

AGENDA

ARIZONA JUDICIAL COUNCIL

Little America Hotel
2515 E Butler Ave.
Flagstaff, AZ 86004

October 22, 2015

Meeting Room: Flagstaff

9:00 a.m. Welcome.....Chief Justice Scott Bales

Tab No.

(1) Approval of MinutesChief Justice Scott Bales

(2) Approval of 2016 MeetingChief Justice Scott Bales
Dates

9:10 a.m. (3) Processing Rule 11 Cases in.....Judge Elizabeth Finn
Limited Jurisdiction Courts..... Mr. Paul Thomas

9:30 a.m. (4) Judicial Branch Legislative Package..... Mr. Jerry Landau
.....Ms. Amy Love

10:30 a.m. Break

10:45 a.m. (5) Interpreter Credentialing Program Ms. Amy Wood

11:15 a.m. (6) Time Standards – Phase IV Justice Robert Brutinel

(7) Handouts/Miscellaneous

11:30 a.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:**

October 22, 2015

**Type of Action
Requested:**

Formal Action/Request

Information Only

Other

Subject:

Approval of Minutes

FROM:

Lorraine Smith, Staff to the Arizona Judicial Council

DISCUSSION:

The minutes from the June 15, 2015 meeting of the Arizona Judicial Council are attached for your review.

RECOMMENDED COUNCIL ACTION:

Approve the minutes as written.

ARIZONA JUDICIAL COUNCIL

Camelback Inn
5402 E. Lincoln Drive, Sunshine Room
Scottsdale, Arizona 85253

June 15, 2015

Draft Meeting Minutes

Council Members Present:

Chief Justice Scott Bales
Jim Bruner
David Byers
Judge Rachel Torres Carrillo
Judge Norman Davis
Victor Flores
Athia Hardt
Mike Hellon
Michael Jeanes
Jack Jewett
Judge Diane Johnsen
Gary Krcmarik
Judge David Mackey

William J. Mangold, M.D., J.D.
Judge John Nelson
R. Tony Penn
(proxy for Janet Regner)
Judge Antonio Riojas, Jr.
Judge Sally Simmons
Judge Roxanne Song Ong
Judge Monica Stauffer
Judge Garye Vasquez
(proxy for Judge Peter Eckerstrom)
George Weisz
Judge David Widmaier

Council Members Absent (excused):

Yvonne R. Hunter, J.D.
Richard Platt

Janet K. Regner

Administrative Office of the Courts (AOC) Staff Present:

Mike Baumstark
Cindy Cook
Karl Heckart
Susan Hunt
Kevin Kluge
Jerry Landau
Amy Love

Mark Meltzer
Alicia Moffatt
Heather Murphy
Marcus Reinkensmeyer
Lorraine Smith
Kathy Waters
David Withey

Presenters and Guests Present:

Judge Janet Barton
Judge Michael J. Brown
Judge Kyle Bryson
Bryan Chambers
Joannie Collins
Judge Louis Dominguez

Alvaro Flores
Marcie Kanefield
Lisa Loo
Vice Chief Justice John Pelander
John Phelps
Judge Derek Pullan

Chief Justice Scott Bales, Chair, called the meeting to order at 1:00 p.m. in the Sunshine Room at the Camelback Inn, 5402 E. Lincoln Drive, Scottsdale, Arizona. The Chair welcomed those in attendance and announced the following:

New members: Mr. R. Tony Penn (Public member/proxy for Janet Regner) and Judge Monica Stauffer (Superior Court Presiding Judge Rural member).

New members effective July 1, 2015: Judge Kyle Bryson (Presiding Judge in Pima County member), Judge Janet Barton (Presiding Judge in Maricopa County member), Bryan Chambers and Lisa Loo (State Bar President member), Judge Louis Dominguez (Magistrate member), and Judge Michael Brown (Chief Judge COA Division I member).

Members with terms ending June 30, 2015: Janet Regner, Judge Norm Davis, Judge Sally Simmons, Judge Diane Johnsen, Richard Platt, and Judge Roxanne Song Ong.

The Chair welcomed the new members and thanked the members whose terms are expiring for their service on the Council.

Approval of Minutes

The Chair called for any omissions or corrections to the minutes from the March 26, 2015, meeting of the Arizona Judicial Council. There were none.

MOTION: To approve the minutes from the March 26, 2015, meeting of the Arizona Judicial Council, as presented. The motion was seconded and passed. AJC 2015-11.

Utah Discovery Rules

Judge Derek Pullan, Fourth District Court Judge from Utah presented information on the Utah Supreme Court's Advisory Committee on the Civil Rules of Procedure and Utah's efforts to reform civil discovery rules.

Judge Pullan reviewed the 5 key components: front loading discovery, proportionality, expert discovery limits, give the rule teeth, and expedite resolution of discovery disputes. He spoke on the process and assessment involved.

The Chair noted the Arizona Rules of Civil Procedure are in significant part modeled after the Federal rules, and the Court will assess whether Federal changes are something we would want to implement in Arizona. He stated that we have a Committee already at work restyling all 108 of Arizona's Rules of Civil Procedure, and the Committee will develop recommendations and file a rules petition at the end of this year. The Chair advised that the changes taking place in Utah go beyond what the Federal rules have sought to do in many respects, and added that other states have similar efforts underway.

Commission on Technology (COT)

Vice Chief Justice Pelander, Chair of the Commission on Technology provided an update on the work of the COT.

Mr. Karl Heckart, CIO and Director of the Information Technology Division of the AOC provided an update on COT's achievements, automation project updates, priorities, and the FY 2016 project list.

Mr. Heckart briefed the Council members on the COT's recommended changes to the ACAP device fee structure for local items on the network to take effect in FY 2017. He asked for the Council's approval of these changes as presented.

Judge Mackey asked that the Superior Court Presiding Judges have an opportunity to talk about the impact, affect, and analysis before the Council votes. He suggested the issue be revisited at the October meeting.

Mr. Michael Jeanes suggested that the Council approve the recommended changes and advise the Presiding Judges at their meeting on Tuesday. He stated if there were issues, we could bring this item back to the meeting in October.

MOTION: To approve the ACAP device fee structure to take effect in FY 2017, as recommend by the Commission on Technology. The motion was seconded and passed. AJC 2015-12.

Mr. Kevin Kluge, CFO and Director of the Administrative Services Division of the AOC briefed the Council on JCEF revenues, on-going commitments, comparison of revenue to expense, and the projected year-end fund balance, subject to action by the Legislature. He asked that the Council approve the JCEF automation budget, as recommended by the COT, and the JCEF non-automation court programs budget and the JCEF probation budget, as recommended by the AOC Administrative Director and as appropriated by the Legislature.

MOTION: To approve the JCEF 2016 budget request and JCEF probation budget, as presented. The motion was seconded and passed. AJC 2015-13.

Arizona Case Processing Time Standards

Mr. Marcus Reinkensmeyer, Director of the Court Services Division of the AOC presented the Committee's recommendation that the case processing time standards for the following five case types be adopted as final effective January 1, 2016:

- Probate administration of estates
- Probate guardianship/conservatorship
- Probate mental health cases
- Misdemeanor (1 tier only)
- Justice court civil cases

MOTION: To approve the adoption of the 5 case types effective January 1, 2016, as presented. The motion was seconded and passed. AJC 2015-14.

Legislative Update

Mr. Jerry Landau, Director of Governmental Affairs and Ms. Amy Love, Legislative Liaison for the AOC, presented a legislative update which included a recap of the past legislative session and preparation for next year. Mr. Landau noted that all 4 of the Council bills passed.

ACJA 6-106: Personnel Practices

Ms. Kathy Waters, Director of the Adult Probation Services Division of the AOC presented information on the proposed revisions to ACJA § 6-106: Personnel Practices and asked the Council members to approve as written.

MOTION: To approve Arizona Code of Judicial Administration § 6-106: Personnel Practices, as presented. The motion was seconded and passed. AJC 2015-15.

Task Force on the Review of the Role and Governance Structure of the State Bar of Arizona

Mr. Mark Meltzer, Senior Court Policy Analyst for the Court Services Division of the AOC and Task Force staff provided an update on the work of the Task Force and their recommendations.

Arizona Foundation for Legal Services and Education Project

Ms. Joannie Collins, Chief Administrative Officer for the Arizona Foundation for Legal Services & Education presented information on the youth-focused education programs, including Law Related Education Academy, the updated and newly designed Law for Kids website, and the Law for Veterans and Law for Seniors websites.

International Law and Child Custody Update

Judge David Mackey, Chair of the Committee on Superior Court provided an update on this issue raised at a prior Council meeting. He reported the Committee has no new ideas for legislation, but are looking further into the training aspect to include a session that deals with international law and child custody and the analysis that would follow under Arizona law. Judge Mackey stated the Committee is encouraging the Education Services Division of the AOC to consider organizing a family law conference in the near future and to provide a provision in the Benchbook.

The Chair inquired about training for cross-border issues.

Parenting Coordinator Update

Judge Janet Barton, Chair of the Parenting Coordinator Rule Petition Review Committee provided background information on the work of the Committee. She reported that Committee has filed an amended rules petition (Rule 74) based on comments received and will submit its recommended forms to the Supreme Court by December 1, 2015.

Call to the Public

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

The meeting adjourned at 4:40 p.m.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
October 22, 2015	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Approval of Arizona Judicial Council Meeting Dates for the Year 2016

FROM:

Lorraine Smith, Staff

DISCUSSION:

The following are proposed meeting dates for the Arizona Judicial Council in 2016. The Council will be asked to approve the meeting schedule for the months of March, June, October, and December, as follows:

- Thursday, March 24, 2016 State Courts Building, Phoenix, Ste. 119
- Monday, June 20, 2016 Starr Pass – in conjunction with the Judicial Conference in Tucson
- Thursday, October 27, 2016 *Location to be determined

**Note: this meeting is in conjunction with the annual Court Leadership Conference. Location will be identified at a later date. AJC members are invited to this Conference.*

- Thursday, December 8, 2016 State Courts Building, Phoenix, Ste. 119

RECOMMENDED COUNCIL ACTION:

Approve the proposed Arizona Judicial Council meeting dates for the year 2016.

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
October 22, 2015	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	PROCESSING RULE 11 CASES IN LIMITED JURISDICTION COURTS

FROM:

Elizabeth R. Finn, Presiding Judge, Glendale City Court
Paul Thomas, Court Administrator, Mesa Municipal Court

DISCUSSION:

Present information on pilot program for Glendale City Court and Mesa Municipal Court to have their Rule 11 proceedings held at their respective courthouses. A working group has been identifying and resolving the necessary processes for city court judges to act as Superior Court *judge pro tempore* to preside over their Rule 11 proceedings. This presentation will outline the processes identified and the benefit of holding these proceedings at their local courts.

RECOMMENDED COUNCIL ACTION:

Determine if approval by the Council is necessary and take appropriate action.

Glendale City Court Mesa Municipal Court

**Proposal to Resolve Rule 11
Competency Determinations in
Limited Jurisdiction Courts**

Supreme Court Strategic Goal #1

Access to Justice

“Our courts should work with others in government and our communities to assess the legal needs of modest to low income individuals and to develop strategies to better serve those needs.”

Supreme Court Strategic Goal #2

Protecting Children, Families, and Communities

Problem-Solving Courts

“Problem-solving courts must also follow evidence-based practices to succeed. Although some Arizona courts have implemented problem-solving courts, there is a continuing need to create courts designated to serve the distinct needs of certain individuals, such as homeless courts, drug courts, veterans courts, and mental health courts.”

THE PROPOSAL

The proposal is to facilitate the Rule 11 competency evaluation and subsequent ruling at the local court level.

- A. Authorize Mesa Municipal Court and Glendale City Court to resolve the Rule 11 competency matters locally as Pro-tem judges in Superior Court**
- B. Utilize doctors on the approved Superior Court list**
- C. Judicial action remains as a Superior Court matter (no change in jurisdiction)**

Supreme Court Action

- **Appointed Workgroup**
- **Representatives from:**
 - **Clerks Office**
 - **Superior Court commissioner and administrative staff**
 - **Glendale City Court**
 - **Mesa Municipal Court**
 - **Maricopa County and Phoenix Public Defenders**
 - **Prosecutors**

Process to Date

- **City clerks trained by Clerks Office on minute entries**
- **City clerks trained by Superior Court administration on process**
- **City clerks sworn in as special deputies**
- **City judges observed Rule 11 process and consulted with judicial officer**
- **Protocol for transfer of recordings of Rule 11 proceedings held in city courts**

Clerks Office

- **All minute entries from cities will be filed in e filing portal**
- **Facilitating:**
 - **Electronic entry of warrants issued by cities in name of Superior Court**
 - **Distinguishing city court issued Superior Rule 11 warrants from Superior Court issued warrants**
 - **Access to sealed prior Rule 11 doctors reports**

In Process...

- **Superior Court drafting Administrative Orders for Superior Court and the Supreme Court**
- **Access to iCIS**
- **Finalize warrant process**
- **Finalize individual city listed on warrants for IA Commissioners**
- **MCSO process to release defendants to cities**
- **Have judges sworn in as Pro tem judges**
- **Select doctors**

Process (continued)

- **Sample minute entries**
- **What happens when defendant is on Court Ordered Treatment or needs Court Ordered Evaluation**
- **City prosecutor role in Court Ordered Evaluation process**

City Courts

- **Advise doctors and counsel of appointment of doctors**
- **Schedule doctor to appear at city courthouse**
- **Flat rate per day**
- **Will schedule defendants to meet with doctors on site**
- **Monitor time line on doctor reports being submitted**
- **Public defenders will review doctor reports in advance of Rule 11 proceedings.**
- **Rule 11 proceedings will be shorter**

BENEFITS

- **Greatly improved service to defendants and the public**
- **Case processing times can be significantly reduced**
- **No show rates can be radically reduced**
- **Improved case management**
- **Significant cost savings**
- **Excellent response to increasing mental health demands**
- **Fulfills “Access to Justice”**

Questions?

ARIZONA JUDICIAL COUNCIL

Request for Council Action

**Date Action
Requested:**

October 22, 2015

**Type of Action
Requested:**

Formal Action/Request
 Information Only
 Other

Subject:
Legislative Proposals

FROM:

Jerry Landau and Amy Love

DISCUSSION:

Legislative Proposals – Cause/Effect and Implementations

RECOMMENDED COUNCIL ACTION:

Council may vote to include or not include in the Legislature a Judicial Branch proposal or to support, oppose or take no action on proposals from other entities presented to the Council.

2016 Arizona Judicial Council Legislative Proposals

2016-01: Temporary Order; Preliminary Injunction

Requires the Clerk of Court to issue an automatic preliminary injunction in actions to establish paternity, legal decision making and/or parenting time for a child or children born out of wedlock. The injunction must prohibit harassment or assault of any party, removal of any child subject to the proceedings from the jurisdiction of the court, and cancellation of any insurance coverage for a child. Current law mandates a similar injunction at the time of filing for separation or dissolution of marriage.

Title affected: 8

2016-02: Special needs/adult guardianship

Requires a guardianship petition to include the most recent family court order regarding legal decision making and parenting time if applicable. If the family court made best interest findings pursuant to Title 25 there is a rebuttal presumption that the current access schedule is in the ward's best interest and should be preserved after the appointment of a guardian. This presumption may be rebutted if the court finds good cause to deviate from the prior family court order. If the court has not made prior orders concerning legal decision making and parenting time and both parents are seeking appointment as guardian the court may consider all relevant factors.

Authorizes the court to order any party who engages in unreasonable conduct in a guardianship proceeding to pay for some or all of the professional fees and expenses caused by such unreasonable conduct.

Increases the priority of guardianship appointment for a parent or relative who has lived with the incapacitated person for more than six months.

Requires guardians to make a good faith effort to maintain the ward's historical relationships as demonstrated by past pattern and practice, and ensure that the ward has reasonable access to family and friends. Mandates a guardian consider a ward's relationship with parents or spouse when moving the ward out of state.

Title affected: 14

2016-03: Guardianship of foreign citizens

Removes the requirement that a foreign citizen be under 21 years in order to be eligible for guardianship.

Title affected: 14

2016-04: FCRB sunset

Continues the Foster Care Review Board for ten years until July 1, 2026. Delays repeal of laws governing the FCRB until January 1, 2027.

Title affected: 41

2016-05: Adult probation; GPS; restitution; lifetime probation; earned time credit

Provides the court discretion in determining whether a person convicted of a dangerous crime against children and mandated to register as a sex offender is required to be placed on global positioning monitoring or electronic monitoring. The court is not required to order GPS if the court determines it is unnecessary based upon the circumstances of the defendant, the defendant's conduct on probation or reports from a treatment provider.

The running period of probation is tolled while a probationer is in the custody of the Department of Corrections or is absent without authorization. The period of probation resumes upon resumption of supervision or monitoring by the probation department or upon absolute discharge from the DOC.

If probation is imposed on a person who at the time is serving a sentence of imprisonment imposed on a different conviction, service of the sentence of imprisonment may satisfy the probation. Currently this is precluded by statute.

Codifies a review process for persons on lifetime probation. Probation may be reviewed after ten years at the request of the probationer, probation department or prosecutor.

If a probationer has made a full payment for court ordered restitution and any other monetary obligation in a given month, the probationer is eligible for earned time credit. Current law requires the probationer to be completely current on all payments. Removes the requirement that the probationer is current on community restitution in order to receive earned time credit. Note, earned time credit upon recommendation of the probation officer is twenty days for every thirty days the probationer meets all three requirements of statute.

Title affected: 13

2016-06: Adult Intensive Probation Supervision

Authorizes the court, with good cause, to exclude or reduce the required community restitution hours of offenders on intensive probation who are employed full time. Permits community restitution hours to be satisfied through school, a court ordered treatment program, employment, supervised community restitution work, and positive family activities that are structured to strengthen familial relationships.

Requires periodic verification of employment instead of weekly contact.

Clarifies when the court must revoke a period of intensive probation and impose a term of imprisonment if the probationer commits a felony offense.

Title affected: 13

2016-07: Child support; probation and court orders

Requires probation officers to monitor the payment of child support and other court ordered financial obligations.

Title affected: 12

2016-08: Juvenile court; disposition; commitment

The court “may” instead of “shall” place a juvenile on intensive probation if the juvenile is fourteen years of age or older and commits a felony while on probation.

Repeals the statute stating that the court may order the juvenile to submit to random drug testing at least twice a week as a condition of probation if adjudicated delinquent for an offense involving the purchase, possession or consumption of alcohol or a violation of Title 13, Chapter 34. The court can impose drug testing, any number of days a week as a condition of probation without this statute.

Repeals the statute stating that a juvenile who is on probation and is subsequently adjudicated delinquent for an offense involving the purchase, possession or consumption of alcohol or a violation of Title 13 Chapter 34 is in violation of probation. Repeals the statute stating that the court must either revoke probation or impose an additional term, including detention, global position system monitoring, additional alcohol or drug treatment, community restitution, additional drug or alcohol testing or a monetary assessment if a juvenile commits a third or subsequent violation of a condition of probation for an offense involving the purchase, possession or consumption of alcohol or a violation of Title 13, Chapter 34. Again, the court may make this finding and take the action without this statute. However, the statute limits the court’s options.

Requires juvenile intensive probation to be conditioned upon positive family activities that are structured to strengthen familial relationships. Current statute contains four other requirements.

Title affected: 8

2016-09: CORP; service credit

A present active member of the Correction Officers Retirement Plan who has at least five years of credit service with the plan may elect to redeem up to sixty month of any part of prior service as a full time paid probation officer, surveillance officer or detention officer by paying into the plan amounts required by statute if the prior service is

not on account with any other retirement plan. Currently, the member may redeem service only as a full time paid corrections officer or certified police officer.

Title affected: 38

2016-10: Entry on Records; stipulation; court order

When granting an order stating that a person has been cleared due to a wrongful arrest, indictment or charge, a judge is only required to notify a law enforcement agency and court as requested by the petitioner instead of all law enforcement agencies and courts. (Currently, law enforcement agencies seem to be receiving orders associated with only with its own cases and further if DPS receives the order it will be available to all agencies).

Title affected: 13

2016-11: Title 12 Statutes, Rules of Civil Procedure

Proposed by the Task Force on the Arizona Rules of Civil Procedure and designed to remove inconsistencies between the proposed rules and current statute.

Repeals the statutory requirement that the party in whose favor judgment is rendered is to file a statement of costs and serve a copy on the opposing party within ten days after judgment. The proposed rule will require the statement of costs, similar to a request for attorney's fees be filed before the entry of judgment.

In an action related to real property, current law requires that an application for the appointment of a receiver served upon the adverse party with reasonable notice of the time of the hearing. The statute allows the adverse party to file counter affidavits and the court to determine what testimony to admit on the hearing for the application. The proposed rule does not include the "reasonable notice of time of hearing" language as a receiver might need to be appointed immediately. The service, counter affidavit and testimony language is procedural and therefore, the proposal removes it from statute.

Title affected: 12

2016-12: Juvenile Court Jurisdiction

Raises the jurisdiction of the juvenile court to age nineteen if the court acquires jurisdiction over the juvenile, which would be prior to the juvenile's eighteenth birthday.

Title affected: 8

ARIZONA JUDICIAL COUNCIL
Legislative Request for Proposals
2016 Legislative Session
AOC Legal Services Comments

TEMPORARY ORDER/PRELIMINARY INJUNCTION (§25-806.01 (NEW)) PROPOSED BY THE FAMILY COURT DIVISION OF THE MARICOPA SUPERIOR COURT, HON. PAUL MCMURDIE

Change in terminology is needed in order to make the language of the proposed new statute internally consistent. In the proposed new §25-806.01((C)(2), the term “final decree” is used twice. Everywhere else in the proposed statute, the final order in a paternity case is called a “final order.” Based on comparison of the proposed statute with the one it is supposed to mirror from the dissolution provisions of Title 25 it appears everything that should be there is there.

