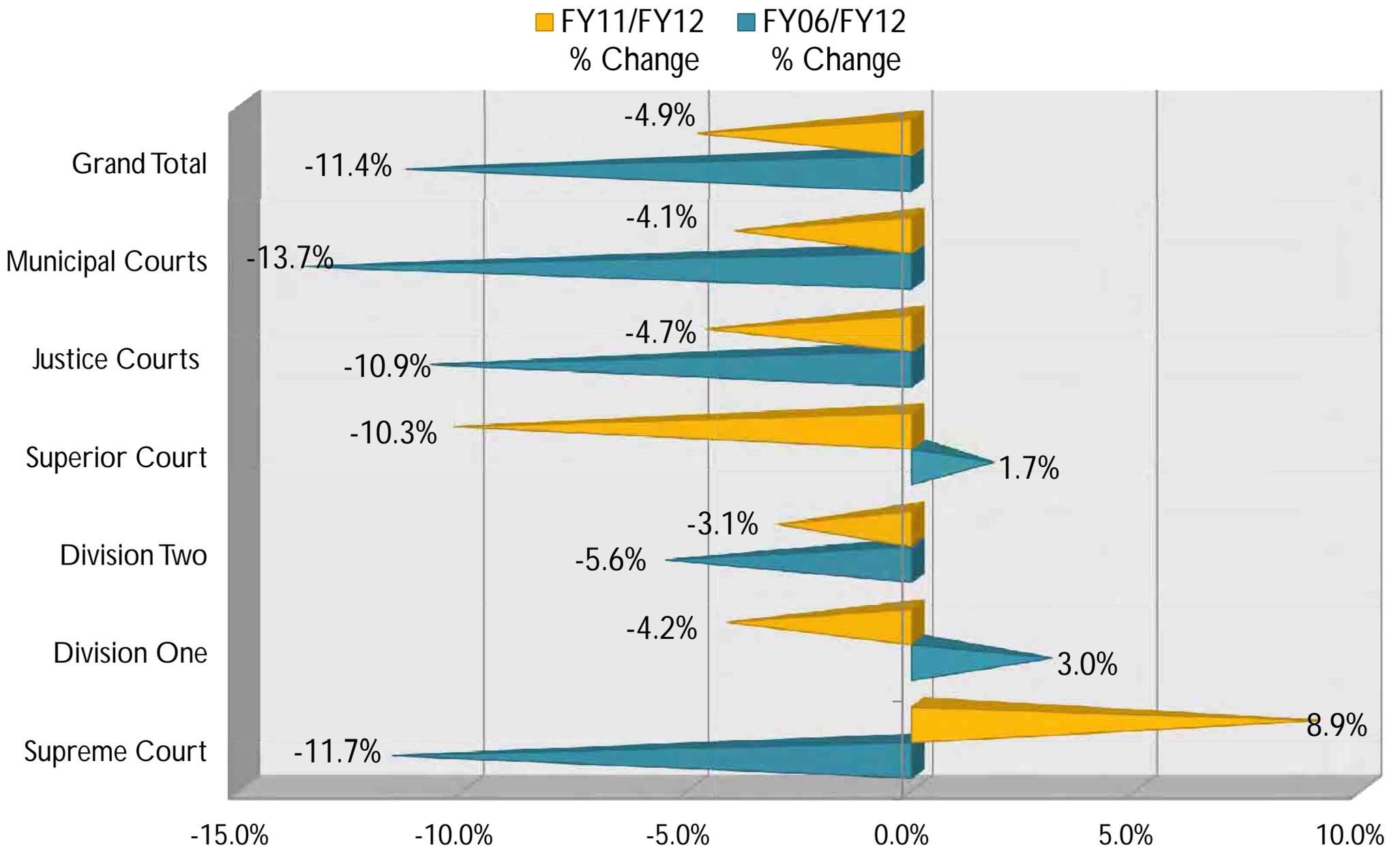
June 2013 ~ AJC Meeting

Arizona Court Statistics Trends

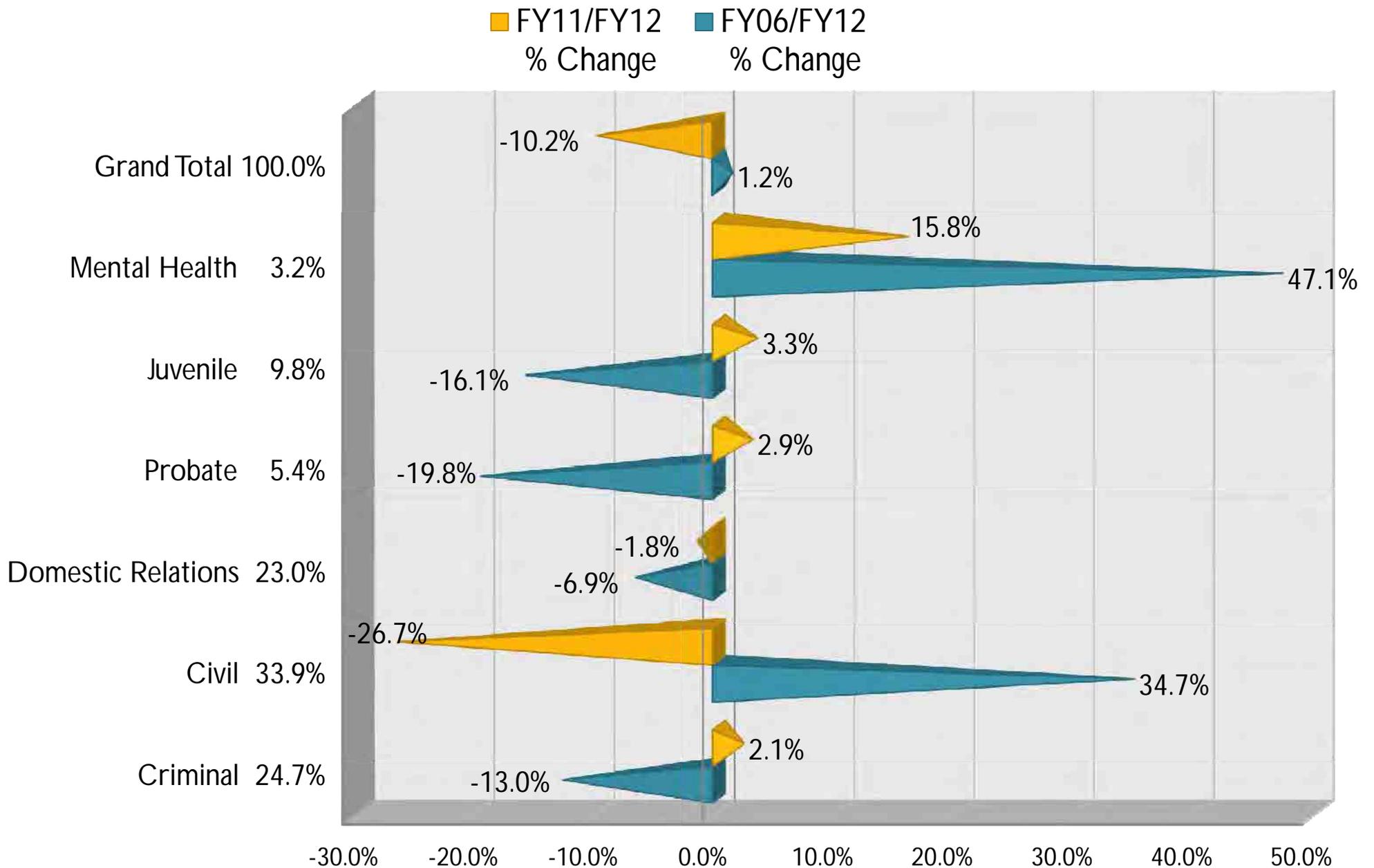
- Statewide Filing
- Superior Court Filing
- Limited Jurisdiction Courts Filing
- Revenue Trends



