COMMITTEE ON SUPERIOR COURT

Date Action Required:	Type of Action Required:	Subject:
May 20, 2011	☐ Formal Action/Request ☒ Information Only ☐ Other	LEGISLATIVE UPDATE

FROM: Kay Radwanski

PRESENTER(S): Jerry Landau, AOC Government Affairs Director

DISCUSSION: Mr. Landau will discuss superior court-related bills that were considered by the Legislature in its recent session.

RECOMMENDED MOTION: Information only.

Committee on Superior Court
Legislative Update
May 20, 2011

SB 1614: STATE BUDGET PROCEDURES; 2011-2012 **CH 26**

Senator Andy Biggs

http://www.azleg.gov/legtext/50leg/1r/bills/sb1614h.pdf

Any employee hired after the effective date of the bill is not eligible for state employee benefits until the employee has worked regularly for at least 90 days and any state employee is not eligible to become a member of the Arizona State Retirement System and the Long Term Disability program until the employee has worked regularly for at least 6 months.

Retroactive to July 1, 2011, in ASRS the 50/50 split of employee and employer contributions will change. The employee will now contribute 53% of the total required contributions and the employer will contribute 47% of the total contributions.

An agency director whose agency participates in ASRS may require agency covered employees to work reduced hours in order to comply with any reduction in appropriations.

For fiscal year 2010-2011 the six furlough days required is decreased to five days and the furlough days required in 2011-2012 are eliminated.

Statutes amended: A.R.S. § 38-736, 38-737, 38-797.05, 38.797.06, Amending Laws 2010, 7th special session, Chapter 3, Section 9; relating to state budget procedures.

Statutes enacted: A.R.S. § 38-671, 41-763.05

SB 1621: BUDGET RECONCILIATION; CRIMINAL JUSTICE; 2011-2012; **CH 33**

Senator Andy Biggs

http://www.azleg.gov/legtext/50leg/1r/bills/sb1621h.pdf

Judicial

In pertinent part, adds A.R.S. § 12-119.05, *Post of duty; Supreme Court justice.* The designated post of duty of a Supreme Court justice who resides outside of Maricopa County shall be deemed to be the justice's place of physical residence at the time of the justice's appointment.

Repeals A.R.S. § 12-270, *Probation revocation and crime reduction performance funding*; *reports.*

Suspends the reporting requirements for the following sections of laws for FY 2011-2012:

- Annual Juvenile Intensive Probation Report
- Community Punishment Program Report
- Emancipation of Minors Report
- Annual Drug Treatment and Education Fund Report
- Annual Lengthy Trial Fund Report
- Annual Child Support Committee Report
- Annual Domestic Relations Committee Report

Suspends the following:

- § 12-102.02, *State aid to the courts fund,* Subsection E:
- All monies spent or distributed from the fund shall be used to supplement, not supplant, funding at the level provided in fiscal year 1997-1998 by the counties for the processing of criminal cases in the superior court, including the office of the clerk of the superior court, and justice courts.
- § 12-102.03, *Local courts assistance fund,* Subsection D:
- All monies distributed or spent from the fund shall be used to supplement, not supplant, funding at the level provided in fiscal year 1997-1998 by the counties for the processing of criminal cases.

- § 12-135, *Alternative dispute resolution fund,* Subsection D:
- Monies from the alternative dispute resolution fund that are provided to local courts shall be used to supplement, not supplant, local funding that would otherwise be made available for alternative dispute resolution programs.
- § 12-135.01, *Local alternative dispute resolution fund; report,* Subsection D:
- Monies in the fund shall be used to supplement, not supplant, funding that would otherwise be made available for alternative dispute resolution programs.
- § 12-267, *Adult probation services fund;* Subsection D:
- State monies expended from the adult probation services fund shall be used to supplement, not supplant, county appropriations for the superior court adult probation department.
- § 12-268, *Juvenile probation fund; use,* Subsection D:
- State monies expended from the juvenile probation services fund shall be used to supplement, not supplant, county appropriations for the superior court juvenile probation department.
- § 12-299.01, *Submission of plan; use of monies; prohibitions,* Subsection C:
- The plan shall include a proposed budget necessary to implement and operate the plan. All monies provided shall be used to supplement monies currently used for community based sentencing and adult probation programs and services.

The Supreme Court shall submit a report to the Joint Legislative Budget Committee identifying any decrease in county funding relating to these suspending provisions, including the reasons for the decrease.

The Supreme Court shall not reimburse counties the 50% requirement for state funded representation of indigent defendants in capital post conviction relief proceedings pursuant to A.R.S. § 13-4041 or for grand jury expenses pursuant to A.R.S. § 21-428 and requires reimbursement only in the amount provided in the FY 2011 and FY 2012 General Appropriations Act.

State Department of Corrections / County Jail

If a person is sentenced to serve one year or less in the Arizona Department of Corrections (ADC), the person shall be committed to the custody of the county jail, unless the sheriff of the county has entered into an agreement to reimburse the ADC for the incarceration costs. The county must enter into a reimbursement agreement at least one month before a person is transferred into the custody of the ADC to serve their sentence and the county is prohibited from cancelling a reimbursement agreement, unless it has provided ADC with at least a one month's notice.

A person sentenced to a concurrent term of incarceration for more than one year is to be incarcerated in ADC. Counties must make reimbursements within 30 days after a request by ADC and requires the Director of ADC, if the county fails to make the reimbursement, to notify the State Treasurer of the amount owed. The Treasurer must withhold the amount, including interest, from any transaction privilege tax distributions to the county. The Treasurer shall deposit the monies in the State General Fund.

The State Treasurer is required to deposit monies received from a county for the costs of incarcerating a person in the ADC who otherwise would be incarcerated in jail in the State General Fund. In session law, a sentencing county that does not intend to enter into an agreement with ADC must notify ADC by February 1, 2012.

Unless the Sheriff of the sentencing county has entered in an agreement to reimburse the ADC for the incarceration costs, a person who is convicted of the following violations must serve the required sentence in jail

- Aggravated operation of watercraft while under the influence
- Aggravated DUI
- Operation of aircraft while under the influence

State Capital Postconviction Public Defender Office

Exempts the State Capital Post Conviction Relief Public Defender's Office from the Attorney General Legal Services Cost Allocation Fund pro rata charge.

Requires, in a county with a population of less than 1.5 million, the state to pay 19.25% of justice of the peace compensation and employee related expenditures.

Statutes amended: A.R.S. § 5-396, 12-267, 13-701, 22-117, 28-1383, 28-8288, 31-201.01, 31-230, 41-191.09, 41-1604, 41-1604.02, 41-1604.03, 41-1624, 41-1723, 41-1724, Amending Laws 2007, Chapter 6, Section 21 and Laws 2010, Seventh Special Session, Chapter 6, Section 24; making appropriations, relating to criminal justice budget reconciliation.

Statutes enacted: A.R.S. § 12-119.05, 31-133, 41-797, 41-1610.02

Statute repealed: A.R.S. § 12-270

SB 1245: CAPITAL POSTCONVICTION PUBLIC DEFENDER; CONTINUATION **CH 42**

Senator Ron Gould

http://www.azleg.gov/legtext/50leg/1r/bills/sb1245s.pdf

Continues the State Capital Postconviction Public Defender Office until July 1, 2016.

Statute enacted: A.R.S. § 41- 3016.29

Statute repealed: A.R.S. § 41-3011.13

HB 2064: FOREIGN LAW; CONFLICT OF LAWS **CH 76**

Representative Judy Burges

http://www.azleg.gov/legtext/50leg/1r/bills/hb2064s.pdf

A court, arbitrator, administrative agency or other adjudicative, mediation or enforcement authority shall not enforce a foreign law if doing so would violate a right guaranteed by the Constitution of this state or of the United States or conflict with laws of this state or the United States. Applies only to actual violations of the constitutional rights of a person or actual conflict with the laws of this state caused by the application of the foreign law.

Defines "foreign law" as "any law, rule, or legal code or system other than the Constitution, laws and ratified treaties of the United States and the territories of the United States, or the Constitution and laws of this state."

Statutes enacted: A.R.S. § 22-3101, 22-3102, 22-3103

HB 2353: SENTENCING; DANGEROUS OFFENSES; PROBATION **CH 90**

Representative Eddie Farnsworth

http://www.azleg.gov/legtext/50leg/1r/bills/hb2353s.pdf

Includes within the definition of "dangerous offense" the "use or exhibition of a deadly weapon or dangerous instrument." This terminology was excluded in the criminal code sentencing reorganization because the word "threatening" was inadvertently not added to the phrase in a few sections when the definition of "dangerous offense" was modified in 1993. (Section 1, 5, 22, 23)

A person who is over 18 commits Aggravated Assault if the assault is on a child under 15, rather than 15 or under. (Section 6)

Removes the special sentencing sections for certain crimes added in the sentencing reorganization and reinserts the sentencing provisions in the actual criminal offense. The special sentencing provisions were placed together in order to make them more easily visible, however, were found not to be beneficial to the understanding of the code. (Section 3, 4, 8, 9, 10, 11, 12, 13, 15, 16, 17)

Resolves an issue created by the enactment of Laws, 2010, chapters 97, 241 and 276 that resulted in two provisions of A.R.S.§ 13-1204, *Aggravated Assault*, having to do with code enforcement officers and park rangers not having a penalty provision. (Section 6, 7)

A person commits Aggravated Assault if the assault is on a public defender, a code enforcement officer, or a park ranger. (Section 6)

Removes the reference in the DUI treatment statute to alcohol or drug education and treatment ordered by MVD, as MVD only orders alcohol or drug screening, not education and treatment (Section 18)

Repeals the version of the Adult Offender Compact that was superseded by a newer compact ratified in 2002. (Section 20, 21)

Makes conforming and technical changes (Section 2, 14, 19)

Statutes amended: A.R.S. § 13-105, 13-708, 13-709.02, 13-907, 13-1204, 13-1207, 13-1212, 13-1402, 13-1403, 13-2308.01, 13-2312, 13-3101, 13-3407, 13-3411, 13-3601, 13-3961, 28-1387, 31-418, 41-1604.10, 41-1604.13

Statutes repealed: A.R.S. § 13-709.01, 13-709.03, 13-709.04, 13-709.05, 13-1204, A.R.S. Title 31, Chapter 3, Article 4

SB 1212: CIVIL APPEAL BONDS; LIMITS **CH 99**

Senator Al Melvin

http://www.azleg.gov/legtext/50leg/1r/bills/sb1212h.pdf

Enforcement of a criminal restitution order or a juvenile restitution order by any person who is entitled to restitution or by the state includes the collection of interest, which accrues at 10% annum.

The rate for calculating interest that accrues from and after the date a medical malpractice judgment is entered shall be adjusted on June 30 and December 31 of each year to equal one percentage point, rather than three, above the federal post judgment interest rate.

Sets the bond that is necessary to stay execution during the course of all appeals or discretionary reviews of a civil judgment for damages as the lesser:

- The total amount of damages awarded excluding punitive damages
- 50% of the appellant's net worth
- 25 million dollars

If the appellee proves by clear and convincing evidence that the appellant is intentionally dissipating assets outside the ordinary course of business to avoid payment of a judgment, the court may require the appellant to post a bond in an amount up to the full amount of the judgment. If an appellant proves by clear and convincing evidence that the appellant is likely to suffer substantial economic harm if required to post the required bond amount, the trial court may lower the bond amount to an amount that will not cause the appellant substantial economic harm.

Interest on any judgment that is based on a written agreement evidencing a loan, indebtedness or obligation that bears a rate of interest not in excess of the maximum shall be at the rate of interest provided in the agreement and shall be specified in the judgment. Unless otherwise provided by law, interest on any judgment is set at the lesser of 10% per annum or at a rate per annum that is equal to one percent plus the prime rate as published by the Board of Governors of the Federal Reserve System in Statistical Release H.15 or any other publication that supersedes it.

A court is precluded from awarding prejudgment interest for any unliquidated, future, punitive or exemplary damages that are found by the Trier of fact or interest for any future, punitive or exemplary damages that are found by the Trier of fact.

“Future damages” is defined. Prejudgment interest is set as above.

Repeals A.R.S. § 38-849, *Limitations on receiving pension.*

Statutes amended: A.R.S. § 8-344, 12-352, 13-805, 25-510, 32-2188, 32-2193.38, 32-2193.39, 36-3411, 38-809, 38-849, 38-897, 38-912, 44-1201

Statute enacted: A.R.S. § 12-2108

Statute repealed: A.R.S. § 38-849

SB 1291: PRISONERS; CREDITS FOR FINES **CH 102**

Senator Gail Griffin

http://www.azleg.gov/legtext/50leg/1r/bills/sb1291s.pdf

A county jail prisoner sentenced to pay a fine shall be allowed up to a $50 credit per day, rather than $10, for each day employed at hard labor.

Statute amended: A.R.S. § 31-145

HB 2406: CRIMES; FORENSIC INTERVIEWS; MANDATORY FINE **CH 115**

Representative Ted Vogt

http://www.azleg.gov/legtext/50leg/1r/bills/hb2406h.pdf

An assessment of $500 is imposed on a person convicted of a Dangerous Crime Against Children (DCAC) or sexual assault. The assessment cannot be waived and is not subject to surcharge. The money collected is transmitted to the county treasurer to be used for the cost of medical expenses needed in the investigation of a DCAC or sexual assault.

Any forensic interview expense as well as medical expense that is needed in order to secure evidence that a person has been a victim of a DCAC children shall be paid for by the county in which the offense occurred.

Delayed effective date: Jan. 1, 2012

Statute amended: A.R.S. § 13-1414

Statute enacted: A.R.S. § 13-824

HB 2191: PUNITIVE DAMAGES; UNLAWFUL ENTRY **CH 137**

Representative Jim Weiers

http://www.azleg.gov/legtext/50leg/1r/bills/hb2191s.pdf

A person present in this state in violation of a federal immigration law related to improper entry by an alien shall not be awarded punitive damages in any action in any court in this state.

Retroactive to any cause of action that accrues on or after January 1, 2004.

Statute enacted: A.R.S. § 12-512

SB 1167: LEGISLATION; REFERENDA CHALLENGES **CH 159**

Senator Steve Yarbrough

http://www.azleg.gov/legtext/50leg/1r/bills/sb1167h.pdf

A challenge to the legal sufficiency of a measure referred by the legislature must be filed within:

- 20 days after the referendum is filed with the Secretary of State if the referendum is filed in an odd numbered year
- Ten days after the referendum is filed with the Secretary of State if the referendum is filed in an even numbered year

The court is required to hear and decide the action as soon as possible. Either party may appeal to the Supreme Court within five days after judgment. The Superior Court in Maricopa County has jurisdiction over the action. The President of the Senate or the Speaker of the House may intervene as a party, file briefs or choose not to participate.

Contains an *emergency clause.*

Date effective: April 18, 2011

Statute enacted: A.R.S. § 19-161

HB 2302: PROTECTED ADDRESS; SECRETARY OF STATE **CH 173**

Representative J.D. Mesnard

http://www.azleg.gov/legtext/50leg/1r/bills/hb2302s.pdf

Amends A.R.S. § 16-153, *Voter registration; confidentiality,* to include border patrol agents in persons eligible to request that the general public be prohibited from accessing the address, telephone number, and voting precinct number contained in their voter registration record.

The court may seal the change of name application and judgment on request if a person is protected under an order of protection or is a victim of stalking pursuant to A.R.S. § 13-2923, S*talking, classifications, definitions.* If the offense took place in another jurisdiction, but would be classified as a violation or attempted violation of A.R.S. § 13-2923 if committed in this state, these provisions still apply. A person who obtained a judgment on or after Jan. 1, 2009, may request that the court seal the application and judgment pursuant to this section.

Directs the Secretary of State (SOS), by January 1, 2013, to establish the Address Confidentiality Program (ACP). The ACP allows victims of domestic violence, sexual offenses, or stalking to keep their residential address confidential, by giving them a substitute lawful address. Outlines what the application will include and what is considered evidence of domestic violence, a sexual offense, or stalking.

Allows an ACP participant to be served by certified or registered mail with any process, notice, or demand required by law and clarifies that this provision does not prescribe the only or necessary means of serving an ACP participant. Adds five days to the timeframe within which an ACP participant legally has a right to act, if they were served in accordance with law by mail or first-class mail. This provision does not apply if the time period is otherwise corrected by a court rule.

Individuals are certified into the ACP for four years following the date of filing. Certification may be renewed by filing a renewal application with the SOS within 30 days of the current certification expiring. ACP participants may withdraw certification by filing a request for withdrawal that is acknowledged before a notary public. If the ACP participant fails to notify the SOS of a change in legal name, current address, telephone number, or knowingly submits false information, certification of the program participant can be cancelled. Requires the SOS to send notice and the reason for cancellation to the program participant if it is determined that there is reason for cancelling certification. The program participant has 30 days to appeal the cancellation decision. Under A.R.S. § 41-155, the SOS cannot disclose any address or telephone number of an ACP participant except under the following circumstances:

- The information is required under a court order
- The SOS grants a request by a state or local government entity pursuant to A.R.S. § 41-157, *Request for disclosure*

Any person to whom an ACP participant's actual address or telephone number has been disclosed cannot further disclose the information to any other person unless required by court order or as otherwise provided by law. The SOS shall immediately notify an ACP participant if it has disclosed a participant's information.

If an ACP participant is involved in divorce proceedings, child support, or the allocation of parental responsibilities or parenting time, the SOS must notify the court that the participant has been certified and is part of the ACP.

Anyone who knowingly and intentionally obtains or discloses an ACP participant's information is guilty of a Class 1 Misdemeanor.

The ACP participant is responsible for requesting that a state or local government entity use the substitute address as the participant's residential, school, or work address.

Except as otherwise provided for in the statute or by order of the court, if a participant submits a current and valid address confidentiality program card to the court, the court shall accept the substitute address as the home, work, and school address for the participant. The court may make a photocopy of the card and shall return the card to the participant.

Outlines how participants shall be able to register to vote and to vote.

A state or local government agency requesting disclosure of an ACP program participant's actual address must make the request in writing on letterhead. This provision does not apply to the court. The SOS must notify the participant of a request for address disclosure and allow the participant an opportunity to be heard regarding the request. The SOS must provide the participant with written notification if a request for disclosure has been granted or denied. Notice or opportunity to be heard shall not be afforded to the participant if the request for disclosure is made by a state or local law enforcement agency conducting a criminal investigation or if providing notice would jeopardize an ongoing criminal investigation or the safety of law enforcement personnel. The director of the program, or the director's designee, must be available to state and local governments 24 hours a day for purposes of a request for disclosure.

Outlines an expedited disclosure process to be used by a court, criminal justice official or agency, or a probation department when disclosure is required pursuant to a trial, hearing, proceeding, or investigation involving an ACP participant. An official or agency obtaining information under the expedited disclosure process shall certify to the SOS that it has a system in place to protect the confidentiality of a participant's actual address from the public and personnel involved in the trial, hearing, proceeding, or investigation. A court or administrative tribunal may seal the portion of any record containing an actual address.