GUARDIANSHIP PROPOSALS - SUPERIOR COURT IN MARICOPA COUNTY

A.R.S. §14-1105 Remedies for unreasonable conduct; definitions

The proposal adds a new (C) which extends the opportunity to recover professional fees or expenses to a parent or relative if these expenses are incurred as a result of unreasonable conduct. The objective is clear and understood and legislation is necessary to accomplish the objective stated. A possible unintended consequence would be a chilling effect on individuals who consider taking an adverse position to a parent or relative in a guardianship matter. Interested parties might be reluctant to litigate matters within a guardianship proceeding for the protection of the ward, for fear of their conduct being deemed “unreasonable”, therefore exposing them to fees and expenses. Additionally, fiduciaries who have traditionally served in times of great family conflict may be reluctant to engage in litigation adverse to a parent or relative of a ward. This would not be in the ward’s best interest.

A.R.S. §14-5301.03 Judicial appointment of guardian; special provision for incapacitated minors approaching adulthood

This proposal seeks to amend a recently passed (2011) statute that allowed for a guardianship petition to be filed for a minor who is at least 17.5 years of age and who is alleged to be incapacitated. The new law permitted the guardianship to take effect immediately on the minor’s 18th birthday. The amendment seeks to have findings of the family court, pursuant to A.R.S. §25-403, create a rebuttable presumption that an access schedule is in the ward’s best interest and should be preserved. While the objective of the proposal is a bit unclear, it does appear to seek to reduce litigation and streamline cases. The proposed legislation does not clearly accomplish the stated objective, nor is it the best way to accomplish the stated objective.

The attempt to graft requirements from the dissolution statutes into the guardianship statutes will likely create many unintended or unrecognized legal consequences. An incapacitated adult has significant constitutional rights regarding custody and access that Title 14 proceedings protect. Family court proceedings are not designed to address such issues. Creating rebuttable presumptions in guardianship proceedings based upon Family Court litigation places wards having such orders in a very different

position than wards not having such orders. Similarly, requiring all young adult wards to essentially have legal decision making and parenting time orders entered places these wards in a very different position from other adult wards.

It would appear best to leave the statute as it is, without the amendments. A.R.S. §14-5303(9) already requires a guardianship petition to contain the following: “If a custodial order was previously entered regarding an alleged incapacitated person in a child custody action or similar proceeding in this state or another jurisdiction and the petitioner or proposed guardian is a parent or nonparent custodian of the alleged incapacitated person, the court, case number for that action or proceeding.” The court will already have any relevant child custody orders to consider appropriately. Alternatively, language could be proposed that is less tied to Title 25 child custody issues and more representative of factors to consider in decision-making for adult wards.

A.R.S. §14-5303 Procedure for court appointment of a guardian of an alleged incapacitated person.

The proposed legislation adds to A.R.S. §14-5303(9) the following: “AND THE MOST RECENT FAMILY COURT ORDER REGARDING LEGAL DECISION MAKING AND PARENTING TIME”. The objective of the proposal is clear and understandable. Arguably, the legislation currently in place is sufficient to accomplish the stated objective, and no change such as that proposed is necessary. The proposed legislation has unintended or unrecognized legal consequences as discussed generally under A.R.S. §14-5301.03, above.

A.R.S. §14-5311 Who may be guardian; priorities

No comment.

A.R.S. §14-5312 General powers and duties of guardian

No comment.

GUARDIANSHIP OF FOREIGN CITIZENS - SUPERIOR COURT IN MARICOPA COUNTY (PROBATE COURT PRESIDING JUDGE)

A.R.S. §14-5108. Guardianship of foreign citizens

The objective of the proposal is not clear or understood, and may be based upon a misunderstanding and misapplication of the law. Therefore, the proposed change is not necessary. It appears that the proposal recognizes that the petition in the case provided as an example was filed under the wrong statute and should have been filed under A.R.S. §14-5108, however, the proposed language does not clear up this misunderstanding or misapplication of the statute and does not accomplish the objective stated. The use of the proper statute when filing a guardianship for an incapacitated person, albeit a foreign citizen, should be addressed by assistance to litigants rather than an unnecessary statutory amendment. This topic should be added to self-help materials available to persons filing petitions in probate court without the benefit of counsel.

Adoption of the proposed statute would create a legal category of guardianship regardless of age, and incapacitation—but only for foreign citizens. There is no legal theory or support for this notion. The 2010 amendments contribute to the confusion around A.R.S. §14-5108. It appears that the amendments

removing the FSIA requirements in Arizona were to address a specific issue regarding guardianships for foreign exchange students. In Arizona anyone over 18 is an adult and capable of entering contracts and giving consent for medical treatment or participation in sports. A foreign exchange student between the ages of 18 and 21 would not need a guardian under Arizona law. Except in the very unusual situations contemplated by the FSIA of 2002 and the Arizona amendments of 2004 that permitted implementation, there is no need for a guardianship for anyone over 18, (foreign national or not) except for those who are incapacitated and such guardianships are provided for in A.R.S. §14-5301. Therefore, the proposed change is not necessary.

FCRB SUNSET

This is a necessary piece of legislation to change the sunset or termination date for the State foster care review board from July 1, 2016 to July 1, 2026.

ADULT PROBATION STATUTES [A.R.S. §13-902(G), A.R.S. §13-903, A.R.S. §13-924] - MARICOPA COUNTY ADULT PROBATION PROPOSAL

The objectives of the proposal are clear and the proposed legislation is necessary to accomplish those objectives and would do so in a reasonably effective manner without unintended legal consequences. No legal issues for discussion have been identified.

ADULT PROBATION STATUTES [A.R.S. §13-914, §13-916 AND §13-917]-ADULT CHIEF PROBATION OFFICERS BY AOC ADULT PROBATION SERVICES DIVISION

A.R.S. §13-916 Employer Contacts

This proposal seeks to allow adult probation departments more discretion in employer contacts. The proposed language regarding employer contacts is clear, necessary, and sufficient to accomplish the stated objective. There are no known unintended or unrecognized legal consequences.

A.R.S. §13-914 Community Restitution

The proposal regarding the expansion of options for community restitution is somewhat problematic in that it attempts to broaden the concept of community restitution to include, among other things, positive programmatic completion. The proposed language appears to be modeled after the juvenile intensive probation statutes, however, the result is different because the proposed adult language appears in the intensive probation provision requiring community restitution. The juvenile statute simply lists community restitution as an option, among other activities. Hence, the juvenile statutes condition intensive probation on “participating in one or more of the following . . . for not less than thirty-two hours each week of school, court ordered treatment, employment, supervised community restitution work.” [Emphasis added] While the juvenile statute clearly sets up a number of alternatives, including community restitution, the proposed language for the adult statutes addresses only community restitution and essentially expands the meaning of community restitution. The proposal also states that the changes “would be applicable to the adult intensive probation and dispositional statutory provisions.” There are a number of dispositional statutes, primarily for drug offenses, that require community restitution. The only way to address those statutes is to develop a comprehensive and expansive definition of community restitution that would apply throughout the criminal code and not only to A.R.S. §13-914.

Legislation is necessary to accomplish the objective stated, however, the proposed language does not adequately address the issue of expanding the definition of community restitution in all criminal statutes. Perhaps it would be best to consider language similar to that used in the juvenile intensive probation statutes where community restitution is a stand-alone “one or more of the following” alternative, rather than a redefined term. This would provide the desired discretion for the judge and would be consistent with evidence-based practices. The proposed legislation makes a change in the law that is not necessary to accomplish the stated objective and has unintended or unrecognized legal consequences. The current proposal will lead to confusion about the meaning of community restitution. If the definition of community restitution is to change, it is best to offer a definitional statute that would apply to the entire criminal code. If that is not intended, it is best to follow the example set forth in the juvenile statutes and provide community restitution as an alternative.

In considering changing the definition of community restitution, it is important to note that the ordinary meaning of the term community service (prior term for community restitution) is “a component of a judicial sentence that requires the offender to complete a designated number of unpaid work hours. The work is often manual in nature and may be completed at government agency sites or for the benefit of non-profit groups.” [*An Elected Official’s Guide to Community Correctional Options*”, published by the American Probation and Parole Association.]

A.R.S. §13-917 Modification of Supervision

The proposal removes the requirement that a court shall revoke intensive probation and impose a prison term if it is found that a person has committed an additional felony offense. The objective of this part of the proposal is clear, legislation is necessary to accomplish the objective stated of providing courts with more discretion regarding new charges and violations of probation. The legislation as written clearly accomplishes the stated objective and there are no known unintended or unrecognized legal consequences.

PROBATION COURT ORDER ENFORCEMENT - MARICOPA SUPERIOR COURT JUDGE MCMURDEE

No comment.

JUVENILE INTENSIVE PROBATION DETERMINATIONS AND REQUIRED ACTIVITIES AND RESPONSES TO SUBSTANCE ABUSE VIOLATIONS [A.R.S. §8-341 and §A.R.S.8-352] - MARICOPA COUNTY JUVENILE PROBATION PROPOSAL

The objective of the proposal is not uniformly clear and understandable. No specific reason is provided for removal of A.R.S. §8-341(T) and (U). Legislation is clearly necessary to provide greater sentencing options in A.R.S. §8-341 (C) and (D) and the proposed legislation as written does accomplish the stated objective of greater discretion for the juvenile court. No legal issues with the proposed amendments to A.R.S. §8-341(C), (D), and A.R.S. §8-352(E) have been identified.

CORP PURCHASE OF TIME - MARICOPA ADULT PROBATION

No comment.

ENTRY ON RECORDS OF ORDER CLEARING WRONGFULLY ARRESTED, INDICTED OR OTHERWISE CHARGED (§13-4051) PROPOSED BY THE CRIMINAL COURT DIVISION OF THE MARICOPA SUPERIOR COURT, HON. SAM MYERS

No comment.

CIVIL COSTS AND APPOINTMENT OF RECEIVERS (§§12—346 AND 12-1242) PROPOSED BY THE TASK FORCE ON THE ARIZONA RULES OF CIVIL PROCEDURE, MARK MELTZER

This proposal seeks to conform statutes to court practice and a procedural concerning clearly procedural matters. Deletion of recovery of costs statute, §12-346, as proposed would eliminate a statutory filing timeframe that is contrary to the current more efficient practice and that is unnecessary as §12-341 provides parties the right to recover costs. The proposed amendment of the appointment of receivers statute, §12-1242, would conform the statute to a rule adopted in 1967 by which the Supreme Court expressly superseded the statute. The proposed changes would eliminate statutes that may mislead litigants regarding court procedures. However, these changes are not necessary for the court procedural rules concerning these matters to be legally effective.

A.R.S. §8-202 JURISDICTION OF THE JUVENILE COURT - SUBMITTED BY JJSD/APSD

The objective of the proposal is to provide the juvenile court and juvenile probation with the authority to supervise a juvenile placed on probation to the age of 19. Legislation is necessary to accomplish the objective stated. Legislation is the best and only way to accomplish the stated objective. There may be unintended or unrecognized legal consequences as well as legal issues. We may need clarification in the statute that the intent is to extend the jurisdiction of the court for an individual who commits an offense before turning eighteen. Concerns have been expressed as to whether the adjudication or disposition needs to occur before the youth turns eighteen. There are questions about detaining nineteen year olds in Detention Centers (contrary to statutory sight and sound separation requirements) as well as ADJC. Legal issues also exist regarding the ability of a court to commit a nineteen year old to ADJC if probation is revoked.

ARIZONA JUDICIAL COUNCIL
Legislative Request for Proposal
2016 Legislative Session

- *Submit electronically to Brandi Ensign at bensign@courts.az.gov*
- *For questions contact Jerry Landau or Amy Love: 602-452-3361*

SUBJECT MATTER OF PROPOSAL: Temporary Order/Preliminary Injunction
DATE: August 14, 2015

PROPOSAL REQUESTED BY: Superior Court in Maricopa County

Name: Hon. Paul McMurdie

Title: Family Court Presiding Judge

Address: Central Court Building – 7C
201 W. Jefferson
Phoenix, AZ

Telephone: 602.372.0765

E-mail: mcmurdiep@superiorcourt.maricopa.gov

SECTION I: PROPOSAL

- A. **Please summarize the proposal.** Under the current statutes, a temporary order or preliminary injunction is issued (A.R.S. § 25-315) when an action for dissolution of marriage, for legal separation or for annulment is filed. However, there is no similar automatic order when an action to establish paternity or legal decision making and parenting time for a child or children born out of wedlock is filed. As a result, there is no order that prevents removing the child. This proposal seeks to add a statute similar to A.R.S. § 25-315 to protect the individuals who file an action to establish paternity or legal decision making and parenting time for a child or children born out of wedlock.
- B. **Why this proposal is being requested? Provide supporting information, e.g., benefit to court operations, budget, statistics on increased caseloads, reports, etc.** See above.
- C. **Provide the contact information of any individuals with relevant expert knowledge on this subject.**

Hon. Paul McMurdie, Family Court Presiding Judge: 602.372.0765
Lori Ash, General Counsel: 602.506.5433

- D. **Attach the recommended language of the legislation to this form. Please include the entire section of law, use UPPER CASE to designate new language and ~~strikethrough~~ to designate stricken language. (The Government Affairs group will assist in final drafting as the proposal moves forward).**

25-806.01. TEMPORARY ORDER OR PRELIMINARY INJUNCTION; EFFECT; DEFINITION

A. IN ALL ACTIONS TO ESTABLISH PATERNITY OR LEGAL DECISION MAKING AND PARENTING TIME FOR A CHILD OR CHILDREN BORN OUT OF WEDLOCK IN WHICH THE PETITIONER HAS FILED A COPY OF THE BIRTH CERTIFICATE LISTING THE FATHER AS A PARENT, AN AFFIDAVIT SIGNED BY FATHER ADMITTING PATERNITY, OR AN ADOPTION ORDER LISTING BOTH PARTIES AS PARENTS, THE CLERK OF THE COURT SHALL PURSUANT TO ORDER OF THE SUPERIOR COURT ISSUE A PRELIMINARY INJUNCTION IN THE FOLLOWING MANNER:

1. THE PRELIMINARY INJUNCTION SHALL BE DIRECTED TO EACH PARTY TO THE ACTION AND CONTAIN THE FOLLOWING ORDERS:

(A) THAT BOTH PARTIES ARE ENJOINED FROM:

(I) MOLESTING, HARASSING, DISTURBING THE PEACE OF OR COMMITTING AN ASSAULT OR BATTERY ON THE PERSON OF THE OTHER PARTY OR ANY NATURAL OR ADOPTED CHILD OF THE PARTIES.

(II) REMOVING ANY NATURAL OR ADOPTED CHILD OF THE PARTIES THEN RESIDING IN ARIZONA FROM THE JURISDICTION OF THE COURT WITHOUT THE PRIOR WRITTEN CONSENT OF THE PARTIES OR THE PERMISSION OF THE COURT.

(III) REMOVING OR CAUSING TO BE REMOVED THE CHILDREN OF THE PARTIES FROM ANY EXISTING INSURANCE COVERAGE, INCLUDING MEDICAL, HOSPITAL, DENTAL, AUTOMOBILE AND DISABILITY INSURANCE.

(B) THAT BOTH PARTIES SHALL MAINTAIN ALL INSURANCE COVERAGE IN FULL FORCE AND EFFECT.

2. THE PRELIMINARY INJUNCTION SHALL INCLUDE THE FOLLOWING STATEMENT:

WARNING

THIS IS AN OFFICIAL COURT ORDER. IF YOU DISOBEY THIS ORDER THE COURT MAY FIND YOU IN CONTEMPT OF COURT. YOU MAY ALSO BE ARRESTED AND PROSECUTED FOR THE CRIME OF INTERFERING WITH JUDICIAL PROCEEDINGS AND ANY OTHER CRIME YOU MAY HAVE COMMITTED IN DISOBEYING THIS ORDER.

YOU OR THE OTHER PARTY MAY FILE A CERTIFIED COPY OF THIS ORDER WITH YOUR LOCAL LAW ENFORCEMENT AGENCY. A CERTIFIED COPY MAY BE OBTAINED FROM THE CLERK OF THE COURT THAT ISSUED THIS ORDER. IF YOU ARE THE PERSON THAT BROUGHT THIS ACTION, YOU MUST ALSO FILE EVIDENCE WITH THE LAW ENFORCEMENT AGENCY THAT THIS ORDER WAS SERVED ON THE OTHER PARTY.

THIS COURT ORDER IS EFFECTIVE UNTIL A FINAL ORDER OF PATERNITY, LEGAL DECISION MAKING OR PARENTING TIME IS FILED OR THE ACTION IS DISMISSED.

3. THE PRELIMINARY INJUNCTION IS EFFECTIVE AGAINST THE PETITIONER WHEN THE PETITION IS FILED AND AGAINST THE RESPONDENT ON SERVICE OF A COPY OF THE ORDER OR ON ACTUAL NOTICE OF THE ORDER, WHICHEVER IS SOONER. IF SERVICE IS BY REGISTERED MAIL UNDER THE ARIZONA RULES OF FAMILY LAW PROCEDURE, THE ORDER IS EFFECTIVE ON

RECEIPT OF THE ORDER. THE ORDER REMAINS EFFECTIVE UNTIL FURTHER ORDER OF THE COURT OR THE ENTRY OF PATERNITY, LEGAL DECISION MAKING OR PARENTING TIME.

4. AT THE TIME OF FILING THE PETITION PATERNITY, LEGAL DECISION MAKING OR PARENTING TIME, THE COPIES OF THE PRELIMINARY INJUNCTION SHALL BE ISSUED TO THE PETITIONER OR THE AGENT, SERVANT OR EMPLOYEE FILING THE PETITION FOR PATERNITY, LEGAL DECISION MAKING OR PARENTING TIME. THE PETITIONER IS DEEMED TO HAVE ACCEPTED SERVICE OF THE PETITIONER'S COPY OF THE PRELIMINARY INJUNCTION AND TO HAVE ACTUAL NOTICE OF ITS CONTENTS BY FILING OR CAUSING TO BE FILED A PETITION FOR PATERNITY, LEGAL DECISION MAKING OR PARENTING TIME. THE PETITIONER SHALL CAUSE A COPY OF THE PRELIMINARY INJUNCTION TO BE SERVED ON THE RESPONDENT WITH A COPY OF THE SUMMONS AND PETITION FOR PATERNITY, LEGAL DECISION MAKING OR PARENTING TIME.

5. THE PRELIMINARY INJUNCTION HAS THE FORCE AND EFFECT OF AN ORDER OF THE SUPERIOR COURT SIGNED BY A JUDGE AND IS ENFORCEABLE BY ALL REMEDIES MADE AVAILABLE BY LAW, INCLUDING CONTEMPT OF COURT.

B. THE COURT MAY ISSUE A TEMPORARY RESTRAINING ORDER WITHOUT REQUIRING NOTICE TO THE OTHER PARTY ONLY IF IT FINDS ON THE BASIS OF THE MOVING AFFIDAVIT OR OTHER EVIDENCE THAT IRREPARABLE INJURY WILL RESULT TO THE MOVING PARTY IF NO ORDER IS ISSUED UNTIL THE TIME FOR RESPONDING HAS ELAPSED. A BOND IS NOT REQUIRED UNLESS THE COURT DEEMS IT APPROPRIATE.

C. A TEMPORARY ORDER OR PRELIMINARY INJUNCTION:

1. DOES NOT PREJUDICE THE RIGHTS OF THE PARTIES OR OF ANY CHILD THAT ARE TO BE ADJUDICATED AT THE SUBSEQUENT HEARINGS IN THE PROCEEDING.

2. MAY BE REVOKED OR MODIFIED BEFORE FINAL DECREE ON A SHOWING BY AFFIDAVIT OF THE FACTS NECESSARY TO REVOCATION OR MODIFICATION OF A FINAL DECREE.

3. TERMINATES WHEN THE FINAL ORDER IS ENTERED OR WHEN THE PETITION IS DISMISSED.

G. A PERSON WHO DISOBEYS OR RESISTS AN INJUNCTION ISSUED PURSUANT TO SUBSECTION A, PARAGRAPH 1, SUBDIVISION (A) OF THIS SECTION IS SUBJECT TO ARREST AND PROSECUTION FOR INTERFERENCE WITH JUDICIAL PROCEEDINGS PURSUANT TO SECTION 13-2810 AND THE FOLLOWING PROCEDURES APPLY:

1. ANY PARTY MAY CAUSE A CERTIFIED COPY OF THE INJUNCTION AND RETURN OF SERVICE ON THE OTHER PARTY TO BE REGISTERED WITH THE SHERIFF HAVING JURISDICTION OF THE AREA IN WHICH THE PARTY RESIDES. THE PARTY ORIGINALLY REGISTERING THE INJUNCTION SHALL REGISTER ANY CHANGES OR MODIFICATIONS OF THE INJUNCTION WITH THE SHERIFF. FOR ENFORCEMENT BY ARREST AND PROSECUTION FOR INTERFERENCE WITH JUDICIAL PROCEEDINGS, A CERTIFIED COPY OF THE INJUNCTION, WHETHER OR NOT REGISTERED WITH THE SHERIFF, IS PRESUMED TO BE A VALID EXISTING ORDER OF THE COURT UNTIL A FINAL ORDER IS ENTERED OR THE ACTION IS DISMISSED.

2. A PEACE OFFICER, WITH OR WITHOUT A WARRANT, MAY ARREST A PERSON IF THE PEACE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT AN OFFENSE UNDER THIS SUBSECTION HAS BEEN COMMITTED AND HAS PROBABLE CAUSE TO BELIEVE THAT THE PERSON TO BE ARRESTED HAS COMMITTED THE OFFENSE, WHETHER THE OFFENSE IS A FELONY OR A MISDEMEANOR AND WHETHER SUCH OFFENSE WAS COMMITTED WITHIN OR WITHOUT THE PRESENCE OF THE PEACE OFFICER. THE RELEASE PROCEDURES AVAILABLE UNDER SECTION 13-3883, SUBSECTION A, PARAGRAPH 4 AND SECTION 13-3903 ARE NOT APPLICABLE TO ARRESTS MADE PURSUANT TO THIS SUBSECTION.