Statewide Filing Trends

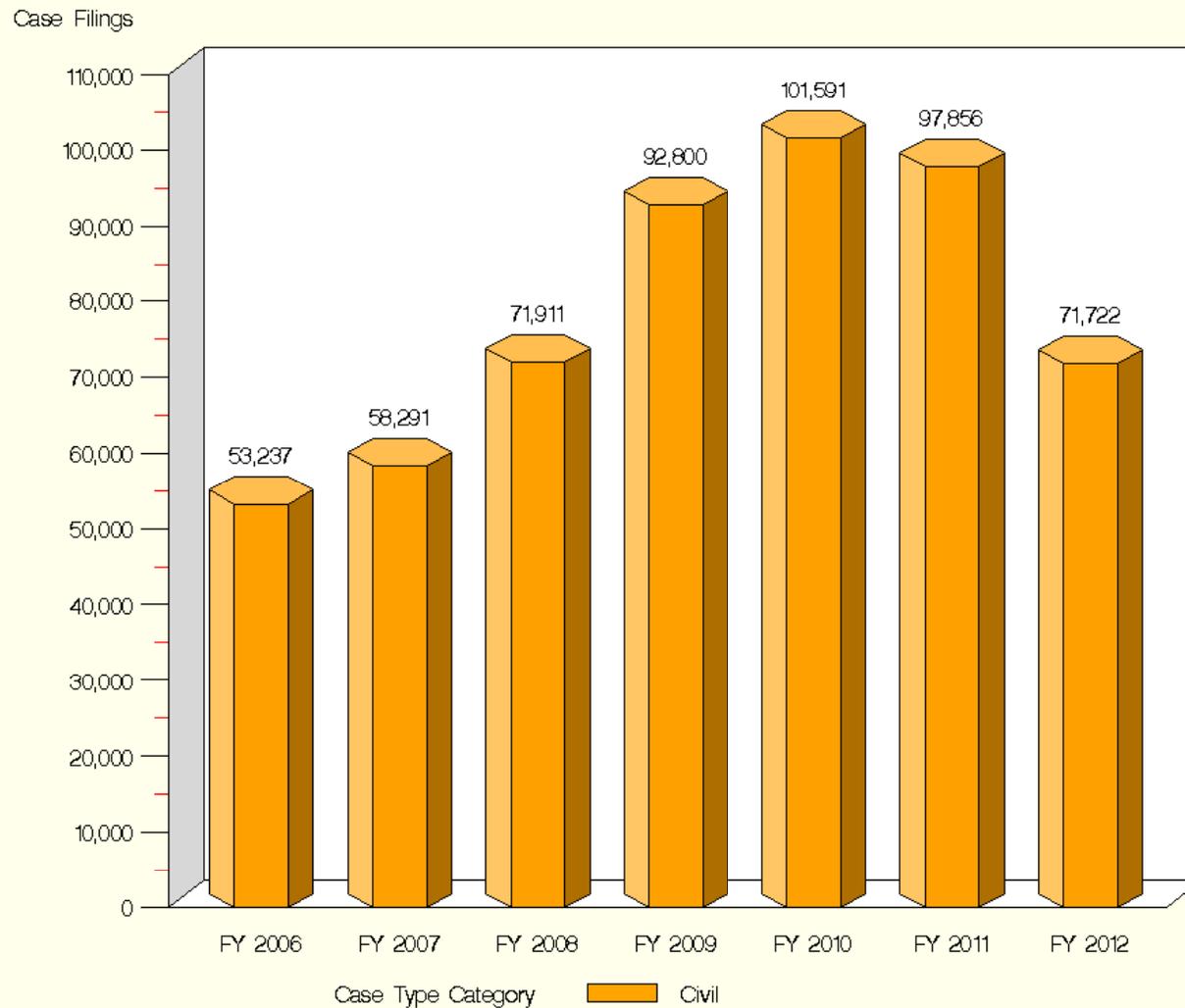


Superior Court Filing Trends



Superior Court Civil Trends

Seven Year Trend — Fiscal Years 2006—2012

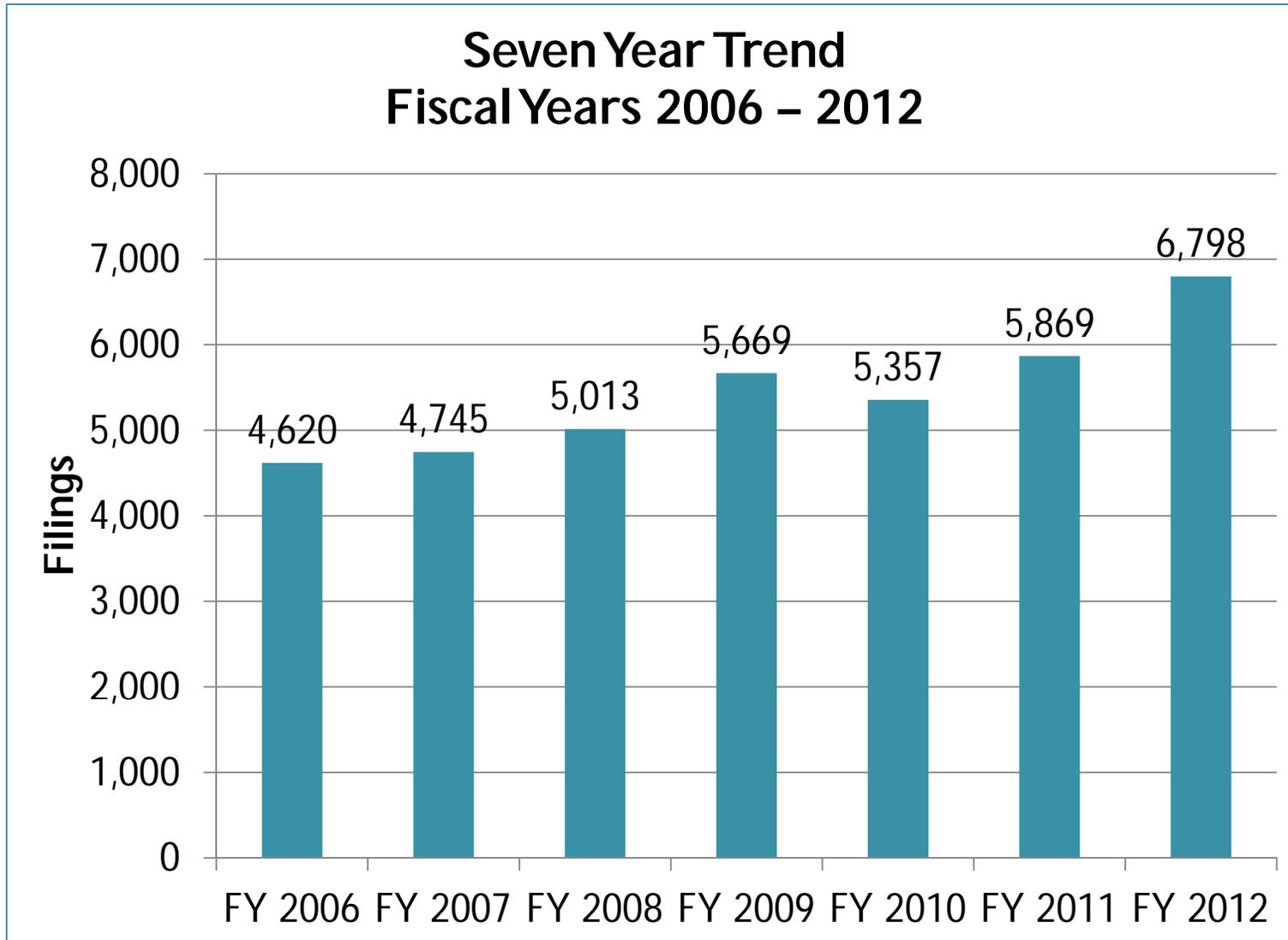


Percent Change

34.7% FY06/12

-26.7% FY11/12

Superior Court Mental Health



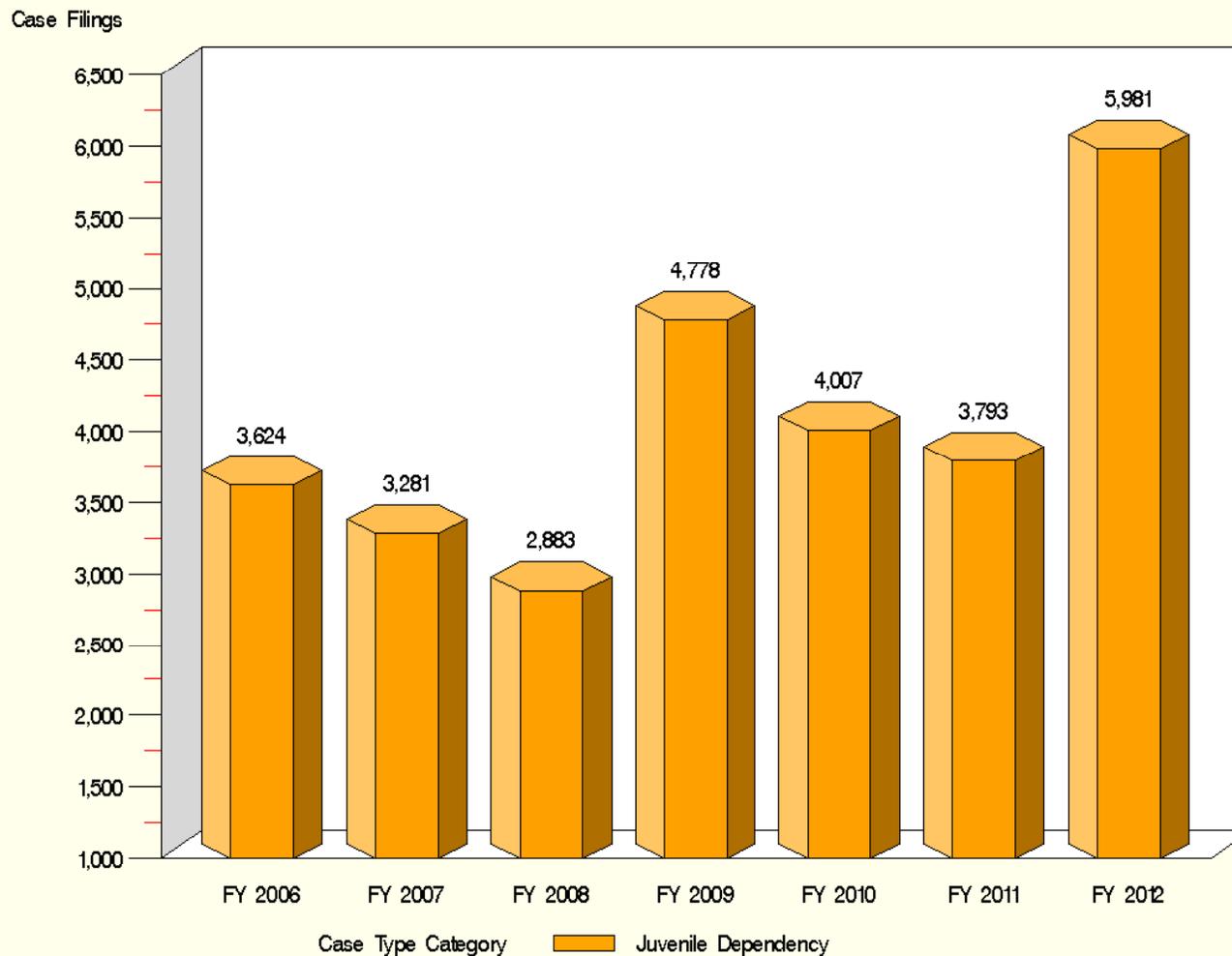
Percent
Change

FY06/12:
47.1%

FY11/12:
15.8%

Superior Court Juvenile Dependency

Seven Year Trend – Fiscal Years 2006–2012

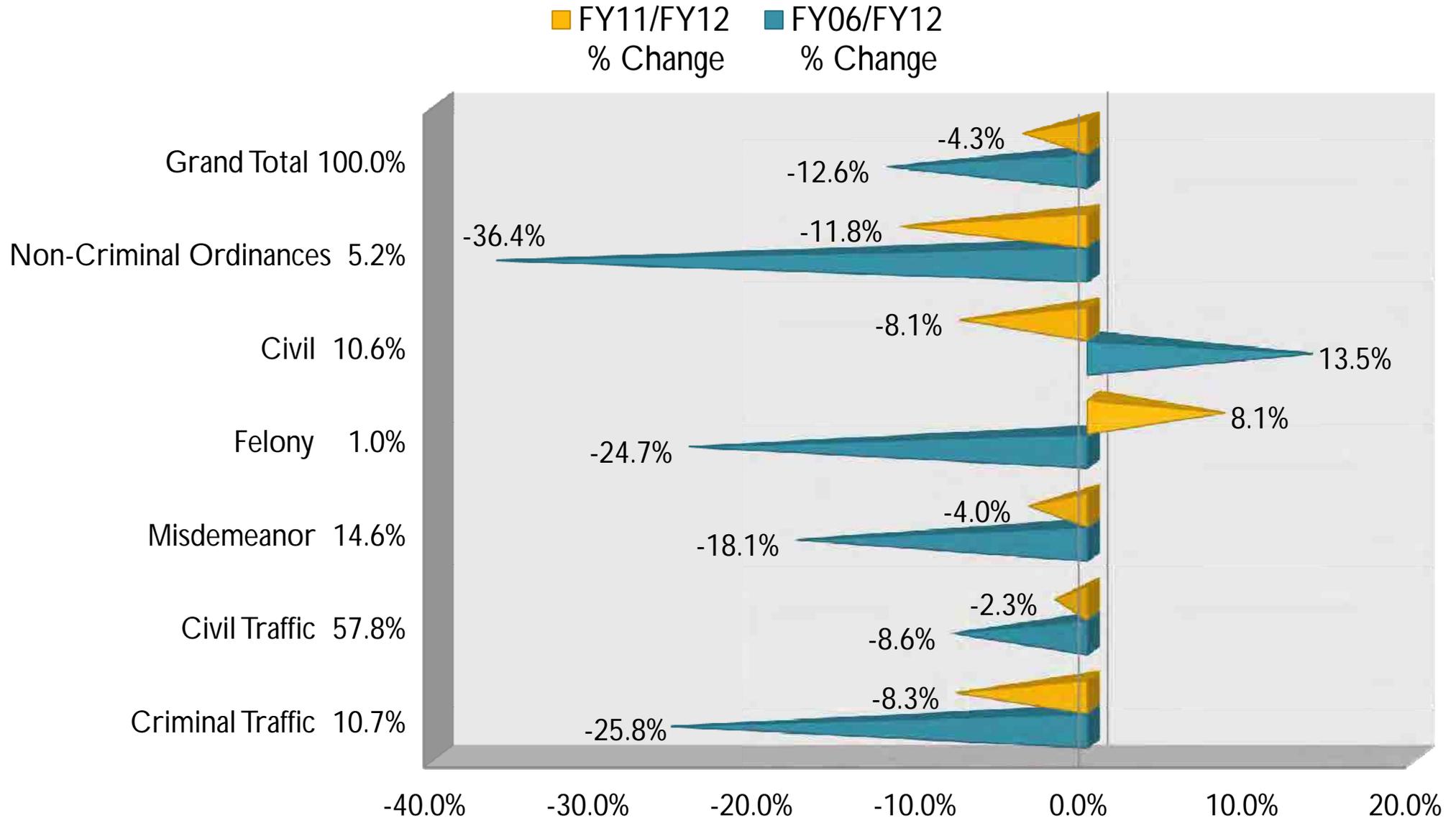


Percent Change

65.0% FY06/12

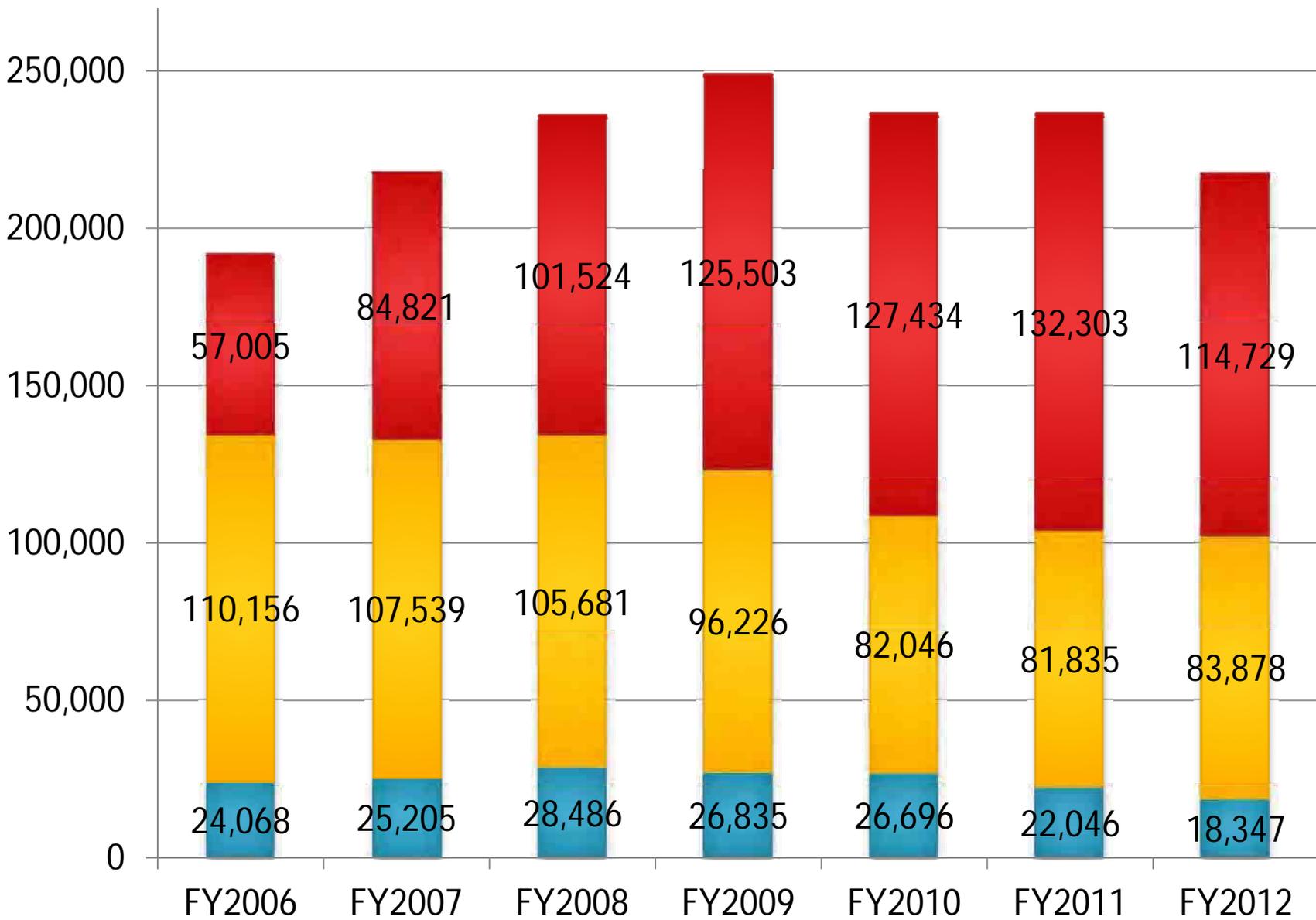
57.7% FY11/12

Limited Jurisdiction Courts Filing Trends



Justice Courts Civil Filing Trends

■ Civil-Small Claims
 ■ Civil-Forcible Detainer
 ■ Civil-Other Civil



Total Civil Percent Change

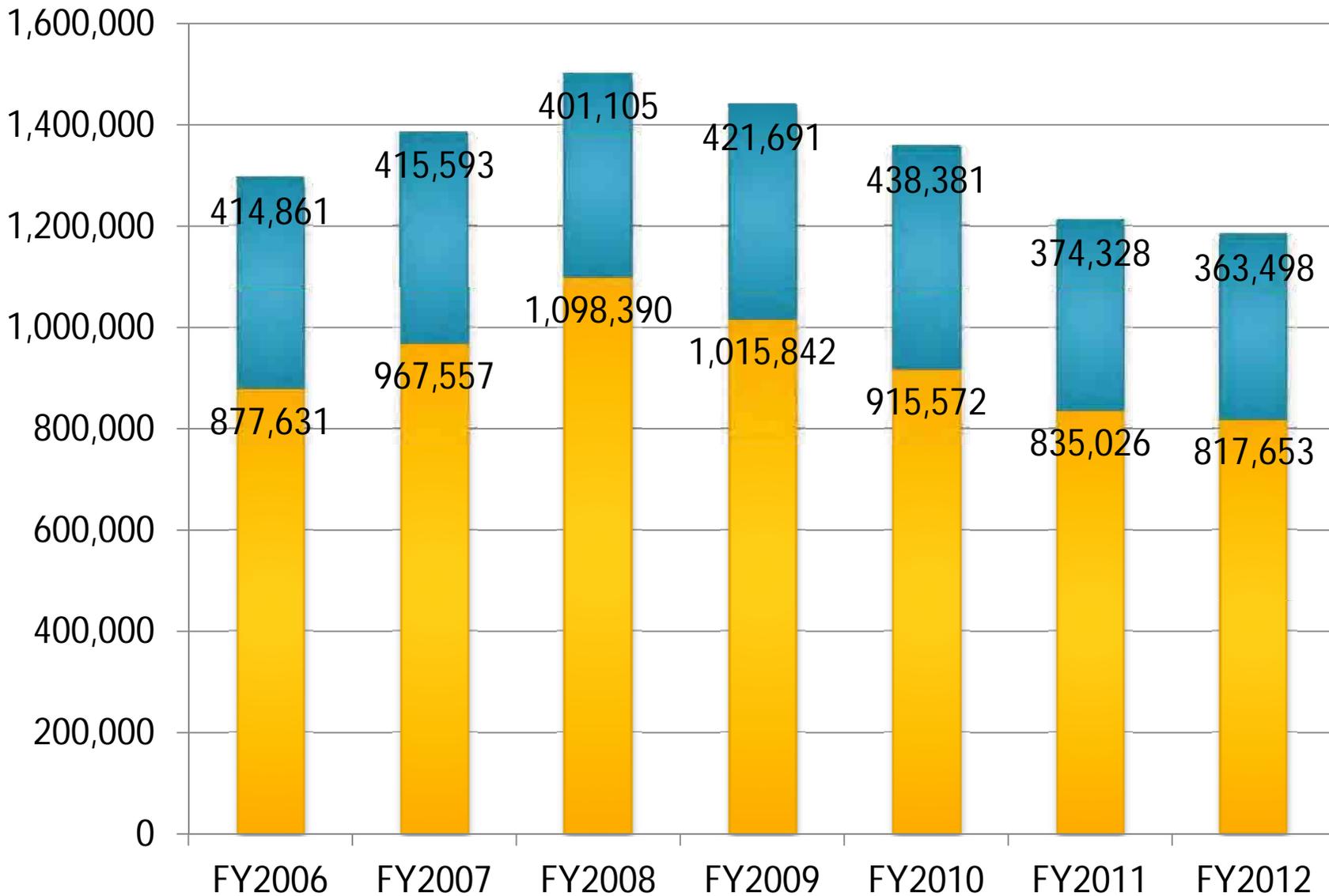
13.5% FY06/12
 -8.1% FY11/12

Limited Jurisdiction Courts Civil Traffic Filing Trends

■ MUNICIPAL COURTS ■ JUSTICE COURTS

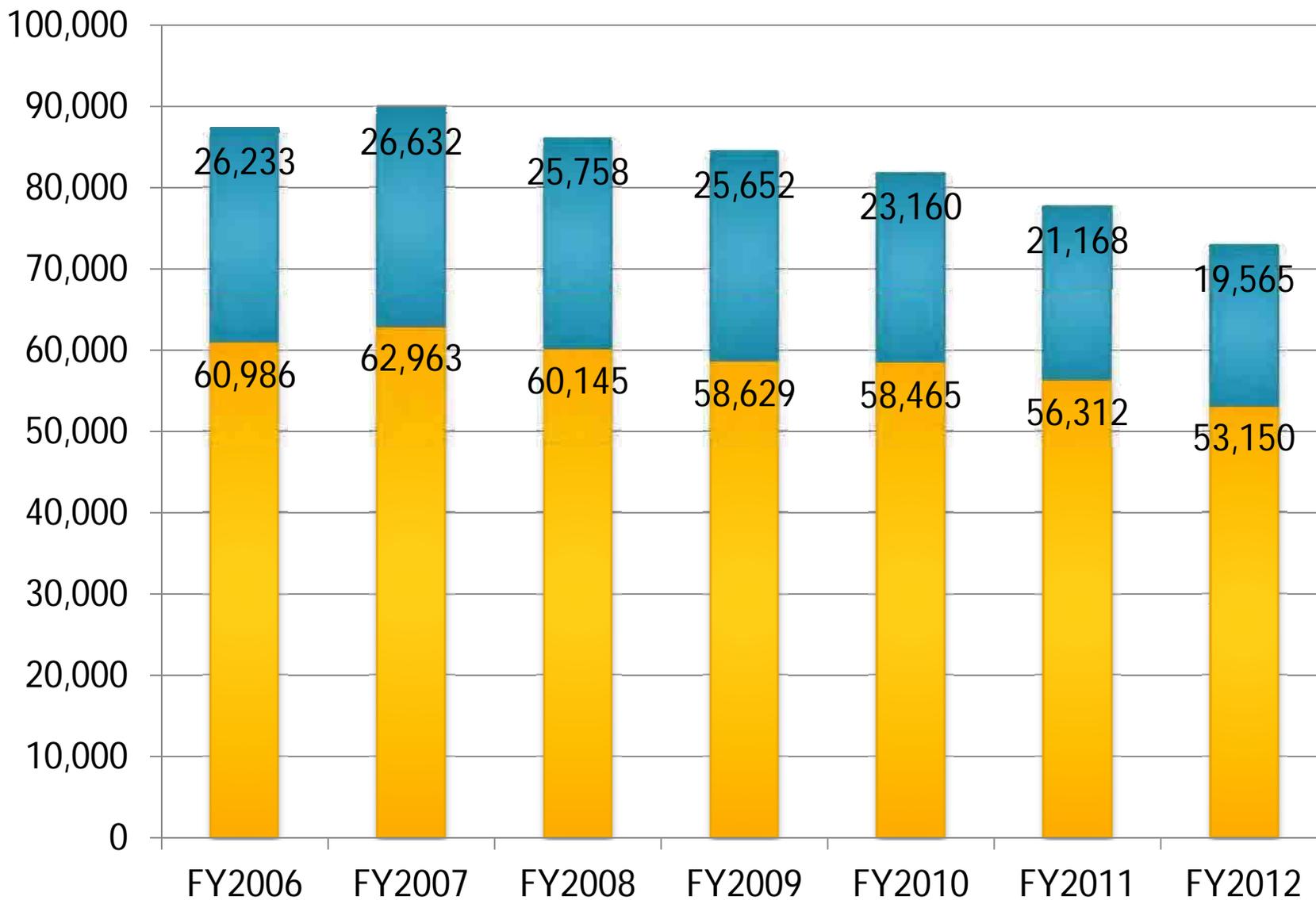
Percent
Change

-8.6% FY06/12
-2.3% FY11/12



Limited Jurisdiction Courts Criminal DUI Filing Trends

■ MUNICIPAL COURTS ■ JUSTICE COURTS



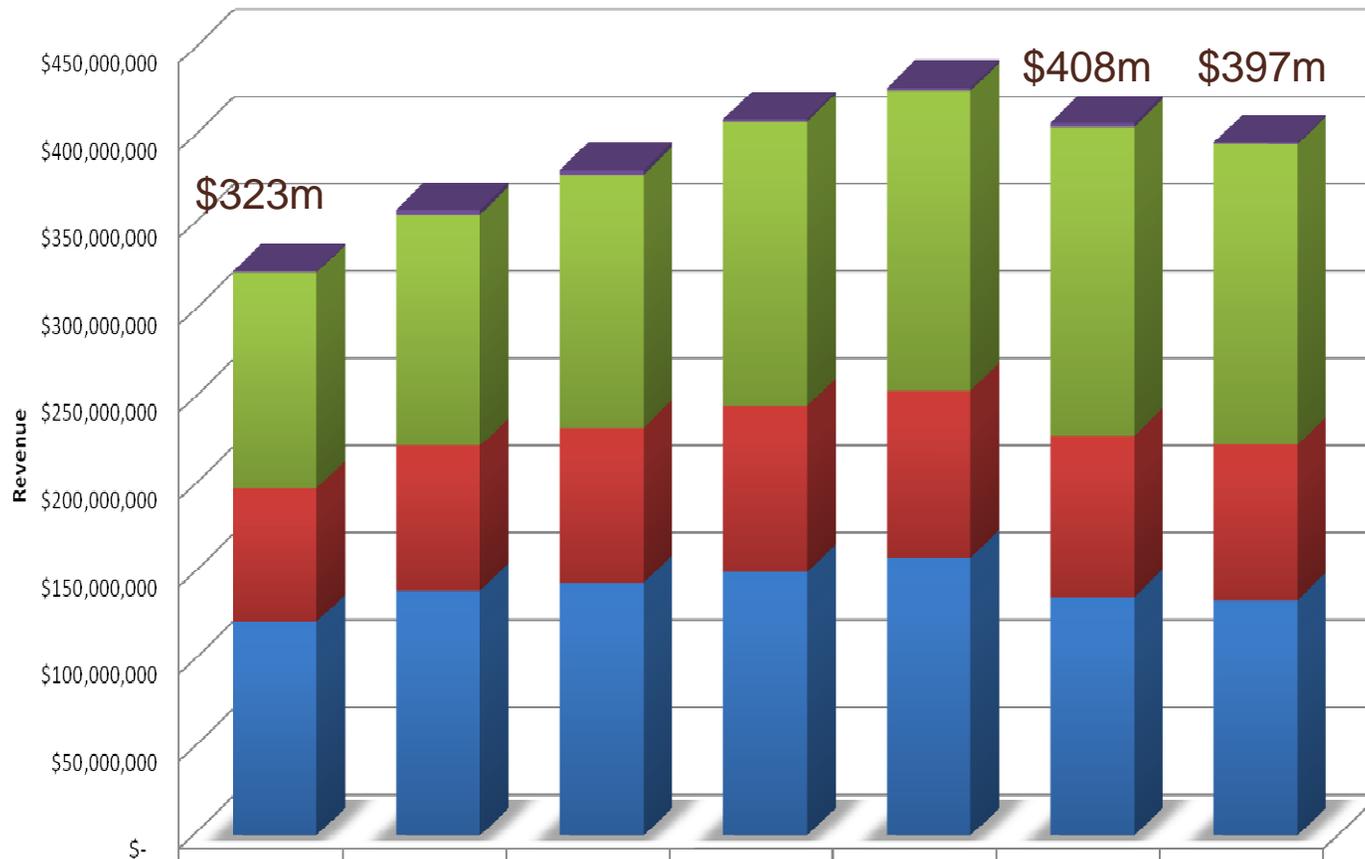
Percent Change

-16.6% FY06/12

-6.1% FY11/12

DUI filings have decreased every fiscal year since FY07.

Statewide Revenue Trends



FY11/12
% Change
-2.7%

Down turn in revenue impacted by decrease in filings.

FY06/12
% Change
22.8%

\$20 Probation surcharge and increase in civil filings increased revenue.



Questions?

Please contact:

Humberto Cisneros

Senior Statistical Analyst, Arizona Supreme Court

Hcisneros@courts.az.gov

ARIZONA JUDICIAL COUNCIL

Request for Council Action

**Date Action
Requested:**

June 24, 2013

**Type of Action
Requested:**

Formal Action/Request
 Information Only
 Other

Subject:

Evidence Based Pre-
Trial Services

FROM:

Kathy Waters, Director, Adult Probation Services Division, AOC

DISCUSSION:

Information Only

RECOMMENDED COUNCIL ACTION:

n/a

Pre-Trial Services In Arizona

The Mission of this Project is as Follows:

Promote the use of evidence-based assessments and professional judgment to determine pre-trial release conditions, and thereby better protect public safety, reduce failures to appear, and avoid unnecessary jail costs. The project will advance the fair administration of justice by helping assure that individuals are not detained pre-trial merely because they cannot afford a monetary bond or appearance surety.

Develop Legal Framework and Governance Documents

Adopt an Administrative Order to enable courts to establish and operate pre-trial services in Arizona courts.

Research

1. Provide current research regarding evidence-based pre-trial practices to courts in Arizona.
2. Use current research to make recommendations to the Arizona Judicial Council.

Evidence-Based and Validated Risk Assessments for Pre-Trial

Background