Permits a state or local government agency, at its discretion, to use an actual address in any document or record filed with a court or administrative tribunal if, at the time of filing, the document or record is not a public record.

Effective January1, 2012, adds A.R.S. § 12-116.04, *Address confidentiality program assessment*, that adds a $50 assessment for a person who is convicted of a domestic violence offense, a sexual offense, or stalking. The court may waive all of or a portion of the assessment if the court finds that the defendant is unable to pay the assessment. 95% of the assessment goes to the address confidentiality fund and 5% is retained by the clerk of the court for administrative costs.

Defines "actual address," "address confidentiality program," "applicant," "application assistant," "domestic violence," "program participant," "public record," "sexual offense," "stalking," "state or local government entity," and "substitute address."

The SOS program sunsets July 1, 2021.

Statutes amended: A.R.S. § 12-601, 16-153, 39-123, 39-124

Statute enacted: A.R.S. § 12-116.04

SB 1482: APPELLATE JUDGES; JUDICIAL PERFORMANCE REVIEWS **CH 210**

Senator Ron Gould

http://www.azleg.gov/legtext/50leg/1r/bills/sb1482s.pdf

Within 60 days prior to the regular primary election for the retention of an appellate court judge, the Commission on Judicial Performance Review shall present a list on its website of the decisions of that justice or judge, including the citation and an electronic copy of the text of the decision.

Statutes amended: A.R.S. § 12-120.07

HB 2352: COURT COMMISSIONER; QUALIFICATIONS **CH 217**

Representative Eddie Farnsworth

http://www.azleg.gov/legtext/50leg/1r/bills/hb2352h.pdf

Modifies the minimum qualifications for serving as a Superior Court Commissioner to mirror that of a Superior Court Judge. Requires an appointed Commissioner to be admitted to the practice of law in and be a resident of the state of Arizona for five years preceding the appointment. This language is taken word for word from the Arizona Constitution, Article VI, Section 22. The qualifications replace that of being engaged in the practice of law for not less than three years preceding the appointment.

Statute amended: A.R.S. § 12-213

SB 1235: LAW ENFORCEMENT OFFICERS; DISCIPLINARY PROCEDURES **CH 230**

Senator Linda Gray

http://www.azleg.gov/legtext/50leg/1r/bills/sb1235p.pdf

After an employer completes an investigation of a law enforcement officer or probation officer, if the employer seeks disciplinary action, the employer must provide a basic summary or file copies of any discipline ordered against any other law enforcement officer or probation officer of generally similar rank and experience employed within the previous two years for a similar violation at the request of the officer. The employer cannot take final action or schedule the hearing until the summary or file copies have been provided. This provision does not apply if court rule prohibits the release of file copies of disciplinary cases.

In cases before the office of administrative hearings or if the employer is a county, city, or town, a party may request a change or hearing officer or administrative law judge, which shall be granted on the first request. A city or town with a population of less than 65,000 persons or a county with a population of less than 250,000 persons must provide for an alternative hearing officer by means of an interagency agreement. If the law enforcement officer or probation officer is the party who requested the alternate hearing, the officer shall pay ½ of the additional expenses. If the alternate hearing officer is requested by means of an interagency agreement, the law enforcement or probation officer or employer has the option to continue the hearing for an additional ten days.

Prohibits a critical incident stress management team member who acquires information from an emergency services medical technician, officer, firefighter, or probation officer secretly and in confidence in the course of the member's response to a critical incident from being compelled or allowed to disclose the information in a legal proceeding, trial, or investigation, except under these specified circumstances:

- The communication indicates a clear and present danger to the designated person who received crisis response services or other persons
- The designated person who received crisis response services gives express consent to the testimony
- The communication or advice is made during the course of a criminal investigation
- The designated person who received crisis response services voluntarily testifies, therefore the team member may be compelled to testify on the same subject
- There is a breach of department policy which is in violation of the law

Defines "critical incident stress management team member," "law enforcement officer," and "probation officer".

Adds city and town law enforcement officers to the "whistle blower" statutes in Title 38.

Statutes amended: A.R.S. § 38-531, 38-532, 38-534, 38-1101

Statute enacted: A.R.S. § 38-1105

HB 2355: COURT SURCHARGES **CH 260**

Representative Eddie Farnsworth

http://www.azleg.gov/legtext/50leg/1r/bills/hb2355s.pdf

Surcharges are applied to the base fine and not to any other surcharge. Replaces the words 'penalty assessment' and 'assessment' with 'surcharge' in A.R.S. § 12-116.01 and A.R.S. § 12-116.02.

Statutes amended: A.R.S. § 12-114.01, 12-116.01, 12-116.02, 28-121, 28-702.01, 28-710, 28-797, 28-907, 28-1598, 41-2419, 41-2421

SB 1472: PUBLICITY PAMPHLETS; JUDICIAL PERFORMANCE; COMMENT **CH 272**

Senator Ron Gould

http://www.azleg.gov/legtext/50leg/1r/bills/sb1472h.pdf

Within 60 days prior to the regular primary election, the Commission on Judicial Performance Review must prepare and file with the Secretary of State the following:

- The length of time a Supreme Court justice or Court of Appeals judge has served on the bench
- The justice's or judge's educational background
- A list of published decisions in which the justice or judge declared a statute constitutional or unconstitutional and the provision of the Constitution relied upon in making this determination

Contains a legislative intent clause.

Statute enacted: A.R.S. § 19-124.01

HB 2024: ASRS; AMENDMENTS **CH 277**

Representative Bob Robson

http://www.azleg.gov/legtext/50leg/1r/bills/hb2024s.pdf

Any employee hired on or after the effective date is not eligible for state employee benefits until the employee has worked for at least 90 days. Any state employee, not including current members, hired on or after the effective date is not eligible to become a member of any state retirement system until the 27th week of employment.

"State employee" means a person who is employed by an agency, department, board or commission of this state, a university under the jurisdiction of the Arizona Board of Regents, the Judicial Branch, the Arizona Corporation Commission or the Legislature.

"State employee benefits" means any coverage provided pursuant to Title 38, Chapter 4, Article 4 relating to health and accident coverage.

One provision under the definition of "current annual compensation" is changed to be equal to the annualized compensation of the partial year if the member has less than 12 months total compensation, rather than credited service, on the date of a request to purchase credited service.

All charter cities or ASRS retirement service credit transfers shall be made pursuant to A.R.S. § 38-922, *Transfer or redemption of service credits.*

An employer must pay interest on delinquent contribution payments or any other delinquent payments under Title 38 Chapter 5, Article 2.1, *Long term disability program*, Article 7, *Transfers of another retirement system or plan* or Article 8, *Supplemental defined contribution plans*. Employers must record delinquent payments.

A member who was previously a member of another public employee retirement system and who is either receiving or is eligible to receive retirement benefits from that system is ineligible to receive retirement benefits from ASRS for the same period.

Employer contributions for an active member who is called to active military service shall be for a period ending the date the member returns to employment or the date the member should have returned to employment, whichever is earlier. Also, the period in which the contributions shall be made may end either

when the member is released from service related to hospitalization or two years after initiation of service related hospitalization, whichever is earlier.

On the death of a member who is not yet retired, the member's natural or adopted child under the age of 21 or the member's natural or adopted child of any age who is disabled is eligible to receive the member's survival benefits.

The lump sum retirement threshold is increased from a periodic payment of $20 to an amount determined by the ASRS board. A member will continue to have rights to the ASRS Health Insurance Program, however the member will not be eligible for a permanent benefit increase.

For a member who elects to have any portion of an eligible rollover distribution paid directly to a retirement plan the definition "eligible retirement plan" includes, beginning Jan 1, 2008, a "Roth" IRA.

Under a Qualified Domestic Relations Order (QDROs) if an alternate payee dies before the member, the amount payable to the alternate payee ceases on the death of the alternate payee and the amount formerly payable to the alternate payee is given to the member.

Monthly Long Term Disability Program benefits are not payable to a member who files an initial claim for disability more than 12 months after the date of the disability, unless the member demonstrates to ASRS good cause for not filing the initial claim within the 12 months. ASRS may suspend or terminate a member's long term disability if the member fails to provide the necessary information requested by ASRS or the insurance company or claims administration. The benefits or claim will be retroactively reinstated once the member provides the information.

ASRS is granted rule making authority.

Statutes amended: A.R.S. § 38-711, 38-730, 38-735, 38-744, 38-745, 38-756, 38-762, 38-764, 38-770, 38-773, 38-797.07, 38-922

Statute enacted: A.R.S. § 28-671

Statute repealed: A.R.S. § 28-671 as enacted in Laws 2011, Chapter 26, Section 1

SB 1424: ASSESSMENT FOR FAMILY OFFENSES; STALKING **CH 296**

Senator John Nelson

http://www.azleg.gov/legtext/50leg/1r/bills/sb1424h.pdf

In addition to any other penalty, fine, fee, or assessment, a person convicted of a violation of § 13-2921,13-2921.01,13-2923, or an offense listed in title 13, chapter 36, (all related to harassment and stalking), shall pay an additional assessment of $50 to be deposited into the Domestic Violence Shelter Fund. This is not subject to any additional surcharge.

Statute amended: A.R.S. § 36-3002

Statute enacted: A.R.S. § 12-116.04

HB 2645: FIREARMS; RIGHTS RESTORATION; PEACE OFFICERS **CH 304**

Representative Michele Ugenti

http://www.azleg.gov/legtext/50leg/1r/bills/hb2645s.pdf

A person who is a prohibited possessor as a result of being found to constitute a danger to himself or others or to be persistently or acutely disabled or gravely disabled pursuant to court order under § 36-540, or who has been found to be a mental defective or was committed to a mental intuition under federal law, 18 USC § 922(d)(4) or (g)(4) and whose right to possess a firearm has not been restored may petition the court that prohibited the person from possessing a firearm for restoration. The person or the person's guardian may file the petition. The petition is to be served on the attorney for the state who appeared in the underlying case.

The court must set a hearing. The person is required to present psychological or psychiatric evidence in support of the petition and the state is required to provide the court with the person's criminal history records, if any. The court is required to receive evidence and consider the following:

- The circumstances that resulted in the person being a prohibited possessor as defined in A.R.S. § 13-3101,(a)(7)(a) or subject to 18 USC § 922(d)(4) or (g)(4)
- The person's record, including the person's mental health record and criminal history record, if any
- The person's reputation based on character witness statements, testimony or other character evidence
- Whether the person is a danger to self or others, is persistently, acutely or gravely disabled or whether the circumstances that led to the original order, adjudication or finding remain in effect
- Any change in the person's condition or circumstances that is relevant to the relief sought
- Any other evidence deemed admissible by the court

The petitioner shall prove by clear and convincing evidence that the petitioner is not likely to act in a manner that is dangerous to public safety and granting the requested relief is not contrary to the public interest. The court shall issue findings of fact and conclusions of law at the conclusion of the hearing.

A victim has the right to be present and heard at any of these proceedings. If the victim has made a request for post conviction notice, the attorney for the state is required to provide notice to the victim as least five days before the hearing.

If the court grants the petition for relief, the original order, finding or adjudication is deemed not to have occurred for the purposes of applying the prohibited possessor and federal statutes listed above to that person. The granting of a petition only restores the person's right to possess a firearm and does not apply to and has no affect on any other rights or benefits the person receives.

An appeal may be taken to the Court of Appeals from a final order granting or denying the petition.

The court is requested to promptly notify the Department of Public Safety, which shall update the person's record in any database that DPS maintains and make available to the national instant criminal background check system. Within ten days after receiving the notification from the court, DPS must notify the U.S. Attorney General.

A retired peace officer shall not be prohibited from carrying a firearm. Some exceptions apply.

Defines "retired peace officer."

Statutes amended: A.R.S. § 12-2101, 38-1102
Statute enacted: A.R.S. § 13-4441
Statute repealed: A.R.S. § 13-925

SB 1398: MOVING VIOLATIONS; ASSESSMENT; EQUIPMENT; ENFORCEMENT **CH 308**

Senator Andy Biggs

http://www.azleg.gov/legtext/50leg/1r/bills/sb1398h.pdf

In pertinent part:

Levies a penalty assessment of $13 on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and civil penalties for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor vehicle statutes, for any local ordinance relating to the stopping, standing or operation of a vehicle or for a violation of the game and fish statutes in Title 17. The first one million dollars will be deposited in the state general fund and distributed as follows:

- $4 to the Department of Public Safety Equipment Fund to be used by the Department of Public Safety (DPS) for protective armor, electronic stun devices, and other safety equipment
- $4 to Gang and Immigration Intelligence Team Enforcement Mission Fund (GIITEM)
- $4 to the agency that issues the citation or investigates the offense
- $1 to the Justice courts
    - For counties with a population less than two million the monies are distributed to the Justice Courts proportionately based on the judicial productivity credits calculated pursuant to A.R.S. § 22-125

- For counties with a population of two million or more the monies are distributed to the Justice Court administration

If a law enforcement agency issues a photo enforcement system citation and serves the citation in a manner other than what is authorized by the Rules of Civil Procedure, the agency is required to inform the person that there is no obligation to identify the driver or respond to the citation. Failure to respond to the citation will result in the probability that the person will be formally served, which will likely result in the person being required to pay the cost of the service.

If a person receives a Notice of Violation by mail for a violation of Title 28, Chapter 3, Article 3 (Traffic, signs, signals and markings) or Article 6 (Speed restrictions) or for a violation of a city or town ordinance for excessive speed or failure to obey a traffic control device that is obtained using a photo enforcement system, the person is not required to identify who is in the photo or respond to the notice of violation.

The Notice of Violation must state:

- The notice is not a court issued document and the recipient is under no obligation to identify the person or respond to the notice
- Failure to respond to the notice may result in official service that may result in an additional fee

"Notice of Violation" and "Photo enforcement system" are defined.

Redirects FY 2011-12 monies from the State Aid to Indigent Defense Fund to the GIITEM Board Security sub account

40% of the monies remaining in the Photo Enforcement Fund in FY 2011 and FY 2012, after paying expenses and court costs and not exceeding $7 million, are deposited in the Public Safety Equipment Fund.

Statutes enacted: A.R.S. § 12-116.04, 28-1602

Statutes amended: A.R.S. § 28-1592, 28-1593, 41-1723, and 41-1724

Repeals A.R.S. § 28-1602, *Photo enforcement; notice of violation, complaint, penalties*

Repeals A.R.S. § 28-3323, S*uspension or revocation of license; state photo enforcement system.*

Repeals A.R.S. § 41-1722, *State photo enforcement system; fund* on July 1, 2012.

COMMITTEE ON SUPERIOR COURT

Date Action Required:	Type of Action Required:	Subject:
May 20, 2011	☐ Formal Action/Request ☐ Information Only ☒ Other	CHILD CUSTODY STATUTE REVISION

FROM: Kay Radwanski

PRESENTER(S): Steve Wolfson, Esq.

DISCUSSION: In October 2008, the Domestic Relations Committee (a legislative committee) established the Ad Hoc Custody Workgroup. The workgroup was subsequently charged with the task of rewriting Arizona's current child custody statutes (ARS 25-401 et. seq.). The workgroup met for more than a year and created a draft that changed some parts of the current statute dramatically while leaving other sections intact. In early March 2011, the AHCW forwarded its draft to the DRC's Substantive Law/Court Procedures Workgroup, which has been reviewing and modifying the draft. This workgroup intends to provide the Domestic Relations Committee, at the June 3, 2011, meeting, a full status report and unveiling of the work-in-progress. Stakeholders have included judges, attorneys, Conciliation Court professionals, mental health professionals, and parents. The relevance of domestic violence and child custody has been discussed frequently in both the AHCW and the SL/CP workgroups. Debate continues about what language about DV should be included in the statute. Once the DRC receives the draft, it will continue to work with it, and if a sponsor is located, a bill may be introduced in the Legislature in January 2012.

RECOMMENDED MOTION: Comment and review.

Chapter 4
Minor Children: Parental Decision-Making, Parenting Time AND Relocation

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25-421. Jurisdiction
25-422. Definitions
25-423. Mandatory Preliminary Inquiry: Special Circumstances
25-424. Specific Findings Required

Article 3. Parenting Plans, Decision-Making AND Parenting Time: Cases Without Special Circumstances
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Article 4. Special Circumstances
25-XXX DEFINITIONS
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25-441. Intimate Partner Violence AND Child Abuse: Parental Decision-Making
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Article 5. Third Parties
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Article 6. Temporary Orders, Decree Modification AND Relocation of a Child
25-460. Temporary Orders
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Article 8. Miscellaneous
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25-482. Identification of Primary Caretaker
25-483. Fees AND Resources
25-484. Child Interviews by Court AND Professional Assistance
25-485. Investigations AND Reports
25-486. Child Support AND Parenting Time Fund
25-487. Domestic Relations Education AND Mediation Fund

ARTICLE 2.
INTRODUCTION AND PRELIMINARY REQUIREMENTS

25-420. Public policy

Absent evidence to the contrary, it serves a child's best interests for both legal parents to:

A. Share parental decision-making concerning their child;

B. Have substantial, frequent, meaningful and continuing parenting time with their child;

C. Develop a mutually agreeable parental decision-making and parenting time plan.

AD HOC CUSTODY WORKGROUP NOTE

This section descends from 2010 Senate bill 1314, enacted into law at A.R.S. § 25-103, and reaffirms its core principles relevant to children here, while leaving A.R.S. § 25-103(a) itself intact at its current location, due to its broader application to families that do not have shared children.

25-421. Jurisdiction [Former A.R.S. § 25-401]

A. Before conducting any proceeding concerning parental decision-making or parenting time, including any proceeding scheduled to decide the custody or visitation of a non-parent, all Arizona courts shall first confirm their authority to do so to the exclusion of any other state, Indian tribe or foreign nation by complying with the Uniform Child Custody Jurisdiction and Enforcement Act ('UCCJEA'), at ARIZONA REVISED STATUTES SECTIONS 25-1001 TO 25-1067, Parental Kidnapping Prevention Act ('PKPA') at 28 UNITED STATES CODE SECTION 1738A, and any applicable international law concerning the wrongful abduction or removal of children.

B. THE FOLLOWING PERSONS MAY REQUEST PARENTAL DECISION-MAKING OR PARENTING TIME UNDER THE FOLLOWING CIRCUMSTANCES:

1. BY A PARENT, IN ANY PROCEEDING FOR MARITAL DISSOLUTION, LEGAL SEPARATION, PATERNITY, OR MODIFICATION OF AN EARLIER DECREE.

2. BY A PERSON OTHER THAN A PARENT, BY FILING A PETITION FOR THIRD-PARTY RIGHTS UNDER SECTION 25-450 IN THE COUNTY IN WHICH THE CHILD PERMANENTLY RESIDES.