3. A PEACE OFFICER MAKING AN ARREST PURSUANT TO THIS SUBSECTION IS NOT CIVILLY OR CRIMINALLY LIABLE FOR THE ARREST IF THE OFFICER ACTS ON PROBABLE CAUSE AND WITHOUT MALICE.

4. A PERSON ARRESTED PURSUANT TO THIS SUBSECTION MAY BE RELEASED FROM CUSTODY IN ACCORDANCE WITH THE RULES OF CRIMINAL PROCEDURE OR OTHER APPLICABLE STATUTE. AN ORDER FOR RELEASE, WITH OR WITHOUT AN APPEARANCE BOND, SHALL INCLUDE PRETRIAL RELEASE CONDITIONS NECESSARY TO PROVIDE FOR THE PROTECTION OF THE ALLEGED VICTIM AND OTHER SPECIFICALLY DESIGNATED PERSONS AND MAY PROVIDE ADDITIONAL CONDITIONS THAT THE COURT DEEMS APPROPRIATE, INCLUDING PARTICIPATION IN ANY COUNSELING PROGRAMS AVAILABLE TO THE DEFENDANT.

5. THE REMEDIES PROVIDED IN THIS SUBSECTION FOR ENFORCEMENT OF THE PRELIMINARY INJUNCTION ARE IN ADDITION TO ANY OTHER CIVIL OR CRIMINAL REMEDIES AVAILABLE, INCLUDING CIVIL CONTEMPT OF COURT. THE USE OF ONE REMEDY DOES NOT PREVENT THE SIMULTANEOUS OR SUBSEQUENT USE OF ANY OTHER.

E. Can the requested change be achieved by another method? No How?
 Court Rule Administrative Code

F. If adopted by the Arizona Legislature, would the regular effective date (90 days after adjournment of the legislative session) be acceptable, or is there a reason for an emergency effective date (effective immediately upon signature of the Governor) or a delayed effective date? If a delayed effective date is requested, what date is recommended? Regular Effective Date

SECTION II: IMPACTS

A. Check ALL courts that could be affected.

Supreme Appellate Superior Limited Jurisdiction

B. List the Arizona Revised Statute(s), Court Rule(s) or Administrative Code(s) affected by the proposed legislation. Adds A.R.S. §25-806.01

C. Describe anticipated impacts of proposed legislation on the administration of the courts, such as adoption or revision of court rule or code, shift of cases from one court level to another, added or revised reporting requirements, collection of statistics, automation requirements, etc. The Clerk of Court will have additional orders to issue.

D. Describe any anticipated fiscal impact of this legislation. None

E. Will this legislation impact other governmental agencies? No. How?

F. Describe the consequences if the proposed legislation is not pursued or passed this year. These individuals will not have any protections when filing an action until the court has an opportunity to act on the case.

SECTION III: SUPPORT OR OPPOSITION

- A. Identify any agencies, groups, or legislators, etc. who may support or have expressed an interest in the proposed legislation and the reasons for the support or interest. Unknown at this time.

- B. Identify any agencies, groups, or legislators, etc. who may oppose the proposed legislation and the reasons for the opposition. Unknown at this time.

ARIZONA JUDICIAL COUNCIL
Legislative Request for Proposal
2016 Legislative Session

- *Submit electronically to Brandi Ensign at bensign@courts.az.gov*
- *For questions contact Jerry Landau or Amy Love: 602-452-3361*

SUBJECT MATTER OF PROPOSAL:

DATE:

Arizona has a growing population of seniors who are facing new challenges related to the increase in Dementia and the conflict within families separated by divorce or geography and, an increasing population of disabled children who are living longer facing similar issues. Both of these vulnerable populations need the Court's thoughtful consideration on how best to protect them. Our goal is to protect the incapacitated person's historical relationships when they are subject to a guardianship by creating a statutory framework for the transition of a child in need of guardianship turning 18 from family court to probate court and incorporating into statute the protection of the incapacitated person's relationships.

PROPOSAL REQUESTED BY:

Name: Judge Janet Barton, Andrew Klein, and Paul McMurdie and a committee of judges, commissioners and attorneys.

Judge Bustmante

Judge Geoffrey Fish

Judge Jay Polk

Commissioner Kerstin LeMaire

Jason Castle, Jayburg & Wilk

Jennifer Kupiszewski and Stephen Kupiszewski, Kile & Kupiszewski Law Firm

Judy Morse, Judith Morse PC

Title: Presiding Judge Janet Barton, Presiding Judge of the Probate Court Judge Andrew Klein and Presiding Judge of the Family Court

Address: 125 W. Washington Phoenix, AZ 85003

Telephone: Judge Barton 602.506.5340, Judge Andrew Klein 602.506.4645 and Judge Paul McMurdie 602.372.0765

E-mail:

Judge Barton, jabarton@superiorcourt.maricopa.gov

Judge Andrew Klein, aklein@superiorcourt.maricopa.gov

Judge Paul McMurdie, Mcmurdiep@superiorcourt.maricopa.gov

SECTION I: PROPOSAL

A. Please summarize the proposal.

To protect vulnerable and incapacitated adults under court ordered guardianship and their fundamental constitutional right to their established familial relationships. Guardianships involving children turning 18 require additional consideration and transition from the family court to the probate court which, does not presently exist in our statutes. For all adults in need a of the Courts' protection we propose to add into the statute language and direction to preserve and protect these familial relationships as well as relationships that exist between the adult and others with whom they have significant ties. The goal is to create a structured framework for the public and the court to apply when appointing a guardian for an incapacitated which, will reduce litigation and further protect the incapacitated adult from isolation and exploitation.

B. Why this proposal is being requested? Provide supporting information, e.g., benefit to court operations, budget, statistics on increased caseloads, reports, etc.

Current legislation fails to address the transition from family court to probate court for children in need of a guardian when turning 18. This leads to a resumption of the litigation in probate court when the family court may have already made findings as to the best interests of the protected person. For all persons under the court's protection the current statutory framework neglects to direct that the guardian appointed by the court maintain the relationships of the protect person. This leaves the person under the protection of the court vulnerable to insolation and exploitation.

According to the Alzheimer's Association, "Millions of Americans have Alzheimer's disease and other dementias. The number of Americans with Alzheimer's disease and other dementias will grow each year as the size and proportion of the U.S. population age 65 and older continue to increase. The number will escalate rapidly in coming years as the baby boom generation ages." In Arizona alone 120,000 persons suffer from Dementia and by 2025 that number is projected to climb to 200,000 a 66.7% increase. Due to the increase of blended families now that 50% of marriages end in divorce and people are living longer and re-marrying after being widowed many of these seniors are at greater risk for exploitation or interference in their second marriage.

Similarly, the numbers of children with developmental disabilities, that are medically fragile or have complex genetic disorders are increasing and they are living longer such that, there is an increasing number of minors turning 18 who will need a guardian when they turn 18. For example, according to the Centers for Disease Control the prevalence of developmental disability has increased 17.1% in the last decade and the prevalence of Autism has increased 285%. As noted above with the divorce rate at 50% many of these families will experience court intervention while the child is a minor and again as an adult.

The court needs more guidance for judges and the public to address these matters in order avoid an increase in contested litigation and to better protect these vulnerable populations.

A search of guardianship statutes in all 50 states revealed that no other state has addressed this issue despite the overwhelming numbers cited above.

- C. Provide the contact information of any individuals with relevant expert knowledge on this subject.**

There is a committee prepared to offer support and their expertise.

- D. Attach the recommended language of the legislation to this form. Please include the entire section of law, use UPPER CASE to designate new language and ~~striketrough~~ to designate stricken language. (The Government Affairs group will assist in final drafting as the proposal moves forward).**

Attached.

- E. Can the requested change be achieved by another method? No**

Court Rule Administrative Code

- F. If adopted by the Arizona Legislature, would the regular effective date (90 days after adjournment of the legislative session) be acceptable, or is there a reason for an emergency effective date (effective immediately upon signature of the Governor) or a delayed effective date? If a delayed effective date is requested, what date is recommended?**

The regular effective date is requested.

SECTION II: IMPACTS

- A. Check ALL courts that could be affected.**

Supreme Appellate X Superior Limited Jurisdiction

- B. List the Arizona Revised Statute(s), Court Rule(s) or Administrative Code(s) affected by the proposed legislation.**

A.R.S. §14-1105, 14-5301.03, 14-5303, 14-5311 and 14-5312. Additionally, the temporary guardianship statutes will need to be adjusted to be consistent and possibly definitional statutes.

- C. Describe anticipated impacts of proposed legislation on the administration of the courts, such as adoption or revision of court rule or code, shift of cases from one court level to another, added or revised reporting requirements, collection of statistics, automation requirements, etc.**

There are no anticipated impacts other than the potential to reduce litigation and to provide the public with guidance that may streamline cases.

D. Describe any anticipated fiscal impact of this legislation.

None other than as described in section C.

E. Will this legislation impact other governmental agencies? How?

This will likely benefit the public fiduciary by reducing their potential caseload. Currently, the Public Fiduciary is the default guardian, if the protected person does not have funds to pay a private fiduciary, when there is litigation around who should be appointed as guardian. If litigation can be prevented and there is a smoother transition for children turning 18 and the transition from family court to probate court reduces familial conflict it is more likely that a family member will be appointed.

The Division of Developmental Disabilities may also benefit for similar reasons as stated above.

F. Describe the consequences if the proposed legislation is not pursued or passed this year.

The issues that arise between parents when a child turns 18 and transition from family court to probate court will only increase as noted above. For all protected persons they remain vulnerable to being isolated by the court appointed guardian increasing the risk for abuse and exploitation if their relationships are not maintained.

SECTION III: SUPPORT OR OPPOSITION

A. Identify any agencies, groups, or legislators, etc. who may support or have expressed an interest in the proposed legislation and the reasons for the support or interest.

Arizona chapter of the National Elder Law Association, Arizona Chapter of the Association of Family and Conciliation Courts, Arizona Chapter of the American Matrimonial Lawyers Association, State and County Bars, the County Public Fiduciaries, the Division of Developmental Disabilities, the American Association of Retired Persons, Alzheimer's Association, and other groups that advocate on behalf of seniors and disabled children.

We have not approached any groups or legislators.

B. Identify any agencies, groups, or legislators, etc. who may oppose the proposed legislation and the reasons for the opposition.

We do not anticipate any opposition.

14-1105. Remedies for unreasonable conduct; definitions

A. If the court finds that a decedent's estate or trust has incurred professional fees or expenses as a result of unreasonable conduct, the court may order the person who engaged in the conduct or the person's attorney, or both, to pay the decedent's estate or trust for some or all of the fees and expenses as the court deems just under the circumstances.

B. In a guardianship or conservatorship case, if the court finds that a ward or protected person has incurred professional fees or expenses as a result of unreasonable conduct, the court may order the person who engaged in the conduct or the person's attorney, or both, to pay the ward or protected person for some or all of the fees and expenses as the court deems just under the circumstances.

C. IN A GUARDIANSHIP PROCEEDING BROUGHT PURSUANT TO A.R.S. §14-5301.03, IF THE COURT FINDS THAT A PARENT OR RELATIVE HAS INCURRED PROFESSIONAL FEES OR EXPENSES AS A RESULT OF UNREASONABLE CONDUCT, THE COURT MAY ORDER THE PERSON WHO ENGAGED IN THE CONDUCT OR THE PERSON'S ATTORNEY, OR BOTH, TO PAY THE PARENT OR RELATIVE FOR SOME OR ALL OF THE FEES AND EXPENSES AS THE COURT DEEMS JUST UNDER THE CIRCUMSTANCES.

~~C.~~ D. The remedies permitted pursuant to this section are in addition to any other civil remedy or any other provision of law. The remedies permitted pursuant to this section may be invoked to mitigate the financial burden on a ward, protected person, decedent's estate or trust incurred as a result of unjustified court proceedings or unreasonable or excessive demands made on a fiduciary, fiduciary's attorney, court-appointed attorney or representative.

~~D.~~ E. For the purposes of this section:

1. "Court-appointed attorney" means an attorney appointed pursuant to section 14-5303, subsection C, section 14-5310, subsection C, section 14-5401.01, subsection C or section 14-5407, subsection B.

2. "Fiduciary" means an agent under a durable power of attorney, an agent under a health care power of attorney, a guardian, a conservator, a personal representative, a trustee or a guardian ad litem.

3. "Person who engaged in the conduct" includes a fiduciary, an attorney or a guardian ad litem.

4. "Professional" means an accountant, an attorney, a fiduciary, a physician, a psychologist, a registered nurse, a guardian ad litem or an expert witness.

5. "Professional fees or expenses" includes the fiduciary's fees and expenses and the fiduciary's attorney fees and expenses, as well as the fees and expenses of any other professionals hired by the fiduciary or the fiduciary's attorney.

14-5303. Procedure for court appointment of a guardian of an alleged incapacitated person

A. The alleged incapacitated person or any person interested in that person's affairs or welfare may petition for the appointment of a guardian or for any other appropriate protective order.

B. The petition shall contain a statement that the authority granted to the guardian may include the authority to withhold or withdraw life sustaining treatment, including artificial food and fluid, and shall state, at a minimum and to the extent known, all of the following:

1. The interest of the petitioner.
2. The name, age, residence and address of the alleged incapacitated person.
3. The name, address and priority for appointment of the person whose appointment is sought.
4. The name and address of the conservator, if any, of the alleged incapacitated person.
5. The name and address of the nearest relative of the alleged incapacitated person known to the petitioner.
6. A general statement of the property of the alleged incapacitated person, with an estimate of its value and including any compensation, insurance, pension or allowance to which the person is entitled.
7. The reason why appointment of a guardian or any other protective order is necessary.
8. The type of guardianship requested. If a general guardianship is requested, the petition must state that other alternatives have been explored and why a limited guardianship is not appropriate. If a limited guardianship is requested, the petition also must state what specific powers are requested.
9. If a custodial order was previously entered regarding an alleged incapacitated person in a child custody action or similar proceeding in this state or another jurisdiction and the petitioner or proposed guardian is a parent or nonparent custodian of the alleged incapacitated person, the court, case number AND THE MOST RECENT FAMILY COURT ORDER REGARDING LEGAL DECISION MAKING AND PARENTING TIME for that action or proceeding.
10. If the appointment of a guardian is necessary due solely to the physical incapacity of the alleged incapacitated person.

C. On the filing of a petition, the court shall set a hearing date on the issues of incapacity. Unless the alleged incapacitated person is

represented by independent counsel, the court shall appoint an attorney to represent that person in the proceeding. The alleged incapacitated person shall be interviewed by an investigator appointed by the court and shall be examined by a physician, psychologist or registered nurse appointed by the court. If the alleged incapacitated person has an established relationship with a physician, psychologist or registered nurse who is determined by the court to be qualified to evaluate the capacity of the alleged incapacitated person, the court may appoint the alleged incapacitated person's physician, psychologist or registered nurse pursuant to this subsection. The investigator and the person conducting the examination shall submit their reports in writing to the court. In addition to information required under subsection D, the court may direct that either report include other information the court deems appropriate. The investigator also shall interview the person seeking appointment as guardian, visit the present place of abode of the alleged incapacitated person and the place where it is proposed that the person will be detained or reside if the requested appointment is made and submit a report in writing to the court. The alleged incapacitated person is entitled to be present at the hearing and to see or hear all evidence bearing on that person's condition. The alleged incapacitated person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed examiner and investigator, and to trial by jury. The court may determine the issue at a closed hearing if the alleged incapacitated person or that person's counsel so requests.

D. A report filed pursuant to this section by a physician, psychologist or registered nurse acting within that person's scope of practice shall include the following information:

1. A specific description of the physical, psychiatric or psychological diagnosis of the person.
2. A comprehensive assessment listing any functional impairments of the alleged incapacitated person and an explanation of how and to what extent these functional impairments may prevent that person from receiving or evaluating information in making decisions or in communicating informed decisions regarding that person.
3. An analysis of the tasks of daily living the alleged incapacitated person is capable of performing without direction or with minimal direction.
4. A list of all medications the alleged incapacitated

person is receiving, the dosage of the medications and a description of the effects each medication has on the person's behavior to the best of the declarant's knowledge.

5. A prognosis for improvement in the alleged incapacitated person's condition and a recommendation for the most appropriate rehabilitation plan or care plan.

6. Other information the physician, psychologist or registered nurse deems appropriate.

14-5311. Who may be guardian; priorities

A. Any qualified person may be appointed guardian of an incapacitated person, subject to the requirements of section 14-5106.

B. The court may consider the following persons for appointment as guardian in the following order:

1. A guardian or conservator of the person or a fiduciary appointed or recognized by the appropriate court of any jurisdiction in which the incapacitated person resides.
2. An individual or corporation nominated by the incapacitated person if the person has, in the opinion of the court, sufficient mental capacity to make an intelligent choice.
3. The person nominated to serve as guardian in the incapacitated person's most recent durable power of attorney or health care power of attorney.
4. The spouse of the incapacitated person.
5. An adult child of the incapacitated person.
- ~~6. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.~~
- ~~7. Any relative of the incapacitated person with whom the incapacitated person has resided for more than six months before the filing of the petition.~~
6. A PARENT OR RELATIVE OF THE INCAPACITATED PERSON WITH WHOM THE INCAPACITATED PERSON HAS RESIDED WITH FOR MORE THAN SIX MONTHS IMMEDIATELY BEFORE THE FILING OF THE PETITION.
7. A PARENT OF THE INCAPACITATED PERSON, INCLUDING A PERSON NOMINATED BY WILL OR OTHER WRITING SIGNED BY A DECEASED PARENT.
8. The nominee of a person who is caring for or paying benefits to the incapacitated person.
9. If the incapacitated person is a veteran, the spouse of a veteran or the minor child of a veteran, the department of veterans' services.
10. A fiduciary who is licensed pursuant to section 14-5651, other than a public fiduciary.
11. A public fiduciary who is licensed pursuant to section 14-5651.

C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 of this section may nominate in writing a person to serve in that person's place. With respect to persons who have equal priority, the court shall select the one the court determines is best qualified to serve.

D. For good cause the court may pass over a person who has priority and appoint a person who has a lower priority or no priority. For the purposes of this subsection, "good cause" includes a determination that:

1. The incapacitated person's durable power of attorney or health care power of attorney is invalid.
2. Honoring the incapacitated person's durable power of attorney or health care power of attorney would not be in the physical, emotional or financial best interest of the incapacitated person.
3. The estimated cost of the fiduciary and associated professional fees would adversely affect the ability of the incapacitated person's estate to provide for the incapacitated person's reasonable and necessary living expenses.

E. On a request by a person who was passed over by the court pursuant to subsection D of this section, the court shall make a specific finding regarding the court's determination of good cause and why the person was not appointed. The request must be made within ten days after the entry of the order.

14-5312. General powers and duties of guardian

A. A guardian of an incapacitated person has the same powers, rights and duties respecting the guardian's ward that a parent has respecting the parent's unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the guardianship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

1. To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the ward and may establish the ward's place of abode within or without this state.

2. If entitled to custody of the ward the guardian shall make provision for the care, comfort and maintenance of the ward and, whenever appropriate, arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of the ward is in need of protection.

3. A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service.

4. If no conservator for the estate of the ward has been appointed, the guardian may:

(a) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform such person's duty.

(b) Receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward, but the guardian may not use funds from his ward's estate for room and board the guardian or the guardian's spouse, parent or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.

5. A guardian is required to report the condition of the ward and of the estate that has been subject to the guardian's possession or control, as required by the court or court rule.

6. If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care and education of the ward shall be paid to the conservator for management as provided in this chapter and the guardian must account to the conservator for funds expended.

7. If appropriate, a guardian shall encourage the ward to develop maximum self-reliance and independence and shall actively work toward limiting or terminating the guardianship and seeking alternatives to guardianship.

8. A guardian shall find the most appropriate and least restrictive setting for the ward consistent with the ward's needs, capabilities and financial ability.

9. A GUARDIAN SHALL MAKE GOOD FAITH EFFORTS TO MAINTAIN THE WARD'S HISTORICAL RELATIONSHIPS AS DEMONSTRATED BY PAST PATTERN AND PRACTICE AND ENSURE THAT THE WARD HAS REASONABLE ACCESS TO FAMILY AND FRIENDS. THE WARD'S HISTORICAL RELATIONSHIPS ESPECIALLY WITH A SPOUSE OR PARENT SHALL BE CONSIDERED WHEN MOVING THE WARD OUT OF STATE AS PROVIDED FOR IN A.R.S §14-5312(1).

~~9.~~ 10. A guardian shall make reasonable efforts to secure appropriate medical and psychological care and social services for the ward.

~~10.~~ 11. A guardian shall make reasonable efforts to secure appropriate training, education and social and vocational opportunities for his ward in order to maximize the ward's potential for independence.

~~11.~~ 12. In making decisions concerning his ward, a guardian shall take into consideration the ward's values and wishes.

~~12.~~ 13. The guardian is authorized to act pursuant to title 36, chapter 32.

~~13.~~ 14. The guardian of an incapacitated adult who has a developmental disability as defined in section 36-551 shall seek services that are in the best interest of the ward, taking into consideration:

(a) The ward's age.

(b) The degree or type of developmental disability.

(c) The presence of other disabling conditions.

(d) The guardian's ability to provide the maximum opportunity to develop the ward's maximum potential, to provide a minimally structured residential program and environment for the ward and to provide a safe, secure, and dependable residential and program

environment.

(e) The particular desires of the individual.

B. Any guardian of a ward for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

14-5301.03. Judicial appointment of guardian; special provision for incapacitated minors approaching adulthood

A. A party that is interested in the welfare of a minor who is at least seventeen years six months of age and who is alleged to be incapacitated may initiate guardianship proceedings pursuant to this article and request that any guardianship order take effect immediately on the minor's eighteenth birthday.