Adult Probation now operates pre-trial services in Maricopa, Pinal, Coconino, and Yuma Counties. Yavapai Adult Probation reports pre-trial on a limited basis. Pima County Court operates an independent pre-trial services agency separate from probation, and Navajo County operates pre-trial services under Court Administration. Pre-trial services also exist in several municipalities, including Scottsdale, Mesa, and Glendale.

In other jurisdictions, judicial officers do not use pre-trial services or assessments when making pre-trial release decisions.

Currently, no Arizona Statutes, Arizona Code of Judicial Administration, or Administrative Orders govern or authorize state pre-trial services.

Pre-trial services in Maricopa, Pima, Pinal, and Coconino Counties use different validated instruments. Yuma and Pinal use an instrument that was validated in the State of Virginia. Yavapai and Navajo are not using an assessment.

This project will review current assessment instruments to identify any needed adjustments. Arizona practices will be compared to research-based recommendations to identify proposed guidelines and changes.

Operations:

- 1.** Work with each jurisdiction to ensure evidence-based practices are being followed.
- 2.** Determine how to promote establishment of pre-trial services and the use of validated assessments.
- 3.** Establish models for limited jurisdiction courts.

Education:

Develop and deliver education programs for judges and probation staff through the Judicial Education Center. Program assistance will be offered by models from the Pre-Trial Justice Institute and the National Association of Pre-Trial Services Association.

Judicial Conference
Judicial Education
New Judge Orientation
Broadcast
Community Leaders
Cities and Towns
Boards of Supervisors
Probation Training for Pre Trial Services

2012-2013 Policy Paper Evidence-Based Pretrial Release

Final Paper



Author

Arthur W. Pepin, Director
New Mexico Administrative Office of the Courts

COSCA Policy and Liaison Committee

Arthur W. Pepin, *Chair*
Director, New Mexico Administrative
Office of the Courts

Joseph Baxter
State Court Administrator, Rhode Island

David K. Boyd
State Court Administrator, Iowa

Kingsley W. Click
State Court Administrator, Oregon

Sue K. Dosal
State Court Administrator, Minnesota

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Patricia W. Griffin
State Court Administrator, Delaware

Gregory Linhares
State Court Administrator, Missouri

Hon. John W. Smith
Director, Administrative Office of the
Courts, North Carolina

COSCA Policy and Liaison Committee Staff

Richard Y. Schauffler
National Center for State Courts

Shannon E. Roth
National Center for State Court

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Glossary of Terms

Bail – Bail refers to a deposit or pledge to the court of money or property in order to obtain the release from jail of a person accused of a crime. It is understood that when the person returns to court for adjudication of the case, the bail will be returned in exchange. If the person fails to appear, the deposit or pledge is forfeited. There is no inherent federal Constitutional right to bail; a statutory right was first created in the 1960s.