AD HOC CUSTODY WORKGROUP NOTE

This section makes no substantive changes to old A.R.S. § 25-401. Rather, it explicitly cites the two most relevant jurisdictional statutes by name and number to facilitate the immediate assessment of Arizona's right to adjudicate decision-making responsibility and parenting time – particularly when such the resulting decree may conflict with an existing order issued by another State or Nation.

25-422. Definitions [Former A.R.S. § 25-402]

1. "In loco parentis" means a person who has been treated as a parent by the child and who has formed a meaningful parental relationship with the child for a substantial period of time.

2. "Legal parent" means a biological or adoptive parent whose parental rights have not been terminated. It does not include a person whose paternity has not been established under state law pursuant to sections 25-812 and 25-814.

3. "Parental decision-making" means the legal right and responsibility to make major life decisions affecting the health, welfare and education of a child, including – but not limited to – schooling, religion, daycare, medical treatment, counseling, commitment to alternative long-term facilities, authorizing powers of attorney, granting or refusing parental consent where legally required, entitlement to notifications from third parties on behalf of the child, employment, enlistment in the armed forces, passports, licensing and certifications, and blood donation. For purposes of interpreting or applying any international treaty, federal law, uniform code or other state statute, "parental decision-making" shall mean the same as "legal custody."

(A) "Shared parental decision-making" means that both parents equally share the burdens and benefits of decision-making responsibility, with neither parent possessing superior authority over the other. Parents granted this authority are expected to sensibly and respectfully consult with each other about child-related decisions, and attempt to resolve disputes before seeking court intervention.

(B) "Final parental decision-making" means one parent is ultimately responsible for child-related decisions, but must still reasonably consult with the other before exercising this authority.

(C) "Sole parental decision-making" means one parent is exclusively responsible for child-related decisions, and does not require any level of consultation with the other before the authority is exercised.

4. "Parenting time" refers to a parent's physical access to a child at specified times, and entails the provision of food, clothing and shelter, as well positive role-modeling and active involvement in a child's activities, while the child remains in that parent's care. A person exercising parenting time is expected to make routine decisions regarding the child's care that do not contradict the major life decisions made by a parent vested with parental decision-making authority.

5. "Visitation" involves the same rights and responsibilities as parenting time when exercised by a non-parent.

This amendment explains terms that were never defined in our existing law, or that have now been added through the new bill. Most are self-explanatory and require no elaboration. Others are discussed as follows:

The definition of "batterer's intervention program" draws almost verbatim from existing Ariz. Admin. Code Title 9, Ch. 20, Sec. 1101 (which regulates the licensing of treatment programs for convicted DV offenders) – with the exception of A.R.S. § 25-422(1)(e), which was added to highlight the importance of requiring a batterer to disclose records that reveal the extent to which s/he learned anything from the experience.

"Conviction" is broadened to include all criminal court outcomes where factual guilt was established either because: (1) the trier of fact was convinced of that guilt beyond a reasonable doubt (i.e. bench or jury trial, or (2) the defendant agreed that a factual basis existed for a conviction, even though s/he did not want to actually admit responsibility (i.e. nolo contendere plea).

"Deferred prosecution and diversion" is added to allow the court to consider prior proceedings involving intimate partner violence that resulted in dismissal of the charges based on an agreement that the offender could earn dismissal or avoid prosecution by completing counseling or education.

"Intimate partner violence" now adds anticipatory crimes, and expressly excludes violence legitimately inflicted in self-defense.

The definitions of "strangulation" and "suffocation" are copied almost verbatim from new A.R.S. § 13-1204(B)(1), which elevated both behaviors to felonious aggravated assault. They have significance in the definition of "coercive control" at Sec. 106(E)(17).

SL/CP WORKGROUP NOTE

Domestic violence definitions moved to Article 4 pursuant to the bill drafting conventions outlined in the *Arizona Legislative Bill Drafting Manual 2011-2012*.

25-423. Mandatory Preliminary Inquiry: Special Circumstances [New]

Before evaluating the best interests of the child and deciding parental decision-making and parenting time, the court shall first determine whether special circumstances exist under SECTIONS 25-440 through 25-443 (Intimate Partner Violence & Child Abuse), SECTION 25-444 (Substance Abuse), SECTION 25-445 (Dangerous Crimes Against Children) or SECTION 25-446 (Violent & Serial Felons). If so, the court shall enter parental decision-making and parenting time orders in accordance with those statutes. If not, the court shall proceed directly to the general provisions of SECTIONS 25-430 through 25-432 to devise a parenting plan that allocates parental decision-making and parenting time consistent with the child's best interests.

AD HOC CUSTODY WORKGROUP NOTE

This new addition constitutes the heart of the "decision-tree" philosophy. The goal is to openly require the court to evaluate special circumstances <u>first</u>, and only then engage the generic "best interests" test if none of those circumstances apply. Despite arbitrary (and rather confusing) sequencing in the current statute, existing case law already says much the same thing. *See In re Marriage of Hurd*, 223 Ariz. 48, 219 P.3d 258, 261 (App. 2009) ("when the party that committed the act of violence has not rebutted the [domestic violence] presumption … the court need not consider all the other best-interest factors in A.R.S. § 25-403.A").

25-424. Specific Findings Required [New]

In any evidentiary hearing involving parental decision-making, parenting time or third-party rights, including both temporary orders and trial, the court shall make specific findings on the record about all relevant factors and reasons for why the judicial decision serves a child's best interests. The findings shall include a description of any special circumstances established by the evidence, and an explanation for the court's decision in light of the controlling rules.

ARTICLE 3.
PARENTING PLANS, DECISION-MAKING AND PARENTING TIME: CASES WITHOUT SPECIAL CIRCUMSTANCES

25-430. Parenting Plans [Former A.R.S. § 25-403.02]

A. Consistent with the child's physical and emotional well-being, the court shall adopt a parenting plan that provides for both parents to share parental decision-making concerning their child and maximizes their respective parenting time. The court shall not prefer one parent over the other due to gender.

B. If a child's parents cannot agree to a plan for parental decision-making or parenting time, each shall submit to the court a detailed, proposed parenting plan.

C. Parenting plans shall include at least the following:

1. A designation of the parental decision-making plan as either shared, final or sole, as defined in SECTION 25-422(9).

2. Each parent's rights and responsibilities for making decisions concerning the child in areas such as education, health care, religion, extracurricular activities and personal care.

3. A plan for communicating with each other about the child, including methods and frequency.

4. A detailed parenting time schedule, including holidays and school vacations.

5. A plan for child exchanges, including location and responsibility for transportation.

6. In shared parental decision-making plans, a procedure by which the parents can resolve disputes over proposed changes or alleged violations, which may include the use of conciliation services or private mediation.

7. A procedure for periodic review of the plan.

8. A statement that each party has read, understands and will abide by the notification requirements of SECTION 25-445(B) pertaining to access of sex offenders to a child.

D. The parties may agree to any level of shared or sole parental decision-making without regard to the distribution of parenting time. Similarly, the degree of parenting time exercised by each parent has no effect on who exercises parental decision-making.

25-431. Parental Decision-Making; Shared, Final or Sole [Former A.R.S. § 25-403.01]

A. The court shall determine parental decision-making in accordance with the best interests of the child. The court shall consider the relevant findings made in accordance with section 25-432, and all of the following:

1. The agreement or lack of an agreement by the parents regarding the parental decision-making plan.

2. Whether a parent's lack of agreement is unreasonable or influenced by an issue not related to the best interests of the child.

3. Whether an award of final or sole parental decision-making would be abused.

4. The past, present and future willingness and ability of the parents to cooperate in decision-making about the child.

5. Whether the parental decision-making plan is logistically possible.

25-432. Parenting Time [New]

A. The court shall determine parenting time in accordance with the best interests of the child, and consider all factors relevant to the child's physical and emotional welfare, including:

1. The historical, current and potential relationship between the parent and the child.

2. The mental and physical health of all individuals involved.

3. The child's adjustment to home, school and community.

4. The interaction and relationship between the child and the child's siblings and any other person who may significantly affect the child's best interest.

5. The child's own viewpoint and wishes, if possessed of suitable age and maturity, along with the basis of those wishes.

6. Whether one parent is more likely to support and encourage the child's relationship and contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing or suffering an act of intimate partner violence or child abuse.

7. The feasibility of each plan taking into account the distance between the parents' homes, the parents' and/or child's work, school, daycare or other schedules, and the child's age.

8. Whether a parent has complied with the educational program prescribed in SECTIONS 25-351 through-353.

ARTICLE 4.
SPECIAL CIRCUMSTANCES

25-XXX. DEFINITIONS

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "Batterer's intervention program" means an individual or group treatment program for intimate partner violence offenders that:

(a) emphasizes personal responsibility;

(b) clearly identifies intimate partner violence as a means of asserting power and control over another individual;

(c) does not primarily or exclusively focus on anger or stress management, impulse control, conflict resolution or communication skills;

(d) does not involve the participation or presence other family members, including the victim or children; and

(e) preserves records establishing an offender's participation, contribution and progress toward rehabilitation, irrespective of whether a given session involves individual treatment or group therapy including multiple offenders.

2. "Child abuse" means any of the following acts where the relationship between the offender and victim qualifies under SECTION 13-3601(A)(5), including any attempt, conspiracy or solicitation of another to commit such act:

(a) Endangerment, as defined IN SECTION 13-1201.

(B) Threatening or intimidating, as defined IN SECTION 13-1202(A).

(C) Assault, as defined IN SECTION 13-1203(A).

(D) Aggravated assault, as defined IN SECTION 13-1204(A)(1) – (5).

(E) Child abuse, as defined IN SECTION 13-3623.

3. "Conviction" shall include guilty, "no contest" and Alford pleas, and guilty verdicts issued by a trier of fact.

4. "Deferred prosecution" and "diversion" means any program offered by a criminal court or government agency through which an alleged offender avoids criminal prosecution by agreeing to pay a fine, participate in counseling, or perform other remedial tasks in exchange for dismissal of one or more pending charges or a promise by the state not to proceed with a complaint or indictment.

5. "Intimate partner violence" means any act DEFINED IN SECTION 13-3601(A), as well as any other act of physical or sexual violence constituting a felony, where inflicted by a person against an intimate partner. This definition also includes any attempt, conspiracy, or solicitation of another to commit such act. It does not include any behavior that would constitute self-defense or other legal justification as defined by 13-404 through 408.

6. "Intimate partners" means persons whose relationship with each other qualifies PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3) OR (6).

7. "Intimate partner violence" means any act AS DEFINED IN SECTION 13-3601(A), as well as any other act of physical or sexual violence constituting a felony, where inflicted by a person against an intimate partner. This definition also includes any attempt, conspiracy, or solicitation of another to commit such act. It does not include any behavior that would constitute self-defense or other legal justification as defined by SECTIONS13-404 through 408.

8. "Intimate partners" means persons whose relationship with each other qualifies PURSUANT TO SECTIONS 13-3601(A)(1), (2), (3) OR (6).

9. "Special circumstance" refers to conduct requiring application of one or more mandatory rules PURSUANT TO SECTIONS 25-440 through 446.

SL/CP WORKGROUP NOTE

Domestic violence definitions moved to Article 4 pursuant to the bill drafting conventions outlined in the *Arizona Legislative Bill Drafting Manual 2011-2012.*

25-440. Intimate Partner Violence and Child Abuse: Basic Principles

[Former A.R.S. § 25-403.03(B)]

A. Intimate partner violence is frequently characterized by an effort of one parent to control the other through the use of abusive patterns of behavior that operate at a variety of levels – emotional, psychological and physical. The presence of this abusive dynamic will always be relevant to the question of what decision-making or parenting time arrangement will serve the best interests of any shared children.

B. The court shall always consider a history of intimate partner violence or child abuse as contrary to the best interests of the child, irrespective of whether a child personally witnessed a particular act of violence. When deciding both parental decision-making and parenting time, the court shall assign primary importance to the physical safety and emotional health of the child and the non-offending parent.

AD HOC CUSTODY WORKGROUP NOTE

This section amends the legislative policy statement concerning intimate partner violence by explicitly – and for the first time – recognizing controlling behavior as a primary motivator for classic intimate partner violence. This is important because our current law makes no effort to discern what prompted a given act of violence and what that portends for decision-making and parenting time in the future. Second, the law clarifies that IPV disserves a child's best interests even when s/he did not personally witness it. Generally accepted research has made this point for years, yet it may be disregarded or discounted if the child was absent during an assault, with the thought that "it was just between the two parents" or that "the offender is still a good father/mother even though s/he abused the other parent."

25-441. Intimate Partner Violence and Child Abuse: Parental Decision-making

[Former A.R.S. § 25-403.03(A), (D) and (E)]

A. Cases Where Parental Decision-Making Presumptively Disallowed. If the court determines from a preponderance of the evidence that a parent has previously committed any act of intimate partner violence against the other parent, or child abuse against the child or child's sibling, then it shall not award parental decision-making to the offending parent without proof that such parent should still make major decisions for the child despite the proven history of abuse or violence. The offending parent may submit this proof by

asking the court to consider the criteria listed in SUBSECTION (B). In that event, the court shall also evaluate whether the offending parent has nevertheless failed to prove his or her suitability for parental decision-making by considering each of the criteria listed in SUBSECTION(C).

B. How a Confirmed Offender May Prove Suitability for Parental Decision-Making. To determine if the offending parent may exercise parental decision-making, despite the proven history of intimate partner violence or child abuse, and in addition to any other relevant, mitigating evidence, the court shall consider whether that parent has:

1. Completed a batterer's intervention program, as defined SECTION 25-422(1), in cases involving intimate partner violence, and has also disclosed and submitted into evidence a complete set of treatment records proving an acceptable level of rehabilitation. A mere certificate of completion does not alone prove rehabilitation. The treatment records themselves must exhibit active involvement and positive steps by the offending parent during therapy.

2. Completed a counseling program for alcohol or other substance abuse, if the evidence establishes that these considerations played a role in past intimate partner violence or child abuse.

3. Refrained from any further behavior that would constitute a criminal offense under federal or state law, including new acts of intimate partner violence or child abuse.

4. Demonstrated sincere remorse and acceptance of personal responsibility by words and conduct following the confirmed act of intimate partner violence or child abuse.

C. Reasons to Refuse Parental Decision-Making to an Offender. To evaluate whether the mitigating evidence presented in SUBSECTION (B) is adequate to award parental decision-making to the offending parent, and in addition to any other relevant, aggravating factors, the court shall also consider:

1. The extent to which the offending parent coercively controlled the other parent during their relationship, as described in SUBSECTION (D), or committed other acts of child abuse against the child or child's sibling.

2. Whether the offending parent committed successive acts of intimate partner violence or child abuse against any person after having already received counseling on past occasions.

3. The extent to which the offending parent inflicted intimate partner violence or child abuse against some other person in the past, or has recently done so with a new intimate partner or child.

4. In cases of mutual violence not amounting to self-defense or other legal justification, as defined by SECTIONS 13-404 through 408, the motivation of each parent for the violence, the level of force used by each parent, and their respective injuries.

5. Whether the offending parent continues to minimize or deny responsibility for proven violence or blame it on unrelated issues.

6. Whether the offending parent has engaged in other behavior that would constitute a criminal offense under federal or state law.

7. Whether the offending parent failed to comply with the mandatory disclosure requirements of ARIZONA RULES OF Family Law PROCEDURE rules 49(B)(2) THROUGH (4) or reasonable discovery requests for records associated with treating intimate partner violence or child abuse.

D. Coercive Control. As used in subsection C(1), "coercive control" refers to one or more controlling behaviors inflicted by one parent against another, when the latter has also suffered intimate partner violence by that parent. With regard to each behavior, the court shall consider its severity, whether it comprises part of a wider pattern of controlling conduct, and the actor's motivation. Specifically, the court shall contemplate whether the offending parent has:

1. Persistently engaged in demeaning, degrading or other verbally abusive conduct toward the victim;

2. Confined the victim or otherwise restricted the victim's movements;

3. Attempted or threatened suicide;

4. Injured or threatened to injure household pets;

5. Damaged property in the victim's presence or without the victim's consent;

6. Threatened to conceal or remove children from the victim's care, or attempted to undermine the victim's relationship with a child;

7. Restricted or hindered the victim's communications, including attempts by the victim to report intimate partner violence, child abuse or other criminal behavior to law enforcement, medical personnel or other third parties;

8. Eavesdropped on the victim's private communications or Internet activities, interrupted or confiscated the victim's mail, or accessed the victim's financial, electronic mail or Internet accounts without permission;

9. Engaged in a course of conduct deliberately calculated to jeopardize the victim's employment;

10. Illicitly tampered with the victim's residential utilities, or entered onto residential property inhabited by the victim without permission;

11. Reported or threatened to report the victim's immigration status to government officials;

12. Terminated the victim's or children's insurance coverage;

13. Forbade or prevented the victim from making decisions concerning disposition of property or income in which the victim possessed a legal interest;

14. Opened financial or credit accounts in the victim's name without the victim's consent, forged the victim's signature, or otherwise appropriated the victim's identity without the victim's authority;

15. Restricted the victim's participation in social activities, or access to family, friends or acquaintances;

16. Forbade or prevented the victim from achieving the victim's educational or career objectives;

17. Used especially dangerous forms of physical violence against the victim, including burning, strangulation, suffocation or use of a deadly weapon

18. Inflicted any form of physical violence against a pregnant victim; or

19. Engaged in any other controlling behavior consistent with the conduct described in this definition.

E. FOR THE PURPOSES OF THIS SECTION:

1. "STRANGULATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-1204(B)(1).

2. "SUFFOCATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-1204(B)(1).

AD HOC CUSTODY WORKGROUP NOTE

Arizona law currently segregates intimate partner violence into a two-part analysis. The first part, found at A.R.S. § 25-403.03(A), forbids joint custody to a "significant" IPV offender, either because of significant violence or a significant history of violence. Unfortunately, the statute does not define "significant," which leads to widely varying outcomes for comparable conduct. The current statute also produces the unintended consequence of invalidating the ordeal of intimate partner violence survivors who suffer injuries that the court is unwilling to classify as "significant" for purposes of an absolute bar to parental decision-making.

For all of these reasons, and due to strong opposition from professional stakeholders to the theory of an absolute ban on parental decision-making, no descendant of A.R.S. § 25-403.03(A) appears in the new bill. The proposed amendments do strengthen the second part of the existing law: the "presumption" rule now codified at A.R.S. § 25-403.03(D). It also now includes acts of child abuse, which were inexplicably omitted from the current statute. An alleged victim (or parent of an alleged victim) must still prove "an act" of IPV or child abuse, but the procedure by which an offender proves (or fails to prove) rehabilitation is more detailed. For example, in cases where an offender argues that s/he has successfully completed an IPV treatment program, it requires that offender to disclose the actual records of his/her treatment program to the opposing side and submit them into evidence for the court's review. A.R.S. § 25-441(B)(1).