B. The petitioner may provide with the petition a report of an evaluation of the minor by a physician, psychologist or registered nurse that meets the requirements of section 14-5303, subsection D. If the evaluation was conducted within six months after the date the petition is filed with the court, the petitioner may ask in the petition that the court accept this report in lieu of ordering any additional evaluation pursuant to section 14-5303, subsection C, and the court may grant the request

C. IF THE FAMILY COURT HAS MADE FINDINGS PURSUANT TO A.R.S §25-403 THAT CREATES A REBUTTAL PRESUMPTION THAT THE CURRENT ACCESS SCHEDULE IS IN THE WARD'S BEST INTEREST AND SHOULD BE PRESERVED AFTER THE APPOINTMENT OF A GUARDIAN. THE PRESUMPTION CAN BE REBUTTED IF THE COURT FINDS GOOD CAUSE TO DEVIATE FROM THE PRIOR FAMILY COURT ORDER.

D. IF THE COURT HAS NOT MADE PRIOR ORDERS CONCERNING LEGAL DECISION MAKING AND PARENTING TIME AND BOTH PARENTS ARE SEEKING TO BE APPOINTED AS GUARDIAN THE COURT MAY CONSIDER ALL FACTORS THAT ARE RELEVANT TO THE INCAPACITATED PERSON PHYSICAL AND EMOTIONAL WELL-BEING INCLUDING:

1. THE PAST, PRESENT AND POTENTIAL FUTURE RELATIONSHIP BETWEEN THE PARENT AND THE INCAPACITATED PERSON.
2. THE INTERACTION AND INTERRELATIONSHIP OF THE INCAPACITATED PERSON WITH THE INCAPACITATED PERSON'S PARENT OR PARENTS, THE INCAPACITATED PERSON'S SIBLINGS AND ANY OTHER PERSON WHO MAY SIGNIFICANTLY AFFECT THE INCAPACITATED PERSON'S BEST INTEREST.
3. THE INCAPACITATED PERSON'S ADJUSTMENT TO HOME, SCHOOL AND COMMUNITY.
4. IF THE INCAPACITATED PERSON HAS SUITABLE ABILITY AND MATURITY, THE WISHES OF THE INCAPACITATED PERSON AS TO THEIR LIVING ARRANGEMENTS, FAMILIAL REALTIONSHIP AND SOCIAL CONTACTS SHALL BE CONSIDERED.

5. THE MENTAL AND PHYSICAL HEALTH OF ALL INDIVIDUALS INVOLVED.

6. WHICH PROPOSED GUARDIAN IS MORE LIKELY TO ALLOW THE INCAPACITATED PERSON FREQUENT, MEANINGFUL AND CONTINUING CONTACT WITH OTHERS.

7. WHETHER THERE HAS BEEN DOMESTIC VIOLENCE OR CHILD ABUSE PURSUANT TO SECTION A.R.S §25-403.03.

8. WHETHER EITHER PARENT WAS CONVICTED OF AN ACT OF FALSE REPORTING OF INCAPACITATED PERSON ABUSE OR NEGLECT UNDER SECTION A.R.S. §13-2907.02.

ARIZONA JUDICIAL COUNCIL
Legislative Request for Proposal
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- *Submit electronically to Brandi Ensign at bensign@courts.az.gov*
- *For questions contact Jerry Landau or Amy Love: 602-452-3361*

SUBJECT MATTER OF PROPOSAL: Guardianship of Foreign Citizens **DATE:** August 14, 2015

PROPOSAL REQUESTED BY: Superior Court in Maricopa County

Name: Hon. Andrew Klein

Title: Probate Court Presiding Judge

Address: Old Court House, 101
125 W. Washington St.
Phoenix, AZ

Telephone: 602.506.4645

E-mail: aklein@superiorcourt.maricopa.gov

SECTION I: PROPOSAL

- A. **Please summarize the proposal.** The probate court identified an issue with the current statutory scheme. In a recent guardianship filing, a husband sought guardianship for his wife, who has Alzheimer's and needs a guardian. The wife is a legal resident (Mexican citizen). They applied under A.R.S. § 14-5108 which allows for guardians of legal residents but which has an age restriction of under 21 years of age. The wife was older than 21. The court found a workaround, to use A.R.S. § 14-5301. However, the court believes it would be helpful to remove the age restriction and to clarify that this statute applies only to non-incapacitated individuals so that legal residents who need a guardian because they are incapacitated know to file under 14-5301. Juvenile Court has also raised the issue that when this statute was amended, it no longer applied to juveniles because it says that it applies to an "adult" – these guardianship can be necessary for families hosting minor foreign exchange students to be able to sign consent forms and other necessary documents. (Attached is a memo prepared by a bailiff on the concern from the probate department).
- B. **Why this proposal is being requested? Provide supporting information, e.g., benefit to court operations, budget, statistics on increased caseloads, reports, etc. See above.**

- C. Provide the contact information of any individuals with relevant expert knowledge on this subject.

Hon. Andrew Klein, Probate Court Presiding Judge: 602.506.4645
Hon. Suzanne Cohen, Judge: 602.372.1916
Hon. Geoffrey Fish, Commissioner, 602.372.1771
Lori Ash, General Counsel: 602.506.5433

- D. Attach the recommended language of the legislation to this form. Please include the entire section of law, use UPPER CASE to designate new language and ~~strikethrough~~ to designate stricken language. (The Government Affairs group will assist in final drafting as the proposal moves forward).

14-5108. Guardianship of foreign citizens

The court may appoint a guardian of an ~~adult~~ foreign citizen if ~~all of the following are true:~~

- ~~1. The foreign citizen is under twenty-one years of age.~~
2. The foreign citizen has a temporary visa issued by the United States or is a legal permanent resident.

- E. Can the requested change be achieved by another method? No How?
 Court Rule Administrative Code

- F. If adopted by the Arizona Legislature, would the regular effective date (90 days after adjournment of the legislative session) be acceptable, or is there a reason for an emergency effective date (effective immediately upon signature of the Governor) or a delayed effective date? If a delayed effective date is requested, what date is recommended? Regular Effective Date

SECTION II: IMPACTS

- A. Check ALL courts that could be affected.
 Supreme Appellate Superior Limited Jurisdiction
- B. List the Arizona Revised Statute(s), Court Rule(s) or Administrative Code(s) affected by the proposed legislation. A.R.S. § 14-5108
- C. Describe anticipated impacts of proposed legislation on the administration of the courts, such as adoption or revision of court rule or code, shift of cases from one court level to another, added or revised reporting requirements, collection of statistics, automation requirements, etc. None
- D. Describe any anticipated fiscal impact of this legislation. None

- E. Will this legislation impact other governmental agencies? No How?
- F. Describe the consequences if the proposed legislation is not pursued or passed this year. Superior Court judges will need to continue as they have been in these types of cases. Finding workaround solutions.

SECTION III: SUPPORT OR OPPOSITION

- A. Identify any agencies, groups, or legislators, etc. who may support or have expressed an interest in the proposed legislation and the reasons for the support or interest. Unknown at this time.
- B. Identify any agencies, groups, or legislators, etc. who may oppose the proposed legislation and the reasons for the opposition. Unknown at this time.

Memorandum

To: Commissioner Fish

From: Natalie Booher

Date: March 12, 2014

Re: A.R.S. § 14-5108 as it pertains to incapacitated foreign citizens, over the age of 21, in need of a Guardianship

I researched the issue of what the legislative's intent was in enacting A.R.S. § 14-5108. Specifically, the current text of the statute reads:

"The court may appoint a guardian of an adult foreign citizen if all of the following are true:

1. The foreign citizen is under twenty-one years of age.
2. The foreign citizen has a temporary visa issued by the United States or is a legal permanent resident." A.R.S. § 14-5108 (2012).

A version of this statute was first enacted in 2004. At that time it was a novel addition to A.R.S. Title 14 and was not intended to amend any other provision. This original statute contained more elements and was enacted to fit a very specific situation.¹ Ultimately it provides a pathway for an adult to step in and take over, on behalf of a minor's deceased parent, who has previously filed a petition for permanent resident status on behalf of that minor child. This version reads:

"The court may appoint an adult as the guardian of a foreign citizen if all of the following are true:

1. The foreign citizen is under twenty-one years of age.
2. The foreign citizen has a temporary visa issued by the United States.
3. The adult agrees to sponsor the foreign citizen in obtaining permanent resident alien status in the United States.
4. The foreign citizen's parent, on behalf of the foreign citizen, filed a petition for permanent resident alien status with the United States government and that parent is now deceased.
5. The foreign citizen was under eighteen years of age at the time the petition for permanent resident alien status was filed." A.R.S. § 14-5108 (2004).

This original statute was passed as Senate Bill 1034. The House Bill Summary written on April 16, 2004 details the history behind why the bill was introduced. In addition to explaining that this statute is Arizona's counterpart to federal law it is also noted that "A.R.S. Title 14, Chapter 5 currently provides for the appointment of legal guardians if a person is incapacitated or is a minor, but provides no mechanism for appointing a legal guardian to a

¹ Rep. Driggs discusses this purpose in his testimony regarding the amendment in 2010. Senator Jarrett sponsored the original bill on behalf of a Korean minor whose parents were killed.

person over the age of 18 if the person is not incapacitated.” This language implies that this statute was enacted to extend guardianships to apply in the context of foreign citizen who are not incapacitated.

This is further bolstered by the testimony of Representative Adam Driggs, Chairman of the Judiciary Committee in the Arizona House of Representatives, on March 24, 2010 before the Senate Public Safety and Human Services Committee. Rep. Driggs sponsored the amendment in 2010 of A.R.S. 14-5108, known as House Bill 2437, to eliminate elements 3-5 because he himself was hosting a foreign high school student. He was attempting to petition the court to be named as temporary guardian in order to enroll him in sports and sign school consent forms on his behalf. This was made impossible by the additional elements contained within the statute which were eliminated at his urging effective April 26, 2010.

The intent of A.R.S. § 14-5108 was never to specifically restrict the Court’s ability to appoint a guardian on behalf of an adult foreign citizen. In fact, the statute does not even contemplate appointing a guardian for a foreign citizen who is incapacitated. Rather its purpose is to extend guardianship protections for minors who are foreign citizens, up to the age of 21.

**ARIZONA JUDICIAL COUNCIL
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- *Submit electronically to Brandi Ensign at bensign@courts.az.gov*
- *For questions contact Jerry Landau or Amy Love: 602-452-3361*

SUBJECT MATTER OF PROPOSAL: FCRB Sunset

DATE: August 18, 2015

PROPOSAL REQUESTED BY: Caroline Lutt-Owens

Name: Caroline Lutt-Owens

Title: Director, Dependent Children's Services Division

Address: 1501 W. Washington, Ste. 128, Phoenix, AZ 85007

Telephone: 602-452-3408

E-mail: clowens@courts.az.gov

SECTION I: PROPOSAL

A. Please summarize the proposal.

The proposal simply introduces legislation to continue the FCRB program past its current Sunset date.

B. Why this proposal is being requested? Provide supporting information, e.g., benefit to court operations, budget, statistics on increased caseloads, reports, etc.

The Foster Care Review Board is scheduled to Sunset July 1, 2016.

C. Provide the contact information of any individuals with relevant expert knowledge on this subject.

Caroline Lutt-Owens, 602-452-3408
Steve Lazere, 602-452-3409

- D. **Attach the recommended language of the legislation to this form. Please include the entire section of law, use UPPER CASE to designate new language and ~~striketrough~~ to designate stricken language. (The Government Affairs group will assist in final drafting as the proposal moves forward).**

A.R.S. 41-3016.08 State foster care review board; termination July 1, ~~2016~~ 2026

A. The state foster care review board terminates on July 1, ~~2016~~. 2026.

B. Section 8-515.04 is repealed on January 1, ~~2017~~. 2027.

- D. **Can the requested change be achieved by another method? No How? N/A**

Court Rule Administrative Code

- E. **If adopted by the Arizona Legislature, would the regular effective date (90 days after adjournment of the legislative session) be acceptable, or is there a reason for an emergency effective date (effective immediately upon signature of the Governor) or a delayed effective date? If a delayed effective date is requested, what date is recommended?**

The bill would need to be effective by July 1, 2016.

SECTION II: IMPACTS

- A. **Check ALL courts that could be affected.**

Supreme Appellate Superior Limited Jurisdiction

- B. **List the Arizona Revised Statute(s), Court Rule(s) or Administrative Code(s) affected by the proposed legislation.**

Statutes, Court Rules, Administrative Code that support the FCRB:

A.R.S. 8-515.01, 02, 03, 04, 05

AZ. Rules of Court:

Rules of Procedure for the Foster Care Review Boards

Supplemental Rules of the State Foster Care Review Board

Administrative Code of Judicial Administration, Section 7-102

- C. **Describe anticipated impacts of proposed legislation on the administration of the courts, such as adoption or revision of court rule or code, shift of cases from one court level to another, added or revised reporting requirements, collection of statistics, automation requirements, etc.**

N/A

D. Describe any anticipated fiscal impact of this legislation.

Continued funding

E. Will this legislation impact other governmental agencies? How?

N/A

F. Describe the consequences if the proposed legislation is not pursued or passed this year.

The Foster Care Review Board program would sunset, the state courts would not benefit from the case review and recommendations from an unbiased party, the check and balance of the child welfare system would be terminated, and the children in Arizona's child welfare system suffer a disservice.

SECTION III: SUPPORT OR OPPOSITION

A. Identify any agencies, groups, or legislators, etc. who may support or have expressed an interest in the proposed legislation and the reasons for the support or interest.

Superior Courts, Parents, Foster Parents, children subject to a dependency petition, DCS

B. Identify any agencies, groups, or legislators, etc. who may oppose the proposed legislation and the reasons for the opposition.

N/A

ARIZONA JUDICIAL COUNCIL
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- *For questions contact Jerry Landau or Amy Love: 602-452-3361*

SUBJECT MATTER OF PROPOSAL: Adult Probation Statutes **DATE:** August 14, 2015

PROPOSAL REQUESTED BY: Superior Court in Maricopa County and
Maricopa County Adult Probation Department

Name: Barbara Broderick

Title: Chief Adult Probation Officer

Address: Downtown Justice Center
620 W. Jackson Street
Phoenix, AZ

Telephone: 602.506.7244

E-mail: bbroderi@apd.maricopa.gov

SECTION I: PROPOSAL

- A. Please summarize the proposal.** The Adult Probation Department (APD) seeks to amend several statutes to better manage its caseloads and resources. First, APD proposes amending A.R.S. § 13-902(G) to give the court discretion regarding placing a DCAC probationer on GPS monitoring. The statute currently requires GPS and there are situations in which placement in GPS is not logical and a waste of resources, such as a probationer who is immobile. In addition, APD proposes amending A.R.S. § 13-903 to clearly spell out that a probation sentence is tolled while a probationer is in DOC. There is quite a bit of confusion on when the time is tolled and a clear rule would be beneficial. APD also proposes amending A.R.S. § 13-923 to allow a review process for those on lifetime probation. This population increases every year and there are those cases in which the probationer is no longer in need of probation supervision, based on many years on probation and the services received. Finally, APD seeks to amend A.R.S. § 13-924 regarding earned time credit. APD would like to clarify that if a probationer has made a full payment in a given month, he/she is eligible for earned time credit. APD also would like to remove the community restitution requirement from earned time credit. Many probations are given 240 hours of community restitution by statute and are unable to complete that during a probation term.

- B. Why this proposal is being requested? Provide supporting information, e.g., benefit to court operations, budget, statistics on increased caseloads, reports, etc. See above.**
- C. Provide the contact information of any individuals with relevant expert knowledge on this subject.**

Barbara Broderick, Chief Probation Officer: 602.506.7244

Lori Ash, General Counsel: 602.506.6433

- D. Attach the recommended language of the legislation to this form. Please include the entire section of law, use UPPER CASE to designate new language and ~~strikethrough~~ to designate stricken language. (The Government Affairs group will assist in final drafting as the proposal moves forward).**

13-902. Periods of probation; monitoring; fees

A. Unless terminated sooner, probation may continue for the following periods:

1. For a class 2 felony, seven years.
2. For a class 3 felony, five years.
3. For a class 4 felony, four years.
4. For a class 5 or 6 felony, three years.
5. For a class 1 misdemeanor, three years.
6. For a class 2 misdemeanor, two years.
7. For a class 3 misdemeanor, one year.

B. Notwithstanding subsection A of this section, unless terminated sooner, probation may continue for the following periods:

1. For a violation of section 28-1381 or 28-1382, five years.
2. For a violation of section 28-1383, ten years.

C. When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to the defendant's offense and that condition has not been satisfied, the court at any time before the termination or expiration of probation may extend the period within the following limits:

1. For a felony, not more than five years.
2. For a misdemeanor, not more than two years.

D. Notwithstanding any other provision of law, justice courts and municipal courts may impose the probation periods specified in subsection A, paragraphs 5, 6 and 7 and subsection B, paragraph 1 of this section.

E. After conviction of a felony offense or an attempt to commit any offense that is included in chapter 14 or 35.1 of this title or section 13-2308.01, 13-2923 or 13-3623, if probation is available, probation may continue for a term of not less than the term that is specified in subsection A of this section up to and including life and that the court believes is appropriate for the ends of justice.

F. After conviction of a violation of section 13-3824, subsection A, if a term of probation is imposed and the offense for which the person was required to register was a felony, probation may continue for a term of not less than the term that is specified in

subsection A of this section up to and including life and that the court believes is appropriate for the ends of justice.

G. If a person is convicted on or after November 1, 2006 of a dangerous crime against children as defined in section 13-705, a term of probation is imposed, the person is required to register pursuant to section 13-3821 and the person is classified as a level three offender pursuant to section 13-3825, the court shall require global position system or electronic monitoring for the duration of the term of probation, UNLESS THE COURT DETERMINES THAT GLOBAL POSITION SYSTEM OR ELECTRONIC MONITORING IS UNNECESSARY BASED ON THE CIRCUMSTANCES OF THE DEFENDANT, THE DEFENDANT'S CONDUCT WHILE ON PROBATION, OR REPORTS FROM TREATMENT PROVIDERS. The court may impose a fee on the probationer to offset the cost of the monitoring device required by this subsection. The fee shall be deposited in the adult probation services fund pursuant to section 12-267, subsection A, paragraph 3. This subsection does not preclude global position system or electronic monitoring of any other person who is serving a term of probation.

13-903. Calculation of periods of probation

A. A period of probation commences on the day it is imposed or as designated by the court, and an extended period of probation commences on the day the original period lapses.

B. If a court determines that the defendant violated a condition of the defendant's probation but reinstates probation, the period between the date of the violation and the date of restoration of probation is not computed as part of the period of probation. If it is determined that the defendant is not a violator, there is no interruption of the period.

C. The running of the period of probation shall cease during ANY SENTENCE OF IMPRISONMENT FOR ANY CONVICTION, the unauthorized absence of the defendant from the jurisdiction or THE UNAUTHORIZED ABSENCE OF THE DEFENDANT from any required supervision and shall resume only upon the defendant's voluntary or involuntary return to SUPERVISION OR MONITORING BY THE PROBATION DEPARTMENT OR UPON THE DEFENDANT'S ABSOLUTE DISCHARGE FROM IMPRISONMENT ~~the probation service.~~

D. The running of the period of probation shall cease during the period from the filing of the petition to revoke probation to the termination of revocation of probation proceedings, except that if a court determines that the defendant is not a violator, there is no interruption of the period of probation.

~~E. If probation is imposed on one who at the time is serving a sentence of imprisonment imposed on a different conviction, service of the sentence of imprisonment shall not satisfy the probation.~~

~~EF.~~ Time spent in custody under section 13-901, subsection F shall be credited to any sentence of imprisonment imposed upon revocation of probation.

13-923. Persons convicted of sexual offenses; annual probation review hearing; report; notification

A. If requested by the probationer, the court shall conduct a probation hearing at least once a year for a probationer who is under twenty-two years of age and who was

convicted of an offense that occurred when the person was under eighteen years of age and that requires the probationer to register pursuant to section 13-3821.

B. IF REQUESTED BY THE PROBATIONER, PROBATION DEPARTMENT, OR PROSECUTOR, THE COURT MAY CONDUCT A PROBATION HEARING FOR A PROBATIONER WHO WAS PLACED ON LIFETIME PROBATION AND HAS BEEN ON PROBATION FOR MORE THAN TEN YEARS.

CB. This section does not preclude the court from conducting more than one probation review hearing each year.

DC. The probation department that is supervising the probationer shall prepare a probation report and submit the report to the court prior to the hearing.

ED. The following individuals shall be notified of the hearing:

1. A prosecutor.
2. An attorney for the probationer.
3. Any victim or victim's attorney who has a right to be present and heard pursuant to the victims' bill of rights, article II, section 2.1 of the constitution of this state, title 13, chapter 40 or court rule.
4. The probation officer supervising the probationer.

FE. At the hearing, after hearing from those present pursuant to subsection D of this section, the court shall consider the following:

1. Whether to continue, modify or terminate probation.
2. Whether to continue to require, to suspend or to terminate the probationer's registration pursuant to section 13-3821.
3. Whether to continue, defer or terminate community notification pursuant to section 13-3825.

GF. The court may hold a prehearing involving the persons listed in subsection D of this section to discuss and advise the court concerning the issues listed in subsection E of this section.

13-924. Probation; earned time credit; applicability

A. The court may adjust the period of a probationer's supervised probation on the recommendation of an adult probation officer for earned time credit.

B. Earned time credit equals twenty days for every thirty days that a probationer does all of the following:

1. Exhibits positive progression toward the goals and treatment of the probationer's case plan.
2. HAS MADE A FULL MONTHLY PAYMENT~~is current on payments~~ for court ordered restitution and other obligations.
3. ~~Is current in completing community restitution.~~

C. Any earned time credit awarded pursuant to this section shall be revoked if a probationer is found in violation of a condition of probation.