Bond – A term that is used synonymously with the term “bail” and “bail bond.” (*See above*).

Citation release – a form of nonfinancial pretrial release in which the defendant is issued a written citation, usually at the time of arrest, and signs the citation pledging to appear in court when required.

Commercial bail agent/bondsman – a third party business or person who acts as a surety on behalf of a person accused of a crime by pledging money or property to guarantee the appearance of the accused in court when required.

Compensated surety – a bond for which a defendant pays a fee to a commercial bail agent, which is nonrefundable.

Conditional release – a form of nonfinancial pretrial release in which the defendant agrees to comply with specific kinds of supervision (e.g., drug testing, regular in-person reporting) in exchange for release from jail).

Deposit bond - a bond that requires a defendant to post a deposit with the court (usually 10% of the bail amount), which is typically refunded upon disposition of the case.

Full cash bond – a bond deposited with the court, the amount of which is 100% of the bail amount. The bond can be paid by anyone, including the defendant.

Pretrial - The term “pretrial” is used throughout this paper to refer to a period of time in the life of a criminal case before it is disposed. The term is a longstanding convention in the justice field, even though the vast majority of criminal cases are ultimately disposed through plea agreement and not trial.

Property bond – a bond that requires the defendant to pledge the title of real property valued at least as high as the full bail amount.

Release on recognizance – a form of nonfinancial pretrial release in which the defendant signs a written agreement to appear in court when required and is released from jail.

Surety–a person who is liable for paying another’s debt or obligation.

Surety bond – a bond that requires the defendant to pay a fee (usually 10% of the bail amount) plus collateral if required, to a commercial bail agent, who assumes responsibility for the full bail amount should the defendant fail to appear. If the defendant does appear, the fee is retained by the commercial bail agent.

I. Introduction

Pretrial judicial decisions about release or detention of defendants before disposition of criminal charges have a significant, and sometimes determinative, impact on thousands of defendants every day while also adding great financial stress to publicly funded jails holding defendants who are unable to meet financial conditions of release. Many of those incarcerated pretrial do not present a substantial risk of failure to appear or a threat to public safety, but do lack the financial means to be released.¹ Conversely, some with financial means are released despite a risk of flight or threat to public safety, as when a bond schedule permits release upon payment of a pre-set amount without any individual determination by a judge of a defendant's flight risk or danger to the community. Finally, there are individuals who, although presumed innocent, warrant pretrial detention because of the risks of flight and threat to public safety if released.

Evidence-based assessment of the risk a defendant will fail to appear or will endanger others if released can increase successful pretrial release without financial conditions that many defendants are unable to meet. Imposing conditions on a defendant that are appropriate for that individual following a valid pretrial assessment substantially reduces pretrial detention without impairing the judicial process or threatening public safety. The Conference of State Court Administrators advocates that court leaders promote,

collaborate toward, and accomplish the adoption of evidence-based assessment of risk in setting pretrial release conditions. COSCA further advocates the presumptive use of non-financial release conditions to the greatest degree consistent with evidence-based assessment of flight risk and threat to public safety and to victims of crimes.

II. The Law

The Supreme Court of the United States has said, "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law."² The right to bail has been a part of American history in varying degrees from the beginning -- 1641 in Massachusetts and 1682 in Pennsylvania. Other state constitutions adopted the Pennsylvania provision as a model.³ Nine states and Guam follow the pattern of the United States Constitution by prohibiting "excessive bail" without explicitly guaranteeing the right to bail.⁴ Forty state constitutions, as well as the Puerto Rico Constitution and the District of Columbia Bill of Rights, expressly prohibit excessive bail.⁵ One state, Maine, had a constitutional provision prior to 1838 that expressly provided the right to bail, but by amendment that year the Maine Constitution now only prohibits bail in capital cases, without otherwise addressing the matter.⁶ However, the Maine Supreme Judicial Court held that the current language continues the guarantee of the right to bail that was express prior to 1838.⁷ The Federal

Judiciary Act of 1789 provided for the absolute right to bail in non-capital cases. The Eighth Amendment prohibition on excessive bail was adopted in 1791 as part of the Bill of Rights.⁸

Freedom before conviction permits unhampered preparation of a defense and prevents infliction of punishment before conviction. Without the right to bail, the presumption of innocence would lose its meaning.⁹ The purpose of bail is to ensure the accused will stand trial and submit to sentencing if found guilty.¹⁰ Another legitimate purpose is reasonably to assure the safety of the community and of crime victims.¹¹

Twelve states, the District of Columbia, and the federal government have enacted a statutory presumption that defendants charged with bailable offenses should be released on personal recognizance or unsecured bond unless a judicial officer makes an individual determination that the defendant poses a risk that requires more restrictive conditions or detention.¹² Six other states have adopted this presumption by court rule.¹³ However, it is common in many states to have bail schedules, adopted statewide or locally, that establish a pre-set amount of money that must be deposited at the jail in order for a defendant to obtain immediate release, without any individual assessment of risk of flight or danger to the community. In a 2009 nationwide survey of the 150 largest counties, among the 112 counties that responded, 64 percent reported using bond schedules.¹⁴

Despite the common use of bond schedules (also commonly termed “bail schedules”), they seem to contradict the notion that pretrial release conditions should reflect an assessment of an individual defendant’s risk of failure to appear and threat to public safety. Two state high courts have rejected the practice of imposing non-discretionary bail amounts based solely on the charge, as in a bail schedule. The Hawai’i Supreme Court found an abuse of discretion for a trial court to apply a bail schedule promulgated by the senior judge that ignored risk factors specific to the defendant.¹⁵ The Oklahoma Court of Criminal Appeals overturned a statutory mandate for a particular bail amount attached to a specific crime: “[The statute] sets bail at a predetermined, nondiscretionary amount and disallows oral recognizance bonds under any circumstances. We find the statute is unconstitutional because it violates the due process rights of citizens of this State to an individualized determination to bail.”¹⁶

In the United States in the twenty-first century, it is common to require the posting of a financial bond as the means to obtain pretrial release, often through procuring the services of a commercial bond company, or bail bondsman. Bonding companies typically require a non-refundable premium payment from the defendant, usually 10 percent of the bail set by the court. Many companies also require collateral sufficient to cover the full bond amount.¹⁷ In 2007 the DOJ Bureau of Justice Statistics reported that an estimated 14,000 bail agents nationwide secured the release of more than 2 million defendants annually.¹⁸ The United

States and the Philippines are the only countries that permit the widespread practice of commercial bail bonds.¹⁹ In countries other than these two, “[b]ail that is compensated in whole or in part is seen as perverting the course of justice.”²⁰

III. The Consequences of Pretrial Release versus Incarceration

From the perspective of the defendant, who is presumed innocent, pretrial release mitigates the collateral consequences of spending weeks or months awaiting trial or a plea agreement. Jail time can result in job loss, home loss, and disintegrated social relationships, which in turn increase the likelihood of re-offending upon release.²¹

In 2010 the United States had the world’s highest total number of pretrial detainees (approximately 476,000) and the fourth-highest rate of pretrial detention (158 per 100,000).²² A study of felony defendants in America’s 75 largest urban counties showed that in 1990, release on recognizance accounted for 42% of releases, compared to 25% released on surety bond. By 2006, the proportions had been reversed: surety bonds were used for 43% of releases, compared to 25% for release on recognizance.²³ Taking into account all types of financial bail (surety bond, deposit bail, unsecured bond, and full cash bond), it is clear that the majority of pretrial release requires posting of financial bail.

The same study of felony defendants showed that 42% were detained until disposition of their case.²⁴ Pretrial

incarceration imposes significant costs on taxpayer-funded jails, primarily at the local government level. In 2010, “taxpayers spent \$9 billion on pre-trial detainees.”²⁵ The increased practice of requiring financial bonds has contributed to increased jail populations, which has produced an extraordinary increase in costs to counties and municipalities from housing pretrial detainees. The most recent national data indicates that 61% of jail inmates are in an un-convicted status, up from just over half in 1996.²⁶

In addition to the financial costs from increased pretrial detention, the cost in unequal access to justice also appears to be high. The movement to financial bonds as a requirement for pretrial release, often requiring a surety bond from a commercial bond seller, makes economic status a significant factor in determining whether a defendant is released pending trial, instead of such factors as risk of flight and threat to public safety. A study of all nonfelony cases in New York City in 2008 found that for cases in which bail was set at less than \$1,000 (19,617 cases), in 87% of those cases defendants were unable to post bail at arraignment and spent an average of 15.7 days in pretrial detention, even though 71.1% of these defendants were charged with nonviolent, non-weapons-related crimes.²⁷ In short, “for the poor, bail means jail.”²⁸ The impact of financial release conditions on minority defendants reflects disparate rates of poverty among different ethnic groups. A study that sampled felony cases in 40 of the 75 largest counties nationwide found that, between 1990 and

1996, 27% of white defendants were held in jail throughout the pretrial period because they could not post bond, compared to 36% of African-American defendants and 44% of Hispanic defendants.²⁹

The practice of conditioning release on the ability to obtain a surety bond has so troubled the National Association of Pretrial Services Agencies (NAPSA) that, in its Third Edition of Standards on Pretrial Release (and in previous editions beginning in 1968), Standard 1.4(f) provides that “[c]onsistent with the processes provided in these Standards, compensated sureties should be abolished.” According to NAPSA, compensated sureties should be abolished because the ability to pay a bondsman is unrelated to the risk of flight or danger to the community; a surety bond system transfers the release decision from a judge to private party making unreviewable decisions on unknown factors; and the surety system unfairly discriminates against defendants who are unable to afford non-refundable fees required by the bondsman as a condition of posting the bond.³⁰ The American Bar Association also recommends that “compensated sureties should be abolished.”³¹ The Commonwealth of Kentucky and the State of Wisconsin have prohibited the use of compensated sureties.³² In addition, Illinois and Oregon do not allow release on surety bonds (but do permit deposit bail).³³

The ability of a defendant to obtain pretrial release has a significant correlation to criminal justice outcomes. Numerous research projects conducted over the past

half century have shown that defendants who are held in pretrial detention have less favorable outcomes than those who are not detained —regardless of charge or criminal history. In these studies, the less favorable outcomes include a greater tendency to plead guilty to secure release (a significant issue in misdemeanor cases), a greater likelihood of conviction, a greater likelihood of being sentenced to terms of incarceration, and a greater likelihood of receiving longer prison terms.”³⁴ Data support the common sense proposition that pretrial detention has a coercive impact on a defendant’s amenability to a plea bargain offer and inhibits a defendant’s ability to participate in preparation for a defense. In summarizing decades of research, the federal Bureau of Justice Assistance noted that “research has demonstrated that detained defendants receive more severe sentences, are offered less attractive plea bargains and are more likely to become ‘reentry’ clients because of their pretrial detention – regardless of charge or criminal history.”³⁵

IV. Evidence-Based Risk Assessment: The Lesson of *Moneyball* and the Challenge of Adopting New Practices

Michael Lewis’s book *Moneyball* documents how Oakland A’s general manager Billy Beane used statistics and an evidence-based approach to baseball that yielded winning seasons despite severe budgetary constraints.³⁶ His approach attracted considerable antagonism in the baseball community because it deviated from long-held practices based on intuition and gut feelings, tradition, and ideology. As

persuasively set forth more recently in *Supercrunchers*, the cost of ignoring data and evidence in a broad variety of human endeavors is suboptimal decision-making.³⁷ This realization and the commensurate movement toward evidence-based practice, by now firmly ensconced in medicine and other disciplines, have finally emerged in the fields of sentencing, corrections, and pretrial release (but not without resistance, as in baseball).

In 1961, the New York City Court and the Vera Institute of Justice organized the Manhattan Bail Project, an effort to demonstrate that non-financial factors could be used to make cost-effective release decisions.³⁸ Decades later, the movement away from financial conditions and toward use of an evidence-based risk assessment in setting pretrial release conditions appears to be gathering momentum. The 2009 Survey of Pretrial Services Programs found that the majority of 112 counties responding to a survey of the 150 largest counties use a combination of objective and subjective criteria in risk assessment. Eighty-five percent of those responding counties reported having a pretrial services program to assess and screen defendants and present that information at the first court appearance.³⁹ The ongoing development of evidence-based decision-making in pretrial release decisions is demonstrated by the release in August 2011 of a monograph by the National Institute of Corrections recommending outcome and performance measures for evaluating pretrial release programs.⁴⁰ Looking forward to the type of assessments that would support evidence-

based pretrial decisions, an accumulation of empirical research strongly suggests the following points:

- Actuarial risk assessments have higher predictive validity than clinical or professional judgment alone.⁴¹
- Post-conviction risk factors (relating to recidivism) should not be applied in a pretrial setting.⁴²
- Several measures commonly gathered for pretrial were not significantly associated with pretrial failure: residency, injury to victim, weapon, and alcohol.⁴³
- The six most common validated pretrial risk factors are prior failure to appear; prior convictions; current charge a felony; being unemployed; history of drug abuse; and having a pending case.⁴⁴
- Defendants in counties that use quantitative and mixed risk assessments are less likely to fail to appear than defendants in counties that use qualitative risk assessments.⁴⁵
- Not only are subjective screening devices prone to demographic disparities, but these devices produce poor results from a public safety perspective.⁴⁶
- The statewide pretrial services program in Kentucky, begun in 1968, now uses a uniform assessment protocol that results in a failure to appear rate of only 10 percent and a re-arrest rate of only 8 percent.⁴⁷

- Pretrial programs that use quantitative and mixed quantitative-qualitative risk assessments experience lower re-arrest rates than programs that only use qualitative risk assessments.
- The number of sanctions a pretrial program can impose in response to non-compliance with supervision conditions further lowers the likelihood of a defendant's pretrial re-arrest.⁴⁸

The use of a validated pretrial risk assessment tool when making a judicial decision to release or not, and the attendant conditions on release based on that assessment, fits within a well-functioning case management regimen. While different instruments have been used with success in different jurisdictions, in general, research on pretrial assessment conducted over decades has identified these common factors as good predictors of court appearance and/or danger to the community:

- Current charges;
- Outstanding warrants at the time of arrest;
- Pending charges at the time of arrest;
- Active community supervision at the time of arrest;
- History of criminal convictions;
- History of failure to appear;
- History of violence;
- Residence stability over time;
- Employment stability;
- Community ties; and
- History of substance abuse.⁴⁹

A comprehensive guide to implementing successful evidence-based pretrial services into the pretrial release determination, with step-by-step instructions on the process from formation of a Pretrial Services Committee through program implementation, is available from the Pretrial Justice Institute.⁵⁰