Moreover, under new A.R.S. § 25-441(C), the court would also consider "aggravating" factors to evaluate whether more serious issues detract from what the offender has offered in a rebuttal case. This section lists a broad range of conduct often ignored or minimized in IPV cases, and includes an examination of the behaviors defined under "coercive control." The definition of "coercive control" was added to help a trial court evaluate the motivation for proven intimate partner violence and assess the danger posed to the victim and child alike by permitting joint decision-making or unfettered parenting time to a batterer. The listed factors are *not* intended to be exclusive, but instead represent some of the more common conduct of batterers motivated by a desire to control their partners. It is vital not to review these factors strictly in isolation or conclude that, in their absence, all is necessarily well. However, the appearance of these behaviors in tandem should cause significant concern – both in terms of safety for the victim and child, as well as future role-modeling as a parent. The definition also requires the court to consider whether the conduct in question may be attributable to a cause other than controlling behavior, or motivated by legitimate concerns.

In cases of so-called "mutual combat," the amendment also requires the court to evaluate what motivated the violence, the force applied, and resulting injuries – rather than dismantling the presumption from the start. *See* A.R.S. § 25-403.03(D) ("presumption does not apply if both parents have committed an act of domestic violence"). The bill would also include the failure to make obligatory, IPV-related, Rule 49 disclosure as an explicit factor for deciding whether a proven offender had overcome the presumption against an award of parental decision-making.

25-442. Intimate Partner Violence and Child Abuse: Parenting Time

[Former A.R.S. § 25-403.03(F)]

A. Cases Where Parenting Time Presumptively Disallowed. If the court finds that a parent has committed any act of intimate partner violence or child abuse, that parent has the burden of proving to the court's satisfaction that unrestricted parenting time will not physically endanger the child or significantly impair the child's emotional development. The victim need not prove the reverse. In deciding whether the offending parent has met this burden, the court shall consider all of the criteria listed in SECTIONS 25-441(B) and (C), giving due consideration to whether parenting time with that parent under the existing circumstances may:

1. Expose the child to poor role-modeling related to the confirmed intimate partner violence as the child grows older and begins to develop his or her own intimate relationships, irrespective of whether the offending parent poses a direct physical risk to the child; and

2. Endanger the child's safety due to the child's physical proximity to new, potential acts of violence by the parent against a new intimate partner or other child.

B. Restrictions on Parenting Time. If the offending parent fails to prove his or her suitability for unrestricted parenting time under SUBSECTION (A), the court shall then place conditions on parenting time that best protect the child and the other parent from further harm. With respect to the offending parent, the court may:

1. Order child exchanges to occur in a specified safe setting.

2. Order that a person or agency specified by the court must supervise parenting time. If the court allows a family or household member or other person to supervise the offending parent's parenting time, the court shall establish conditions that this supervisor must follow. When deciding whom to select, the court shall also consider the supervisor's ability to physically intervene in an emergency, willingness to promptly report a problem to the court or other appropriate authorities, and readiness to appear in future proceedings and testify truthfully.

3. Order the completion of a batterer's intervention program, as defined by SECTION 25-422(1), and any other counseling the court orders.

4. Order abstention from or possession of alcohol or controlled substances during parenting time, and at any other time the court deems appropriate.

5. Order the payment of costs associated with supervised parenting time.

6. Prohibit overnight parenting time.

7. Require the posting of a cash bond from the offending parent to assure the child's safe return to the other parent.

8. Order that the address of the child and other parent remain confidential.

9. Restrict or forbid access to, or possession of, firearms or ammunition.

10. Suspend parenting time for a prescribed period.

11. Suspend parenting time indefinitely, pending a change in circumstances and a modification petition from the offending parent.

12. Impose any other condition that the court determines is necessary to protect the child, the other parent, and any other family or household member.

WORKGROUP NOTE

Although new A.R.S. § 25-442 does not alter the basic premise of current A.R.S. § 25-403.03(F) – which governs parenting time – the rules are clarified to emphasize the twin problems of physical safety and emotional development. Current law already cites both for the court's consideration, but litigants typically focus on physical danger at the expense of overlooking the (potentially more serious) long-term risk of emotional harm resulting from constant access time with an unrepentant abuser. The amendment clearly directs the court to consider the issue of future, parental role-modeling.

25-443. Intimate Partner Violence and Child Abuse: Assorted Provisions

[Former A.R.S. § 25-403.03(C), (G) and (H)]

A. Appropriate Evidence. To determine if a parent has committed an act of intimate partner violence or child abuse, and subject to RULES OF FAMILY LAW PROCEDURE Rule 2(B), the court shall consider all relevant factors including, but not limited to, the following:

1. Findings or judgments from another court of competent jurisdiction.
2. Police or medical reports.
3. Counseling, school or shelter records.
4. Child Protective Services records.
5. Photographs, recordings, text messages, electronic mail or written correspondence.
6. Witness testimony.

B. Collateral Criminal Proceedings. For purposes of this section, evidence that a parent previously consented to deferred prosecution or diversion from criminal charges for intimate partner violence or child abuse shall constitute adequate proof that such parent committed the act or acts alleged in the criminal complaint later dismissed pursuant to the diversion or deferred prosecution. Nothing in this subsection prevents either parent from introducing additional evidence related to the event in question in support of that parent's case.

C. Collateral Protective Order Proceedings. For purposes of this section, no judgment resulting from protective order proceedings SECTION 13-3602(I) shall be considered conclusive evidence that intimate partner violence or child abuse did or did not occur.

D. Shelter Residency. A parent's residency in a shelter for victims of intimate partner violence shall not constitute grounds for denying that parent any degree of decision-making authority or parenting time. For purposes of this section, "shelter" means any facility meeting the definitions of SECTIONS 36-3001(6) and 36-3005.

E. Joint Counseling Prohibited. The court shall not order joint counseling between a perpetrator of intimate partner violence and his or her

victim under any circumstances. The court may refer a victim to appropriate counseling, and provide a victim with written information about available community resources related to intimate partner violence or child abuse.

F. Alternative Dispute Resolution. A victim of intimate partner violence may opt out of alternative dispute resolution ('ADR') imposed under RULES OF FAMILY LAW PROCEDURE Rule 67 or 68 to the extent that a suggested ADR procedure requires the parties to meet and confer in person. The court shall notify each party of this right before requiring their participation in the ADR process. As used in this subsection only, "victim of intimate partner violence" means: (1) a party who has acquired a protective order against the other parent pursuant to SECTION 13-3602; (2) a party who was previously determined by a civil or family court to have suffered intimate partner violence by the other parent; or (3) a party who was the named victim in a criminal case that resulted in the conviction, diversion or deferred prosecution of the other parent for an act of intimate partner violence.

G. Referrals to CPS. The court may request or order the services of the Division of Children and Family Services in the Department of Economic Security if it believes that a child may be the victim of abuse or neglect as defined in SECTION 8-201.

AD HOC CUSTODY WORKGROUP NOTE

Subsection (A) updates existing A.R.S. § 25-403.03(C). Subsection (B) holds IPV offenders accountable for conduct previously resolved by diversion or deferred prosecution in criminal court. This reform recognizes that such programs are best reserved for defendants who admit responsibility for conduct alleged in the charging complaint or indictment, but avoid formal conviction by seeking rehabilitation through counseling or other measures. They are not appropriate for defendants who deny accountability for their alleged misconduct and simply want to evade criminal prosecution. Under such circumstances, it is both illogical and unfair to require a victim of that crime to prove its occurrence in family court – sometimes several months or even years after the fact (when witnesses or other evidence may no longer be available) – simply because the offender dodged a conviction with an admission, counseling and subsequent dismissal of charges.

Subsection (C) clarifies that family court litigants should not use the outcome of contested, domestic violence protective order proceedings as "proof" that intimate partner violence did or did not exist. The amendment recognizes that protective order proceedings apply a different legal standard, potentially apply different evidentiary rules, and frequently occur with little advance notice to the alleged victim – who bears the burden of proof and may not be able to collect witnesses or exhibits within the allotted time. This amendment does not, however, preclude the use of evidence presented at such an earlier hearing, or even the use of the judgment itself in conjunction with other evidence. It bars only use of the judgment as conclusive proof, standing alone, that intimate partner violence did or did not occur.

Subsection (D) shields victims of intimate partner violence from the loss of decision-making authority or access time merely by virtue of their temporary residency in a domestic violence shelter.

Subsection (E) strengthens the protections for potentially vulnerable IPV victims otherwise forced into mediation or other forms of ADR with their abusers.

25-444. Substance Abuse [Former A.R.S. § 25-403.04]

A. If the court determines from a preponderance of the evidence that a parent has been criminally convicted for any of the following conduct within

the past three years, a rebuttable presumption shall arise prohibiting an award of parental decision-making to that parent:

1. Any drug offense, AS DEFINED IN TITLE 13, CHAPTER 34.

2. Driving under the influence of alcohol, as defined IN SECTION 28-1381.

3. Extreme driving under the influence of alcohol, as defined IN SECTION 13-1382.

4. Aggravated driving under the influence of alcohol, as defined IN SECTION 13-1383.

B. To determine if an offender has overcome the presumption described in SUBSECTION(A), the court shall consider all relevant factors, including:

1. The absence of any other drug or alcohol-related arrest or conviction.

2. Reliable results from random urinalyses, blood or hair follicle tests, or some other comparable testing procedure.

25-445. Dangerous Crimes Against Children [Former A.R.S. § 25-403.05]

A. The court shall not award parental decision-making or unsupervised parenting time to:

1. A person criminally convicted for a dangerous crime against children, as defined IN SECTION 13-705(P)(1); or

2. A person required to register PURSUANT TO SECTION 13-3821.

B. A child's parent or custodian must immediately notify the other parent or custodian if the parent or custodian knows that a convicted or registered sex offender or a person who has been convicted of a dangerous crime against children, as defined in SECTION 13-705may have access to the child. The parent or custodian must provide notice by first-class mail, return receipt requested, or by electronic means to an electronic mail address that the recipient provided to the parent or custodian for notification purposes, or by some other means of communication approved by the court.

25-446. Violent AND Serial Felons [Former A.R.S. § 25-403.05]

A. The court shall not award parental decision-making or unsupervised parenting time to:

1. A person criminally convicted for first- or second-degree murder, as defined IN SECTIONS 13-1105(A) and 13-1104(A), except as provided in SUBSECTION(B).

2. A person whose criminal history meets the definition of a category two or three repetitive offender PURSUANT TO SECTIONS 13-703(B) and (C).

B. If a parent is criminally convicted of first- or second-degree murder of the child's other parent, the court may award parental decision-making and unrestricted parenting time to the convicted parent on a showing of credible evidence, which may include testimony from an expert witness, that the

convicted parent was a victim of intimate partner violence at the hands of the murdered parent and suffered trauma as a result.

25-447. Conflicting Presumptions or Mandatory Rules [New]

In the event that neither parent is eligible for an award of parental decision-making or parenting time due to special circumstances, as defined by 25-422(11), the court may refer the matter for juvenile dependency proceedings pursuant to SECTION 8-800, assign parental decision-making or visitation to another family member or third party consistent with the child's best interests, or provide detailed, written findings that describe the extraordinary conditions that justify an award of decision-making or parenting time to a parent normally disqualified by SECTIONS 25-440 through 25-446. The court shall also explain why its decision best serves the child, with particular focus on the child's safety.

Article 5.
Third Parties

25-450. Third-Party Rights; Decision-Making and Visitation by Grandparents, Parental Figures AND Other Third Parties [Former A.R.S. §§ 25-409 and -415]

A. Decision-Making Authority. PURSUANT TO SECTION 25-421(B)(2), a person other than a legal parent may petition the superior court for decision-making authority over a child. The court shall summarily deny a petition unless it finds that the petitioner has established that all of the following are true in the initial pleading:

1. The person filing the petition stands in loco parentis to the child.

2. It would be significantly detrimental to the child to remain, or be placed in the care of, either legal parent who wishes to keep or acquire parental decision-making.

3. A court of competent jurisdiction has not entered or approved an order concerning parental decision-making within one year before the person filed a petition pursuant to this section, unless there is reason to believe the child's present environment may seriously endanger the child's physical, mental, moral or emotional health.

4. One of the following applies:

(a) One of the legal parents is deceased.

(b) The child's legal parents are not married to each other at the time the petition is filed.

(c) There is a pending proceeding for dissolution of marriage or for legal separation of the legal parents at the time the petition is filed.

B. Presumption in Favor of Legal Parent. If a person other than a child's legal parent is seeking decision-making authority concerning that child, the court must presume that it serves the child's best interests to award

decision-making to a legal parent because of the physical, psychological and emotional needs of the child to be reared by a legal parent. A third party may rebut this presumption only with proof by clear and convincing evidence that awarding parental decision-making custody to a legal parent is not consistent with the child's best interests.

C. Visitation. PURSUANT TO 25-421(B)(2), a person other than a legal parent may also petition the superior court for visitation with a child. The superior court may grant visitation rights during the child's minority on a finding that the visitation is in the child's best interests and that any of the following is true:

1. One of the legal parents is deceased or has been missing at least three months. For the purposes of this paragraph, a parent is considered to be missing if the parent's location has not been determined and the parent has been reported as missing to a law enforcement agency.

2. The child was born out of wedlock and the child's legal parents are not married to each other at the time the petition is filed.

3. For grandparent or great-grandparent visitation, the marriage of the parents of the child has been dissolved for at least three months.

4. For in loco parentis visitation, there is a pending proceeding for dissolution of marriage or for legal separation of the legal parents at the time the petition is filed.

D. Verification of Petition and Mandatory Notice. Any petition filed under SUBSECTION (A) or (C) shall be verified, or supported by affidavit, and include detailed facts supporting the petitioner's claim. The petitioner shall also provide notice of this proceeding, including a copy of the petition itself and any affidavits or other attachments, and serve the notice consistent with RULES OF FAMILY LAW PROCEDURE Rules 40-43 to all of the following:

1. The child's legal parents.

2. A third party who already possesses decision-making authority over the child or visitation rights.

3. The child's guardian or guardian ad litem.

4. A person or agency that already possesses physical custody of the child, or claims decision-making authority or visitation rights concerning the child.

5. Any other person or agency that has previously appeared in the action.

E. Criteria for Granting Third-Party Visitation. When deciding whether to grant visitation to a third party, the court shall give special weight to the legal parents' opinion of what serves their child's best interests, and then consider all relevant factors, including:

1. The historical relationship, if any, between the child and the person seeking visitation.

2. The motivation of the requesting party seeking visitation.

3. The motivation of the person objecting to visitation.

4. The quantity of visitation time requested and the potential adverse impact that visitation will have on the child's customary activities.

5. If one or both of the child's parents are deceased, the benefit in maintaining an extended family relationship.

F. Coordinating Third-Party Visitation with Normal Parenting Time. If logistically possible and appropriate, the court shall order visitation by a grandparent or great-grandparent to occur when the child is residing or spending time with the parent through whom the grandparent or great-grandparent claims a right of access to the child.

G. Consolidation of Cases. A grandparent or great-grandparent seeking visitation rights under this section shall petition in the same action in which the family court previously decided parental decision-making and parenting time, or if no such case ever existed, by separate petition in the county of the child's home state, PURSUANT TO 25-1002(7).

H. Termination of Third-Party Visitation. All visitation rights granted under this section automatically terminate if the child has been adopted or placed for adoption. If the child is removed from an adoptive placement, the court may reinstate the visitation rights. This subsection does not apply to the adoption of the child by the spouse of a natural parent if the natural parent remarries.

Article 6. Temporary Orders, Modification & Relocation
§ 25-460. Temporary Orders
[former A.R.S. § 25-404]
§ 25-461. Decree Modification
[former A.R.S. § 25-411]
§ 25-462. Relocation of a Child
[former A.R.S. § 25-408(B)]
Article 7. Records & Sanctions
§ 25-470. Access to Records
[former A.R.S. § 25-403.06]
§ 25-471. Sanctions for Misconduct
[former A.R.S. § 25-414]
Article 8. Miscellaneous
§ 25-480. Statutory Priority
[former A.R.S. § 25-407]
§ 25-481. Agency Supervision
[former A.R.S. § 25-410]
§ 25-482. Identification of Primary Caretaker
[former A.R.S. § 25-403.07]
§ 25-483. Fees & Resources
[former A.R.S. § 25-403.08]
§ 25-484. Child Interviews by Court & Professional Assistance
[former A.R.S. § 25-405]
§ 25-485. Investigations & Reports

[former A.R.S. § 25-406]

§ 25-486. Child Support & Parenting Time Fund

[former A.R.S. § 25-412]

§ 25-487. Domestic Relations Education & Mediation Fund

[former A.R.S. § 25-413]

COMMITTEE ON SUPERIOR COURT

Date Action Required:	Type of Action Required:	Subject:
May 20, 2011	☐ Formal Action/Request ☒ Information Only ☐ Other	UPDATE - SCR 124 AMENDED PETITION

FROM: Administrative Office of the Courts, CSD & ITD

PRESENTER(S): Stewart Bruner and Melinda Hardman (AOC team from Court Services and Information Technology Divisions working on revisions to S.C. Rule 124, Electronic Filing, Delivery and Service of Documents).

DISCUSSION: This agenda item is intended to provide you with a progress update of the revisions to S.C. Rule 124, Electronic Filing, Delivery and Service of Documents.

Rule Petition R-11-0012, to Amend Rule 124, Rules of the Supreme Court, was filed January 7, 2011. The amendments were brought before this committee prior to filing. After the petition was filed, the court ordered a revised comment schedule. Under that order, initial comments were received in April, 2011, the comments were considered and amendments were made to the proposed, revised rule where possible, and an amended petition, with an attached, amended version of the proposed, revised rule, will be/was filed May 9.

Again, referring to the court's revised schedule as ordered, comments to the amended petition must be submitted by June 6.

A copy of the modified version of the rule has been provided for this meeting.

RECOMMENDED MOTION: Informational only.