D. This section does not apply to a probationer who is currently:

1. On lifetime probation.
2. On probation for any class 2 or 3 felony.
3. On probation exclusively for a misdemeanor offense.
4. Required to register pursuant to section 13-3821.

E. This section has no effect on the ability of the court to terminate the period of probation or intensive probation pursuant to section 13-901, subsection E at a time earlier than originally imposed.

E. Can the requested change be achieved by another method? No How?
 Court Rule Administrative Code

F. If adopted by the Arizona Legislature, would the regular effective date (90 days after adjournment of the legislative session) be acceptable, or is there a reason for an emergency effective date (effective immediately upon signature of the Governor) or a delayed effective date? If a delayed effective date is requested, what date is recommended? Regular Effective Date

SECTION II: IMPACTS

A. Check ALL courts that could be affected.

Supreme Appellate X Superior Limited Jurisdiction

B. List the Arizona Revised Statute(s), Court Rule(s) or Administrative Code(s) affected by the proposed legislation. A.R.S. §§ 13-902, -903, -923, and 924.

C. Describe anticipated impacts of proposed legislation on the administration of the courts, such as adoption or revision of court rule or code, shift of cases from one court level to another, added or revised reporting requirements, collection of statistics, automation requirements, etc. None.

D. Describe any anticipated fiscal impact of this legislation. This may costs in less GPS use and may help probationers qualify for earned time credit quicker.

E. Will this legislation impact other governmental agencies? No How?

F. Describe the consequences if the proposed legislation is not pursued or passed this year. APD will continue as it has been.

SECTION III: SUPPORT OR OPPOSITION

A. Identify any agencies, groups, or legislators, etc. who may support or have expressed an interest in the proposed legislation and the reasons for the support or interest. Unknown at this time.

B. Identify any agencies, groups, or legislators, etc. who may oppose the proposed legislation and the reasons for the opposition. Unknown at this time.

ARIZONA JUDICIAL COUNCIL
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- *Submit electronically to Brandi Ensign at bensign@courts.az.gov*
- *For questions contact Jerry Landau or Amy Love: 602-452-3361*

SUBJECT MATTER OF PROPOSAL:

DATE: 9/22/2015

Adult Intensive Probation Supervision

PROPOSAL REQUESTED BY: Adult Chief Probation Officers

Name: Kathy Waters

Title: Director, Adult Probation Services Division

Address: 1501 W. Washington, Suite 344, Phoenix, AZ 75007

Telephone: 602-452-3468

E-mail: kwaters@courts.az.gov

SECTION I: PROPOSAL

A. Please summarize the proposal.

The Adult Probation Departments propose to amend A.R.S. §§ 13-914, §13-916 and §13-917 to allow the Adult Probation Departments more discretion in employer contacts, an expansion in allowable activities and guided by objective assessment of risk, levels of need, and supporting evidence-based best practices that identifies the significant importance of employment, treatment and families as a protective factor to reduce recidivism while maintaining a high level of accountability with close supervision requirements. These changes would be applicable to the adult intensive probation and dispositional statutory provisions.

- B. Why this proposal is being requested? Provide supporting information, e.g., benefit to court operations, budget, statistics on increased caseloads, reports, etc. The Intensive Probation Statutes were implemented in the early 1990's. With the adoption of Evidence Based Practices in the supervision of adult offenders, it has become apparent that many of the requirements of the current statutes are**

not research based and do not produce positive outcomes for measures of success for adult offenders under supervision.

These changes will allow probation officer discretion in monitoring the behavior of the offenders on IPS while continuing the close supervision. Community Restitution will be broadened to include positive programmatic completion which leads to the success of offenders and allows them to complete their sentences while working and paying restitution, fees and fines as ordered by the court. Employment is a key component to IPS and finding employment is difficult for persons with felony convictions. Weekly contacts with offenders at their places of employment place an undue disruption to the workplace and employers are reluctant to hire individuals who will constantly be under the scrutiny of officers in the work place. Officers have other means of employment contact and verifications without placing themselves weekly on the job site. Lastly, the court should have more discretion on a case by case basis in regards to new charges and violations of probation. Not all offenders charged with additional crimes should result in an automatic prison term. These changes will increase the opportunity for success while under supervision and increase the positive outcomes for offenders on IPS. Their success in the community will result in a risk reduction to committing additional crimes and for the safety of the public.

- C. Provide the contact information of any individuals with relevant expert knowledge on this subject. Kathy Waters, Division Director, Adult Probation Services Division, Administrative Office of the Courts, 1501 W. Washington, Suite 344, Phoenix, Arizona 85007. 602-452-3468**
- D. Attach the recommended language of the legislation to this form. Please include the entire section of law, use UPPER CASE to designate new language and ~~strikethrough~~ to designate stricken language. (The Government Affairs group will assist in final drafting as the proposal moves forward).**

13-914. Intensive probation; evaluation; sentence; criteria; limit; conditions

- A. An adult probation officer shall prepare a presentence report for every offender who has either:
1. Been convicted of a felony and for whom the granting of probation is not prohibited by law.
 2. Violated probation by commission of a technical violation that was not chargeable or indictable as a criminal offense.
- B. The adult probation officer shall evaluate the needs of the offender and the offender's risk to the community, including the nature of the offense and criminal history of the offender. If the nature of the offense and the prior criminal history of the offender indicate that the offender should be included in an intensive probation program pursuant to supreme court guidelines for intensive probation, the adult probation officer may recommend to the court that the offender be granted intensive probation.
- C. The court may suspend the imposition or execution of the sentence and grant the offender a period of intensive probation in accordance with this chapter. Except for sentences that are imposed pursuant to section 13-3601, the sentence is tentative to the extent that it may be altered or revoked pursuant to this chapter, but for all other

purposes it is a final judgment of conviction. This subsection does not preclude the court from imposing a term of intensive probation pursuant to section 13-3601.

D. When granting intensive probation the court shall set forth on the record the factual and legal reasons in support of the sentence.

E. Intensive probation shall be conditioned on the offender:

1. Maintaining employment or maintaining full-time student status at a school subject to title 15 or title 32, chapter 30 and making progress deemed satisfactory to the probation officer, or both, or being involved in supervised job searches and community restitution work at least six days a week throughout the offender's term of intensive probation.

2. Paying restitution and probation fees of not less than seventy-five dollars unless, after determining the inability of the offender to pay the fee, the court assesses a lesser fee. Probation fees shall be deposited in the adult probation services fund established by section 12-267. Any amount assessed pursuant to this paragraph shall be used to supplement monies used for the salaries of adult probation and surveillance officers and for support of programs and services of the superior court adult probation departments.

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

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

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

6. Performing not less than forty hours of community restitution each month. Full-time students and employment may be exempted or required to perform fewer hours of community restitution. For good cause, the court may reduce the number of community restitution hours performed to not less than twenty hours each month and may include activities as approved by the court and probation departments such as

(a) School.

(b) A court ordered treatment program.

(c) Employment.

(d) Supervised community restitution work.

(E) POSTIVE FAMILY ACTIVITIES THAT ARE STRUCTURED TO STRENGTHEN FAMILIAL RELATIONSHIPS.

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

13-916. Intensive probation teams; adult probation officer qualifications; duties; case load limit

A. The chief adult probation officer in each county, with approval of the presiding judge of the superior court, shall appoint intensive probation teams consisting of one adult probation officer and one surveillance officer, two adult probation officers or one adult probation officer and two surveillance officers.

B. A two person intensive probation team shall supervise no more than twenty-five persons at one time, and a three person intensive probation team shall supervise no more than forty persons at one time.

C. The adult probation officers shall meet the bonding requirements and experience and education standards established pursuant to section 12-251.

- D. The intensive probation team may serve warrants on, make arrests of and bring before the court persons who have violated the terms of intensive probation.
- E. The adult probation and surveillance officers both have the authority of a peace officer in the performance of their duties but are not eligible to participate in the public safety personnel retirement system.
- F. The intensive probation team shall:
 1. Secure and keep a complete identification record of each person supervised by the team and a written statement of the conditions of the probation.
 2. Exercise close supervision and observation over persons sentenced to intensive probation including both of the following:
 - (a) Visual contact with each probationer at least four times per week.
 - (b) ~~Weekly contact with the employer of the probationer.~~ Periodic verification of employment by onsite visits and other verification confirmations.

13-917. Modification of supervision

- A. The adult probation officer shall periodically examine the needs of each person granted intensive probation and the risks of modifying the level of supervision of the person. The court may at any time modify the level of supervision of a person granted intensive probation, or may transfer the person to supervised probation or terminate the period of intensive probation pursuant to section 13-901, subsection E.
- B. The court may issue a warrant for the arrest of a person granted intensive probation. If the person commits an additional offense or violates a condition of probation, the court may revoke intensive probation at any time before the expiration or termination of the period of intensive probation. If a petition to revoke the period of intensive probation is filed and the court finds that the person has ~~committed an additional felony offense or~~ has violated a condition of intensive probation which poses a serious threat or danger to the community, the court shall revoke the period of intensive probation and impose a term of imprisonment as authorized by law. If the court finds that the person has violated any other condition of intensive probation, it shall modify the conditions of intensive probation as appropriate or shall revoke the period of intensive probation and impose a term of imprisonment as authorized by law.
- C. The court shall notify the prosecuting attorney, and the victim on request, of any proposed modification of a person's intensive probation if that modification will substantially affect the person's contact with or safety of the victim or if the modification involves restitution or incarceration status.

E. Can the requested change be achieved by another method? How?

Court Rule Administrative Code

F. If adopted by the Arizona Legislature, would the regular effective date (90 days after adjournment of the legislative session) be acceptable, or is there a reason for an emergency effective date (effective immediately upon signature of the Governor) or a delayed effective date? If a delayed effective date is requested, what date is recommended? Regular Effective Date

SECTION II: IMPACTS

A. Check ALL courts that could be affected.

Supreme Appellate Superior Limited Jurisdiction

B. List the Arizona Revised Statute(s), Court Rule(s) or Administrative Code(s) affected by the proposed legislation. A.R.S. §§ 13-914, §13-916 and §13-917

C. Describe anticipated impacts of proposed legislation on the administration of the courts, such as adoption or revision of court rule or code, shift of cases from one court level to another, added or revised reporting requirements, collection of statistics, automation requirements, etc. AOC would need to revise ACJA 6-105.01, ACJA 6-201.01, ACJA 6-202.01 and ACJA 6-204.01 to match whatever changes are adopted by this proposal.

D. Describe any anticipated fiscal impact of this legislation. These changes should assist in the successful completion of IPS and reduce the number of IPS offenders who are revoked to the Department of Corrections for technical and other violations of IPS. The results will be an increase in compliance to conditions of IPS.

E. Will this legislation impact other governmental agencies? Yes, revocations to the Department of Corrections will be reduced.

F. Describe the consequences if the proposed legislation is not pursued or passed this year. The lack of Evidence Based Interventions can result in increasing the failures of persons on IPS which result in revocations to the Department of Corrections.

SECTION III: SUPPORT OR OPPOSITION

A. Identify any agencies, groups, or legislators, etc. who may support or have expressed an interest in the proposed legislation and the reasons for the support or interest. Chief Probation Officers of Arizona

B. Identify any agencies, groups, or legislators, etc. who may oppose the proposed legislation and the reasons for the opposition.

ARIZONA JUDICIAL COUNCIL
Legislative Request for Proposal
2016 Legislative Session

- *Submit electronically to Brandi Ensign at bensign@courts.az.gov*
- *For questions contact Jerry Landau or Amy Love: 602-452-3361*

SUBJECT MATTER OF PROPOSAL: Probation and Court Orders **DATE:** August 14, 2015

PROPOSAL REQUESTED BY: Superior Court in Maricopa County

Name: Hon. Paul McMurdie

Title: Family Court Presiding Judge

Address: Central Court Building – 7C
201 W. Jefferson
Phoenix, AZ

Telephone: 602.372.0765

E-mail: mcmurdiep@superiorcourt.maricopa.gov

SECTION I: PROPOSAL

Please summarize the proposal. Many probationers have child support orders. Family Court would like probation officers to be able to inquire as to whether those on probation owe child support and have probation emphasize the importance of paying child support. In addition, probation can inform probationers that if their circumstances have changed, they can seek a modification of their child support and if probationers obtain different employment, probation can remind them to update their withholding paperwork. Probation can have the necessary forms available. This can be a positive interaction between probation and the probationer.

Case law and statutes in other jurisdictions, including federal courts, allow probation to help ensure probationers are compliant with child support orders. Here are a few of the cases in which child support payment was a term of probation. See, e.g., *People v. Goossens*, 18 N.E.3d 972 (Ill. App. 2014) (Illinois Court of Appeals upheld challenge to length/terms of probation for a defendant convicted of intimidation – child support payment term included in probation terms based on statute requiring defendant “support his dependents”); *Carlisle v. State*, 14 N.E.3d 134 (Ind. App. 2014) (unpublished) (affirming a case that included a finding by the trial court that defendant “had violated the terms of his probation by failing to make child support payments from February 2011 to May

2011”); *State v. Thomas*, 2012 WL 6097074 (N.J. Super AD 2012) (unpublished) (affirming a probation revocation in a drug case in which the court found defendant “violated substantial terms and conditions of his probation, including failure to make his child support payments”); *State v. Sebastian*, 211 N.C.App. 647, 712 S.E.2d 745 (N.C. App. 2011) (affirming a probation revocation for a DWI and licensing violation and the probation terms included “Satisfy child support and family obligations, as required by the Court”); *State v. Wells*, 243 P.3d 382 (Kan. App. 2010) (in a failure to register case, the opinion facts provide “In October 2008, the State sought to revoke Wells' probation because he **violated the terms of his probation by** receiving speeding tickets, failing to report a change of employment to his probation officer, failing to perform his required community service hours, failing to comply with his curfew hours, **failing to pay his full child support obligation**, and failing to make payments on his court costs and fees. The district court revoked Wells' probation, but also reinstated it.”) (emphasis added).

By statute, federal courts may include a term of probation that defendants pay child support. See 18 U.S.C.A. § 3563; *U.S. v. Barajas*, 331 F.3d 1141 (10th Cir. 2003) (holding that defendant was afforded constructive presentence notice of the possibility that he would be subject to supervised release condition that he pay child support, since both the sentencing guidelines and statute listed supporting dependents as a standard provision for supervised release); *Peters v. Government of Virgin Islands*, 299 F.Supp.2d 490 (D.C. V.I. 2004) (noting that the statute that grants the sentencing judge wide discretion in fashioning conditions attached to probation allows the judge to order a defendant to pay any support obligations that have already been determined, including child support, regardless of whether that support payment is related to the crime).

B. Why this proposal is being requested? Provide supporting information, e.g., benefit to court operations, budget, statistics on increased caseloads, reports, etc. This would be one more tool to help collect child support. It also gives probation one more area in which it can ensure the person on probation is taking responsibility and complying with the law.

C. Provide the contact information of any individuals with relevant expert knowledge on this subject.

Hon. Janet Barton, Presiding Judge: 602.506.5340

Hon. Paul McMurdie, Family Court Presiding Judge: 602.372.0765

Barbara Broderick, Chief Probation Officer: 602.506.7244

Lori Ash, General Counsel: 602.506.5433

D. Attach the recommended language of the legislation to this form. Please include the entire section of law, use UPPER CASE to designate new language and ~~strikethrough~~ to designate stricken language. (The Government Affairs group will assist in final drafting as the proposal moves forward).

12-253. Powers and duties

The adult probation officer shall:

1. Make and file a complete record of persons placed under suspended sentence by the court, and of all reports made to the officer in writing or in person, in accordance with the conditions imposed by the court.
2. Exercise general supervision and observation over persons under suspended sentence, subject to control and direction by the court.
3. Serve warrants, make arrests and bring persons before the court who are under suspended sentences. The officer has the authority of a peace officer in the performance of the officer's duties.
4. Investigate cases referred to the officer for investigation by the court in which the officer is serving and report to the court. In an investigation for a presentence report, the adult probation officer shall promptly inquire into the circumstances of the offense, the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, including the ability to contribute to reimbursement for the costs of the person's legal defense pursuant to section 11-584, education and personal habits. The presentence report shall contain a recommendation by the officer regarding contribution by the convicted person toward the costs of legal defense pursuant to section 11-584. The officer shall also promptly inquire into the physical, emotional and financial impact of the offense on the victim and the emotional and financial impact of the offense on the immediate family of the victim and shall notify the victim or the immediate family of the victim of the right to appear personally or by counsel at any aggravation or mitigation proceeding.
5. Secure and keep a complete identification record of every person released under a suspended sentence and a written statement of the conditions of the suspension.
6. Obtain and assemble information concerning the conduct of persons placed under suspended sentence and report the information to the court.
7. Bring defaulting probationers into court when in the probation officer's judgment the conduct of the probationer justifies the court to revoke suspension of the sentence.
8. Monitor the payment of restitution AND OTHER COURT-ORDERED FINANCIAL OBLIGATIONS INCLUDING CHILD SUPPORT.

E. Can the requested change be achieved by another method? No How?

Court Rule Administrative Code

F. If adopted by the Arizona Legislature, would the regular effective date (90 days after adjournment of the legislative session) be acceptable, or is there a reason for an emergency effective date (effective immediately upon signature of the Governor) or a delayed effective date? If a delayed effective date is requested, what date is recommended? Regular Effective Date

SECTION II: IMPACTS

A. Check ALL courts that could be affected.

Supreme Appellate Superior Limited Jurisdiction

- B. List the Arizona Revised Statute(s), Court Rule(s) or Administrative Code(s) affected by the proposed legislation. A.R.S. § 12-253 and ACJA 6-105**
- C. Describe anticipated impacts of proposed legislation on the administration of the courts, such as adoption or revision of court rule or code, shift of cases from one court level to another, added or revised reporting requirements, collection of statistics, automation requirements, etc. None**
- D. Describe any anticipated fiscal impact of this legislation. None**
- E. Will this legislation impact other governmental agencies? Yes. How? The Adult Probation Departments, depending on how each wanted to implemented this, may need access to the ATLAS system, which is the clearinghouse for child support payments in Arizona.**
- F. Describe the consequences if the proposed legislation is not pursued or passed this year. The Probation Department would not be able to assist in child support enforcement.**

SECTION III: SUPPORT OR OPPOSITION

- A. Identify any agencies, groups, or legislators, etc. who may support or have expressed an interest in the proposed legislation and the reasons for the support or interest. Unknown at this time.**
- B. Identify any agencies, groups, or legislators, etc. who may oppose the proposed legislation and the reasons for the opposition. Unknown at this time.**

ARIZONA JUDICIAL COUNCIL
Legislative Request for Proposal
2016 Legislative Session

- *Submit electronically to Brandi Ensign at bensign@courts.az.gov*
- *For questions contact Jerry Landau or Amy Love: 602-452-3361*

SUBJECT MATTER OF PROPOSAL: Juvenile Intensive Probation Determinations and Required Activities and Responses to Substance Abuse Violations

DATE: August 14, 2015

PROPOSAL REQUESTED BY: Superior Court in Maricopa County and Maricopa County Juvenile Probation Department

Name: Eric Meaux

Title: Chief Juvenile Probation Officer

Address: Durango Juvenile
3125 W. Durango St.
Phoenix, AZ

Telephone: 602.506.2638

E-mail: meauxe@juvenile.maricopa.gov

SECTION I: PROPOSAL

- A. **Please summarize the proposal.** The Juvenile Court and the Juvenile Probation Department propose to amend A.R.S. §§ 8-341 and -352 to remove redundant provisions and to allow the juvenile court more discretion in determining levels of supervision, responses to certain violations based on an expansion in allowable activities and guided by objective assessment of risk, levels of need, and supporting evidence-based best practices that identifies the significant importance of families as a protective factor to reduce recidivism. These changes would be applicable to the juvenile intensive probation and dispositional statutory provisions.
- B. **Why this proposal is being requested? Provide supporting information, e.g., benefit to court operations, budget, statistics on increased caseloads, reports, etc.** See above.
- C. **Provide the contact information of any individuals with relevant expert knowledge on this subject.**

Eric Meaux, Chief Probation Officer: 602.506.2638

Lori Ash, General Counsel: 602.506.5433

- D. Attach the recommended language of the legislation to this form. Please include the entire section of law, use UPPER CASE to designate new language and ~~strikethrough~~ to designate stricken language. (The Government Affairs group will assist in final drafting as the proposal moves forward).**

8-341. Disposition and commitment; definitions

...

C. If a juvenile is adjudicated as a first time felony juvenile offender, the court shall provide the following written notice to the juvenile:

You have been adjudicated a first time felony juvenile offender. You are now on notice that if you are adjudicated of another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fourteen years of age or older, you ~~MAY~~will be placed on juvenile intensive probation, which may include home arrest and electronic monitoring, or you may be placed on juvenile intensive probation and may be incarcerated for a period of time in a juvenile detention center, or you may be committed to the department of juvenile corrections or you may be prosecuted as an adult. If you are convicted as an adult of a felony offense and you commit any other offense, you will be prosecuted as an adult.

D. If a juvenile is fourteen years of age or older and is adjudicated as a repeat felony juvenile offender, the juvenile court ~~MAY~~shall place the juvenile on juvenile intensive probation, which may include home arrest and electronic monitoring, may place the juvenile on juvenile intensive probation, which may include incarceration for a period of time in a juvenile detention center, or may commit the juvenile to the department of juvenile corrections pursuant to subsection A, paragraph 1, subdivision (e) of this section for a significant period of time.

...