Perhaps the best-known use of evidence-based risk assessment to reduce reliance on financial release conditions exists in the District of Columbia's Pretrial Services Agency (PSA).⁵¹ Paradoxically, the DC pretrial Code requires detention if no combination of conditions will reasonably assure that a defendant does not flee or pose a risk to public safety.⁵² If the prosecutor demonstrates by clear and convincing evidence that a defendant presents a serious flight risk or threat to the victim or to public safety, the defendant is detained without the option for pretrial release. However, the DC Code also provides that a judge may not impose a financial condition as a means of preventative detention.⁵³ PSA conducts a risk assessment (flight and danger) through an interview with the defendant within 24 hours of arrest that assesses points on a 38-factor instrument, assigning a defendant into a category as high risk, medium risk, and low risk.⁵⁴ In 1965, only 11% of defendants were released without a money bond, but by 2008, 80% of all defendants were released without a money bond, 15% were held without bail, and 5% were held with financial bail (none on surety bond), while at the same time 88% of released defendants made all court appearances and 88% completed pretrial release without any new arrests.⁵⁵

Another example of the impact of evidence-based pretrial risk assessment is found in the Harris County (Houston), Texas, “direct filing” system.⁵⁶ As charges are being accepted and filed, the defendant is transferred to the central jail for intake. At the jail, the pretrial screening department interviews the defendant and collects data such as family composition, employment status, housing, indigency status, education level, health problems and medications, and potential mental health issues. This process culminates in a risk classification, identifying defendants who are appropriate for release on personal recognizance bond. The process continues through appearance before a magistrate (typically within 12 hours of arrest), where defendants granted personal bond and those able to post cash or surety bonds are released from jail.⁵⁷ An estimate of net savings and revenue for Fiscal Year 2010 showed that Harris County gained \$4,420,976 in avoided detention costs and pretrial services fees collected after deducting for the costs of pretrial services.⁵⁸

Kentucky abolished commercial bail bondsmen in 1976 and implemented the statewide Pretrial Services Agency that today relies on interviews and investigations of all persons arrested on bailable offenses within 12 hours of his or her arrest. Pretrial Officers conduct a thorough criminal history check and utilize a validated risk assessment that measures flight risk and anticipated conduct to make appropriate recommendations to the court for pretrial release. Furthermore, Pretrial Services

provides supervision services for pretrial defendants, misdemeanor diversion participants and defendants in deferred prosecution programs.

In 2011 Pretrial Services processed 249,545 cases in which a full investigation was conducted on 88% of all incarcerated defendants.⁵⁹ Using a validated risk assessment tool, Pretrial Services identifies defendants as being either low, moderate, or high risk for pretrial misconduct, (i.e. failing to appear for court hearings or committing a new criminal offense while on pretrial release). Ideally, low risk defendants (those most likely to return to court and not commit a new offense) are recommended for release either on their recognizance or a non-financial bond. Statistically, about 70% of pretrial defendants are released in Kentucky; 90% of those make all future court appearances and 92% do not get re-arrested while on pretrial release.⁶⁰ When looking at release rates by risk level, the data shows that judges follow the recommendations of Pretrial Services. In 2011, judges ordered pretrial release of 81% of low risk defendants, 65% of moderate risk defendants, and 52% of high risk defendants.⁶¹

In 2011, Kentucky adopted House Bill 463, a major overhaul of the Commonwealth’s criminal laws that intended to reduce the cost of housing inmates while maintaining public safety.⁶² Since adoption of HB 463, Pretrial Services data shows a 10% decrease in the number of defendants arrested and a 5% increase in the overall release rate, with a substantial increase in non-financial

releases and in releases for low and moderate risk defendants. The non-financial release rate increased from 50% to 66%, the low risk release rate increased from 76% to 85%, and the moderate risk release rate increased from 59% to 67%. In addition, pretrial jail populations have decreased by 279 defendants, while appearance and public safety rates have remained consistent.⁶³

There are other, similar examples of successful implementation of evidence-based pretrial assessments that deliver on the promise of pretrial release without financial conditions.⁶⁴

Evidence-based pretrial risk assessment in the context of skillful and collaborative case management and data sharing should be embraced as the best practice by judges, court administrators, and court leaders. Reliance on a validated, evidence-based pretrial risk assessment in setting non-financial release conditions balances the interests of courts in both protecting public safety and safeguarding individual liberty.

V. The Way Forward

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

ABA Criminal Justice Standards on Pretrial Release, Third Edition
Standard 10-1.1.

By adopting this paper, COSCA is not leading a parade, but joining in some very good and credible company. As noted in 2011 by a leading official of the United States Department of Justice, “Within the last year, a number of organizations have publicly highlighted the need to reform our often antiquated and sometimes dangerous pretrial practices and replace them with empirically supported, risk-based decision-making.”⁶⁵ Not surprisingly pretrial services agencies themselves support this effort,⁶⁶ but so do a wide variety of other justice-oriented interest groups: the National Association of Counties,⁶⁷ the American Jail Association,⁶⁸ the International Association of Chiefs of Police,⁶⁹ the American Council of Chief Defenders,⁷⁰ the American Bar Association,⁷¹ the Association of Prosecuting Attorneys,⁷² and the American Association of Probation and Parole.⁷³

Following the 2011 National Symposium on Pretrial Justice hosted by the U.S. Department of Justice (DOJ), the DOJ’s Office of Justice Programs collaborated with the Pretrial Justice Institute to convene in October 2011 the first meeting of the Pretrial Working Group. Information about the continuing work of the Pretrial Working Group subcommittees can be found at the Web site published by the Office of Justice Programs in association with the Pretrial Justice Institute. The stated goals of this effort are to exchange information on pretrial justice issues, develop a website to disseminate information on the work of the subcommittees, and inform evidence-based pretrial justice policy making.⁷⁴

There are two major obstacles to reform. First, there is resistance to changing the status quo from those who are comfortable with or profit from the existing system. This resistance can be overcome by a well-

executed, evidence-based protocol, as has been demonstrated in the District of Columbia and in Kentucky. Second, courts tend to be deliberate in adopting change and to require persistent presentation of well-documented advantages to new approaches, such as evidence-based practices in the pretrial release setting. In this regard, familiarity with evidence-based decision making in drug courts, at sentencing, and in evaluating court programs should help gain acceptance for evidence-based practices in the pretrial setting. Part of this shift in practice might include elimination of or decreased reliance on bail schedules, which are in use in at least two-thirds of counties across the country.⁷⁵ State court leaders should closely follow and make a topic of discussion the efforts of the Department of Justice and its Pretrial Justice Working Group discussed above, as well as continuing efforts by the American Bar Association which is supporting transition toward evidence-based pretrial practices through its Pretrial Justice Task Force.⁷⁶

State court leaders must take several steps to leverage the emerging national consensus on this issue:

- Analyze state law and work with law enforcement agencies and criminal justice partners to propose revisions that are necessary to
 - support risk-based release decisions of those arrested;
 - ensure that non-financial release alternatives are available and that financial release options are available without the requirement for a surety.
- Collaborate with experts and professionals in pretrial justice at the national and state levels.
- Take the message to additional groups and support dialogue on the issue.
- Use data to promote the use of data; determine what state and local data exist that would demonstrate the growing problem of jail expense represented by the pretrial population, and that show the risk factors presented by that population may justify broader pretrial release.
- Reduce reliance on bail schedules in favor of evidence-based assessment of pretrial risk of flight and threat to public safety.

References

¹VanNostrand, M. and Crime and Justice Institute (2007). *Legal and Evidence-Based Practices: Applications of Legal Principles, Laws, and Research to the Field of Pretrial Services*. Washington, DC: U.S. Department of Justice, National Institute of Corrections.

² Coffin v. United States, 156 U.S. 432, 453 (U.S. 1895).

³ Schnacke, T.R., and M. R.Jones, and C. M. Brooker (2010). *The History of Bail and Pretrial Release*. Washington, D.C.: Pretrial Justice Institute.

⁴ U.S. Const. amend VIII (1791); Ga. Const., art. 1, sec. 9, para. XVII; Haw. Const. art. I, sec. 12; Md. Const. Declaration of Rights, art. 25; Mass. Const. Part I, art. XXVI; N.H. Const. Part I, art. 33; N.Y. Const. art. I, sec. 5; N.C. Const. art. 1, sec. 27; Va. Const. art. 1, sec. 9; W.Va. Const. art. III, sec. 5; Guam Organic Act, 48 U.S.C. sec. 1421b (2006).

⁵ ALA. CONST. art. I, §16; ALASKA CONST. art. I, § 11; ARIZ. CONST. art. II, § 22; ARK. CONST. art. II, § 8; CAL. CONST. art. I, § 12; COLO. CONST. art. I, § 19; CONN. CONST. art. I, § 8; DEL. CONST. art. I, § 12; FLA. CONST. art. I, § 14; IDAHO CONST. art. I, § 6; ILL. CONST. art. I, § 9; IND. CONST. art. I, § 7; IOWA CONST. art. I, § 12; KAN. CONST. Bill of Rights, § 9; KY. CONST. § 16; LA. CONST. art. I, § 8; ME. CONST. art. I, § 10; MICH. CONST. art. I, § 15; MINN. CONST. art. I, § 7; MISS. CONST. art. III, § 29; MO. CONST. art. I, § 20; MONT. CONST. art. II, § 21; NEB. CONST. Art. I, § 9; NEV. CONST. art. I, § 7; N.J. CONST. art. I, § 11; N.M. CONST. art. II, § 13; N.D. CONST. art. I, § 11; OHIO CONST. art. I, § 9; OKLA. CONST. art. II, § 8; OR. CONST. art. I, § 14; PA. CONST. art. I, § 14; R.I. CONST. art. I, § 9; S.C. CONST. art. I, § 15; S.D. CONST. art. VI; Tenn. CONST. ART. I, §15; TEX. CONST. art. I, § 11; UTAH CONST. art. I, § 8; VT. CONST. ch. 2, § 40; WASH. CONST. art. I, § 20; WIS. CONST. art. I, § 8; WYO. CONST. art. I, § 14; P.R. CONST. art. II, § 11; D.C. Code, Bill of Rights, art. I, § 108.

⁶ ME. CONST. art. I, § 10.

⁷ Fredette v. State, 428 A.2d 395, 404-05 (Me. 1981).

⁸ U.S. CONST. amend. VIII (1791).

⁹ “Federal law has unequivocally provided that person arrested for noncapital offense shall be admitted to bail, since the traditional right of accused to freedom before conviction permits unhampered preparation of defense and serves to prevent infliction of punishment prior to conviction, and presumption of innocence, secured only after centuries of struggle, would lose its meaning unless such right to bail before trial were preserved.” Stack v. Boyle, 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951).

¹⁰ *Id.*

¹¹ United States v. Salerno, 481 U.S. 739 (1987); Bail Reform Act of 1984, 18 U.S.C. §§ 3141-3150 (1984).

¹² 18 U.S.C. § 3142(c)(1)(B) (2008); D.C. Code § 23-1321(c)(B) (2003); 11 Del. Code § 2105 (2006); Iowa Code Ann. §811.2 (2012); Ky. Rev. Stat. Ann. § 431.520 (2012); Mass. Gen. Laws Ann. ch. 276 § 58A (2010); Me. Rev. Stat. Ann. tit. 15 § 1026 (2012); Neb. Rev. Stat. § 29-901 (2010); N.C. Gen. Stat. § 15A-534 (2012); Or. Rev. Stat. Ann. § 135.245(3) (2009); S.C. Code Ann. § 17-15-10 (2011) (amended by 2012 South Carolina Laws Act 286 (S.B. 45)); SDCL § 23A-43-2 (1982); Tenn. Code Ann. § 40-11-104 (2012); Wis. Stat. § 969.01 (1977).

¹³ Ariz. R. Crim. P. 7.2(a) (2008); Minn. R. Crim. P. 6.02 (2010); N.M. R. Dist. Ct. RCRP Rule 5-401(a) (2010); N. D. R. Crim. P. 46(a) (2006); D.C. Code §23-1321 (2003) ; Wyo. R. Crim. P. 46.1(a)(2) (2001).

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- ²⁹ Demuth, S. (2003). "Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees," p. 41. *Criminology* Vol. 41 No. 3, pp 873-907.
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- ³² Ky. Rev. Stat. §431.510 (2004); Wis. Stat. §969.12 (1994).
- ³³ IL ST CH 725 §5/110-7 (2012); Or. Rev. Stat. §135.265 (2011).
- ³⁴ National Association of Pretrial Services Agencies, *NAPSA Standards on Pretrial Release*, *supra* note 30, p.9. See also Phillips, M. T. (2007). *Bail, Detention, and Nonfelony Case Outcomes, Research Brief No. 14*. New York: New York City Criminal Justice Agency, Inc. and Phillips, M. T. (2008). *Bail, Detention, and Felony Case Outcomes, Research Brief No. 18*. New York: New York City Criminal Justice Agency, Inc.
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⁶³ *Ibid.*

⁶⁴ *State of the Science of Pretrial Risk Assessment*, *supra*, note 42, at 30-38. See also *Rational and Transparent Bail Decision Making*, *supra* note 48 at 22-33.

⁶⁵ Laurie Robinson, Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice, remarks at the National Symposium on Pretrial Justice, Washington, D.C., May 31, 2011.

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Pretrial Justice in Criminal Cases: Judges' Perspectives on Key Issues and Opportunities for Improvement

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Pretrial Justice in Criminal Cases: Judges' Perspectives on Key Issues and Opportunities for Improvement

Introduction

When a person is arrested or immediately after, significant issues must be addressed. For example:

- Should the person be detained?
- If detention is not required (e.g., mandatory because of the nature of the offense charged), what type or amount of bail or release conditions should be required?
- Should non-financial conditions of release (e.g., restricted residency, no contact provisions, limitations on activities, etc.) be imposed?
- If monitoring or supervision is necessary, how will it be provided?
- Should the court order screening, assessments or evaluations for possible drug abuse or mental health issues?
- Should the court order participation in specific programs?

These and other issues involve rapid decisions addressing two key types of risks potentially posed by the arrested person: (1) what is the risk of failure to appear, and (2) what is the risk to community safety or to the safety of specific individuals? From a systemic perspective, there are additional issues to consider:

- What are effective practices or protocols that allow decision makers to make evidence-based decisions that take these risks into account?
- To what extent is there room for improvement in the processes that judges and other justice system decision makers now follow about pretrial release and detention?
- What can be done to address problems or build upon strengths to improve the quality and effectiveness of pretrial decision-making?