APPENDIX A

~~RULES OF THE SUPREME COURT~~

~~RULE 124. ELECTRONIC FILING, DELIVERY AND SERVICE OF DOCUMENTS~~

~~**(a) Electronic Filing Authorized.** In accordance with this rule and the corresponding Administrative Requirements for Electronic Filing and Management of Court Documents adopted concurrently herewith, the chief justice and the chief judge of each division of the court of appeals may permit by appropriate court rule or administrative order the electronic filing of documents in their respective courts. The presiding judge of the superior court in each county may permit by appropriate court rule the electronic filing of documents in the superior court and justice courts in each county. After consultation with the governing body of the city or town in which a municipal court is located, the presiding judge of the superior court may permit by appropriate court rule the electronic filing of documents in municipal court.~~

~~**(b) Implementation of Electronic Filing.** Before Implementing an electronic filing system, an implementing court must:~~

~~(1) develop an electronic filing plan that conforms with the Administrative Requirements for Electronic Filing and Management of Court Documents; and~~

~~(2) adopt procedures that ensure document availability, security and integrity, and authentication of the document and its sender.~~

~~**(c) Date and Effect of Electronic Filing.**~~

~~(1) An electronically filed document shall be deemed filed on the date and time that it is received by the court (or by its designee), unless the court later rejects the document for filing. Promptly upon receipt, the court (or its designee) shall transmit to the filing party an acknowledgment indicating the date and time of receipt. If the court later does not accept the document for filing, it shall promptly notify the filing party electronically and set forth the grounds for rejection.~~

~~(2) An electronically filed document constitutes the filing of the original written and signed paper under the rules governing practice and procedure in the courts of this state. The court may require the party to produce the original of an exhibit that has been filed electronically. An electronically filed document as it resides on the court's computer shall be considered the original document satisfying the best evidence rule set forth in Rule 1002, Arizona Rules of Evidence.~~

~~**(d) Electronic Delivery of Documents by the Court.** A court may deliver judgments, minute entries, orders requiring the signature of a judge or a clerk to be effective, and notices electronically, instead of by mail, to any party or any party's attorney who files either traditionally or electronically a consent. Such consent is effective in all subsequent litigation in that court involving the consenting party. A party or that party's attorney may withdraw such consent at any time upon notice to the clerk of the court filed either traditionally or~~

~~electronically. An implementing court may adopt, by appropriate court rule, additional procedures relating to the e-delivery of documents, to the extent such additional procedures are not inconsistent with this Rule 124.~~

~~**(e) [Reserved.]**~~

~~**(f) Paragraph Numbering.** Paragraph numbering based on the system adopted by the Supreme Court for numbering appellate opinions shall be used in all electronic documents. Until such time as a uniform citation system with paragraph numbering standards may be adopted, electronically filed documents shall include numbers assigned to each paragraph in accordance with the following procedures:~~

~~(1) Each paragraph of text shall be numbered consecutively.~~

~~(2) The following portions of an electronic document do not constitute a new paragraph and therefore shall not be numbered:~~

~~(A) headings introducing sections of text;~~

~~(B) indented (blocked) text, including text quoted from opinions, transcripts, exhibits, pleadings, or similar sources;~~

~~(C) lists of cases, statutes, or issues;~~

~~(D) text immediately following indented text, unless such text begins a new paragraph;~~

~~(E) footnotes;~~

~~(F) appendices or other attachments.~~

~~(3) If indented text is from a source that uses numbered paragraphs, the numbers from the original source shall not be included in the indented portion but in the citation only.~~

~~(4) Each paragraph number shall be shown as, *e.g.*, "¶ 1" and placed at the left margin. The number shall be followed by a tab at the tenth character.~~

~~(5) If additional text is inserted into a document after it is first filed and/or distributed, the new paragraph or paragraphs shall be numbered using the number of the paragraph immediately preceding the insertions and letters, *e.g.*, "¶ 1a."~~

~~(6) If one or more paragraphs are deleted from a document after it is first filed and/or distributed, the text shall be replaced with the statement "paragraph deleted" following the appropriate paragraph number.~~

~~(7) If a supplemental document is filed, the paragraph numbering in the original document shall be continued.~~

~~(8) If referring to specific portions or passages in electronic documents which contain paragraph numbers, references shall employ the paragraph numbers in those documents.~~

~~**(g) Computation of Time.** The electronic delivery of documents by the court pursuant to paragraph (d) of this Rule is complete upon transmission.~~

RULES OF THE SUPREME COURT

RULE 124, ELECTRONIC FILING, DELIVERY AND SERVICE OF DOCUMENTS

(a) Definitions.

(1) "Application Fee" or "User Fee," means the fee assessed when a filer performs various functions using AZTurboCourt.

(2) "AZTurboCourt" means the supreme court approved Internet-based system for filing and service of documents in the trial and appellate courts of Arizona.

(3) "Attached Document" means a document prepared outside of AZTurboCourt and then filed in AZTurboCourt.

(4) "Document" means any pleading, motion, exhibit, declaration, affidavit, memorandum, paper, order, notice, and any other filing submitted by a filer or by the court.

(5) "Electronic Document Management System (EDMS)" means a collection of computer software application programs and hardware devices that provide a means of organizing and controlling the creation, management and retrieval of documents through their life cycle. It may include workflow software which enables organizations to define routing and processing schemes to automate the business processes for document handling. It may also include imaging and optical character recognition (OCR) software and devices to support the capture, storage, and retrieval of document images from paper.

(6) "Filer" means the individual under whose personal registration a document is submitted through AZTurboCourt.

(b) Electronic Filing Authorized. ~~Parties, attorneys,~~Unless otherwise ordered by the court or as provided by this rule or the AZTurboCourt Technical Standards, attorneys shall file documents electronically through AZTurboCourt, in courts where AZTurboCourt is both available and required, and for any case type available in that court, in accordance with this rule. Self-represented litigants, court personnel, and persons appointed by the court are authorized to file

documents electronically through AZTurboCourt in courts where AZTurboCourt is available and for any case type available in that court, in accordance with this rule. AZTurboCourt is the supreme court's authorized mechanism for submittal of electronic filings to the courts of this state. Documents filed electronically through AZTurboCourt shall be filed in accordance with this rule and the AZTurboCourt Technical Standards.

(c) Registration. AZTurboCourt shall require registration to obtain an individual login ID and password for access to the system.

(d) AZTurboCourt Technical Standards. The supreme court is authorized to develop, publish, and implement a set of technical standards for electronic filing of documents through AZTurboCourt to be called the "AZTurboCourt Technical Standards."

(~~d~~e) Official Record.

(1) ~~All electronically filed documents shall be considered original documents of record in and for the applicable court.~~An electronic document that resides within the clerk's or court's EDMS is the original document and satisfies the requirements of Rule 1002, Arizona Rules of Evidence.

(2) An electronic ~~submission in~~transmission or print-out from the clerk's or court's EDMS that shows the clerk's or court's seal attesting to the document's authenticity shall be considered an official record or certified copy of the original.

(3) Any court rule requiring that a document be an original, be on paper or another tangible medium, or be in writing, is satisfied by the electronic image defined as the original document ~~herein~~in paragraph (e)(1) of this Rule.

(~~e~~f) Date and Effect of Electronic Filing.

(1) A person who files a document electronically shall have the same responsibility as a person who files a document on paper for ensuring that the document is properly filed and that a copy has been provided to other parties in the case as required by rule or ~~law~~statute.

(2) An electronically filed document shall be deemed submitted on the date and time it is received by AZTurboCourt as reflected on the subsequent email notification~~, unless notification is declined by the filer.~~ or the filing details displayed within AZTurboCourt.

(3) The clerk shall record the date and time of receipt as provided by AZTurboCourt and the applicable court or office of the clerk where the document was received.

(4) Once an electronically filed document has been accepted by the court, the date and time of filing shall be the AZTurboCourt date and time of submittal.

(~~f~~g) Electronic Payment of Filing Fees and Application Fees.

(1) For filings submitted through AZTurboCourt, filers shall pay all filing fees and application

fees through AZTurboCourt, unless otherwise directed by the clerk or court.

(2) A judge shall not waive or ~~suspend~~ defer the application fee; however, a judge may grant a represented party a waiver from compliance with a requirement of mandatory e-filing through AZTurboCourt, for good cause shown, thereby allowing the represented party to file documents on paper.

(3) Filers who need to request a fee deferral or waiver are required to file all documents on paper, until the ~~application~~ request for fee deferral or waiver can be filed through AZTurboCourt.

(~~g~~h) Signature.

(1) An attorney is responsible for all documents filed under the attorney's registered login ID and password. Documents filed in AZTurboCourt under an attorney's registered login ID and password, and that display the symbol "/s/" with the attorney's printed name, shall be deemed signed by that attorney for purposes of the rules governing practice and procedure in the courts of this state, including Rule 11, Rules of Civil Procedure. Documents filed under the registered login ID and password of any person the attorney has authorized, either directly or indirectly, to file in AZTurboCourt and that display the symbol "/s/" with the attorney's printed name, shall be deemed signed by that attorney for purposes of the rules governing practice and procedure in the courts of this state, including Rule 11, Rules of Civil Procedure.

(2) Documents filed in AZTurboCourt by a self-represented litigant shall be filed under the self-represented litigant's registered login ID and password~~. Documents that display the symbol "/s/" with the self-represented litigant's printed name~~ and shall be deemed signed by that self-represented litigant for purposes of the rules governing practice and procedure in the courts of this state, including Rule 11, Rules of Civil Procedure.

(3) ~~In the courts of this state, a judicial officer or clerk may sign a document for filing in AZTurboCourt utilizing a facsimile signature or by inserting the symbol "/s/" and then inserting the judicial officer's or clerk's printed name.~~Documents filed in AZTurboCourt under a judicial officer's or clerk's registered login ID and password shall be deemed signed by that judicial officer or clerk.

(4) A document being filed by more than one self-represented litigant on the same side, need only be signed by one of the self-represented litigants. The signer of the document shall ensure that all parties named in the document agree with the contents of the document. The standing of all parties is subject to judicial determination during the proceedings.

(~~h~~i) Required Document Formats.

(1) All filers are responsible for ensuring that the documents they file through AzTurboCourt meet the AzTurboCourt Technical Standards published on the AzTurboCourt website.

(2) All attached documents submitted by the filer through AZTurboCourt shall be formatted in accordance with the applicable rules governing formatting of paper documents in the courts of

this state.

(3) When establishing proof of service by U. S. Postal Service certified mail, a filer shall scan and electronically file both sides of the signed return receipt, in addition to complying with all other requirements of rule or ~~law~~statute. When establishing proof of service by a national courier service, the filer shall scan and electronically file the documentation required by rule or statute, in addition to complying with all other requirements of rule or ~~law~~statute.

(4) When an electronically notarized document is not available, a notary requirement may be satisfied by the filer's scanning and electronically filing the document that contains the notary's original signature and seal.

~~(5) Courtroom exhibits may be converted to electronic format at the discretion of the clerk.~~

(5) A filer may include a hyperlink only to static textual information or documents. Materials accessed via hyperlinks are not part of the official court record. A filer may include a bookmark to another page within the same document.

(6) Appellate Court Opinions shall have each paragraph of text numbered consecutively.

(~~i~~j) Electronic Service and Delivery of Documents.

(1) Registration in AZTurboCourt constitutes consent to electronic service, through AZTurboCourt or e-mail, of documents under the rules governing practice and procedure in the courts of this state~~, through AZTurboCourt~~. A self-represented litigant may withdraw such consent at any time upon written notice to the clerk and to all other attorneys and self-represented litigants in an action. The written notice shall set forth a ~~physical~~mailing address for service. An attorney may not withdraw consent. Such consent or withdrawal of consent to electronic service by a self-represented litigant is effective only for the case in which the consent or withdrawal has been submitted.

(2) Service of post-initiation documents~~ as required by the rules governing practice and procedure in the courts of this state shall be completed~~, if available through AZTurboCourt, shall be completed through AZTurboCourt except when a self-represented litigant has withdrawn consent to electronic service by filing a notice of withdrawal of consent in a case, or when electronic service is otherwise prohibited by rule or ~~law~~statute. If a self-represented litigant has withdrawn consent to electronic service, a paper copy of the document shall be served on the self-represented litigant at the ~~physical~~mailing address provided in the withdrawal of consent. Withdrawal of consent to electronic service and delivery by a self-represented litigant does not relieve the litigant of his or her obligation to serve documents, as required by rule or statute.

(3) Attorneys shall provide a current e-mail address on all documents submitted to the court, whether electronic or paper. Self-represented litigants who have not withdrawn consent to electronic service shall include a current e-mail address on all documents submitted through AZTurboCourt.

(4) ~~As much as~~To the extent reasonably practicable, a clerk shall distribute through AZTurboCourt or by other electronic means, all communication issued from the clerk, including orders, judgments, notices, minute entries, and any other communication to attorneys and self-represented litigants, whether the case in which the document or communication is issued was initiated by paper or electronic means.

(~~j~~k) Extensions of Time Due to Interruption in Service. ~~If a filer fails to meet a filing deadline imposed by rule or law solely as the result of a technical failure of AZTurboCourt in processing the document, the filer must file the document as soon thereafter as practicable and accompany the filing with a motion to accept the document as timely filed. The motion shall set forth the reason the deadline was not met by describing the technology failure. The document and motion shall be filed on paper at the proper courthouse no later than the second day on which the court is open for business following the deadline that was not met, unless the technology failure is alleviated and the motion and document are submitted using AZTurboCourt not later than the second day on which the court is open for business following the deadline that was not met. If the court grants the motion, the document shall be deemed timely filed nunc pro tunc, notwithstanding any rule or law to the contrary.~~ If a filer fails to meet a filing deadline imposed by court order, rule or statute because of a failure in the transmission of a document, and the matter cannot be resolved to the satisfaction of the filer and the clerk, the filer may file the document as soon thereafter as practicable and accompany the filing with a motion to accept the document as timely filed. For good cause shown, the court may enter an order permitting the document to be filed nunc pro tunc to the date the filer originally sought to transmit the document electronically. The court and clerk shall not be liable for malfunction or errors occurring in electronic transmission or receipt of electronically filed documents.

COMMITTEE ON SUPERIOR COURT

Date Action Required:	Type of Action Required:	Subject:
May 20, 2011	☒ Formal Action/Request ☐ Information Only ☐ Other	REVISIONS TO ACJA §§ 1-605: REQUESTS FOR BULK OR COMPILED DATA, AND 1-606: PROVIDING CASE RECORD ACCESS TO PUBLIC AGENCIES

FROM: Administrative Office of the Courts, Court Services Division

PRESENTER(S): Melinda Hardman, Sr. Policy Analyst

DISCUSSION: Now that ACJA §§ 1-605 & 1-606 have been in place for more than a year, the AOC has become aware of certain improvements that are necessary to the process of requesting and releasing bulk data that resides with the courts. As a result, the AOC is now proposing revisions, primarily to § 1-605, to clarify and improve this process.

The proposed revisions to § 1-605:

- Differentiate between a request for bulk or compiled court data that includes a request for "protected personal identifiers," defined as "a street address, the numerical day of the month of birth, the last four digits of a social security and a driver license number" and a request that does not.

- Acknowledge that there are different types of requestors of bulk or compiled data and clarify the concept of a "subscription service" for court data.

- Reduce the number of provisions or terms required in a dissemination agreement when protected personal identifiers are not requested.

The proposed revisions to § 1-606:

- Clarify the persons and entities to whom the section applies and the types of requests to which it applies, including that it does not apply to persons or entities covered by ACJA § 1-605.

RECOMMENDED MOTION: The Committee on Superior Court recommends that the Arizona Judicial Council approve the proposed revisions to ACJA §§ 1-605: Requests for Bulk or Compiled Data, and 1-606: Providing Case Record Access to Public Agencies or to Serve a Public Purpose, as presented.

M. Hardman
April 25, 2011

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 1: Judicial Branch Administration
Chapter 6: Records
Section 1-605: Requests for Bulk or Compiled Data

A. Purpose. Rule 123, Rules of the Supreme Court of Arizona ("Rule 123") authorizes courts to release bulk or compiled court data. This section sets forth the procedure for releasing bulk or compiled data, for either a commercial or a non-commercial purpose, to members of the general public, users enrolled in a subscription service, members of the media, and all other individuals and entities not specifically covered under Arizona Code of Judicial Administration § 1-606.

B. Definitions. In addition to the definitions found in Rule 123, the following definitions apply to this section:

"Protected Personal identifiers" means a street address, the numerical day of the month of birth, the last four digits of a social security and a driver license number.

"Subscription service" means the dissemination of data from case records by a custodian of bulk data on a periodic basis to the same requestor, for a commercial purpose, which is often, but not always, re-disseminated by the requestor in whole or in part to customers as another data product.

C. [no change]

D. ~~Procedure for~~ Providing Bulk or Compiled Data.

1. Subscription ~~Service~~ service. Upon request, a custodian of bulk data may make such data or a portion thereof available through a subscription service, pursuant to the provisions of Rule 123, this section, and all other applicable rules and laws. The custodian of bulk data shall require ~~the requestor~~ a subscriber to enter into a dissemination agreement containing, at a minimum, the terms set forth ~~below~~ in subsection (D)(2) or (D)(3) and pay a fee for the service in an amount specified by the custodian.

2. Dissemination ~~Agreement~~ agreement for bulk data containing any protected personal identifiers. A custodian of bulk data shall require all individuals or entities requesting bulk or compiled data that includes any protected personal identifiers as defined in subsection (B) to provide proof of identification satisfactory to the custodian, pay any applicable fees, and execute a dissemination agreement and disclaimer that includes the following provisions:

   a. Requestor agrees to comply with all current laws, rules and policies governing the confidentiality of any data provided by the custodian.

   b. Requestor will not use or resell data for the purpose of commercial solicitation of any individual named in the data.

c. Requestor will not publish or re-disseminate the data for the purpose of unrestricted access on the Internet with the personal identifiers set forth in Rule 123(j)(4), Rules of the Supreme Court of Arizona.

d. Requestor agrees that the custodian may audit requestor's compliance with the terms and conditions of the dissemination agreement and that requestor will cooperate fully with any law enforcement investigation concerning the use of the data by requestor or any of its subscribers.

e. Requestor agrees to defend, indemnify, and hold harmless the custodian, the supreme court, the court from which the data is disseminated, and the State of Arizona and their officers, agents and employees from all risk of loss and damages incurred because of any claims, judgments, or executions arising out of any use made of the data obtained under the agreement.

f. Requestor agrees to purchase and maintain commercial general liability insurance with minimum coverage limits of $1,000,000 per each claim, naming the custodian, the supreme court, the court from which the data is disseminated, the State of Arizona and their officers, agents and employees, as additional insureds. Non-commercial users may be excepted from this requirement.

A dissemination agreement shall include the following additional terms when the requestor is receiving data pursuant to a data subscription service:

g. Requestor agrees to provide its users only the most recent data obtained from the custodian.

h. Upon notice from the custodian, requestor agrees to remove from its files within two business days any data that has been amended, corrected, sealed, or otherwise restricted and notify its subscribers to do the same. The notice from the custodian shall identify the cases that are to be corrected, removed, or otherwise restricted.

i. The custodian may immediately terminate the dissemination agreement at any time if, in the custodian's sole discretion, the data is used ~~improperly~~ contrary to law or this agreement.

j. A ~~Requestor~~ requestor who transfers bulk data to another customer on a periodic or on-going basis, must enter a written ~~subscriber~~ agreement with each of ~~its subscribers~~ these customers that specifically details the authorized uses of the data accessed, conditions access to lawful use, and includes a provision for immediate termination of the agreement in the event of improper use of the data. The agreement shall also require the ~~subscriber~~ customer to remove from its files any data that has been amended, corrected, sealed, or otherwise restricted, within two business days from receiving notice from requestor. The agreement shall further require the ~~subscriber~~ customer to provide a disclosure statement to each customer, client, or other third party at the time any of the data obtained under the agreement is provided, which states:

The custodian of bulk data provides no warranties, express or implied,

that the data provided is accurate, current, correct, or complete. It is expressly understood that it is the responsibility of the requestor and/or its subscribers, customers, clients, or other third parties to whom the data is supplied to verify the data obtained under this agreement with the official court records.