~~T. If a juvenile is adjudicated delinquent for an offense involving the purchase, possession or consumption of spirituous liquor or a violation of title 13, chapter 34 and is placed on juvenile probation, the court may order the juvenile to submit to random drug and alcohol testing at least two times per week as a condition of probation.~~

~~U. A juvenile who is adjudicated delinquent for an offense involving the purchase, possession or consumption of spirituous liquor or a violation of title 13, chapter 34, who is placed on juvenile probation and who is found to have consumed any spirituous liquor or to have used any drug listed in section 13-3401 while on probation is in violation of the juvenile's probation. A juvenile who commits a third or subsequent violation of a condition of probation as prescribed by this subsection shall be brought before the juvenile court and, if the allegations are proven, the court shall either revoke probation and hold a disposition hearing pursuant to this section or select additional conditions of probation as it deems necessary, including detention, global position system monitoring, additional alcohol or drug treatment, community restitution, additional drug or alcohol testing or a monetary assessment.~~

...

8-352. Intensive probation; evaluation; criteria; limit; conditions

...

E. Intensive probation shall be conditioned on the juvenile:

1. Participating in one or more of the following throughout the term of intensive probation for not less than thirty-two hours each week:

(a) School.

(b) A court ordered treatment program.

(c) Employment.

(d) Supervised community restitution work.

(E) POSTIVE FAMILY ACTIVITIES THAT ARE STRUCTURED TO STRENGTHEN FAMILIAL RELATIONSHIPS.

...

E. Can the requested change be achieved by another method? No How?

Court Rule Administrative Code

F. If adopted by the Arizona Legislature, would the regular effective date (90 days after adjournment of the legislative session) be acceptable, or is there a reason for an emergency effective date (effective immediately upon signature of the Governor) or a delayed effective date? If a delayed effective date is requested, what date is recommended? Regular Effective Date

SECTION II: IMPACTS

A. Check ALL courts that could be affected.

Supreme Appellate Superior Limited Jurisdiction

B. List the Arizona Revised Statute(s), Court Rule(s) or Administrative Code(s) affected by the proposed legislation. A.R.S. §§ 8-341 and -352 and ACJA 6-302 and 6-302.01.

C. Describe anticipated impacts of proposed legislation on the administration of the courts, such as adoption or revision of court rule or code, shift of cases from one court level to another, added or revised reporting requirements, collection of statistics, automation requirements, etc. AOC would need to revise ACJA 6-302 and 6-302.01 to match whatever changes are adopted by this proposal.

D. Describe any anticipated fiscal impact of this legislation. This may result on fewer juveniles placed on JIPS and a reduction in court-related activities, which could lower costs.

E. Will this legislation impact other governmental agencies? No How?

- F. Describe the consequences if the proposed legislation is not pursued or passed this year. The court would continue to be required to place juveniles on JIPS who may do well with a lower level of supervision. In addition, it restricts our direction toward Evidence Based Practices, a strategic priority for all Courts.**

SECTION III: SUPPORT OR OPPOSITION

- A. Identify any agencies, groups, or legislators, etc. who may support or have expressed an interest in the proposed legislation and the reasons for the support or interest. Unknown at this time.**
- B. Identify any agencies, groups, or legislators, etc. who may oppose the proposed legislation and the reasons for the opposition. Unknown at this time.**

ARIZONA JUDICIAL COUNCIL
Legislative Request for Proposal
2016 Legislative Session

- *Submit electronically to Brandi Ensign at bensign@courts.az.gov*
- *For questions contact Jerry Landau or Amy Love: 602-452-3361*

SUBJECT MATTER OF PROPOSAL: Adult Probation Statutes **DATE:** August 14, 2015

PROPOSAL REQUESTED BY: Superior Court in Maricopa County and
Maricopa County Adult Probation Department

Name: Barbara Broderick

Title: Chief Adult Probation Officer

Address: Downtown Justice Center
620 W. Jackson Street
Phoenix, AZ

Telephone: 602.506.7244

E-mail: bbroderi@apd.maricopa.gov

SECTION I: PROPOSAL

- A. Please summarize the proposal. Members of CORP are able to purchase service credits for past work as a corrections officer or law enforcement officer but not for past work as a probation officer, surveillance officer, or detention officer. APD proposes amending A.R.S. § 38-909 to include these areas of past employment. APD believes this may help the department recruit individuals who already have experience in probation work.**
- B. Why this proposal is being requested? Provide supporting information, e.g., benefit to court operations, budget, statistics on increased caseloads, reports, etc. See above.**
- C. Provide the contact information of any individuals with relevant expert knowledge on this subject.**
- Barbara Broderick, Chief Probation Officer: 602.506.7244
Lori Ash, General Counsel: 602.506.6433
- D. Attach the recommended language of the legislation to this form. Please include the entire section of law, use UPPER CASE to designate new language**

and ~~strikethrough~~ to designate stricken language. (The Government Affairs group will assist in final drafting as the proposal moves forward).

38-909. Redemption of prior service; calculation

- A. Each present active member of the plan who has at least five years of credited service with the plan who had previous service in this state as an employee with an employer now covered by the plan or who had previous service with an agency of the United States government, a state of the United States or a political subdivision of this state or a state of the United States as a full-time paid corrections officer, PROBATION OFFICER, SURVEILLANCE OFFICER, DETENTION OFFICER, or full-time paid certified peace officer may elect to redeem up to sixty months of any part of the prior service by paying into the plan any amounts required under subsection B if the prior service is not on account with any other retirement system.

...

- E. Can the requested change be achieved by another method? No How?
 Court Rule Administrative Code
- F. If adopted by the Arizona Legislature, would the regular effective date (90 days after adjournment of the legislative session) be acceptable, or is there a reason for an emergency effective date (effective immediately upon signature of the Governor) or a delayed effective date? If a delayed effective date is requested, what date is recommended? Regular Effective Date

SECTION II: IMPACTS

- A. Check ALL courts that could be affected.
 Supreme Appellate X Superior Limited Jurisdiction
- B. List the Arizona Revised Statute(s), Court Rule(s) or Administrative Code(s) affected by the proposed legislation. A.R.S. § 38-909
- C. Describe anticipated impacts of proposed legislation on the administration of the courts, such as adoption or revision of court rule or code, shift of cases from one court level to another, added or revised reporting requirements, collection of statistics, automation requirements, etc. None.
- D. Describe any anticipated fiscal impact of this legislation. This proposal is cost neutral as the members pay the cost of the past service time.
- E. Will this legislation impact other governmental agencies? No How?
- F. Describe the consequences if the proposed legislation is not pursued or passed this year. None

SECTION III: SUPPORT OR OPPOSITION

- A. Identify any agencies, groups, or legislators, etc. who may support or have expressed an interest in the proposed legislation and the reasons for the support or interest. Unknown at this time.

- B. Identify any agencies, groups, or legislators, etc. who may oppose the proposed legislation and the reasons for the opposition. Unknown at this time.

ARIZONA JUDICIAL COUNCIL
Legislative Request for Proposal
2016 Legislative Session

- *Submit electronically to Brandi Ensign at bensign@courts.az.gov*
- *For questions contact Jerry Landau or Amy Love: 602-452-3361*

SUBJECT MATTER OF PROPOSAL: Entry on Records **DATE:** August 14, 2015

PROPOSAL REQUESTED BY: Superior Court in Maricopa County

Name: Hon. Sam Myers

Title: Criminal Department Presiding Judge

Address: South Court Tower, 13200
175 W. Madison St.
Phoenix, AZ. 85003

Telephone: 602.372.2940

E-mail: myerss02@superiorcourt.maricopa.gov

SECTION I: PROPOSAL

- A. Please summarize the proposal.** The current version of A.R.S. § 13-4051 requires the court to notify “all law enforcement agencies” when entering an order that records indicate the person has been cleared. The requirement to notify “all law enforcement agencies” is not reasonable and not something that can realistically be done by the court. In addition, this creates extra work for the law enforcement agencies that were not involved in the investigation or the case. As a result, the court requests the statute be amended to only require notification to the agencies requested by the petitioner.
- B. Why this proposal is being requested? Provide supporting information, e.g., benefit to court operations, budget, statistics on increased caseloads, reports, etc.** The current requirements for notice of the order are overbroad and unrealistic. The court simply cannot comply with the current requirement. Even if the language was limited to Arizona law enforcement agencies, that would require the Court to notify over 110 federal, state, tribal, county, and municipal law enforcement agencies operating within this state (per US Bureau of Justice Statistics' 2008 Census of State and Local Law Enforcement Agencies).
- C. Provide the contact information of any individuals with relevant expert knowledge on this subject.**

- D. Attach the recommended language of the legislation to this form. Please include the entire section of law, use UPPER CASE to designate new language and ~~strikethrough~~ to designate stricken language. (The Government Affairs group will assist in final drafting as the proposal moves forward).**

§ 13-4051. Entry on records; stipulation; court order

A. Any person who is wrongfully arrested, indicted or otherwise charged for any crime may petition the superior court for entry on all court records, police records and any other records of any other agency relating to such arrest or indictment a notation that the person has been cleared.

B. After a hearing on the petition, if the judge believes that justice will be served by such entry, the judge shall issue the order requiring the entry that the person has been cleared on such records, with accompanying justification therefor, and shall cause a copy of such order to be delivered to ~~THE~~ law enforcement agencies and courts AS REQUESTED BY THE PETITIONER. The order shall further require that all law enforcement agencies and courts shall not release copies of or provide access to such records to any person except on order of the court.

C. Any person who has notice of such order and fails to comply with the court order issued pursuant to this section shall be liable to the person for damages from such failure.

- E. Can the requested change be achieved by another method? No How?**

Court Rule Administrative Code

- F. If adopted by the Arizona Legislature, would the regular effective date (90 days after adjournment of the legislative session) be acceptable, or is there a reason for an emergency effective date (effective immediately upon signature of the Governor) or a delayed effective date? If a delayed effective date is requested, what date is recommended? Regular Effective Date**

SECTION II: IMPACTS

- A. Check ALL courts that could be affected.**

Supreme Appellate Superior Limited Jurisdiction

- B. List the Arizona Revised Statute(s), Court Rule(s) or Administrative Code(s) affected by the proposed legislation. A.R.S. § 13-4051**

- C. Describe anticipated impacts of proposed legislation on the administration of the courts, such as adoption or revision of court rule or code, shift of cases from one court level to another, added or revised reporting requirements, collection of statistics, automation requirements, etc. This will have minimal**

court impact. If anything, this reduces the workload of the court and clerk because the court/clerk will not need to send the order to as many law enforcement agencies.

- D. **Describe any anticipated fiscal impact of this legislation.** None
- E. **Will this legislation impact other governmental agencies? Yes How?** Law enforcement agencies who were not involved in the investigation or case will not receive copies of orders that do not pertain to them. This will likely reduce their workload in trying to determine if they have to take any action in response to the order.
- F. **Describe the consequences if the proposed legislation is not pursued or passed this year.** The court will continue to struggle with how to comply with the statute as written.

SECTION III: SUPPORT OR OPPOSITION

- A. **Identify any agencies, groups, or legislators, etc. who may support or have expressed an interest in the proposed legislation and the reasons for the support or interest.** Unknown at this time.
- B. **Identify any agencies, groups, or legislators, etc. who may oppose the proposed legislation and the reasons for the opposition.** Unknown at this time.

ARIZONA JUDICIAL COUNCIL
Legislative Request for Proposal
2016 Legislative Session

- *Submit electronically to Brandi Ensign at bensign@courts.az.gov*
- *For questions contact Jerry Landau or Amy Love: 602-452-3361*

SUBJECT MATTER OF PROPOSAL:

Conforming two Title 12 statutes to the Arizona Rules of Civil Procedure

DATE:

August 17, 2015

PROPOSAL REQUESTED BY:

Name: Mark Meltzer, on behalf of the Task Force on the Arizona Rules of Civil Procedure

Title: Court Services Division staff for the Task Force

Address: 1501 West Washington St., Suite 410, Phoenix 85007

Telephone: 602.452.3242

E-mail: mmeltzer@courts.az.gov

SECTION I: PROPOSAL

A. Please summarize the proposal.

Supreme Court Administrative Order 2014-116 established the Task Force on the Arizona Rules of Civil Procedure (“TF.ARCP”). The Task Force is performing the first comprehensive review of Arizona’s civil rules since their adoption in 1956. The Court directed the Task Force, among other things, to conform the civil rules to modern usage, and to facilitate by rule amendments the resolution of civil cases without unnecessary cost, delay, or complexity.

This proposal requests changes to two statutes so those statutes don’t conflict with court rules. The proposed statutory changes would (1) simplify the process for including “costs” in a final judgment; and (2) clarify the process for court appointment of a receiver. The result of these changes would be uniformity between the statutes and court rules.

B. Why this proposal is being requested? Provide supporting information, e.g., benefit to court operations, budget, statistics on increased caseloads, reports, etc.

Costs: **A.R.S. § 12-346** provides in part that a statement of costs in a civil action “may be filed and served within ten days after judgment.” But a statement of costs, like a claim for attorney’s fees, should be filed before the entry of judgment. That way, costs as well as attorney’s fees can be included in a single judgment. The current language of **§ 12-346**, which allows for a post-judgment claim for costs, could require a subsequent amendment of the judgment to include costs; or it could require the entry of a second and separate judgment solely for costs. Both of these alternatives are inefficient and contrary to having a single judgment that the parties can enforce or appeal. Furthermore, most judges as a practical matter now determine costs before the entry of judgment. But a novice or out-of-state attorney, or a self-represented litigant, might be confused by a statute that allows costs to be considered post-judgment. **§ 12-346** is strictly procedural; the time for filing a statement of costs should be governed by the court’s procedural rules. The TF.ARCP accordingly proposes a repeal of **§ 12-346**.

Receivers: **A.R.S. § 12-1242** provides in part that an application for appointment of a receiver must be “served upon the adverse party, together with reasonable notice of the time of hearing.” This is impractical, because sometimes the court needs to appoint a receiver immediately, and before the applicant completes service of a notice on the adverse party. The TF.ARCP seeks to delete the aforementioned portion of **§ 12-1242**. It also seeks to delete a sentence in this statute that allows the adverse party to file counter affidavits, and which permits “such testimony as the court admits.” These provisions are procedural. After the defendant is served with a notice of hearing and the applicant’s affidavits, the defendant should respond and present such affidavits and testimony as allowed by court rules.

C. Provide the contact information of any individuals with relevant expert knowledge on this subject.

William Klain, Lang-Klain, TF.ARCP co-chair: 480.947.1911
David Rosenbaum, Osborn Maledon, TF.ARCP co-chair: 602.640.9345
John Rogers, Supreme Court staff attorney, TF.ARCP staff: 602.452.3388
Mark Meltzer, Court Services Division, TF.ARCP staff: 602.452.3242

D. Attach the recommended language of the legislation to this form. Please include the entire section of law, use UPPER CASE to designate new language and ~~strikethrough~~ to designate stricken language. (The Government Affairs group will assist in final drafting as the proposal moves forward).

See page 5.

E. Can the requested change be achieved by another method? How?

Court Rule Administrative Code

No. The TF.ARCP will propose amendments to court rules, but the current statutes are inconsistent with those amendments.

- F. If adopted by the Arizona Legislature, would the regular effective date (90 days after adjournment of the legislative session) be acceptable, or is there a reason for an emergency effective date (effective immediately upon signature of the Governor) or a delayed effective date? If a delayed effective date is requested, what date is recommended?**

A delayed effective date is appropriate. If the rules necessitating these statutory changes are adopted by the Court, those rules would probably become effective on January 1, 2017. **January 1, 2017**, would therefore also be the most appropriate effective date for the legislative changes.

SECTION II: IMPACTS

- A. Check ALL courts that could be affected.**

Supreme Appellate Superior Limited Jurisdiction

- B. List the Arizona Revised Statute(s), Court Rule(s) or Administrative Code(s) affected by the proposed legislation.**

Costs: **Rule 54(f)** of the Arizona Rules of Civil Procedure concerns “costs.” The TF.ARCP’s draft of this rule, to be consistent with the statute, now provides that a party claiming costs must file a statement of costs “within 10 days after judgment is entered.” However, the TF.ARCP, anticipates that the Civil Practice and Procedure Committee of the State Bar will recommend a change to the timing requirement; this change would require the court to consider costs before the entry of judgment. It’s noteworthy that Rule 58(b) has a provision that precludes entry of a judgment if claims for attorney’s fees have not been resolved and addressed in the judgment. For efficiency, costs should be treated the same way.

Receivers: Current **Rule 66** of the Arizona Rules of Civil Procedure concerns “receivers.” Although **§ 12-1242** indicates that notice to the adverse party is required before the court appoints a receiver, current **Rule 66** provides in part that notice to the adverse party is not required in two circumstances: (1) that despite reasonable efforts, personal service on the adverse party cannot be made before the hearing; or (2) there is “substantial cause” for appointing a receiver before service on the adverse party. The Task Force’s revised version of Rule 66 will incorporate parallel provisions.

- D. Describe anticipated impacts of proposed legislation on the administration of the courts, such as adoption or revision of court rule or code, shift of cases from one court level to another, added or revised reporting requirements, collection of statistics, automation requirements, etc.**

No impacts in these areas are anticipated.

- E. Describe any anticipated fiscal impact of this legislation.**

No fiscal impact is anticipated.

- E. Will this legislation impact other governmental agencies? How?**

No impact on other governmental agencies is anticipated.

- F. Describe the consequences if the proposed legislation is not pursued or passed this year.**

The Court will consider TF.ARCP's comprehensive rule petition at its August 2016 rules agenda. If the proposed legislative changes are enacted during the 2016 session, and the Court adopts the proposed rule amendments, then the rules will be consistent with the statutes. If the legislation is not enacted during the 2016 session, and the Court adopts the proposed rules, they will be contrary to the current statutes.

SECTION III: SUPPORT OR OPPOSITION

- A. Identify any agencies, groups, or legislators, etc. who may support or have expressed an interest in the proposed legislation and the reasons for the support or interest.**

Support for this proposal will be sought from the Committee on Superior Court at its September 11, 2015 meeting.

- B. Identify any agencies, groups, or legislators, etc. who may oppose the proposed legislation and the reasons for the opposition.**

None are known.

Proposed statutory changes

Proposed additions are shown by underline; deletions are shown by ~~striketrough~~

A.R.S. § 12-346:

~~12-346.~~ Statement of costs; service and objections

~~A. The party in whose favor judgment is rendered and who claims costs shall file a verified statement of his costs and serve a copy thereof on the opposing party. The statement shall be filed and served within ten days after judgment, unless for good cause shown the time is extended by the court.~~

~~B. At any time within five days after receipt of the copy of the statement of costs, the opposing party may file objections to the statement, serving a copy thereof on the party claiming such costs. The court shall pass upon the objections and by its order correct the statement of costs to the extent that it requires correction.~~

A.R.S. § 12-1242:

~~12-1242.~~ Application for appointment of receiver; verification; service; notice of hearing; restraining order pending hearing

~~An application for the appointment of a receiver shall be in writing, and supported by affidavit and served upon the adverse party, together with reasonable notice of the time of hearing. The adverse party may file counteraffidavits, and the counteraffidavits, with such testimony as the court admits, shall be considered on hearing the application. The court may restrain the adverse party from removing, secreting or otherwise disposing of the property to the injury of the applicant, pending hearing the application for appointment of a receiver.~~

ARIZONA JUDICIAL COUNCIL
Legislative Request for Proposal
2016 Legislative Session

- *Submit electronically to Brandi Ensign at bensign@courts.az.gov*
- *For questions contact Jerry Landau or Amy Love: 602-452-3361*

SUBJECT MATTER OF PROPOSAL:

Extend the Juvenile Jurisdiction to 18 years of age to 19 years of age.

DATE:

9-21-15

PROPOSAL REQUESTED BY:

Name:

Joseph Kelroy and Kathy Waters

Title:

Directors and JJSD and APD

Address:

1501 W Washington Phoenix AZ 85007

Telephone:

602-452-3450

E-mail:

Jkelroy@courts.az.gov

kwaters@courts.az.gov

SECTION I: PROPOSAL

A. Please summarize the proposal.

Raise the jurisdiction of juvenile probation to 19 years of age

This proposal is to provide the juvenile court and juvenile probation with the authority to supervise a juvenile placed on probation to the age of 19. This is not a proposal to raise the age of majority to 19.

Currently the juvenile probation system and court lose jurisdiction at age 18. Many juveniles commit their first offense at age 17. Because jurisdiction is lost at 18, prosecutors are reluctant to process them as a juvenile due to the natural time it takes to resolve the case. As such, they wind up in the adult system, on adult probation caseloads with a permanent adult criminal record. This proposal would not alter the prosecutor's current flexibility to charge a juvenile as an adult. This is aimed at those cases where the prosecutor would prefer to handle the matter in juvenile court, but has no choice due to the juvenile turning 18 in the near future.

- B. Why this proposal is being requested? Provide supporting information, e.g., benefit to court operations, budget, statistics on increased caseloads, reports, etc.**

The majority of states (37) around the county currently have a juvenile jurisdiction ranging from 18 to 21 years of age. Extending the juvenile jurisdiction enables juvenile courts to have adequate time to service youth that require treatment beyond their 18th birthday. It also reduces the burden on the adult system by allowing the juvenile system to service youth under court order beyond their 18th birthday. Often juveniles age out of the juvenile system not completing treatment programs successfully thus committing new offenses and ending up in the adult criminal court.

As well, there is a great deal of research on adolescent brain development. This research indicates that the adolescent brain does not fully develop until the early 20's, reasoning and impulse control being the later areas of development. This suggests that adolescents will make poor decisions at times which if on probation results in violations of probation and new delinquent offenses.