These questions were at the core of a focus group discussion conducted with judges who participated in a program addressing “The Theory and Practice of Judicial Leadership and Project Management” held at The National Judicial College (the NJC) in the fall of 2012. The judges – a total of 36, from 22 states and the District of Columbia – constitute a cross-section of judges from both general and limited jurisdiction courts. They were identified as individuals appropriate to lead or represent the judiciary in justice system improvement projects.¹ This essay builds on the focus group discussions and includes five sections:

1. The core principles relevant to pretrial justice practices
2. A summary of the focus group discussion in which the participating judges identified ten challenges or obstacles to pretrial decision making
3. The judges’ focus group’s suggestions on ways to improve existing practices
4. The national picture and key trends in release or detention decision-making
5. The authors’ views on the need for improvements in pretrial justice and practical steps that can be taken in the near future, consistent with the core principles relevant to pretrial justice practices.

¹ The NJC presented the grant funded program in two stages (one four-day stage in April 2012 and a second four-day stage in September 2012). The NJC designed the two stages to educate the judges in project management and leadership skills. Chief justices or state court administrators nominated the judges who attended; prior to the first program, the judges or their court systems identified local, circuit-wide, or state-wide justice system projects to address. The judges also agreed to act as a focus group on an issue of national importance that the NJC chose. Additionally, the judges participated in a brainstorming session in which they identified areas appropriate for future judicial focus groups which the NJC will explore in the future.

The NJC chose the focus group subject because of recent developments in pretrial justice. Most notably, a 2011 National Symposium on Pretrial Justice² highlighted and addressed potential improvements in criminal justice policies and practices in this area. Participants at the National Symposium developed a number of recommendations for improving pretrial practices, including recommending development of education and training programs that would engage judges at every level in addressing key issues.³ The NJC focus group discussion hopefully will inform future judicial education programs, especially with regard to what judges perceive to be obstacles to improving pretrial practices and potential avenues for implementing positive changes in practices.

² The U.S. Department of Justice, Office of Justice Programs, and the Pretrial Justice Institute convened the National Symposium on May 31-June 1, 2011 in Washington, D.C. For information about the symposium including the recommendations of participants, see *National Symposium on Pretrial Justice: Summary Report of Proceedings*, at <http://www.pretrial.org/NSPJ%20Report%20211.pdf>.

³ *Id.* at p. 40.

I. Pretrial Justice: Core Principles

Pretrial decision-making processes vary widely across jurisdictions in the United States. Despite the differences in practices, the authors believe that it should be possible to find broad basic agreement about a few core principles relevant to pretrial justice practices:

- The practices should be fair and evidence based. Optimally, decisions about custody or release should not be determined by factors such as an individual's gender, race, ethnicity, or financial resources.
- The practices should address two key goals: (1) protecting against the risk that the individual will fail to appear for scheduled court dates; and (2) protecting against risks to the safety of the community or to specific persons.
- Unnecessary pretrial detention should be minimized. Detention is detrimental to the individual who is detained, costly to the jurisdiction, and can be counter-productive in terms of its impact on future criminal behavior.
- To make sound decisions about release or detention, judicial officers need to have (1) reliable information about the potential risks posed by release of the individual; and (2) confidence that resources are available in the community to address or minimize the risks of non-appearance or danger to the community if the decision is made to release the individual.⁴

⁴ These principles were central to discussions at the National Symposium on Pretrial Justice and are at the core of the American Bar Association's *Standards for Pretrial Release*. See especially Standard 10-1.4.

II. Ten Obstacles or Challenges to Effective Pretrial Decision Making

Asked to consider the obstacles to system improvement, judges participating in the NJC's focus group discussion identified ten main challenges:

1. **Lack of information.** Many of the judges noted that no pretrial services programs exist in their jurisdictions to provide information about defendants – especially about potential risks that might be posed by release and ways to address such risks. Often the judges have only the charge, basic facts set out in a police report or probable cause affidavit, and perhaps a summary of the individual's prior record. The problem is especially acute at first appearances in limited jurisdiction courts, where sometimes no defense counsel or prosecutors are present to provide relevant information.
2. **Lack of objective criteria for setting release conditions.** Although many state statutes list broad criteria to be used in making release or detention decisions, the judges noted that generally little in the way of objective criteria exists to guide their exercise of discretion in setting bail amount or other bond conditions. Often, the only guide is a bail schedule that sets presumptive bond amounts based solely on the charge, without any regard to the individual circumstances of the case and the defendant.⁵
3. **Lack of an evidence-based risk assessment tool.** A few of the judges who participated in the focus group are from jurisdictions that make use of evidence-based risk assessment instruments that can provide judges with indications of the level of risk posed by individual defendants. Most, however, do not have access to such tools. Additionally, a few judges who are familiar with such tools expressed concern about the existing tools' inability to focus explicitly on a primary concern of judges: the risk that an individual will, if released, commit a violent offense. These judges are more concerned about the risk of violent behavior than about risks of possible nonappearance or the risk of additional minor, nonviolent criminal offenses.⁶

⁵ The Conference of State Court Administrators (COSCA) drafted a recent policy paper that is highly critical of the use of bail schedules, noting that they “seem to contradict the notion that pretrial release conditions should reflect an assessment of an individual defendant's risk of failure to appear and threat to public safety.” See Conference of State Court Administrators, *2012-2013 Policy Paper: Evidence-Based Pretrial Release* 3.

⁶ Current risk assessment instruments merge all of these risks into a single risk of “pretrial failure” or “pretrial misconduct.” See, e.g., Marie VanNostrand, *Assessing Risk Among Pretrial Defendants in Virginia* 1, 5 (Richmond, VA: Virginia Department of Criminal Justice Services, 2003); Marie VanNostrand and Kenneth Rose, *Pretrial Risk Assessment in Virginia* 7 (Luminosity, Inc. for the Virginia Department of Criminal Justice Services and the Virginia Community Criminal Justice Association, May 2009); Edward LaTessa et al., *Validation of the Ohio Risk Assessment System: Final Report* (Cincinnati: University of Cincinnati Center for Criminal Justice Research, July 2009); Cynthia A. Mamalian, *State of the Science of Risk Assessment* 7-8 (Washington, D.C.: Pretrial Justice Institute, Mar. 2011).

4. **Lack of counsel at first appearance.** In some limited jurisdiction courts (as well as some general jurisdiction, single-tier court systems), it is common for first appearance proceedings to take place without a prosecutor or defense counsel being present. The judges participating in the focus group felt strongly that there is value in having counsel for both sides present, especially when there is no pretrial services program to provide basic information relevant to setting release conditions. A prosecutor can provide information not readily available from the documents before the judge about factors such as the circumstances of the offense, the victim's situation, the victim's views about release, and the prosecution's views about appropriate conditions of release. Similarly, defense counsel can provide information about the defendant's history, current employment, living situation, roots in the community, health issues, and ability to function under specific conditions of release.
5. **Lack of options for release under supervision in the community, especially for “frequent fliers.”** Some jurisdictions have an array of community-based supervision options that judges can employ to help mitigate potential risks of nonappearance or pretrial criminal offenses committed by released defendants. However, many of the judges at the focus group session thought that such resources were not readily available in their jurisdictions. A number of the judges expressed particular frustration about the lack of options for dealing with the population of frequent arrestees. Many of these individuals have significant mental health or substance abuse problems and are repeatedly charged with relatively minor offenses such as petty theft, urinating in public, other public order offenses, or failure to pay a previously imposed fine. They typically fail to change their behaviors regardless of the sanction imposed, and judges often lack other dispositional options that could address underlying behavioral health issues. Sometimes, a short jail sentence becomes the default sanction simply because nothing else has worked, and the judges feel that the offender's conduct warrants some expression of justice system disapproval.
6. **Push-back from bail bond agencies and insurance companies.** In some jurisdictions, bail bond agencies and the insurance companies who underwrite them promote themselves as providing a service and being part of the “system.” They are often active in local and statewide political issues and have a vested interest in maintaining a money bail system.
7. **Docket management pressures.** Many judges in high volume courts have scores of cases on their dockets each day. Reorganizing existing practices, to enable the judge and counsel to give more attention to information about the defendant and to consider specific risks of release and possible supervisory options, would likely slow down the process and lead to longer court days.

8. **A local legal culture that is comfortable with long-standing practices.** A number of the judges commented that existing courthouse cultures in their jurisdictions tend to reinforce perpetuation of the status quo – i.e., continuation of practices that rely on the use of money bail and the services of bail bond agencies. The judges often set bail amounts using a schedule that is based on the perceived seriousness of the charged offense(s). As the judges pointed out, a number of reasons explain why some practitioners are likely to resist changes in the existing system:
- Jurisdictions commonly use bail schedules – lists showing the “standard” amount of money bail to post for specific offenses. The schedules provide a quick and easy default positions for judges to take in setting bond.
 - If the defendant is unable to post money bail, a “quick” disposition may occur, especially in a case involving a relatively minor offense because the defendant is eager to get out of jail.
 - Setting bail high enough to make it difficult or impossible for defendants to post bond is often viewed as providing judges and communities with assurance that defendants will not be a risk to public safety.
 - Setting a relatively high bail amount avoids the risk of public criticism of the judge and prosecutor that can result if a released defendant commits a serious offense.
 - Everyone in the courthouse knows the existing system. Changing to a system that involves consideration of more information about risks and possible release options would require learning new procedures and practices and is likely to provoke resistance from some practitioners.
 - People are comfortable with what they know, and often don’t see clear advantages to changing to a different system. In particular, judges and other practitioners are not likely to be receptive to being told that what they have been doing for many years is wrong or inappropriate.
 - Philosophical and partisan differences among judges and others can impede adoption of a new system.
9. **Funding concerns.** Although a few of the jurisdictions represented at the focus group session have pretrial services programs that provide risk assessment information and some supervision services for defendants who are released conditionally, most do not. Given the economic recession that has been going on since 2008, judges expressed concerns that no funding is available to start such programs or sustain them over time.

10. **Lack of judicial or multi-disciplinary education on pretrial justice issues.** For most of the judges who participated in the NJC's course and the focus group session, this was the first experience they had had with any kind of education concerning the pretrial release and detention decision-making process in a long time. New judge programs or elective sessions at judicial conferences may address decision-making about pretrial release or detention, but this area has not been a high priority for education. The judges strongly agreed that they need to know more about feasible approaches to improving their existing systems. Law enforcement, prosecutors, defense counsel, pretrial professionals, among others, impact how this area of the criminal justice system works. As such, multidisciplinary educational programs that educate these professionals along with judges are critical for improving the pretrial justice system.

III. Focus Group Ideas on Ways to Improve Existing Practices

Of the 36 judges who participated in the September 2012 focus group discussion at the NJC, only a few had experiences with systems that provide viable alternatives to money bail. However, those judges without alternatives had considerable interest in learning about the experience of judges who preside in courts where judicial officers have access to objective risk assessment information at the time they initially set bail conditions (typically at defendants' first court appearances) or at later bail review hearings. Similarly, the judges expressed strong interest in finding out how other judges, who have some types of resources available to provide for conditional or supervised release, make use of such resources.

Following a plenary session discussion about perceived obstacles to improved pretrial justice decision-making and practices in jurisdictions that have and use pretrial services programs, the judges returned to small groups to consider possible approaches to improving existing practices. The groups developed six main ideas about ways to improve these practices:

1. **Learn who is in the local jail.** Several of the judges at the NJC course were able to solicit data about the population of their local jails before the course. Not surprisingly, they learned that the jails had a high proportion of pretrial defendants. When persons arrested for alleged probation violations were included with the pretrial defendants identified by these judges, the aggregated percentage was well over 60 percent of the inmates and in one case over 90 percent. Once justice system practitioners have a sense of who is in their jails (and why and for how long), they can begin to think of ways to reduce unnecessary use of expensive jail resources.
2. **Define the problem(s) – be clear about what practices need to be changed.** While the existing money bail system is open to criticism, it will be important for judges and other local-level practitioners to be clear about what changes are most needed including why they should be sought. Is the primary problem:
 - Overcrowding in the local jail?
 - Unnecessary detention of persons who pose no real risk to the safety of the community?
 - A lack of information that a judge needs to make informed decisions about detention or release at the outset of the case?
 - Actual or perceived discrimination against a particular group of persons?
 - A lack of available supervisory options that would enable safe release of some defendants?
 - All of the above or a combination of some of them?

Defining the problem(s) will help to clarify what approaches are likely to be most promising in improving existing practices.

3. **Develop a collaborative approach to system improvement.** Consistent with one of the key themes of the NJC program, several of the discussion groups emphasized the importance of judges working collaboratively with other stakeholders to examine their existing systems and seek improvements. A primary concern of the judges in multi-judge trial courts is gaining support for change (or at least receptivity to considering change) from their judicial colleagues as a foundation for working with a broader stakeholder group.
4. **Learn from practitioners in other jurisdictions – especially about pretrial justice system improvements that have worked well.** All of the small groups expressed interest in learning more about the risk assessment tools and supervisory options used in jurisdictions that have made progress in improving previously existing practices.
5. **Seek improvements incrementally.** Many judges saw merit in starting slowly. Initial steps would be to identify existing practices and learn about effective practices used in other jurisdictions. Once the current situation is understood and the range of potential options is identified, it is possible to design and implement changes that can be tailored to the circumstances of the local jurisdiction.
6. **Educate judges and other justice system stakeholders about the need and opportunity for significant improvements in pretrial justice policies and practices.** The judges who participated in the focus group session recognized that, ultimately, it is the judiciary that has responsibility to establish fair and effective pretrial practices. They emphasized the importance of education as an essential prerequisite for significant change in existing practices – education first and foremost for judges, but also for other system stakeholders including prosecutors, defense counsel, law enforcement, jail staff, and local county government officials such as county commissioners.