3. Dissemination agreements for bulk data not containing protected personal identifiers. A custodian of bulk data shall require all individuals or entities requesting bulk or compiled data that does not include ~~the~~ any protected personal identifiers as defined in subsection (B) to execute a dissemination agreement that includes the following provisions, and pay any applicable fees. Bulk data released pursuant to this subsection shall include the city, state and zip code of an individual's address, and the month and year of birth, when available.

   a. Requestor will not use or resell data for the purpose of commercial solicitation of any individual named in the data.

   b. The parties shall engage in good faith efforts to agree on how the records or data will be exchanged, including the format and timing.

   c. If data will be exchanged over a period of time, the parties shall agree on a change management process and allocation of responsibilities for ensuring any unilateral software modifications do not disrupt the ongoing exchange of electronic case record information.

~~This requirement to execute a dissemination agreement and disclaimer to receive bulk or compiled data shall apply to all existing or ongoing dissemination arrangements and future requests for bulk or compiled data.~~

E. Providing ~~Custom~~ custom data reports through a court-contracted vendor. As provided in Supreme Court Rule 123(c)(4), court records custodians are not required to provide customized reports of data by indexing, compiling, reformatting, programming or otherwise reorganizing existing records to create new records not maintained in the ordinary course of business in responding to requests for access to court records. A custodian who uses a case management system other than an AOC-supported system may contract with one or more persons or organizations to perform this function, as permitted by Rule 123(j)(1)(B). The administrative director may contract with one or more persons or organizations to perform this function for any custodian who uses an AOC-supported case management system. Any such contract shall be competitively procured and, at a minimum, include the following provisions:

1. Vendor shall not access the custodian's data or disseminate any information obtained under the contract except as necessary to fulfill the purposes of the contract.

2. Vendor's customized reports may include only the following personal identifiers about a party: name, address, date of birth, last four digits of a social security number or driver license number, as permitted by Rule 123(j)(3).

3. Vendor agrees to abide by the custodian's electronic record system security needs.

4. Vendor agrees to comply with all current laws, rules and policies governing the confidentiality of any data provided by custodian.

5. Vendor agrees that the custodian may audit vendor's compliance with the terms and conditions of the contract and that vendor will cooperate fully with any law enforcement investigation concerning the use of the data by the vendor or any of vendor's customers.

6. Vendor will notify each of its customers of the authorized uses of vendor's data reports, including the prohibition against commercial solicitation of an individual named in a report.

7. The vendor shall provide the following disclosure statement to each customer:

    i. The custodian of the data provided in this report makes no warranties, express or implied, that the data provided is accurate, current, correct, or complete. It is expressly understood that it is customer's responsibility to verify the data contained in vendor's report with the official court records.

8. Vendor agrees to defend, indemnify, and hold harmless the custodian, the supreme court, the court from which the data is obtained, and the State of Arizona and their officers, agents and employees from all risk of loss and damages incurred because of any claims, judgments, or executions arising out of any use made of the data obtained under the agreement.

9. Vendor agrees to purchase and maintain commercial general liability insurance with minimum coverage limits of $1,000,000 per each claim, naming the custodian, the supreme court, the court from which the data is obtained, and the State of Arizona and their officers, agents and employees as additional insureds.

M. Hardman
April 25, 2011

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 1: Judicial Branch Administration
Chapter 6: Records
Section 1-606: Providing Case Record Access to Public Agencies ~~and Public Purpose Organizations~~ or to Serve a Public Purpose

A. Purpose. This section establishes minimum standards for a custodian or the administrative director to follow in providing case records or data to ~~non-judicial branch government agencies and public purpose organizations, as provided in Rule 123(c)(6), Arizona Supreme Court: Employees of~~ federal, state, tribal, and local government agencies ~~and political subdivisions,~~ and private organizations, the objective of which is to serve a public purpose, such as criminal justice, child welfare, licensing, mental health treatment, or research for scholarly~~, journalistic, or governmental purposes, may be granted such access to court records as required to serve that purpose according to this rule or as provided by any supplemental supreme court policies or court order~~ or governmental purposes.

In accordance with this section, the local court's custodian of case records or the administrative director may provide ~~government agencies and public purpose organizations~~ specialized access to case records or data that may exceed the access available to the general public provided by Rule 123. Access to case records or data provided under this section shall be limited to those records necessary for the recipient's intended purpose.

~~**B.**~~ **Applicability.** This section applies to requests from public agencies and private organizations identified in subsection (A) for one-time, periodic, or on-going access to electronic or paper case records in bulk, that may include requests for access by remote electronic means or by an application-to-application transmission of records. This section does not apply to requests from ~~government and public purpose organizations~~ persons or entities governed by ACJA § 1-605, nor does it apply to any requests for one-time access to case ~~files~~ records on a case-by-case basis. ~~This section applies to requests from government and public purpose organizations for access that is carried out by any of the following methods:~~

- ~~One-time, periodic, or on-going access to electronic or paper records in bulk,~~
- ~~On-going access by remote electronic means, or~~
- ~~Application-to-application electronic exchange of case records between a court and another government agency.~~

C. Record Access Agreement. Before providing access to case records or data under this section, the custodian shall execute a record access agreement with the recipient that identifies the records or data to be provided and permissible uses. The local court's records custodian shall execute a record access agreement for any access to the local court's case management system data. The administrative director shall execute a record access agreement for any access to the statewide repository of aggregated case management system data maintained by the Administrative Office of the Courts. No record access agreement is needed for sharing or exchange of case records with other courts established pursuant to

Article VI, Section 1 of the Arizona Constitution or with the Administrative Office of the Courts.

The record access agreement shall include the following terms and conditions:

1. Recipient shall protect the records and data from unauthorized access and misuse.

2. Recipient shall ensure the security and confidentiality of any records or data provided by the custodian that are sealed or closed by Rule 123 or any other rule or law.

3. Recipient will not copy or re-disseminate any records or data closed by Rule 123 other than for the stated purposes.

4. Recipient will not use the records or data to sell a product or service to an individual or the general public.

5. Recipient will inform its employees of the requirements imposed by applicable federal and state laws, rules, and terms of the record access agreement.

6. If requested by the individual who is the subject of a record, recipient will cooperate in correcting any inaccurate or incomplete records provided by the custodian.

7. A recipient will consult with the custodian prior to releasing any records or data provided under the record access agreement in response to a public records request.

8. Prior to merging any records or data obtained from the custodian with other records or data concerning an individual or organization, recipient will ensure there is sufficient identifying information to reasonably conclude that the record or data concerns the same individual or organization.

9. Recipient will notify the custodian of any record or data inaccuracies discovered by the recipient.

10. Recipient will permit the custodian to audit recipient's use of and access to the records or data provided.

11. The parties shall agree on how the records or data will be exchanged, and if done so electronically, the format, timing, and frequency of exchanges.

12. The parties shall agree on a change management process and allocation of responsibilities for ensuring any unilateral software modifications do not disrupt the on-going exchange of electronic case record information.

13. All applicable rules and laws pertaining to the release of the records and data have been disclosed by the parties.

~~This requirement to execute a record access agreement for access to case records and data shall apply to all existing or current arrangements for specialized access to case records~~

~~provided to any government agency or public purpose organization.~~

D. Court Order. If any records to be released as provided in this section are made confidential by state or federal statute ~~The~~ the custodian or administrative director shall obtain a court order prior to releasing the records ~~when required by federal or state law~~.

COMMITTEE ON SUPERIOR COURT

Date Action Required:	Type of Action Required:	Subject:
05-20-2011	☒ Formal Action/Request ☐ Information Only ☐ Other	ACJA 6-110 OFFENDER DRUG TESTING

FROM: Kathy Waters, Director APSD

PRESENTER(S): Cliff Ford and Mark Stodola

DISCUSSION: The purpose of the this code is to provide the basis of consistency to the alcohol and drug testing of offenders to the probation departments in Arizona.

RECOMMENDED MOTION: Approve as written

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 1: General Administration
Section: 6-110 Offender Alcohol and Drug Testing

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

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

"Alcohol and drug testing" means any validated or verified method of determining the level of identifiable substances in the body including, but not limited to breath, blood, oral fluid, urine, hair and sweat testing.

"Confirmation testing" means the re-analysis of a positive sample with a methodology of greater sensitivity and specificity than the initial immunoassay screening methodology.

"Court" means superior court.

"Immunoassay" means an initial screening methodology, the basis of which is the chemical process known as mass action reaction, for determining small amounts of material in the sample.

"Instrument based testing" means a screen or analysis system that utilizes a piece of laboratory equipment, dedicated personnel, location, and supplies to determine the level of identifiable substances in the body.

"Retest" means a repeated or second immunoassay to verify the findings of the initial screening immunoassay.

B. Applicability. Article VI, Section 3 of the Arizona Constitution authorizes the supreme court to establish requirements for offender alcohol and drug testing conducted by the probation departments and contracted laboratories.

C. Purpose. To provide minimum standards for offender alcohol and drug testing practices and requirements.

D. General Administration.

1. The AOC shall:

    a. Monitor probation department's alcohol and drug testing policies and procedures;

b. Prepare written material setting forth various techniques, practices, guidelines and other recommendations regarding alcohol and drug testing and distribute this material to superior court judges and probation personnel;

c. Inspect, audit, or have audited the alcohol and drug testing records of any probation department;

d. Contract with laboratories to perform alcohol and drug testing on behalf of juvenile probation departments and require those agencies to comply with the requirements within this code;

e. Provide general assistance to probation departments on alcohol and drug testing; and

f. Adopt other administrative practices and procedures consistent with this code, as necessary for alcohol and drug testing.

2. Each probation department shall:

a. Have a written alcohol and drug testing policy and procedure in accordance with this code which includes, but is not limited to:

(1) The selection of offenders to be tested;
(2) The type of drugs to be tested;
(3) The type of tests utilized;
(4) Field, office and laboratory testing;
(5) Method to verify the identity of offenders that appear for testing
(6) Frequency of testing;
(7) The process to ensure specimen samples
  (a) Have not been substituted, adulterated or tampered; and
  (b) Are handled with a reliable chain of custody for supervision and court purposes;
(8) Offender's use of prescription medication not prescribed for the offender or taking prescribed medication more than ordered by physician;
(9) The release of testing results in compliance with applicable statutes, administrative orders, and codes concerning confidentiality of court records;
(10) Handling court challenges to test results; and
(11) Develop, implement, and document training for staff who conduct instrument or non-instrument based tests according to the manufacturer's requirements and departmental policy.

b. Designate an individual who shall be responsible for the oversight of the probation department's alcohol and drug testing practices in accordance with established policies and procedures and this code;

c. ~~Develop, implement, and document training for staff who conduct instrument or non-instrument based tests according to the manufacturer's requirements and departmental policy;~~

d. Require all specimens be immediately discarded if there has been a breach of protocol or procedure;

e. Retain documentation for at least five years of the testing process utilized by the probation department;

f. Provide the AOC with any requested alcohol and drug testing data, performance reviews or inspection results performed by non-probation or non-AOC entities; and

g. Obtain, maintain, or access a properly procured contract with a laboratory which requires the laboratory to adhere to all the requirements in this code and provide results of performance audits, licensing reviews and or certification reviews to the probation departments or the AOC.

h. Use alcohol and drug testing as necessary when:

1) Ordered by the court;
2) It is part of drug rehabilitation;
3) The officer suspects the offender of substance abuse;
4) Applicable statutes, administrative orders, or codes require drug testing;
5) The officer believes testing will improve compliance to the conditions of probation; or
6) The offender has a history of substance use or abuse, or alcohol or drug related arrests.

E. Alcohol and Drug Testing and Collection Requirements. Each probation department shall adhere to the following requirements for instrument based, on site and field testing:

1. Adhere to all the manufacturer specifications and requirements;

2. Require all collected specimens to be stored in a secured area and submitted for testing in secured transport containers;

3. Utilize a chain of custody form for each specimen submitted for testing to a test site which shall include, but not limited to:

a. Offender's name, date of birth, and court case number;

b. Drugs to be tested;

c. Supervising probation officer's name;

d. Name of collection personnel;

e. Date the specimen was collected;

f. Date the specimen was transported to the testing facility;

g. Name of transporting personnel's name, agency and date; (If specimens are transferred to a commercial third party courier service for delivery, separate transport logs may alternately be maintained documenting transporting personnel's name, agency and date of transport);

h. Date the specimen was received by the testing facility and name of laboratory personnel receiving specimen; and

i. Name of testing personnel.

4. Require that the original chain of custody form accompany each container sent to the test site and a copy of the file document remain with the probation department;

5. Require the test site to retain the original chain of custody form and provide a report of all offender test results to the probation department;

6. Require an employee of county, state or contracted vendor of the same sex as the offender to conduct a visual observation of the collection of a urine specimen;

7. Require the offender to review the information on the label which shall include:

   a. Offender's name, date of birth, and case number and JOLTS number, if applicable;

   b. Date the specimen was collected; and

   c. Offender's signature, indicating the information is accurate.

8. Require the collector of sample to initial the label and the offender to initial and affix the label to the specimen container and secure the specimen;

9. Require the laboratory to retest each positive screening with a second immunoassay prior to reporting the positive screening to the probation department;

10. Use the result of the immunoassay urine screening with no confirmation if the offender admits substance use and the results are to be used in court proceedings or for officer imposed sanctions;

11. Use the result of the immunoassay urine screening with no confirmation test if the offender denies substance use and the results are limited to officer imposed sanctions;

12. Confirm the positive urine sample by using a confirmatory methodology approved by the administrative director and allowable under the laboratory accrediting body as a methodology of higher sensitivity and specificity, if the offender denies substance use and the results are to be used in court proceedings;

13. All field test devices are to be immunoassay-based tests approved by the United States Food and Drug Administration. Field tests include Point of Collection Testing devices for conducting drug screening tests on urine and/or oral fluid samples. Testing is conducted by trained non-laboratory personnel to obtain immediate presumptive screening results. Preliminary breath tests that utilize chemical or fuel cell technologies are considered field tests; and

14. Document the drug testing operational process and generate a monthly statistical summary of drug testing.

F. Laboratory Testing Requirements. Each probation department or the AOC shall require all contracted alcohol and drug testing laboratories to:

1. Obtain and maintain accreditation in good standing by the College of American Pathologists for Forensic Drug Testing (CAP-FDT);

2. Notify the probation department or AOC on loss of accreditation for non-compliance within 72 hours. The laboratory will have 30 days from notification of the probation department or AOC to come back into compliance or be removed from the list of approved laboratories;

3. Require all urine specimens be tested at cutoff levels that meet or exceed the levels of sensitivity established by CAP-FDT and the Substance Abuse and Mental Health Services Administration;

4. Comply with applicable provisions of any state licensure requirements;

5. Comply with state and federal legislation and case law regarding privacy of testing results and release of such information;

6. Maintain all positive test specimens for a minimum of one year;

7. Negative test specimens may be discarded immediately upon identifying the negative results from the test;

8. Provide the probation department or AOC with drug testing data as requested and any explanation of test results and laboratory policy and procedure; and

9. Provide court testimony relevant to any issue involved with the testing and or collection of a specimen.

G. Chain of Custody for Specimen Collection. Each probation department shall develop a policy and procedure to collect and handle specimens to ensure a continuous and reliable chain of custody for court purposes. The probation department shall adhere to the following minimum standards:

1. The collector shall verify the identity of the offender presenting for drug testing. The collector shall request the offender, upon the offender's arrival at the collection site, to verify identity through the presentation of personal identification information such as driver's license or other government issued photo, school I.D, or other information stipulated by the probation department.

2. The collector shall have the offender remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the offender's specimen.

3. A chain of custody form for each specimen submitted for analysis, which shall include:

   a. Offender's name, date of birth and case number;

   b. Drug [or drugs] to be screened;

   c. Supervising probation officer's name;

   d. Name of collection personnel;

   e. Date the specimen was collected;

   f. Date the specimen was transported to the testing facility;

   g. Name of transporting personnel's name, agency and date; and

   h. Date the specimen was received by the testing facility and name of personnel receiving specimen.

4. The collector shall instruct the offender to wash and dry their hands prior to collecting the specimen.

5. The collector shall remain in the offender's presence at all times prior to collecting the specimen in order to ensure that there is no contact with any materials that could adulterate the specimen.

6. The collector of the same sex as the offender shall accompany the donor into the designated collection room which shall be made secure during the collection procedure. The collection personnel shall observe the offender as they submit a specimen for drug testing to ensure that the sample has not been substituted, adulterated or tampered with in any way.

7. The collector shall ensure that the offender keeps the specimen bottle or container in view at all times prior to its being sealed and labeled.

8. The collector shall have the offender review the information on the label which shall include:

    a. Offender's name, date of birth, and case number and JOLTS number, if applicable;

    b. Date the specimen was collected; and

    c. Offender's signature, indicating the information is accurate.

9. The offender shall write their initials on the label to indicate the information is accurate.

10. The offender in the presence and under the assistance of the collector shall place a tamper-proof label-seal on the specimen bottle, and shall place the bottle in the specimen container. This container is then to be placed into secure locked storage until it is released for transport to the laboratory facility. At that time the specimen bottles and chain of custody forms are placed in a specimen transport container for shipment to the laboratory.

11. Each person transporting or handling the specimen [or specimens] shall sign and date the chain of custody form [or forms] when the specimen [or specimens] are transported.

12. All transported specimen [or specimens] shall be maintained in a specimen transport container pursuant to laboratory specifications.

13. The chain of custody form [or forms] shall be signed or initialed and dated by authorized laboratory personnel upon receipt.