- C. Provide the contact information of any individuals with relevant expert knowledge on this subject.**

Joseph Kelroy
Kathy Waters

- D. Attach the recommended language of the legislation to this form. Please include the entire section of law, use UPPER CASE to designate new language and ~~strikethrough~~ to designate stricken language. (The Government Affairs group will assist in final drafting as the proposal moves forward).**

8-202. Jurisdiction of juvenile court

- A. The juvenile court has original jurisdiction over all delinquency proceedings brought under the authority of this title.
- B. The juvenile court has exclusive original jurisdiction over all proceedings brought under the authority of this title except for delinquency proceedings.
- C. The juvenile court may consolidate any matter, except that the juvenile court shall not consolidate any of the following:
1. A criminal proceeding that is filed in another division of superior court and that involves a child who is subject to the jurisdiction of the juvenile court.
 2. A delinquency proceeding with any other proceeding that does not involve delinquency, unless the juvenile delinquency adjudication proceeding is not heard at the same time or in the same hearing as a nondelinquency proceeding.
- D. The juvenile court has jurisdiction of proceedings to obtain judicial consent to the marriage, employment or enlistment in the armed services of a child, if consent is required by law.
- E. The juvenile court has jurisdiction over both civil traffic violations and offenses listed in section 8-323, subsection B that are committed within the county by persons under eighteen years of age unless the presiding judge of the county declines jurisdiction of these cases. The presiding judge of the county may decline jurisdiction of civil traffic violations committed within

the county by juveniles if the presiding judge finds that the declination would promote the more efficient use of limited judicial and law enforcement resources located within the county. If the presiding judge declines jurisdiction, juvenile civil traffic violations shall be processed, heard and disposed of in the same manner and with the same penalties as adult civil traffic violations.

F. The orders of the juvenile court under the authority of this chapter or chapter 3 or 4 of this title take precedence over any order of any other court of this state except the court of appeals and the supreme court to the extent that they are inconsistent with orders of other courts.

G. Except as otherwise provided by law, jurisdiction of a child that is obtained by the juvenile court in a proceeding under this chapter or chapter 3 or 4 of this title shall be retained by it, for the purposes of implementing the orders made and filed in that proceeding, until the child becomes ~~eighteen~~ **NINETEEN** years of age, unless terminated by order of the court before the child's ~~eighteenth~~ **NINETEENTH** birthday.

H. Persons who are under eighteen years of age shall be prosecuted in the same manner as adults if either:

1. The juvenile court transfers jurisdiction pursuant to section 8-327.
2. The juvenile is charged as an adult with an offense listed in section 13-501.

8-246. Jurisdiction; length of commitment; placement; assessment

A. When jurisdiction of a juvenile has been acquired by the juvenile court, the juvenile shall continue under the jurisdiction of the juvenile court until the juvenile attains ~~NINETEEN~~ **eighteen** years of age, unless sooner discharged pursuant to law. From the time of commitment to the department of juvenile corrections, a juvenile shall be subject to the control of the department of juvenile corrections until the juvenile's absolute discharge or until expiration of the commitment on the juvenile's ~~NINETEENTH~~ **eighteenth** birthday.

B. Except pursuant to section 8-341, subsection N and section 8-344, the awarding of a juvenile shall not extend beyond the juvenile's ~~eighteenth~~ **NINETEENTH** birthday, and commitment to the department of juvenile corrections shall be until the juvenile attains ~~NINETEEN~~ **eighteen** years of age unless sooner discharged by the department of juvenile corrections.

C. The supreme court in cooperation with the department of juvenile corrections and other state agencies shall develop a common risk needs assessment instrument to be used for each juvenile who is referred to the juvenile court. The juvenile court shall update the risk needs assessment on each subsequent referral of the juvenile to the juvenile court, and the court shall use the risk needs assessment to determine the appropriate disposition of the juvenile. The supreme court in cooperation with the department of juvenile corrections shall develop guidelines to be used by juvenile court judges in determining those juveniles who should be committed to the department of juvenile corrections.

E. Can the requested change be achieved by another method? How?

Court Rule **Administrative Code**

The extended jurisdiction needs to change in statute given the existing law states the Juvenile Court Jurisdiction ends at a person's 18th birthday.

- F. If adopted by the Arizona Legislature, would the regular effective date (90 days after adjournment of the legislative session) be acceptable, or is there a reason for an emergency effective date (effective immediately upon signature of the Governor) or a delayed effective date? If a delayed effective date is requested, what date is recommended?**

The regular effective date would be acceptable.

SECTION II: IMPACTS

- A. Check ALL courts that could be affected.**

Supreme Appellate Superior Limited Jurisdiction

- B. List the Arizona Revised Statute(s), Court Rule(s) or Administrative Code(s) affected by the proposed legislation.**

8 -202 (G)

8-246 (A+B)

8-341 (N)

- C. Describe anticipated impacts of proposed legislation on the administration of the courts, such as adoption or revision of court rule or code, shift of cases from one court level to another, added or revised reporting requirements, collection of statistics, automation requirements, etc.**

Currently the maximum age of a juvenile being supervised by the Juvenile Court is 18 years of age. As well, the ADJC ends their jurisdiction of juveniles at the same age. Allowing the juvenile court to maintain jurisdiction and probation supervision until a juvenile reaches their 19th birthday, this proposal would as well suggest the need for ADJC to have the same maximum age. This proposal would enable juvenile courts to continue supervision of youth who committed crimes prior to their 18th birthday for an additional year. Thus, keeping youth a year longer would increase court caseloads. Additionally, the Prosecutor's Office would have additional resources available to hold juveniles accountable for an one additional year.

The challenge remains as to where 18 year olds, who violate orders of the juvenile court, would be housed should incarceration be necessary.

- D. Describe any anticipated fiscal impact of this legislation.**

There would be additional treatment dollars needed to support juveniles who remain in the Juvenile System for treatment purposes. Also, it could reduce the number of filings by county attorneys to the adult system because the juvenile court would retain supervision and provide treatment/accountability until their 19th birthday.

E. Will this legislation impact other governmental agencies? How?

ADJC could be affected given currently youth age out of their system at age 18. We would support them to extend their end age for servicing youth to 19 years of age.

E. Describe the consequences if the proposed legislation is not pursued or passed this year.

The juvenile justice system would accept status quo however youth who commit crimes prior to but close to their 18th birthday are sometimes charges as adults because there is not enough time to complete due process and service the minor adequately before the court loses jurisdiction at 18. This proposal would remedy this issue. Research supports the fact that adolescent brain development has not occurred fully by age 18 thus suggesting that juvenile court should continue to serve and monitor these youth while protecting them from an adult conviction based solely on age.

The benefit of moving this proposal is that minors that would typically go the adult system due to aging out of the juvenile system at age 18 would not obtain a conviction on their record and would benefit from the treatment services available from the juvenile system.

SECTION III: SUPPORT OR OPPOSITION

A. Identify any agencies, groups, or legislators, etc. who may support or have expressed an interest in the proposed legislation and the reasons for the support or interest.

Children’s Action Alliance fully supports the concept of extended jurisdiction. The Arizona Chiefs Association is also in full support of extended jurisdiction.

B. Identify any agencies, groups, or legislators, etc. who may oppose the proposed legislation and the reasons for the opposition.

Arizona Prosecuting Attorneys Advisory Council has voiced concern.

Extended Jurisdiction Questions:

The following is a recap of the meeting yesterday regarding the EJJ discussion. If I have missed any key points please add them. From the discussion there were numerous questions raised regarding the proposal that needed further detail/answers. The juvenile court currently has jurisdiction until a minor reaches the age of 18. The juvenile court can obtain jurisdiction of a minor by the filing of a delinquent petition prior to their 18th birthday or the ~~adult returns a transferred youth back~~ criminal court transfers a minor to the jurisdiction of the juvenile court. This proposal for EJJ as written raises numerous questions. They ~~were~~ are as follows;

1. Does the filing of a delinquent petition or transfer from the criminal court give the extended jurisdiction to the juvenile court until the minor reaches age 19 as long as the offense occurred prior to their 18th birthday? Or....
2. Does the adjudication (or disposition) need to occur prior to the minors 18th birthday for the juvenile court to have jurisdiction until ~~their~~ the juvenile's 19th birthday?
3. If an 18 year old under the juvenile courts jurisdiction, violates ~~their probation conditions~~ a condition of probation and custody is determined necessary, ~~are they to be held in the juvenile detention center vs the jail~~ can the juvenile be detained in ADJC as well as detention? If so....
4. Are there site and sound separation requirements in the detention center or ADJC? If no, what ~~is~~ are the federal or state guidelines that enable this to occur?
5. If an 18 year old violates ~~their conditions~~ a condition of probation ~~and that warrants commitment to the ADJC,~~ is there a current statute that enables the juvenile court to commit the minor to ADJC? If not....
6. Does the age of jurisdiction for ADJC require a statutory change from 18 to 19 years of age?
7. Is there sufficient capacity in the detention centers and ADJC to absorb this change in statute? If yes...
8. What resources are needed to accomplish this change for detention?
9. If a detention is at capacity or appropriate services are available in another detention center, does current statute enable a county to place a minor at another detention center? If no...
10. What would be needed to accomplish this process?
11. Is there sufficient capacity on the current probation caseload to absorb this change in statute? If yes...
12. What resources are needed to accomplish this change for probation?

Statutes affected by this proposal would include:

- 8-202, 8-8-246 (A+LB), 8-322, 8-341 (B +LN) and 8-344 (D)

Statutes suggested to consider using vs the change in statute regarding EJJ would include:

- 8-341 (N)
- 13-921

TAB 4
Legislative Package
Additional Handout

1 Section 1. 8-341. Disposition and commitment; definitions

2 A. After receiving and considering the evidence on the proper disposition
3 of the case, the court may enter judgment as follows:

4 1. It may award a delinquent juvenile:

5 (a) To the care of the juvenile's parents, subject to the supervision
6 of a probation department.

7 (b) To a probation department, subject to any conditions the court may
8 impose, including a period of incarceration in a juvenile detention
9 center of not more than one year.

10 (c) To a reputable citizen of good moral character, subject to the
11 supervision of a probation department.

12 (d) To a private agency or institution, subject to the supervision of a
13 probation officer.

14 (e) To the department of juvenile corrections.

15 (f) To maternal or paternal relatives, subject to the supervision of a
16 probation department.

17 (g) To an appropriate official of a foreign country of which the juvenile
18 is a foreign national who is unaccompanied by a parent or guardian in
19 this state to remain on unsupervised probation for at least one year on
20 the condition that the juvenile cooperate with that official.

21 2. It may award an incorrigible child:

22 (a) To the care of the child's parents, subject to the supervision of a
23 probation department.

24 (b) To the protective supervision of a probation department, subject to
25 any conditions the court may impose.

26 (c) To a reputable citizen of good moral character, subject to the
27 supervision of a probation department.

28 (d) To a public or private agency, subject to the supervision of a
29 probation department.

30 (e) To maternal or paternal relatives, subject to the supervision of a
31 probation department.

32 B. If a juvenile is placed on probation pursuant to this section, the
33 period of probation may continue until the juvenile's eighteenth
34 birthday, except that the term of probation shall not exceed one year
35 if all of the following apply:

36 1. The juvenile is not charged with a subsequent offense.

37 2. The juvenile has not been found in violation of a condition of
38 probation.

1 3. The court has not made a determination that it is in the best interests
2 of the juvenile or the public to require continued supervision. The court
3 shall state by minute entry or written order its reasons for finding
4 that continued supervision is required.

5 4. The offense for which the juvenile is placed on probation does not
6 involve a dangerous offense as defined in section 13-105.

7 5. The offense for which the juvenile is placed on probation does not
8 involve a violation of title 13, chapter 14 or 35.1.

9 6. Restitution ordered pursuant to section 8-344 has been made.

10 7. The juvenile's parents have not requested that the court continue the
11 juvenile's probation for more than one year.

12 C. If a juvenile is adjudicated as a first time felony juvenile offender,
13 the court shall provide the following written notice to the juvenile:
14 You have been adjudicated a first time felony juvenile offender. You are
15 now on notice that if you are adjudicated of another offense that would
16 be a felony offense if committed by an adult and if you commit the other
17 offense when you are fourteen years of age or older, you ~~will~~ MAY be
18 placed on juvenile intensive probation, which may include home arrest
19 and electronic monitoring, or you may be placed on juvenile intensive
20 probation and may be incarcerated for a period of time in a juvenile
21 detention center, or you may be committed to the department of juvenile
22 corrections or you may be prosecuted as an adult. If you are convicted
23 as an adult of a felony offense and you commit any other offense, you
24 will be prosecuted as an adult.

25 D. If a juvenile is fourteen years of age or older and is adjudicated
26 as a repeat felony juvenile offender, the juvenile court ~~shall~~ MAY place
27 the juvenile on juvenile intensive probation, which may include home
28 arrest and electronic monitoring, may place the juvenile on juvenile
29 intensive probation, which may include incarceration for a period of
30 time in a juvenile detention center, or may commit the juvenile to the
31 department of juvenile corrections pursuant to subsection A, paragraph
32 1, subdivision (e) of this section for a significant period of time.

33 E. If the juvenile is adjudicated as a repeat felony juvenile offender,
34 the court shall provide the following written notice to the juvenile:
35 You have been adjudicated a repeat felony juvenile offender. You are now
36 on notice that if you are arrested for another offense that would be a
37 felony offense if committed by an adult and if you commit the other
38 offense when you are fifteen years of age or older, you will be tried
39 as an adult in the criminal division of the superior court. If you commit
40 the other offense when you are fourteen years of age or older, you may

1 be tried as an adult in the criminal division of the superior court. If
2 you are convicted as an adult, you will be sentenced to a term of
3 incarceration. If you are convicted as an adult of a felony offense and
4 you commit any other offense, you will be prosecuted as an adult.

5 F. The failure or inability of the court to provide the notices required
6 under subsections C and E of this section does not preclude the use of
7 the prior adjudications for any purpose otherwise permitted.

8 G. Except as provided in subsection S of this section, after considering
9 the nature of the offense and the age, physical and mental condition and
10 earning capacity of the juvenile, the court shall order the juvenile to
11 pay a reasonable monetary assessment if the court determines that an
12 assessment is in aid of rehabilitation. If the director of the department
13 of juvenile corrections determines that enforcement of an order for
14 monetary assessment as a term and condition of conditional liberty is
15 not cost-effective, the director may require the youth to perform an
16 equivalent amount of community restitution in lieu of the payment ordered
17 as a condition of conditional liberty.

18 H. If a child is adjudicated incorrigible, the court may impose a
19 monetary assessment on the child of not more than one hundred fifty
20 dollars.

21 I. A juvenile who is charged with unlawful purchase, possession or
22 consumption of spirituous liquor is subject to section 8-323. The
23 monetary assessment for a conviction of unlawful purchase, possession or
24 consumption of spirituous liquor by a juvenile shall not exceed five
25 hundred dollars. The court of competent jurisdiction may order a monetary
26 assessment or equivalent community restitution.

27 J. The court shall require the monetary assessment imposed under
28 subsection G or H of this section on a juvenile who is not committed to
29 the department of juvenile corrections to be satisfied in one or both
30 of the following forms:

31 1. Monetary reimbursement by the juvenile in a lump sum or installment
32 payments through the clerk of the superior court for appropriate
33 distribution.

34 2. A program of work, not in conflict with regular schooling, to repair
35 damage to the victim's property, to provide community restitution or to
36 provide the juvenile with a job for wages. The court order for
37 restitution or monetary assessment shall specify, according to the
38 dispositional program, the amount of reimbursement and the portion of
39 wages of either existing or provided work that is to be credited toward
40 satisfaction of the restitution or assessment, or the nature of the work

1 to be performed and the number of hours to be spent working. The number
2 of hours to be spent working shall be set by the court based on the
3 severity of the offense but shall not be less than sixteen hours.

4 K. If a juvenile is committed to the department of juvenile corrections,
5 the court shall specify the amount of the monetary assessment imposed
6 pursuant to subsection G or H of this section.

7 L. After considering the length of stay guidelines developed pursuant to
8 section 41-2816, subsection C, the court may set forth in the order of
9 commitment the minimum period during which the juvenile shall remain in
10 secure care while in the custody of the department of juvenile
11 corrections. When the court awards a juvenile to the department of
12 juvenile corrections or an institution or agency, it shall transmit with
13 the order of commitment copies of a diagnostic psychological evaluation
14 and educational assessment if one has been administered, copies of the
15 case report, all other psychological and medical reports, restitution
16 orders, any request for postadjudication notice that has been submitted
17 by a victim and any other documents or records pertaining to the case
18 requested by the department of juvenile corrections or an institution or
19 agency. The department shall not release a juvenile from secure care
20 before the juvenile completes the length of stay determined by the court
21 in the commitment order unless the county attorney in the county from
22 which the juvenile was committed requests the committing court to reduce
23 the length of stay. The department may temporarily escort the juvenile
24 from secure care pursuant to section 41-2804, may release the juvenile
25 from secure care without a further court order after the juvenile
26 completes the length of stay determined by the court or may retain the
27 juvenile in secure care for any period subsequent to the completion of
28 the length of stay in accordance with the law.

29 M. Written notice of the release of any juvenile pursuant to subsection
30 L of this section shall be made to any victim requesting notice, the
31 juvenile court that committed the juvenile and the county attorney of
32 the county from which the juvenile was committed.

33 N. Notwithstanding any law to the contrary, if a person is under the
34 supervision of the court as an adjudicated delinquent juvenile at the
35 time the person reaches eighteen years of age, treatment services may
36 be provided until the person reaches twenty-one years of age if the
37 court, the person and the state agree to the provision of the treatment
38 and a motion to transfer the person pursuant to section 8-327 has not
39 been filed or has been withdrawn. The court may terminate the provision

1 of treatment services after the person reaches eighteen years of age if
2 the court determines that any of the following applies:

- 3 1. The person is not progressing toward treatment goals.
- 4 2. The person terminates treatment.
- 5 3. The person commits a new offense after reaching eighteen years of
6 age.
- 7 4. Continued treatment is not required or is not in the best interests
8 of the state or the person.

9 O. On the request of a victim of an act that may have involved significant
10 exposure as defined in section 13-1415 or that if committed by an adult
11 would be a sexual offense, the prosecuting attorney shall petition the
12 adjudicating court to require that the juvenile be tested for the
13 presence of the human immunodeficiency virus. If the victim is a minor
14 the prosecuting attorney shall file this petition at the request of the
15 victim's parent or guardian. If the act committed against a victim is
16 an act that if committed by an adult would be a sexual offense or the
17 court determines that sufficient evidence exists to indicate that
18 significant exposure occurred, it shall order the department of juvenile
19 corrections or the department of health services to test the juvenile
20 pursuant to section 13-1415. Notwithstanding any law to the contrary,
21 the department of juvenile corrections and the department of health
22 services shall release the test results only to the victim, the
23 delinquent juvenile, the delinquent juvenile's parent or guardian and a
24 minor victim's parent or guardian and shall counsel them regarding the
25 meaning and health implications of the results.

26 P. If a juvenile has been adjudicated delinquent for an offense that if
27 committed by an adult would be ~~a felony~~ AN OFFENSE LISTED IN SECTION 41-
28 1750, SUBSECTION C, the court shall provide the department of public
29 safety Arizona automated fingerprint identification system established
30 in section 41-2411 with the juvenile's TEN-PRINT fingerprints, personal
31 identification data and other pertinent information. If a juvenile has
32 been committed to the department of juvenile corrections the department
33 shall provide the fingerprints and information required by this
34 subsection to the Arizona automated fingerprint identification system.
35 If the juvenile's fingerprints and information have been previously
36 submitted to the Arizona automated fingerprint identification system the
37 information is not required to be resubmitted.

38 Q. Access to fingerprint records submitted pursuant to subsection P of
39 this section shall be limited to the administration of criminal justice
40 as defined in section 41-1750. Dissemination of fingerprint information

1 shall be limited to the name of the juvenile, juvenile case number, date
2 of adjudication and court of adjudication.

3 R. If a juvenile is adjudicated delinquent for an offense that if
4 committed by an adult would be a misdemeanor, the court may prohibit the
5 juvenile from carrying or possessing a firearm while the juvenile is
6 under the jurisdiction of the department of juvenile corrections or the
7 juvenile court.

8 S. If a juvenile is adjudicated delinquent for a violation of section
9 13-1602, subsection A, paragraph 5, the court shall order the juvenile
10 to pay a fine of at least three hundred dollars but not more than one
11 thousand dollars. Any restitution ordered shall be paid in accordance
12 with section 13-809, subsection A. The court may order the juvenile to
13 perform community restitution in lieu of the payment for all or part of
14 the fine if it is in the best interests of the juvenile. The amount of
15 community restitution shall be equivalent to the amount of the fine by
16 crediting any service performed at a rate of ten dollars per hour. If
17 the juvenile is convicted of a second or subsequent violation of section
18 13-1602, subsection A, paragraph 5 and is ordered to perform community
19 restitution, the court may order the parent or guardian of the juvenile
20 to assist the juvenile in the performance of the community restitution
21 if both of the following apply:

- 22 1. The parent or guardian had knowledge that the juvenile intended to
23 engage in or was engaging in the conduct that gave rise to the violation.
- 24 2. The parent or guardian knowingly provided the juvenile with the means
25 to engage in the conduct that gave rise to the violation.

26 ~~T. If a juvenile is adjudicated delinquent for an offense involving the~~
27 ~~purchase, possession or consumption of spirituous liquor or a violation~~
28 ~~of title 13, chapter 34 and is placed on juvenile probation, the court~~
29 ~~may order the juvenile to submit to random drug and alcohol testing at~~
30 ~~least two times per week as a condition of probation.~~

31 ~~U. A juvenile who is adjudicated delinquent for an offense involving the~~
32 ~~purchase, possession or consumption of spirituous liquor or a violation~~
33 ~~of title 13, chapter 34, who is placed on juvenile probation and who is~~
34 ~~found to have consumed any spirituous liquor or to have used any drug~~
35 ~~listed in section 13-3401 while on probation is in violation of the~~
36 ~~juvenile's probation. A juvenile who commits a third or subsequent~~
37 ~~violation of a condition of probation as prescribed by this subsection~~
38 ~~shall be brought before the juvenile court and, if the allegations are~~
39 ~~proven, the court shall either revoke probation and hold a disposition~~
40 ~~hearing pursuant to this section or select additional conditions of~~

~~probation as it deems necessary, including detention, global position system monitoring, additional alcohol or drug treatment, community restitution, additional drug or alcohol testing or a monetary assessment.~~

Section 2. 8-352. Intensive probation; evaluation; criteria; limit; conditions

A. A juvenile probation officer shall prepare a disposition summary report for every juvenile who has been adjudicated of a delinquent act or of a technical violation of probation.