IV. The National Picture: Great Disparity in Practices but a Trend Toward Evidence-Based Decision-Making

Across the United States major differences exist in the ways that decisions about pretrial release or detention are made and in the outcomes of those decisions. The differences can be seen in the widely varying proportion of defendants who are released pending adjudication, in the range of different types of release mechanisms used, and in the varying effectiveness with which jurisdictions are able to achieve the key goals of pretrial decision-making. For example, the most recent available national data – drawn from records of cases involving defendants arrested on felony charges in 40 large urban counties in May 2006 and published by the federal Bureau of Justice Statistics (BJS) – shows that:

- The proportion of felony defendants released prior to trial varies from as low as 37 percent (Harris County, TX) to as high as 83 percent (Kings County, NY).
- The proportion released on non-financial conditions varies between zero (Harris County, TX) and 68 percent (Bronx County, NY)
- The proportion of released defendants who failed to return to court and remained fugitives after a year ranged from one percent (nine counties) to 14 percent (Middlesex County, NJ)
- The proportion of released defendants who were re-arrested on either misdemeanors or felony charges ranged between less than seven percent (five counties) to a high of 37 percent (Dallas, TX).⁷

The BJS data include only cases involving defendants charged with felonies, and no available national data exist on release rates, failure to appear (FTA) rates, or re-arrest rates for misdemeanor defendants. However, a few facts stand out from other available data

- Large numbers of people are affected by pretrial release or detention practices. As U.S. Attorney General Eric Holder noted in his remarks at the National Symposium on Pretrial Justice, during the course of a year approximately 10 million individuals will have been involved in nearly 13 million jail admissions.⁸

⁷ See Thomas H. Cohen and Tracey Kyckelhahn, *Felony Defendants in Large Urban Courts, 2006* (Washington, D.C.: Bureau of Justice Statistics, May 2010, Revised July 2010) (tables 19 and 20 at pages 37-38 show release percentages, failure to appear (FTA) rates, and re-arrest rates for the 40 counties in the BJS study).

⁸ See Remarks from the Honorable Eric H. Holder, Jr., in *National Symposium on Pretrial Justice: Summary Report of Proceedings*, supra note 1 at 30-31.

- On a single day in June 2011, there were about 735,000 persons in county and city jails in the U.S.⁹ The number of jail inmates has more than doubled in a little over two decades, from about 343,000 in mid-1988 to more than 785,000 in mid-2008. Since 2008, there has been a slight decline to about 735,000 in June 2011.¹⁰
- About 60 percent of all of the inmates in American jails are defendants awaiting trial or other resolution of the charges against them.¹¹ A 2002 study of un-convicted inmates showed that a little less than 35 percent had been charged with violent offenses. The others were charged with property offenses (22%), drug offenses (23%) and public order offenses (20%).¹²
- A significant percentage of pretrial detainees has been in jail before, some of them many times.¹³
- Most of the pretrial defendants are poor. In many jurisdictions, they remain in custody because they cannot afford to post the financial bail set by a court.¹⁴

⁹ Todd D. Minton, *Jail Inmates at Midyear 2011 – Statistical Tables* 1 (Bureau of Justice Statistics, Apr. 2011).

¹⁰ *Ibid.* Data on jail populations going back to at least 1983 can be found in other publications in the BJS *Prison and Jail Inmates at Midyear Series*. For BJS data on jail populations between 1983 and 1994, see Craig A. Perkins, James J. Stephen, and Allen J. Beck, Bureau of Justice Statistics, *Jails and Jail Inmates at Midyear 1993-94* (Table 1 at 2).

¹¹ See Minton, *Jail Inmates at Midyear 2011 – Statistical Tables*, *supra* note 5 (Table 12).

¹² Doris J. James, *Profile of Jail Inmates*, 2002 at 3 (Bureau of Justice Statistics Special Report, July 2004) (Table 3).

¹³ See Cherise Fanno Burdeen, *Jail Population Management: Elected County Officials' Guide to Pretrial Services* 4 (Washington, D.C.: National Association of Counties, Sept. 2009). This guide notes that a 2007 study of the jail in Athens-Clarke County, Georgia, showed that most of the male inmates were on at least their tenth stay in jail and that one was on his 112th jail stay. The guide emphasizes that a majority of counties are spending significant jail resources on a small number of individuals who are repeatedly arrested.

¹⁴ The effect of requiring financial bail on producing unnecessary pretrial incarceration of poor people was a central theme of speakers at the 2011 National Symposium on Pretrial Justice and has been a continuing criticism of the money bail system for close to a century. See the *Summary Report of Proceedings*, *supra* note 1; also Roscoe Pound and Felix Frankfurter, eds., *Criminal Justice in Cleveland: Reports of the Cleveland Foundation Survey of the Administration of Criminal Justice in Cleveland, Ohio* 290-292 (Cleveland: The Cleveland Foundation, 1922; reprinted, Montclair, NJ: Patterson Smith, 1968); Arthur L. Beeley, *The Bail System in Chicago* (Chicago: University of Chicago Press, 1927); Caleb Foote, *Compelling Appearance in Court: Administration of Bail in Philadelphia*, 102 U.P.A. LAW REV. 693 (1954); Daniel J. Freed and Patricia Wald, *Bail in the United States: 1964* (Washington, D.C.: U.S. Department of Justice and The Vera Foundation, Inc., 1964); Ronald Goldfarb, *Ransom: A Critique of the American Bail System* (New York: John Wiley and Sons, 1968); Paul Wice, *Freedom for Sale: A National Study of Pretrial Release* (Lexington, MA: D.C. Heath and Co., 1974); John S. Goldkamp, *Two Classes of Accused: A Study of Bail and Detention in American Justice* (Cambridge, MA: Ballinger, 1979); Spike Bradford, *For Better or for Profit: How the Bail Bonding Industry Stands in the Way of Effective Pretrial Justice* (Washington, D.C.: Justice Policy Institute, 2012).

The legal framework for addressing pretrial justice issues varies from state to state. Some states have statutes that provide presumptions in favor of release on recognizance or on unsecured bond unless a judicial officer determines that the defendant presents a risk that that calls for more restrictive conditions of release or for detention.¹⁵ In other states, court rule has established such a presumption.¹⁶ In many states, however, the legal framework is murky, and judges get little guidance from statutes or court rules. There is, however, an important United States Supreme Court opinion that is directly relevant to policy development at the local level. In *United States v. Salerno*, 481 U.S. 739 (1987), the Court upheld a federal law permitting pretrial detention of an arrested person in certain limited categories of serious criminal offenses, after a hearing at which the prosecutor is required to show significant risk of flight or danger to the community by clear and convincing evidence. In his opinion for the seven-justice majority, then Chief Justice Rehnquist observed that “in our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”¹⁷

Pretrial justice practices have been receiving increasing attention from influential national groups. Perhaps most notably, in January 2013, the U.S. Conference of Chief Justices (CCJ) addressed these issues in a resolution that formally endorsed a policy paper developed by the Conference of State Court Administrators (COSCA) on evidence-based pretrial release. The resolution explicitly calls on court leaders to:

promote, collaborate, and accomplish the adoption of evidence-based assessment of risk in setting pretrial release conditions and advocate for the presumptive use of non-financial release conditions to the greatest degree consistent with evidence-based assessment of flight risk and threat to public safety and to victims of crime.¹⁸

¹⁵ See, e.g., ALASKA STAT. § 12.30.020; DELAWARE CODE ANN. TITLE 11 § 2105; IOWA CODE § 811.2; KENTUCKY REV. STAT. 431.520; MASSACHUSETTS GEN. LAWS ANN. CH. 276 § 58A; MAINE REV. STAT. TITLE 15 § 1026 (2-A); NORTH CAROLINA GEN. STAT. CH. 15A §§ 534 (A) AND (B); SOUTH CAROLINA CODE ANN. § 17-15-10; SOUTH DAKOTA LAWS § 23A-43-2; WISCONSIN STAT. 961.01.

¹⁶ See, e.g., MINN. R. CRIM. P. 6.10; N.D. RCIM. P. 46A; WASH. CRIM. R. 3.2; WYO. R. CRIM. P. 8(c)(1).

¹⁷ *United States v. Salerno*, 481 U.S. 739, 755 (1987). Notably, as highlighted in the COSCA policy paper, at least two state supreme courts have explicitly rejected the practice of using non-discretionary bail amounts based solely on the charge. See *COSCA Policy Paper on Evidence-Based Pretrial Release 3* (*supra*, note 5); *Pelekai v. White*, 861 P.2d 1205 (Hawaii 1993); *Clark v. Hall*, 53 P.3d 416 (Okla. 2002).

¹⁸ Resolution # 3 approved by the Conference of Chief Justices (CCJ) at the CCJ 2013 Midyear Meeting, Jan. 30, 2013.

The COSCA policy paper endorsed by the Chief Justices includes a review of the history of bail and the issues related to the use of financial conditions of release, discussion of the consequences of the existing bail system in terms of financial costs and unequal justice, and the advantages of making release or detention decisions on the basis of empirically-based assessments of a defendant's risk of flight and threat to public safety and the safety of crime victims.¹⁹ At least one CCJ member – Chief Judge Jonathan Lippman of New York – has already acted on the CCJ resolution, calling for major bail reform in his 2013 State of the Judiciary Address.²⁰

Change is in the wind. The endorsement of evidence-based pretrial release practices by the Conference of Chief Justices is an important step toward improving pretrial release practices, and is consistent with policy positions taken by other major national organizations and associations of justice system practitioners. In addition to the Conference of Chief Justices and the Conference of State Court Administrators, a number national organizations and associations of key stakeholder groups have strongly endorsed moving from the traditional money bail system to a risk-based system for making decisions about detention or release and for setting pretrial release conditions. These include the American Bar Association, the National Association of Counties, the American Jail Association, the International Association of Chiefs of Police, the American Council of Chief Defenders, the Association of Prosecuting Attorneys, and the American Probation and Parole Association.²¹

¹⁹ Conference of State Court Administrators (COSCA), *2012-2013 Policy Paper: Evidence-Based Pretrial Release*, *supra*, note 5. The COSCA policy paper explicitly rejects the use of bail schedules, noting that the use of such schedules contradicts the policy goal of setting release conditions that reflect an assessment of the individual defendant's risk of failure to appear and threat to public safety. *Id.* at 3. Notably, as highlighted in the COSCA policy paper, at least two state supreme courts have explicitly rejected the practice of using non-discretionary bail amounts based solely on the charge. See *Pelekai v. White*, 861 P.2d 1205 (Hawaii 1993); *Clark v. Hall*, 53 P.3d 416 (Okla. 2002).

²⁰ Jonathan Lippman, *The State of the Judiciary 2013: "Let Justice be Done"* (Albany, NY: Feb. 5, 2013)

²¹ See the COSCA policy paper on *Evidence-Based Pretrial Release* 10, *supra*, note 5 and accompanying end notes citing relevant resolutions and publications of these major associations.

V. Authors' Observations and Conclusions

Despite a long history of informed criticism of the money bail system as unfair, discriminatory against the poor, a primary cause of unnecessary over-incarceration of individuals who do not pose significant risks of nonappearance or public safety, and costly to taxpayers, the system has endured for many decades in most places in the U.S. The obstacles identified by the judges who participated in the September 2012 NJC focus group discussion (see Part II above) pinpoint many of the reasons for the persistence of the system and can be viewed as targets for constructive change.

The ideas that emerged during the focus group discussion with judges who are pursuing justice improvement initiatives in their states should be encouraging for the prospects of achieving significant improvement in pretrial justice. During that discussion, judges from the 10th Judicial Circuit of Florida and the 19th Judicial District of Colorado spoke about stakeholder groups in their jurisdictions that had recently gotten together to review existing practices and consider possible changes. The stakeholder groups have developed systems that provide ways for judges in these jurisdictions to obtain essential information and utilize existing resources for supervision in the community, enabling release of more individuals than before. Generally, local government officials are receptive to ideas for system improvements that will result in lower costs for running the jail. They are also likely to very receptive to proposals that will avoid the need for construction of additional jail space.²²

The judges' identification of obstacles to effective pretrial decision-making and their suggestions for ways to improve existing practices (Parts II and III above) provide the basis for developing a practical agenda for specific steps to implement needed change. We believe that once attention has been drawn to the issues, many judges at the trial court level are very interested in, and receptive to, improving pretrial decision-making practices. Of particular relevance, the judges at the focus group session were especially interested in learning about the practices in the District of Columbia, Kentucky, and the two local jurisdictions (in Florida and Colorado) where judges had taken leading roles in developing county-based pretrial services programs that make use of risk assessment instruments and resources for community supervision of released defendants.

²² See, e.g., National Association of Counties, *Jail Population Management: Elected Officials' Guide to Pretrial Services*, supra note 13.

For purposes of engaging judges in leading and supporting the use of evidence-based practices that focus release/detention decision-making on the risks posed by an arrested person, three key areas of attention seem especially important:

1. **The existence and effective operation of other practices for making pretrial release or detention decisions.** Judges want to learn about decision-making practices that have worked elsewhere – why they were adopted, how they work operationally, whether the outcomes (in terms of factors such as pretrial crime and failure to appear [FTA] rates) are better than under traditional approaches, and how practitioners like them. At the focus group discussions, the judges expressed strong interest in the examples of alternative approaches that were briefly outlined by judges from the District of Columbia and Kentucky, and (at the local level) Florida and Colorado.
2. **Strategies for initiating and achieving system change.** Recognizing that jurisdictions differ widely on many dimensions, judges are nonetheless interested in what approaches to system change have actually worked. Who supported the change, and why? What were the obstacles? How were the obstacles overcome and the change put in place? What problems can be anticipated as implementation moves forward? What roles did judges play in initiating and implementing the change?
3. **Relative advantage—why will a new approach be better for the jurisdiction?** Efforts aimed at improving judges’ practices in pretrial decision-making should focus on why the needed change will enable the judge to function more effectively as a judge, as well as on why the changes will better serve the jurisdiction’s justice system and the larger community. This approach suggests an emphasis on four key outcomes to be expected from changing to an evidence-based system that addresses identified risks:
 - ***Effective judicial decision-making.*** When a judge has accurate and relevant information about risk factors and supervisory options, the judge is able to make a better and more informed decision about detention or conditions of release.
 - ***Fairness.*** Equal justice under law is a core value in the American legal system. Perpetuation of the existing money bail system undermines that value and results in discrimination against the poor.
 - ***Public safety.*** By providing the judge with sound risk assessment information at the time of the release or detention decision plus resources for community supervision when needed, an improved system will increase the likelihood of a decision that will protect the safety of victims, witnesses, and the community.

- **Cost effectiveness.** With risk assessment information provided to the judge on a timely basis and with supervisory options available in the community, substantial taxpayer costs can be saved by reducing unnecessary pretrial detention. Operating a jail is expensive, and community supervision is appreciably less expensive. It will be important to demonstrate actual savings likely to be achieved through system change.

Reviewing the ideas generated at the judges' focus group discussion in light of what we know about the picture of pretrial justice nationally, it seems to the authors of this essay that the time is ripe for courts and court systems to begin transitioning from a traditional money bail system to a modern evidence-based system. A modern system would enable judges to use evidence-based risk assessment instruments as the foundation for release or detention decision-making, bring greater fairness to the process, reduce unnecessary confinement in jails, save taxpayer dollars, and enhance public safety. Good working models of such systems exist, and we anticipate that more will emerge in the near future.