14. The original chain of custody document or a copy shall always remain in the secured specimen transport container.

Comments and Responses to ACJA Section 6-110: Offender Drug Testing

PARAGRAPH	COMMENT	RESPONSE
General comments	The stated purpose of this code is - "this proposed code section will replace AO 95-20 Administrative Requirements for Adult and Juvenile Probation and Pre-Trial Services Drug Testing." Since this is also going to be covering your pretrial services units/divisions all references in the code to "offender" need to be changed to read "defendant/offender".	The portions of AO 95-20 that apply to adult or juvenile offenders will be repealed. The portions of AO 95-20 that apply to pretrial services will remain in effect. Change not incorporated.
General comments	Recommend changing the title to "Offender Alcohol and Drug Testing"	Change incorporated.
General comments	Recommend inserting "offender" before all "alcohol and drug testing" throughout the document.	Change not incorporated. By virtue of the code section being titled Offender Alcohol and Drug Testing, it is understood that it applies to offenders.
Section A. Definitions	Suggest alphabetizing definitions section for ease of reference.	Change incorporated.
Section A. Definitions	Define Collector. Can it be a position other than a deputy probation officer?	Change not incorporated. The term Collector is self-defining. Those positions which can collect samples will be defined by local policies and procedures.
Section A. Definitions	Define offender. Does this apply to adult and juvenile?	The Part 6. Chapter 1. sections of the Arizona Code of Judicial Administration are "General Administration" for probation, whether adult or juvenile. Therefore § 6-110 would apply to both.
Section A. Definitions	Does the definition of "Immunoassay" cover Gas Chromatography Mass Spectrometry, hair, and blood	No – Immunoassay is an initial screening methodology only that can be used for urine, blood, hair and oral fluids. GCMS is a

	sampling?	confirmatory methodology. Change to definition incorporated to clarify.
Section B. Applicability	Administrative supervision over all the courts; however it does not specifically spell out the establishment of offender alcohol and drug testing.	Change not incorporated. This is the source of the supreme court and AOC's authority.
Section D. 1. a. General Administration	How is this to be achieved and the purpose of the "monitoring?"	The purpose of monitoring is to exercise oversight.
Section D. 1. d. General Administration	What requirements? Those outlined in this code?	Will be outlined in Funding Agreements.
Section D. 2. a. (6) General Administration	Suggest defining "chain of custody".	Change not incorporated. Definition is self evident.
Section D. 2. a. (7) General Administration	Awkwardly worded for the uninitiated. Suggest: "Offender's illegal use of prescription medication."	Change incorporated. Now reads "Offender's use of prescription medication not prescribed for the offender or taking prescribed medication more than ordered by physician;"
Section D. 2. b. General Administration	Insert "offender alcohol and" before drug testing practices…	Incorporated "alcohol and" but not "offender."
Section D. 2. c. General Administration	This does not seem to fit here. Should be moved to E.	Moved to Section D. 2. a. (10) General Administration
Section D. 2. e. General Administration	Is this actually noted in the Records retention and Disposition list from the Arizona Supreme Court?	This subsection is consistent with the ACJA § 3-402: Superior Court Records Retention and Disposition Juvenile Probation Requirements.
Section D. 2. e. General Administration	I am confused by this – is it specific to a sample such as the chain of custody? TESTING PROCESS UTILIZED???	Refers to all documentation, including the chain of custody form, but not the sample itself.
Section D. 2. f. General Administration	And; not appropriate for this section given it continues on.	Change incorporated.
Section D. 2. G. General Administration	How is this different from the performance reviews and inspections noted in "f" above?	

Section E. Alcohol and Drug Testing and Collection Requirements	Change name of subsection to Non-Laboratory Offender Alcohol and Drug Testing and Collection Requirements	Change not incorporated. As stated, this subsection outlines requirements for "instrument based, on site and field testing."
Section E. 3.a. Alcohol and Drug Testing and Collection Requirements	JOLTS/iCIS/APETS or are you talking about a court case number??	Change incorporated. Now reads "court case number."
Section E. 3.h. Alcohol and Drug Testing and Collection Requirements	An officer is not going to know the date received and the name of the lab person in advance when filling out the COC form. Perhaps this could be incorporated with number 4 or 5 of this section.	Upon completion of the process, the chain of custody form should contain the names and dates of each individual handling the sample. It is not to be pre-populated.
Section E. 5. Alcohol and Drug Testing and Collection Requirements	Many labs have moved to an automated system where PO's can log in to view results – the requirement of providing a report doesn't really speak to this!	Change not incorporated. Reports can be electronic or paper.
Section E. 6. Alcohol and Drug Testing and Collection Requirements	Gender is defined by society and often times left to an interpretation. I think what you are wanting here is SEX, biological sex is not interpretive!	Change incorporated. All references to "gender" are now "sex."
Section E. 9. Alcohol and Drug Testing and Collection Requirements	Shouldn't this go under "Laboratory Testing Requirements" in Section F below?	Change not incorporated.
Section E. 9. Alcohol and Drug Testing and Collection Requirements	Define retest? Is this the same lab test merely performed a second time, or is this the next level of testing (GCMS)? Isn't it standard procedure for most labs to run the same test a second time on a positive sample? And, if we're talking GCMS here, wouldn't GCMS be cost prohibitive in certain situations, especially for 13-901.01 cases? Perhaps require a re-test only when the supervising officer intends to file a	Change incorporated. "Retest" means a repeated or second immunoassay to verify the findings of the initial screening immunoassay. Thus, a retest is a second Immunoassay. Acceptable methods and technology for confirmation are those deemed allowable by the laboratory accrediting body and approved by the administrative director. Specific methods where not listed to allow for the

	PTR or is requesting on-order jail-time?	accrediting body to approve of future technologies without requiring amendment to this code section. The second test is immunoassay test is required before the lab reports a positive finding to the department. It is not the GCMS confirmatory test.
Section E. 10. Alcohol and Drug Testing and Collection Requirements	Seems contradictory to itself, and to number 9 above. What does "…use immunoassay urine screening with no confirmation" mean? We need to define "confirmation testing". Isn't immunoassay a confirmation testing in itself?	Change incorporated. "Confirmation testing" the re-analysis of a positive sample with a methodology of greater sensitivity and specificity than the initial immunoassay screening methodology.
Section E. 11. Alcohol and Drug Testing and Collection Requirements	Seems contradictory to itself, and to number 9. Wouldn't you want to confirm a positive sample if the probationer denies using? I'd hate to impose a sanction if there exists the possibility of a false positive.	If the result of the test is to be used for non-Court imposed sanctions, no GCMS confirmation is required. This does not preclude an offender from paying for their confirmation test.
Section E. 12. Alcohol and Drug Testing and Collection Requirements	Wasn't there already a mandatory retest required by number 9 above? Or are you talking about GCMS now? Overall, items 9 thru 12 are confusing,, and there needs to be greater definition/delineation between "retesting" and "confirmatory methodology".	Changed sentence to read "Confirm the positive urine sample by using a confirmatory methodology…" instead of using the term "retest."
Section E. 12. Alcohol and Drug Testing and Collection Requirements	Perhaps the sentence "If the offender denies substance use and the results are to be used in court proceedings," should start with this segment first for easier readability.	Change not incorporated.
Section E. 14. Alcohol and Drug Testing and Collection Requirements	What data sets do you want to see each month? Please outline.	Will be outlined in Funding Agreements.

Section E. 14. Alcohol and Drug Testing and Collection	Define "statistical" and parameters. Who does this go to? This needs more detail along the generic use of "statistics – descriptive? Data? And if so, what data fields is AOC requesting?	Requirements will be outlined in Funding Agreements.
Section E. 14. Alcohol and Drug Testing and Collection	I am not sure what "drug testing operational process" would entail. Also, do what with the "generate a monthly statistical summary of drug testing?"	The departments' policies and procedures should document the alcohol and drug testing operational process for their specific department. Additionally, they are to keep a monthly summary of drug testing activity on file pursuant to subsection D. 2. e.
Section F. 4. Laboratory Testing Requirements	Any state at all, or Arizona's? (Just playing devil's advocate here.)	Change not incorporated.
Section G. 1. Chain of Custody for Specimen Collection	How is this to be accomplished for juveniles?	
Section G. 5. Chain of Custody for Specimen Collection	What if this is taken in a rural area and only one po is available and not of the same gender? Are there unobserved UA's? If not, it should say that.	Positions which can collect samples will be defined by local policies and procedures. If a same sex officer is not available local policy may allow other staff to observe.

COMMITTEE ON SUPERIOR COURT

Date Action Required:	Type of Action Required:	Subject:
May 10, 2011	☐ Formal Action/Request ☐ Information Only ☒ Other	PROPOSED MODEL TIME STANDARDS

FROM: Janet Johnson

PRESENTER(S): Janet Johnson

DISCUSSION: The National Center for State Courts has proposed revised model time standards. These proposed model time standards are expected to be debated and potentially adopted at the summer Conference of State Court Administrators (COSCA) meeting at the end of July. If adopted, these will be a model set of standards.

As a member of COSCA, Dave Byers is seeking input regarding these proposed standards. In Arizona, it is anticipated that we will begin a process to consider adoption of any or all of the standards, depending on the input received and the outcome of the COSCA discussion.

RECOMMENDED MOTION: Seeking comment.

PROPOSED
MODEL TIME STANDARDS FOR STATE COURTS

Discussion Draft

Reporters

Richard Van Duizend

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INTRODUCTION

Since their first formal articulation, time standards establishing expectations for timely justice in American courts have been elaborated and refined. After having adopted speedy trial standards for criminal cases in 1968, the American Bar Association adopted standards for other case types as well in 1976, amending them in 1984 and again in 1992. The Conference of State Court Administrators promulgated national time standards for cases in the state courts in 1983. Over three quarters of the states have now adopted their own case disposition targets. This document is the result of a two-year review of the more than 40 years of experience with time to disposition standards.

This review is appropriate. The first decade of the 21st Century has witnessed the coming of age of the Internet and dramatic changes in the way in which ordinary people conduct financial transactions (e.g., banking, stock purchases and sales, and on-line purchasing of airline tickets and many goods and services), and many other business activities (such as music and movie distribution). Information on most topics is now immediately available from virtually any location. Communications with other persons anywhere on the globe are almost instantaneous, and available in text, voice and video media. The public is becoming accustomed to very fast turnaround and convenience in dealing with commercial and governmental entities.

Court processes, on the other hand, have changed only marginally. While many courts now make information available online and are gradually incorporating electronic transactions for filings, service, and payments, the case disposition process remains virtually the same as it has been since the introduction of the Federal Rules of Civil Procedure in 1938. Surveys of public opinion concerning the courts consistently find the chief complaint to be the slowness of case resolution. A study in New Mexico showed that litigants desire to have their civil and family cases decided within one or two months of filing. Thus, there is a substantial disconnect between public expectations for the timeliness of court decisions based on the current pace of business, and the current pace of the American judicial system.

The time to disposition standards set forth in this document, based on a review of the experience of state courts, are intended to establish a reasonable set of expectations for the courts, for the lawyers, and for the public.[1] They reflect a review of the case disposition times

[1] Much of the formal research studies cited were conducted more than a decade ago and focused heavily on courts with medium to high caseloads. However, the experience since then such as the examinations of state and federal courts conducted by the Institute for the Advancement of the American Legal System [IAALS, *Civil Case Processing in the Federal District Courts: A 21st Century Analysis* (2009) www.du.edu/legalinstitute/form-PACER-success html; Civil Case Processing in the Oregon Courts (2010) www.du.edu/legalinstitute/pubs/civilcase.pdf] and current statewide and trial court data provided by several jurisdictions strongly suggest the continued validity of the findings of those studies as well as the principles and practices they recommend. *See e.g.,* www.utcourts.gov/courtools/ ; http://www.mass.gov/courts/cmab/metrics-report-2009.pdf; http://www.courts.mo.gov/file.jsp?id=43761; http://www.mncourts.gov/Documents/Public/Other/Annual_Report_2010_Performance_Measures_Public_Posting.pdf;www.superiorcourt maricopa.gov/MediaRelaltionsAndCommunityOutreach/Publications/reports.asp. Nonetheless, there remains an obvious need for continuing research on caseflow management across multiple case

currently being achieved in selected jurisdictions around the country as well as consideration of the various time standards adopted by states, local jurisdictions, and national organizations. For the courts, the standards are intended to set forth achievable performance goals. For the lawyers, the standards establish a time framework within which to conduct their fact-gathering, preparation, and advocacy activities. For the public, the standards are intended to define what can be expected of their courts. Rather than being merely "aspirational" or simply recognizing the current practice regarding time to disposition, these standards are intended to set goals that are attainable in jurisdictions with the requisite leadership, commitment, and resources to do so. They neither ignore reality, nor disregard what is possible to achieve. They are intended as measures of the overall performance of a court, not as a rule governing individual cases or creating rights for individual criminal defendants.

These are "Model Time Standards," to be endorsed by national court organizations. They are intended to unify the current sets of disparate time standards to the greatest degree possible. The final section of the document suggests a process for use by a state judicial branch to implement these standards in its jurisdiction. It also shows how the time standards can be used to assist a court, and the courts of a state, to improve the timeliness of case disposition and improve the court's service to the litigants.

With few exceptions, these standards run from *the date of filing* to *the date of disposition by entry of judgment*. The running of time is suspended under any of these standards by such occurrences as:

- The filing of an interlocutory appeal.
- Federal bankruptcy proceedings during pendency of a civil matter.
- Failure to appear and issuance of a bench warrant for a criminal defendant.
- A mental status evaluation of a criminal defendant.

The standards offered here reflect a recognition that there normally is a large proportion of cases that are disposed with little court involvement; a second proportion that dispose after one or two issues are resolved (e.g., a suppression motion); and the smallest proportion do not resolve without a trial. This tripartite model is reflected in many differentiated case management systems. Based on this understanding, the standards provide a first tier time period within which 75 percent of the filed cases should be disposed; a second tier time period within which 90 percent of the filed cases should be disposed; and a third tier time period within which 98 percent of filed cases should be disposed. The 98 percent tier is key to establishing a backlog measure. The other two tiers are intended as points of measurement for effective case management. The intent is to encourage the fair disposition of cases at the earliest possible time. Standards for completing critical decision points in the process are suggested in the commentary for each case disposition time standard.

A 98 percent level is used rather than 100 percent in recognition that there will be a very small number of cases that will require more time to resolve, e.g., capital murder cases and

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types in state courts of varying sizes to maintain the currency of our knowledge of this critically important subject and to identify the practices used in courts with the best performance in resolving cases in a timely manner.

highly complex multi-party civil cases that require a trial. Even these cases, however, should be monitored closely to ensure that they proceed to disposition without unnecessary delay.

TABLE OF MODEL STANDARDS

Case Category	Case Type	COSCA Standard	ABA Standard	Proposed Overall Standard
CRIMINAL	Felony	100% within 180 days	90% within 120 days 98% within 180 days 100% within 365 days	**75% within 90 days** **90% within 180 days** **98% within 365 days**
	Misdemeanor	100% within 90 days	90% within 30 days 100% within 90 days	**75% within 60 days** **90% within 90 days** **98% within 180 days**
CIVIL	General Civil	100% of non-jury w/I 12 months 100% jury trials w/I 18 months	90% within 12 months 98% within 18 months 100% within 24 months	**75% within 180 days** **90% within 365 days** **98% within 540 days**
	Summary Matters			**75% within 60 days** **90% within 90 days** **98% within 180 days**
FAMILY	Dissolution/ Divorce/ Allocation of Parental Responsibility	100% uncontested w/i 3 months 100% contested w/i 6 months	90% within 3 months 98% within 6 months 100% within 12 months	**75% within 120 days** **90% within 180 days** **98% within 365 days**
	Post Judgment Motions			**98% within 180 days**
	Domestic Violence			**98% within 10 days**

PROPOSED MODEL TIME STANDARDS FOR STATE COURTS

Case Category	Case Type	COSCA Standard	ABA Standard	Proposed Overall Standard
JUVENILE	Delinquency & Status Offense		90% within 3 months 98% within 6 months 100% within 12 months	**75% within 60 days** **90% within 90 days** **98% within 150 days**
	Neglect and Abuse		90% within 3 months 98% within 6 months 100% within 12 months	**Disposition** **98% within 90 days of removal** **Permanency Plan** **75% within 120 days of removal;** **98% within 360 days of removal**
	Termination of Parental Rights		90% within 3 months 98% within 6 months 100% within 12 months	**98% within 120 days**
PROBATE	Administration of Estates			**75% within 120 days** **98% within 360 days**
	Guardianship/ Conservator of Incapacitated Adults			**98% within 90 days**
	Civil Commitment			**98% within 15 days**
POST-ADJUDICATION	Post-conviction proceedings (following a criminal conviction)			**98% within 180 days**

FELONY CASES

Case Type	Proposed Overall Standard
Felony	**75% within 90 days** **90% within 180 days** **98% within 365 days**

COMMENTARY

Definition. Felony cases are those criminal cases involving "an offense punishable by incarceration for a year or more."[2] In the preparation of these time standards, consideration was given to whether capital murder cases should be designated as a separate case category with different time standards. Because some capital cases are disposed by plea, however, it was concluded that those requiring a trial can be better accommodated simply as a "top tier" of one-two percent of all felony cases that require more time to reach disposition. The standards run from the filing of the initial complaint through disposition (e.g., dismissal or sentencing). Thus, in jurisdictions with a limited and general jurisdiction court, the standard would run from the filing of the complaint in the lower trial court except in those few cases filed directly in the general jurisdiction court.

Earlier National Time Standards. In 1983, COSCA provided a 180-day time standard for felony cases, while the 1992 ABA Time Standards provided that 90 percent of felony cases should be disposed within 120 days after arrest, 98 percent within 180 days, and 100 percent within 365 days.

Time Standards in State Court Systems.[3] At least 39 states and the District of Columbia have overall felony time standards, and two states have separate time standards for capital cases. There is considerable variation from state to state, however. For example:

- Ten states have adopted the COSCA time standard of 180 days, with six specifying that all cases are to be disposed within that time, and with five having the 180-day time standard run from filing of or arraignment on an indictment or information rather than arrest or initial appearance.
- As suggested in the ABA time standard, ten other states have adopted one year, 12 months, 365 days or 360 days as the longest time, although four do not have a 100 percent time standard and contemplate that from one to ten percent of all felonies may take longer to be disposed.
- Maximum times to disposition in other states range from 120 days to 22 months.
- The most common approach (14 states) is to provide simply that cases must be decided within a given time period. There are 13 states where the maximum specified duration is for fewer than 100 percent of all cases, assuming that there may

[2] See Court Statistics Project, *State Court Guide to Statistical Reporting*, 18 (Williamsburg, VA: NCSC, 2009).
[3] See NCSC, Knowledge and Information Services, Database, "Case Processing Time Standards [CPTS]," http://www.ncsconline.org/cpts/cptsType.asp, as downloaded from the Internet on September 8, 2010.

always be some cases that might understandably take longer. The next most common approach (five states) is to provide times within which 90 percent, 98 percent and 100 percent of all cases must be disposed. In all, there are at least 17 different configurations for felony time standards.

- In at least 11 states, time standards do not run from arrest or initial appearance, but rather from the filing of an indictment or information, general-jurisdiction arraignment on that charging document, or some other event other than arrest or initial appearance.
- At least ten states have time standards for one or more intermediate case-processing stages.

Overall Felony Case Time Standards. It is critically important to note, however, that the time standard for felony cases is not a "speedy trial rule" requiring dismissal of the case if the standard is not met. These standards are intended as measures of the overall performance of a court, not as a rule governing individual cases or creating rights for individual criminal defendants. Moreover, speedy trial rules generally run from the date of arrest (or sometimes the date of arraignment on the indictment) to the start of trial. These standards are based on the period between the date on which the case is first filed with a court to the entry of the dispositional order (e.g., a dismissal, sentence).