B. The juvenile probation officer shall evaluate the needs of the juvenile and the juvenile's risk to the community, including the nature of the offense, the delinquent history of the juvenile, the juvenile's history of referrals and adjustments and the recommendation of the juvenile's parents. The juvenile probation officer shall include the recommendation of the juvenile's parents in the disposition summary report. If the nature of the offense and the prior delinquent history of the juvenile indicate that the juvenile should be included in an intensive probation program pursuant to supreme court guidelines for juvenile intensive probation, the juvenile probation officer may recommend to the court that the juvenile be granted intensive probation.

C. After reviewing the juvenile's prior record, the facts and circumstances of the current delinquent act or technical violation of probation and the disposition summary report, the court may grant the juvenile a period of intensive probation.

D. When granting intensive probation the court shall set forth on the record the factual reasons for using the disposition.

E. Intensive probation shall be conditioned on the juvenile:

1. Participating in one or more of the following, **AS APPROVED BY THE COURT OR THE PROBATION OFFICER** throughout the term of intensive probation for not less than thirty-two hours each week:

(a) School.

(b) A ~~court ordered~~ treatment program.

(c) Employment.

(d) Supervised community restitution work.

(e) ANY ACTIVITY THAT SUPPORTS FAMILY ENGAGEMENT AND RESPONSIBILITY.

2. Paying restitution and probation fees except that the inability to pay probation fees or restitution does not prohibit participation in the intensive probation program.

3. Remaining at a place of residence at all times except to attend school, work or treatment, to perform community restitution or to participate in some activity, as specifically allowed in each instance

1 by the supervising juvenile probation officer, or if in the direct
2 company of a parent, guardian or custodian, as approved by the juvenile
3 probation officer.

4 4. Allowing administration of drug and alcohol tests as directed by a
5 juvenile probation officer.

6 5. Meeting any other conditions imposed by the court, including
7 electronic monitoring, to meet the needs of the juvenile or to limit the
8 risks to the community.

9 F. Probation fees shall be deposited in the juvenile probation fund
10 established pursuant to section 12-268.

11 Section 3. ~~8-355.~~ School; employment; community restitution programs

12 The juvenile intensive probation team shall ensure that each juvenile
13 under its supervision is ~~either employed, attending school,~~
14 ~~participating in a community restitution program or attending a court~~
15 ~~ordered treatment program or any combination thereof as ordered by the~~
16 ~~court~~ PARTICIPATING IN ONE OR MORE OF THE FOLLOWING, AS APPROVED BY THE
17 COURT OR THE PROBATION OFFICER THROUGHOUT THE TERM OF INTENSIVE PROBATION
18 for not less than thirty-two hours each week-:

- 19 1. SCHOOL.
- 20 2. A TREATMENT PROGRAM.
- 21 3. EMPLOYMENT.
- 22 4. SUPERVISED COMMUNITY RESTITUTION WORK.
- 23 5. ANY ACTIVITY THAT SUPPORTS FAMILY ENGAGEMENT AND RESPONSIBILITY.

24 Section 4. ~~13-902.~~ Periods of probation; monitoring; fees

25 A. Unless terminated sooner, probation may continue for the following
26 periods:

- 27 1. For a class 2 felony, seven years.
- 28 2. For a class 3 felony, five years.
- 29 3. For a class 4 felony, four years.
- 30 4. For a class 5 or 6 felony, three years.
- 31 5. For a class 1 misdemeanor, three years.
- 32 6. For a class 2 misdemeanor, two years.
- 33 7. For a class 3 misdemeanor, one year.

34 B. Notwithstanding subsection A of this section, unless terminated
35 sooner, probation may continue for the following periods:

- 36 1. For a violation of section 28-1381 or 28-1382, five years.
- 37 2. For a violation of section 28-1383, ten years.

38 C. When the court has required, as a condition of probation, that the
39 defendant make restitution for any economic loss related to the
40 defendant's offense and that condition has not been satisfied, the court

1 at any time before the termination or expiration of probation may extend
2 the period within the following limits:

3 1. For a felony, not more than five years.

4 2. For a misdemeanor, not more than two years.

5 D. Notwithstanding any other provision of law, justice courts and
6 municipal courts may impose the probation periods specified in subsection
7 A, paragraphs 5, 6 and 7 and subsection B, paragraph 1 of this section.

8 E. After conviction of a felony offense or an attempt to commit any
9 offense that is included in chapter 14 or 35.1 of this title or section
10 13-2308.01, 13-2923 or 13-3623, if probation is available, probation may
11 continue for a term of not less than the term that is specified in
12 subsection A of this section up to and including life and that the court
13 believes is appropriate for the ends of justice.

14 F. After conviction of a violation of section 13-3824, subsection A, if
15 a term of probation is imposed and the offense for which the person was
16 required to register was a felony, probation may continue for a term of
17 not less than the term that is specified in 3 subsection A of this
18 section up to and including life and that the court believes is
19 appropriate for the ends of justice.

20 G. If a person is convicted on or after November 1, 2006 of a dangerous
21 crime against children as defined in section 13-705, a term of probation
22 is imposed, the person is required to register pursuant to section 13-
23 3821 and the person is classified as a level three offender pursuant to
24 section 13-3825, the court shall require global position system or
25 electronic monitoring for the duration of the term of probation, **UNLESS**
26 **THE COURT DETERMINES THAT GLOBAL POSITION SYSTEM OR ELECTRONIC MONITORING**
27 **IS UNNECESSARY BASED UPON THE CIRCUMSTANCES OF THE OFFENSE, THE**
28 **DEFENDANT'S CONDUCT WHILE ON PROBATION, THE MEDICAL CONDITION OF THE**
29 **DEFENDANT AND ANY REPORTS FROM A TREATMENT PROVIDER.** The court may impose
30 a fee on the probationer to offset the cost of the monitoring device
31 required by this subsection. The fee shall be deposited in the adult
32 probation services fund pursuant to section 12-267, subsection A,
33 paragraph 3. This subsection does not preclude global position system or
34 electronic monitoring of any other person who is serving a term of
35 probation.

36 Section 5. **13-903. Calculation of periods of probation**

37 A. A period of probation commences on the day it is imposed or as
38 designated by the court, and an extended period of probation commences
39 on the day the original period lapses.

1 B. If a court determines that the defendant violated a condition of the
2 defendant's probation but reinstates probation, the period between the
3 date of the violation and the date of restoration of probation is not
4 computed as part of the period of probation. If it is determined that
5 the defendant is not a violator, there is no interruption of the period.

6 C. The running of the period of probation shall cease during ANY SENTENCE
7 OF IMPRISONMENT FOR ANY CONVICTION, the unauthorized absence of the
8 defendant from the jurisdiction or THE UNAUTHORIZED ABSENCE OF THE
9 DEFENDANT from any required supervision and shall resume only upon the
10 defendant's ABSOLUTE DISCHARGE FROM IMPRISONMENT ~~voluntary or~~
11 ~~involuntary~~ OR return to THE SUPERVISION OR MONITORING BY THE PROBATION
12 DEPARTMENT ~~the probation service~~.

13 D. The running of the period of probation shall cease during the period
14 from the filing of the petition to revoke probation to the termination
15 of revocation of probation proceedings, except that if a court determines
16 that the defendant is not a violator, there is no interruption of the
17 period of probation.

18 E. If probation is imposed on one who at the time is serving a sentence
19 of imprisonment imposed on a different conviction, service of the
20 sentence of imprisonment shall not satisfy the probation.

21 F. Time spent in custody under section 13-901, subsection F shall be
22 credited to any sentence of imprisonment imposed upon revocation of
23 probation.

24 Section 6. 13-914. Intensive probation; evaluation; sentence; criteria;
25 limit; conditions

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

28 1. Been convicted of a felony and for whom the granting of probation is
29 not prohibited by law.

30 2. Violated probation by commission of a technical violation that was
31 not chargeable or indictable as a criminal offense.

32 B. The adult probation officer shall evaluate the needs of the offender
33 and the offender's risk to the community, including the nature of the
34 offense and criminal history of the offender. If the nature of the
35 offense and the prior criminal history of the offender indicate that the
36 offender should be included in an intensive probation program pursuant
37 to supreme court guidelines for intensive probation, the adult probation
38 officer may recommend to the court that the offender be granted intensive
39 probation.

1 C. The court may suspend the imposition or execution of the sentence and
2 grant the offender a period of intensive probation in accordance with
3 this chapter. Except for sentences that are imposed pursuant to section
4 13-3601, the sentence is tentative to the extent that it may be altered
5 or revoked pursuant to this chapter, but for all other purposes it is a
6 final judgment of conviction. This subsection does not preclude the court
7 from imposing a term of intensive probation pursuant to section 13-3601.

8 D. When granting intensive probation the court shall set forth on the
9 record the factual and legal reasons in support of the sentence.

10 E. Intensive probation shall be conditioned on the offender:

11 1. Maintaining employment or maintaining full-time student status at a
12 school subject to title 15 or title 32, chapter 30 and making progress
13 deemed satisfactory to the probation officer, or both, or being involved
14 in supervised job searches and community restitution work at least six
15 days a week throughout the offender's term of intensive probation.

16 2. Paying restitution and probation fees of not less than seventy-five
17 dollars unless, after determining the inability of the offender to pay
18 the fee, the court assesses a lesser fee. Probation fees shall be
19 deposited in the adult probation services fund established by section
20 12-267. Any amount assessed pursuant to this paragraph shall be used to
21 supplement monies used for the salaries of adult probation and
22 surveillance officers and for support of programs and services of the
23 superior court adult probation departments.

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

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

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

32 6. Performing not less than forty hours of community restitution each
33 month. Full-time students **AND PERSONS IN A TREATMENT PROGRAM** may be
34 exempted or required to perform fewer hours of community restitution.
35 For good cause, the court may reduce the number of community restitution
36 hours performed to not less than twenty hours each month.

37 7. Meeting any other conditions imposed by the court to meet the needs
38 of the offender and limit the risks to the community, including
39 participation in a program of community punishment authorized in title
40 12, chapter 2, article 11.

1 F. This section has no effect on the ability of the court to terminate
2 the period of probation or intensive probation pursuant to section 13-
3 901, subsection E at a time earlier than originally imposed.

4 Section 7. 13-916. Intensive probation teams; adult probation officer
5 qualifications; duties; case load limit

6 A. The chief adult probation officer in each county, with approval of
7 the presiding judge of the superior court, shall appoint intensive
8 probation teams consisting of one adult probation officer and one
9 surveillance officer, two adult probation officers or one adult probation
10 officer and two surveillance officers.

11 B. A two person intensive probation team shall supervise no more than
12 twenty-five persons at one time, and a three person intensive probation
13 team shall supervise no more than forty persons at one time.

14 C. The adult probation officers shall meet the bonding requirements and
15 experience and education standards established pursuant to section 12-
16 251.

17 D. The intensive probation team may serve warrants on, make arrests of
18 and bring before the court persons who have violated the terms of
19 intensive probation.

20 E. The adult probation and surveillance officers both have the authority
21 of a peace officer in the performance of their duties but are not eligible
22 to participate in the public safety personnel retirement system.

23 F. The intensive probation team shall:

24 1. Secure and keep a complete identification record of each person
25 supervised by the team and a written statement of the conditions of the
26 probation.

27 2. Exercise close supervision and observation over persons sentenced to
28 intensive probation including both of the following:

29 (a) Visual contact with each probationer at least four times per week.
30 (b) Weekly ~~contact with the employer of the probationer~~ VERIFICATION OF
31 THE PROBATIONER'S EMPLOYMENT.

32 3. Obtain and assemble information concerning the conduct of persons
33 sentenced to intensive probation, including weekly arrest records, and
34 report the information to the court.

35 4. Report to the court if the probationer engages in conduct constituting
36 an offense.

37 5. Bring a defaulting probationer into court if, in the judgment of the
38 adult probation officer, the probationer's conduct justifies revoking
39 the intensive probation.

1 6. Monitor the payment of restitution and probation fees and bring into
2 court any probationer who fails to pay restitution or fees.

3 7. Perform any other responsibilities required by the terms and
4 conditions imposed by the court.

5 Section 8. 13-917. Modification of supervision

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

12 B. The court may issue a warrant for the arrest of a person granted
13 intensive probation. If the person commits an additional offense or
14 violates a condition of probation, the court may revoke intensive
15 probation at any time before the expiration or termination of the period
16 of intensive probation. If a petition to revoke the period of intensive
17 probation is filed and the court finds that the person has committed an
18 additional felony offense or has violated a condition of intensive
19 probation **EITHER OF** which poses a serious threat or danger to the
20 community, the court shall revoke the period of intensive probation and
21 impose a term of imprisonment as authorized by law. If the court finds
22 that the person has violated any other condition of intensive probation,
23 it shall modify the conditions of intensive probation as appropriate or
24 shall revoke the period of intensive probation and impose a term of
25 imprisonment as authorized by law.

26 C. The court shall notify the prosecuting attorney, and the victim on
27 request, of any proposed modification of a person's intensive probation
28 if that modification will substantially affect the person's contact with
29 or safety of the victim or if the modification involves restitution or
30 incarceration status.

10/9/15
1:48 pm

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
October 22, 2015	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Interpreter Credentialing

FROM:

Amy Wood, Caseflow Management Unit Manager, Court Services Division of the AOC

DISCUSSION:

An overview of a proposed interpreter credentialing program will be provided. Interpreters would be tested on language abilities and interpreting abilities to receive. Credentials would be earned one-time without ongoing oversight or regulation. One component of the program is to have interpreters understand and agree to a code of ethics which is provided with these materials. Additional information will be provided regarding the fees associated with the program.

RECOMMENDED COUNCIL ACTION:

Recommend that the AOC move forward with an interpreter credentialing program.
Recommend that the Arizona Judicial Branch adopt a code of ethics for interpreters.
Recommend that the proposed fee structure associated with the credentialing program be adopted.

Proposed Court Interpreter Code of Ethics Canons

1. Accuracy and Completeness
2. Representation of Qualifications
3. Impartiality and Avoidance of Conflict of Interest
4. Professional Demeanor
5. Confidentiality
6. Restriction of Public Comment
7. Scope of Practice
8. Assessing and Reporting Impediments to Performance
9. Duty to Report Ethical Violations
10. Professional Development

Taken from *Court Interpretation: Model Guide for Policy and Practice in the State Courts*
National Center for State Courts, 1995

CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS IN THE JUDICIARY PREAMBLE

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency or a speech or hearing impairment. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier.¹ As officers of the court, interpreters help assure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

APPLICABILITY

This code shall guide and be binding upon all persons, agencies and organizations who administer, supervise use, or deliver interpreting services to the judiciary. Commentary: The black letter principles of this Model Code are principles of general application that are unlikely to conflict with specific requirements of rule or law in the states, in the opinion of the code's drafters. Therefore, the use of the term "shall" is reserved for the black letter principles. Statements in the commentary use the term "should" to describe behavior that illustrates or elaborates the principles. The commentaries are intended to convey what the drafters of this model code believe are probable and expected behaviors. Wherever a court policy or routine practice appears to conflict with the commentary in this code, it is recommended that the reasons for the policy as it applies to court interpreters be examined.

¹ A non-English speaker should be able to understand just as much as an English speaker with the same level of education and intelligence.

CANON 1: ACCURACY AND COMPLETENESS

Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.

Commentary:

The interpreter has a twofold duty: 1) to ensure that the proceedings in English reflect precisely what was said by a non-English speaking person, and 2) to place the non-English speaking person on an equal footing with those who understand English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

Therefore, interpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech. Verbatim, "word for word," or literal oral interpretations are not appropriate when they distort the meaning of the source language, but every spoken statement, even if it appears nonresponsive, obscene, rambling, or incoherent should be interpreted. This includes apparent misstatements.

Interpreters should never interject their own words, phrases, or expressions. If the need arises to explain an interpreting problem (e.g., a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court's permission to provide an explanation. Interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions, or dramatic gestures.

Sign language interpreters, however, must employ all of the visual cues that the language they are interpreting for requires -- including facial expressions, body language, and hand gestures. Sign language interpreters, therefore, should ensure that court participants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct.

The obligation to preserve accuracy includes the interpreter's duty to correct any error of interpretation discovered by the interpreter during the proceeding. Interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.

CANON 2: REPRESENTATION OF QUALIFICATIONS

Interpreters shall accurately and completely represent their certifications, training, and pertinent experience.

Commentary:

Acceptance of a case by an interpreter conveys linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins causes a disruption of court proceedings and is wasteful of scarce public resources. It is therefore essential that interpreters present a complete and truthful account of their training, certification and experience prior to appointment so the officers of the court can fairly evaluate their qualifications for delivering interpreting services.

CANON 3: IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

Commentary:

The interpreter serves as an officer of the court and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. This is true regardless of whether the interpreter is publicly retained at government expense or retained privately at the expense of one of the parties.

The interpreter should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. Interpreters should maintain professional relationships with their clients, and should not take an active part in any of the proceedings. The interpreter should discourage a non-English speaking party's personal dependence.

During the course of the proceedings, interpreters should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. It is especially important that interpreters, who are often familiar with attorneys or other members of the courtroom work group, including law enforcement officers, refrain from casual and personal conversations with anyone in court that may convey an appearance of a special relationship or partiality to any of the court participants.

The interpreter should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

Should an interpreter become aware that a proceeding participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge to the appropriate judicial authority and counsel.

Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. Before providing services in a matter, court interpreters must disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure should not include privileged or confidential information.

The following are circumstances that are presumed to create actual or apparent conflicts of interest for interpreters where interpreters should not serve:

1. The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;
2. The interpreter has served in an investigative capacity for any party involved in the case;
3. The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;
4. The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that would be affected by the outcome of the case;

5. The interpreter has been involved in the choice of counsel or law firm for that case should disclose to the court and other parties when they have previously been retained for private employment by one of the parties in the case.

Interpreters should not serve in any matter in which payment for their services is contingent upon the outcome of the case.

An interpreter who is also an attorney should not serve in both capacities in the same matter.

CANON 4. PROFESSIONAL DEMEANOR

Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Commentary:

Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, interpreters should speak at a rate and volume that enable them to be heard and understood throughout the courtroom, but the interpreter's presence should otherwise be as unobtrusive as possible. Interpreters should work without drawing undue or inappropriate attention to themselves.

Interpreters should dress in a manner that is consistent with the dignity of the proceedings of the court.

Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings. However, interpreters who use sign language or other visual modes of communication must be positioned so that hand gestures, facial expressions, and whole body movement are visible to the person for whom they are interpreting are encouraged to avoid personal or professional conduct that could discredit the court.

CANON 5: CONFIDENTIALITY

Interpreters shall protect the confidentiality of all privileged and other confidential information.

Commentary:

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of her or his duties. It is especially important that the interpreter understand and uphold the attorney-client privilege, which requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communications.

Interpreters must also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding.

In the event that an interpreter becomes aware of information that suggests imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to an appropriate authority within the judiciary who is not involved in the proceeding and seek advice in regard to the potential conflict in professional responsibility.

CANON 6: RESTRICTION OF PUBLIC COMMENT

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.

CANON 7: SCOPE OF PRACTICE

Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Commentary:

Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only. Interpreters should refrain from initiating communications while interpreting unless it is necessary for assuring an accurate and faithful interpretation.

Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their duties.

Examples of such circumstances include seeking direction when unable to understand or express a word or thought, requesting speakers to moderate their rate of communication or repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances they should make it clear that they are speaking for themselves.

An interpreter may convey legal advice from an attorney to a person only while that attorney is giving it. An interpreter should not explain the purpose of forms, services, or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. The interpreter may translate language on a form for a person who is filling out the form, but may not explain the form or its purpose for such a person.

The interpreter should not personally serve to perform official acts that are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators or interviewers, or probation counselors.

CANON 8: ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.

Commentary:

If the communication mode or language of the non English-speaking person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority.

Interpreters should notify the appropriate judicial authority of any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately (e.g., the court room is not quiet enough for the interpreter to hear or be heard by the non-English

speaker, more than one person at a time is speaking, or principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret). Sign language interpreters must ensure that they can both see and convey the full range of visual language elements that are necessary for communication, including facial expressions and body movement, as well as hand gestures.

Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary.

Interpreters are encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently.

Even competent and experienced interpreters may encounter cases where routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter (e.g., the unscheduled testimony of an expert witness). When such instances occur, interpreters should request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the presiding officer.

Interpreters should refrain from accepting a case if they feel the language and subject matter of that case is likely to exceed their skills or capacities. Interpreters should feel no compunction about notifying the presiding officer if they feel unable to perform competently, due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.

Interpreters should notify the presiding officer of any personal bias they may have involving any aspect of the proceedings. For example, an interpreter who has been the victim of a sexual assault may wish to be excused from interpreting in cases involving similar offenses.

CANON 9: DUTY TO REPORT ETHICAL VIOLATIONS

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.

Commentary:

Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run counter to the provisions of this code or other laws, regulations, or policies governing court interpreters. It is incumbent upon the interpreter to inform such persons of his or her professional obligations. If, having been apprised of these obligations, the person persists in

demanding that the interpreter violate them, the interpreter should turn to a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters to resolve the situation.

CANON 10: PROFESSIONAL DEVELOPMENT

Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields.

Commentary:

Interpreters must continually strive to increase their knowledge of the languages they work in professionally, including past and current trends in technical, vernacular, and regional terminology as well as their application within court proceedings.

Interpreters should keep informed of all statutes, rules of courts and policies of the judiciary that relate to the performance of their professional duties.

An interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.