Recognizing that different paths will be taken in different states and localities, below are 10 suggestions for approaches and next steps that courts and judges can take:

1. **Avoid a one-size-fits-all approach.** No easy generalizations about pretrial decision-making practices exist across the United States or about feasible reform strategies that will be broadly applicable. The diversity of the jurisdictions represented at the focus group discussions reinforces the sense that it will be important to tailor pretrial justice improvement efforts to the circumstances and needs of individual local jurisdictions. The focus group included a few judges from jurisdictions that have very progressive modern pretrial decision-making practices, and many from jurisdictions where bail practices continue to use the traditional money bail system. The capacity to obtain essential information about defendants and to utilize a range of supervisory options varies widely across jurisdictions, and practical approaches will necessarily take a variety of forms.²³ That said, however, it nevertheless seems feasible to move toward use of evidence-based practices that focus pretrial decision-making on identified risks that may be posed by arrested persons.

²³ Because of sparse populations, long distances, and low case volume, developing effective pretrial programs in rural areas poses special challenges, but the challenges have been met successfully in some rural jurisdictions. For discussion of ways to develop or enhance an evidence-based approach to pretrial decision-making in rural areas, see Stephanie J. Vetter and John Clark, *The Delivery of Pretrial Justice in Rural Areas: A Guide for Rural County Officials* (Washington, D.C.: National Association of Counties, 2012).

2. **Support continued refinement of risk screening and assessment instruments that enable risk-focused decision-making.** Predicting the risk of future behavior is an enterprise fraught with problems, but much has been done to develop risk screening and assessment instruments that can help judicial officers make sound decisions.²⁴ These instruments provide a far better basis for making decisions about pretrial custody than simply using a bail schedule or setting a bond amount that makes release dependent upon an individual's financial resources and a bond agency's willingness to post the bail. However, there is surely room for further improvement in developing more effective tools for gauging risk and for identifying the nature and severity of the risks. As hypothesized by one leading researcher, judges considering release or detention issues may be less concerned with failure to appear and re-arrest for a minor offense than with a person's risk of dangerousness.²⁵ It seems desirable to support work on refining the risk screening and assessment instruments already in existence, to make them even more useful in providing judicial officers with reliable information about specific types of risks. Having such information will enable judges to tailor release or detention decisions (and orders regarding conditions of release) to the specific nature and severity of the risks posed by individuals who have been arrested.

3. **Support development of improved capability for risk management, including appropriate community-based resources for monitoring, supervision and treatment.** Having information derived from good risk screening and assessment instruments takes judges only part way toward effective pretrial decision-making. It is also important for judicial officers to have a range of viable options that can provide a basis for managing risks that are identified. In recent years, there has been considerable progress in the development of community-based resources that can be used to provide monitoring, supervision, and – when appropriate – attention to an individual's substance abuse and/or mental health problems that contribute to the risk of pretrial misbehavior. Judges need to know about the availability of such resources and ways in which they can be utilized. They can be effective leaders in identifying the need for specific types of community-based resources and catalyzing support for their development.

²⁴ See, e.g., the publications discussing risk assessment techniques cited in note 6, *supra*.

²⁵ Mamalian, *State of the Science of Risk Assessment* 33 n. 88, *supra* note 6.

4. **Ensure that counsel for the prosecution and defense are present and prepared in court when the court adjudicates release or detention issues.** Judges who participated in the focus group discussion noted the value of having counsel present at the initial stages of any criminal case. Optimally, counsel for both the prosecution and the defense will have essential information – including information about current charge (at a minimum the police report) and the defendant’s prior criminal record, family and housing situation, employment status, physical and mental condition (including indications of abuse of drugs or alcohol), and prior record of compliance with conditions of release – before a first appearance proceeding. Defense counsel should have an opportunity to review the police report and any information about the arrested person prepared by a pretrial services program. Counsel should also have adequate opportunity to consult with the arrested person prior to the proceeding. The prosecutor should know the basic facts of the prosecution case – i.e., the facts that provided grounds for the arrest – and should also be familiar with information in a pretrial services report. Because of the generally short time period between an arrest and the arrested person’s first court appearance, it is sometime not feasible to have all of the relevant information gathered in time for the first appearance proceeding. If not, and if there is doubt as to whether the individual should be released, a *short* continuance of the proceeding – generally not more than a day – may be needed to enable the information to be gathered, the risks of release assessed, and a decision made with input from counsel.²⁶ In our opinion, the informational reports provided to judicial officers by established pretrial services programs, though generally characterized as “risk assessments” are generally more in the nature of “risk screening” reports. They provide very useful information relevant to gauging risk and can provide a basis for rapid and well-grounded custody or release decisions to be made in a high proportion of cases. However, there will almost certainly be some cases in which more in-depth assessment is desirable.

²⁶ See, e.g., Mamalian, *State of the Science of Risk Assessment* 31, *supra* note 6. Mamalian suggests experimenting with a “differentiated case management” approach in which a court would first identify low risk defendants who could be released quickly without bail. Then, additional time could be spent on more in-depth assessment of the risks posed by higher risk defendants and determination of what supervision options would be most useful to address identified risks.

5. **Conduct judicial education programs that support judicial leaders in moving toward improved practices.** As noted above in the discussion of the focus group’s identification of obstacles to system improvement, effective pretrial decision-making has not been a priority area for judicial education. To implement real change, it will be important for judges to become well educated about pretrial justice principles and best practices. Some of the education can be done on a national basis at The National Judicial College using in-person programs, and some can be done through online programs. However, it will also be important to work at the state level with state judicial educators and others involved in planning judicial conferences and specialized training programs for judges. For example, curricula now being developed by the Pretrial Justice Institute and the National Judicial College can be used for in-state, regional, or national programs of varying length. The curriculum can be adapted for presentation – optimally by a mix of experts and sitting judges who have succeeded in achieving significant reforms – in one-hour to one-day segments at state judicial conferences. Such short programs could focus on key points about the current situation and viable approaches to implementing improved practices, with examples from peer jurisdictions.
6. **Develop and broadly disseminate a “how-to” guide.** To supplement and support judicial education programs, it will be helpful to have a range of written and visual resources that can help judges and other system leaders initiate and implement changes. For example, it would be useful to have a practitioner-oriented resource guide—similar to the “Ten Key Components” publication that was instrumental in fostering the development and implementation of many drug courts in the 1990s.²⁷ Such a guide could address key elements of an effective pretrial justice system; why change is needed; and how the changes can be accomplished in order to improve judicial decision-making, minimize unnecessary detention, save taxpayer dollars, and increase the fairness with which the system functions.²⁸

²⁷ National Association of Drug Court Professionals, Drug Court Standards Committee, *Defining Drug Courts: The Key Components* (Washington, D.C.: Office of Justice Programs Drug Courts Program Office, Jan. 1997).

²⁸ For a useful detailed guide to starting a pretrial services program, see Pretrial Justice Institute, *Pretrial Services Program Implementation: A Starter Kit* (Washington, D.C.: Pretrial Justice Institute, undated; probably 2010).

7. **Use learning sites and videos to demonstrate effective practices.** Four of the jurisdictions represented at the focus group – the District of Columbia, Kentucky, and the Florida and Colorado jurisdictions discussed in the preceding paragraph – are all potential “learning sites” for judges and other justice system stakeholders who are interested in improving current practices. It seems desirable to develop detailed descriptions of how these and other similar jurisdictions function, how well judges and other practitioners like the practices, and how the improved practices were developed and implemented. If possible, it would be desirable to find ways for judges and other practitioners to get a first-hand look at these systems in operation and opportunity to discuss the approaches with practitioners in these learning sites. Videos of practitioners and practices in these jurisdictions can also be valuable both as stand-alone educational tools and as supplements to in-person and online educational programs. A learning site could also (or additionally) conduct a series of webcasts as a way to foster peer-to-peer learning for judges and other practitioners interested in improving pretrial release or detention decision-making.
8. **Develop resources for information and technical assistance.** Judges and others at the focus group session were clearly interested in having a “go-to” place where they could get questions answered, obtain information, and perhaps get short-term assistance in assessing their local systems and developing improved practices. The Pretrial Justice Institute (PJI) has developed an extensive base of web-accessible publications and other resource materials that can be very useful in assessing current practices and implementing changes.
9. **Exercise judicial leadership.** To initiate and achieve meaningful change in existing practices will require judicial leadership – optimally at all levels of the judiciary. The Conference of Chief Justices’ resolution endorsing evidence-based pretrial release is an important exercise of state-level judicial leadership. Chief Judge Lippman’s call for change in New York laws and practices exemplifies one form of state-level judicial leadership in this area. Leadership at the trial court level, where decisions about release or detention are made every day, in a wide range of different environments, will be equally important. The judges who participated in the NJC’s focus group session are all local-level trial court judges. They recognized the leadership opportunities that judges can exercise in improving the justice systems in their localities and in their states. Of particular relevance, they acknowledged that trial court judges – especially chief judges or their designees – can, as knowledgeable and respected neutrals, convene stakeholders and can lead or help catalyze significant justice system improvements at the local level. As work goes forward in improving pretrial justice, judges should have key leadership and supporting roles.

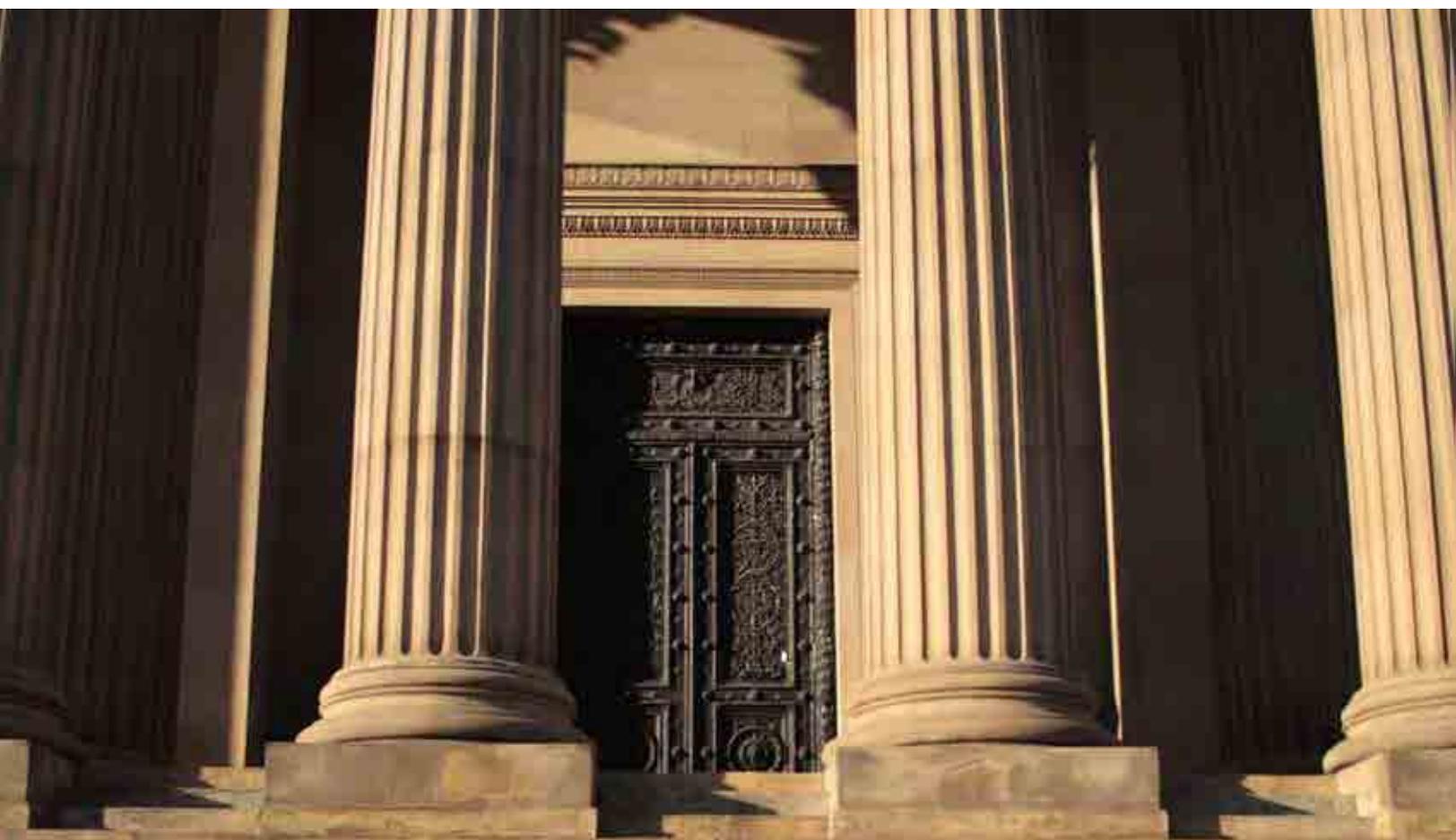
10. **Anticipate resistance to change and develop a strong coalition in support of needed reforms.** The broader the coalition that can be assembled in support of modernizing pretrial justice decision-making, the better. There will almost surely be “incidents” involving persons released from custody – sometimes cases in which a released defendant is charged with serious criminal conduct – that will occur in some jurisdictions and will raise concern about the appropriateness of any program. Therefore, it is important to develop broad support for the program and to acknowledge its limitations. Judges, program leaders, and other stakeholders need to be aware of what the assessments performed actually tell a decision maker about the risks of release and about ways to address the risks. This is why the multidisciplinary approach to education discussed on page 8 is so important. Additionally, the political influence of bail bond agencies and insurance companies needs to be taken into account in undertaking improvement initiatives. These entities have been active in many states in opposing the implementation of pretrial services programs that can provide the information and supervisory options that many judges would like to have to make informed decisions. The entities can adversely impact the future careers of judges in systems where judges are subject to retention or contested elections. The prospect of opposition from these interest groups suggests the importance of developing strong broad-based coalitions to support the development of alternatives to the money bail system.

The NJC focus group was effective in identifying key obstacles to improving pretrial justice and in suggesting practical ways to undertake improvements at the local level. Having the support of state chief justices should be valuable for trial court judges who are prepared to initiate reform efforts at the local level. We are optimistic that trial court judges throughout the country will build on the foundation that has been developed, to work – optimally in collaboration with other stakeholders and with the support of their state chief justices – to implement changes in practices that will incorporate the core principles that are at the root of true pretrial justice.



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