The adoption here of a 365-day maximum rather than one of 180 days is based on the real experience of urban courts. After the adoption in 1983 of the COSCA time standard for felony cases, large-scale studies of felony case processing times in large urban trial courts were undertaken by NCSC.[4] In those studies, no court met the COSCA 180-day time standard for all cases disposed in 1987, and even the fastest courts in the study had eight percent of their cases taking longer. In the slowest court, 81 percent took longer than 180 days.[5] In a subsequent study of felony case disposition times in nine state criminal trial courts, even the fastest court saw 14 percent of its 1994 disposed cases taking longer than 180 days, and disposition times exceeded 180 days in 48 percent of the cases for all courts combined.[6]

For all the courts in these NCSC studies, even a 365-day time standard was difficult to achieve. For all courts for which 1987 felony dispositions were studied, 11.7 percent took longer than a year;[7] and in the study of 1994 felony dispositions, about 11 percent took longer than a year.[8] Yet in each study, there were courts that were able to dispose of at least 95 percent of their cases within a year – eight of 39 of the courts in the study of 1987 dispositions, and two of nine courts in the study of 1994 dispositions. Contemporary court data indicates that courts in

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[4] See J. Goerdt, C. Lomvardias, G. Gallas and B. Mahoney, *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts* (Williamsburg, VA: National Center for State Courts, 1989); and J. Goerdt, C. Lomvardias and G. Gallas, *Reexamining the Pace of Litigation in 39 Urban Trial Courts* (Williamsburg, VA: National Center for State Courts, 1991).

[5] See *Reexamining the Pace of Litigation*, *supra,* note 4, Table 2.2. For all the courts in the study, ten percent of the felony cases took 384 days or more from arrest to disposition. When cases with failures to appear were removed, ten percent of all cases remaining still took 289 days or more.

[6] B. Ostrom and R. Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts* (Williamsburg, VA: National Center for State Courts, 1999), Figure 2.1.

[7] *Reexamining the Pace of Litigation*, *supra,* note 4, Table 2.2.

[8] *Efficiency, Timeliness, and Quality, supra,* note 6, Figure 2.1.

several states are able to dispose of the overwhelming number of felony cases in a year or less. For example: Missouri is able to dispose of 85 percent of its felony cases and New Jersey is able to dispose of 90 percent of its felony cases within 301 days; Colorado concludes 90 percent of its felony cases within 325 days; Minnesota disposes of more than 92 percent of its felony cases and Utah disposes of 93 percent of its felony cases within a year.

Empirical evidence from urban trial courts thus demonstrates two things. First, a time standard of 365 days, while still difficult to attain for almost all courts, is far more realistic than a time standard of 180 days. Second, a standard of 98 percent of all felonies is more realistic than one of 100 percent. This is especially true for capital murder and other more serious cases that go to jury trial; while some may be disposed by plea within a year after case initiation, others can predictably be expected to take longer.

Intermediate Time Standards. In order for overall time standards to be met, it is important for a court and its criminal justice partners to hold meaningful interim court events in a timely manner. For felony cases:

In 100 % of cases, the initial appearance should be held within the time set by state law.

In 98% of cases, the arraignment on the indictment or information should be held within 60 days.

In 98% of cases, trials should be initiated or a plea accepted within 330 days.

In most if not all state court systems, there must be a prompt initial court appearance for preliminary arraignment, determination of eligibility for pretrial release, and determination of eligibility for defense representation at public expense. The elapsed time within which such a first court event must occur is typically within 24-72 hours after arrest. The time standards offered here acknowledge the need for such a prompt initial court event. The suggested interim standards urge that it be held in all cases within the time requirements of state law.

Although only a handful of states have intermediate time standards for felonies,[9] virtually all of them give particular attention to the elapsed time from arrest to general-jurisdiction arraignment on a felony indictment or information. Many states require prompt filing of an indictment or information for felony defendants not released from pretrial detention pending adjudication, but they may not provide such strict expectations for the large majority of defendants who have been released on bail or recognizance. Emphasizing a need for timely commencement of general-jurisdiction felony proceedings, the time standards here provide an indicator for the time within which arraignment on an indictment or information should be held for virtually all felony cases. The provision of this interim time standard also has the effect of

[9] See CPTS database, *supra*, note 3.

prompting early involvement of a public defender or appointed counsel, early discovery exchange, and early commencement of plea discussions between prosecution and defense.

Since the time standards here run from filing of the initial complaint to imposition of a sentence, trial commencement is considered an interim court event rather than the end-point of caseflow management. Consequently, the third interim time standard here has to do with the elapsed time after the initial complaint was filed within which there should be an actual trial start. Having firm and credible trial dates is a fundamental feature of successful caseflow management,[10] and large-scale research of factors affecting the pace of felony litigation has shown that courts with a higher percentage of firm trial dates consistently have shorter times to felony disposition.[11]

It should be noted that achievement of the goals set by these time standards involves the performance of more than one level of court, e.g., a limited jurisdiction court that hears the early stages of criminal proceedings and a general jurisdiction court that obtains jurisdiction only after an indictment or information is filed. Accordingly, any analysis of the performance of an individual court must be measured against the events which that court controls.

[10] See D. Steelman, J. Goerdt and J. McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium* (Williamsburg, VA: National Center for State Courts, 2004 edition), pp. 6-11.
[11] *Reexamining the Pace of Litigation*, *supra,* note 4, Figure 2.7.

MISDEMEANOR CASES

Case Type	Proposed Overall Standard
Misdemeanor	**75% within 60 days** **90% within 90 days** **98% within 180 days**

COMMENTARY

Definition. Misdemeanors involve "an offense punishable by incarceration for less than one year and/or fines."[12] The time standard for misdemeanors recognizes that many moving traffic infractions and other comparable violations of public order have either been formally decriminalized or are treated without the procedural requirements for criminal cases. As a result of these matters now being handled administratively, they are not included in these time standards.

Earlier National Time Standards. In 1983, COSCA provided a 90-day time standard for misdemeanors and the 1992 ABA Time Standards provided that 90 percent of all misdemeanors should be disposed within 30 days after arrest and 100 percent within 90 days.

Time Standards in State Court Systems. Court systems in at least 32 states and the District of Columbia have misdemeanor time standards.[13] Some states distinguish DUI, traffic, or motor-vehicle cases from other misdemeanors. Others make distinctions according to differentiated case management (DCM) "track assignments."[14] As with felony cases, there is considerable variation in standards from one state to another. For example:

- Only seven agree with the COSCA and ABA standards that all or most (99 percent in one state) can or should be disposed within 90 days or less after case initiation.[15]
- In the remaining 25 states and the District of Columbia, the maximum time standards range from 120 to 360 days.
- Only 12 states have a single flat time standard (which may or may not be 100 percent) for misdemeanors, with no percentile gradations.
- While 20 court systems provide a maximum time within which all misdemeanors must be disposed, 13 set the maximum time standard at a level assuming that some cases may unavoidably take longer to be disposed.
- In ten states, the maximum time standard for disposition of all or most misdemeanors is identical to that for felonies.

Overall Misdemeanor Case Time Standards. The time standards offered here for misdemeanors reflect agreement with the drafters of the COSCA and ABA time standards that most misdemeanors can and should be disposed within a short time after case initiation. In fact,

[12] Guide to Statistical Reporting, supra, note 2, at 19.
[13] See CPTS database, *supra*, note 3.
[14] For more on DCM, see *Caseflow Management, supra,* note 10, pp. 4-6.
[15] In one state, the time standard is that all misdemeanor cases should be disposed within 60 days.

the great majority of all misdemeanors (90 percent) can and should be concluded within three months as those earlier standards suggest.

Yet almost all states now treat high-volume speeding cases and other moving traffic violations, along with other comparable ordinance violations, as non-criminal or quasi-criminal matters for which there is little or no likelihood of jail sanctions, and for which many of the procedural safeguards of criminal procedure are absent or can be waived. These cases, though voluminous, were normally quickly resolved. With such matters removed from the category of criminal misdemeanors, the actual experience in most states that have adopted misdemeanor time standards is that a number of these cases cannot be justly disposed within 90 days, and indeed that some must take longer than six months to be disposed. For example, Colorado's County Courts dispose of 75 percent of filed misdemeanors within 128 days and 90 percent within 231 days. Missouri concludes 84% of its misdemeanors within 180 days and 91 percent within 240 days. For this reason, the standard presented here sets a maximum time of 180 days for misdemeanors and recognizes that as many as two percent may understandably take longer than that to be concluded.

Intermediate Time Standards.

In 100 % of cases, the initial appearance should be held within the time set by state law.

In 98% of cases, trials should be initiated or a plea accepted within 150 days.

The intermediate standards provided here follow the rationale presented above for felony cases, except that no interim standard associated with bind over and felony arraignment is required. As with felonies, there is a need to assure that a court arraigns the defendant on initial charges, reviews the need for pretrial detention, and sees that an early determination is made on eligibility for defense representation at public expense.

Once there has been an initial court hearing, it is important for compliance with time standards that the court exercise control over case progress to disposition by providing an early and firm trial date. The interim time standard here for time from case initiation to misdemeanor trial start provides a measurement tool for the court to exercise such control.

GENERAL CIVIL CASES

Case Type	Proposed Overall Standard
General Civil	**75 percent within 180 days** **90 percent within 365 days** **98 percent within 540 days**

COMMENTARY

Definition. Civil cases are a broad category of cases in which "a plaintiff requests the enforcement or protection of a right or the redress or prevention of a wrong."[16] They include automobile torts and other personal injuries, contract disputes, product liability issues, malpractice matters, infringements of intellectual property, and requests for injunctions among other types of cases. As with capital felony cases, consideration was given to whether complex civil cases should be designated as a separate civil case category with different time standards. Because some complex civil cases are settled relatively quickly, however, no specific category for complex civil cases is required. Those complex cases that proceed to trial or settle late in the process can be accommodated simply as a "top tier" of two percent of all general civil cases that require more time to reach disposition.

In these standards, foreclosure cases are included in the category of general civil cases. This is because the new procedures required by the mortgage crisis commencing in 2007 have substantially increased the time needed to dispose of these cases.

In fact, foreclosure cases are not the only civil matters that may be considered neither "major" cases nor "summary" cases. Several state-level court systems have separate time standards for a broad category of "limited" civil cases that they distinguish from "summary" civil cases. Such "limited" cases typically include tort and contract cases that may be tried by a jury but involve claims below a certain dollar threshold but above that for small claims cases. In the time standards offered here, these "limited" civil cases are included in the category of "general" civil cases.

Earlier National Time Standards. The 1983 COSCA time standards for general civil matters provided that all non-jury cases should be tried or otherwise disposed within 12 months after initial filing, and that all jury cases should be tried or otherwise disposed within 18 months after filing. The ABA time standards did not distinguish between jury and non-jury cases, providing instead that 90 percent of all general civil cases should be tried or disposed within 12 months after filing; 98 percent within 18 months; and 100 percent within 24 months. Neither the COSCA standards nor the ABA standards distinguished "major" civil cases from "limited" non-summary civil cases.

[16] Guide to Statistical Reporting, supra, note 2, at 6.

Time Standards in State Court Systems for Major Civil Cases.[17] There are statewide time standards for major civil cases in at least 35 states and the District of Columbia. As with the standards for criminal cases, there are substantial differences among them:

- Only two states have adopted the COSCA time standards, and they are the only states that provide different time expectations for jury cases and non-jury cases.
- Only six states have exactly copied the ABA time standards.
- Nine states have a single standard of time within which all general civil matters must be disposed, while five others have a single standard of time within which a percentage lower than 100 percent (from 75 percent to 98 percent) must be disposed.
- In addition to the six states that have exactly copied the ABA time standards, there are eight other states with three "tiers." Each of these eight states has a slightly different tier configuration, however.
- Two states and the District of Columbia distinguish among different case types within the category of general civil cases; another three states distinguish among differentiated case management (DCM) tracks.
- In 11 states, the maximum time standard is for fewer than 100 percent of all general civil cases.
- The most common maximum duration (which may be fewer than 100 percent of all cases) is 24 months or its equivalent in days (15 states). The next most common maximum is 18 months or its equivalent in days (9 states). One state provides that all cases should be disposed within 180 days. At the other end of the continuum, two states provide that all cases should be disposed within 36 months.
- Two states have a separate time standard for what they define as complex cases.
- Seven states have time standards for one or more intermediate stages of case progress to disposition.

Time Standards in State Court Systems for "Limited Non-Summary" Civil Cases.[18] In addition to "general civil" time standards, courts in six states and the District of Columbia have "limited civil" time standards that do not distinguish between summary and non-summary matters. In addition, there are ten states that have three categories of civil time standards, generally calling them "general," "limited," and "summary." Regarding the time standards for non-summary civil cases in these 17 jurisdictions, the following distinctions can be noted:

- The most common upper time limit is 180 days (six states), although only four of those states require that all such cases be disposed within that time period.
- The upper time limit in the other 11 jurisdictions ranges from 250 days to 730 days.
- In two states, the time standards run not from filing, but from service or return of service.
- In 12 states, the upper time limit is the time within which 100 percent of the cases must be disposed. In the remaining five states, the upper time limit is for fewer than 100 percent.

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[17] See CPTS, *supra,* note 3.
[18] *Id*.

- As in the ABA time standards, there are four states providing time limits within which 90 percent, 98 percent and 100 percent of all cases must be disposed. Three other states have three tiers at a different percentage level, and one state has only two tiers. Eight states have just one tier – the time within which all or a specified percentage of cases must be disposed.

Overall General Civil Time Standards. Although the COSCA time standards urge that all civil cases should be disposed within 18 months, the ABA time standards suggest that one should expect only 98 percent of all general civil cases to be disposed that quickly, while the remaining two percent should require no more than an additional six months.

Studies of civil case processing times in large urban trial courts have shown how difficult it is to meet either time standard. In a 1991 study of the pace of civil litigation in 37 urban trial courts, researchers found one court that was able in 1987 to dispose of 99 percent of all civil cases within 24 months and another that was able to do so for 97 percent of all civil cases. For all civil cases in all 37 courts, only 78 percent were disposed within 24 months. Only two of the 37 courts were able to dispose as many as 90 percent of all civil cases in less than 18 months.[19]

In 1995, a similar study was done of tort and contract litigation in the 45 largest counties in the U.S. For tort cases, in 1992 the five fastest courts were able to dispose of 92-95 percent within 24 months; for contract cases, the five fastest courts were able to dispose of 96-99 percent within 24 months; and only one court disposed of more than 80 percent of its jury trial cases within 24 months.[20] Only 63 percent of all tort cases and 79 percent of all contract cases were disposed within 18 months; in fact, eight percent of all tort cases and four percent of all contract cases took longer than four years to be disposed.[21] More recent data confirms these findings. Utah is able to dispose of 95 percent of its civil cases within 24 months and 87 percent of general civil cases within 12 months. Minnesota disposes of 92.3 percent of its major civil cases within 12 months and 97 percent within 18 months.

Every state requires its courts to give priority to the processing of criminal cases over civil cases. This clearly has an effect on speedy disposition of civil cases. However, the 1991 study showed that courts that were able to dispose of felony cases more expeditiously were typically able to dispose of civil cases more promptly as well.[22] This likely reflects a court culture favoring timely case dispositions for all types of cases.

The time standards offered here reflect a continuing effort to balance the litigants' desire for prompt case disposition with the reality of current court case processing experience. Thus, the upper time limit follows the COSCA time standards at 18 months/540 days, while expressing agreement with position in the ABA time standards that not all cases can be justly disposed within that time period. In recognition of the time justifiably needed to resolve such matters as

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[19] See *Reexamining the Pace of Litigation, supra*, note 4, at Table 3.2.
[20] J. Goerdt, B. Ostrom, D. Rottman, N. LaFountain, and N. Kauder, "Litigation Dimensions: Torts and Contracts in Large Urban Courts," *State Court Journal* (Vol. 19, No.1, 1995) 1, Appendices 7 and 8.
[21] *Id*., Figure 2.9 and Figure 2.17.
[22] *Reexamining the Pace of Litigation, supra,* note 4, Figure 4.1.

contract fraud and toxic torts, however, it does away with the expectation that all cases should properly be expected to reach disposition within 24 months.

Intermediate Time Standards. The time standards offered here for intermediate stages of general civil proceedings reflect the key points in case processing that should be monitored by a court and addressed to assure that litigation proceeds to conclusion at a suitable pace.

In 98% of cases, service of process should be completed within 60 days.

In 98% of cases, responsive pleadings should be filed or default judgments entered within 90 days.

In 98% of cases, discovery should be completed within 270 days.

In 98% of cases, trials should be initiated within 480 days.

A threshold consideration is whether the defendants have been served. A key feature of due process in civil litigation is that there can be no case resolution unless actual or constructive notice has been given to a defendant. Service of a summons and a copy of the complaint start the clock running for the filing of a responsive pleading that will join the issues in the case. Failure to complete service leaves a civil case in limbo. Service of process is a particularly daunting step for plaintiffs who are representing themselves. Setting an interim time standard for completion of service of process encourages courts to monitor the performance of this critical procedural step and to take action – such as setting an early hearing for self-represented litigants who have not filed a return of service or sending the plaintiff's attorney a notice that the case will be dismissed for failure to prosecute – when it has not been completed timely. There are exceptional cases in which defendants evade service or service by publication becomes necessary; service in these cases will often not be completed within 45 days.

The next consideration is whether a defendant has filed a responsive pleading. In their study of civil cases decided in 1992 in 45 large trial courts, researchers found that an answer was filed by a defendant in only 51 percent of all tort cases in one court, and that answers were filed in only 87 percent of all tort cases in the court with the highest percentage of cases with answers filed. For contract cases, the filing of an answer was even less common, ranging from 21 percent of all such cases in one court to 69 percent in the court with the highest portion of defendant responses.[23]

To avoid having cases lay fallow for months or even years without being at issue, the second intermediate time standard thus offers a suggested elapsed time within which there should either be a responsive pleading by a defendant or a plaintiff request for default judgment. This intermediate time standard embodies a suggestion that the trial court should monitor cases to determine whether a responsive pleading has been filed within a reasonable passage of time after case commencement. The exercise of early court control in this fashion has been found to have a statistically significant correlation with shorter times to disposition in civil cases.[24]

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[23] "Litigation Dimensions," *supra,* note 20, Appendix 5.

[24] *Reexamining the Pace of Litigation in 39 Urban Trial Courts, supra,* note 4, Figure 3.7.

Civil cases vary in the amount of discovery they require, with tort cases being more likely to have discovery than contract, real property or other civil cases.[25] Court management of discovery promotes expedition and helps conserve court resources. Research has shown that civil practitioners support direct court involvement and control over discovery through such means as holding an early discovery conference or establishing a discovery plan, through consistent application of the rules, and through the imposition of costs and sanctions for abuse.[26] Having an intermediate time standard like that presented here for completion of discovery can serve as an important tool for the court to exercise ongoing control of case progress.

The fourth intermediate stage in these time standards has to do with having timely and credible trial date scheduling. To help make better use of their time, many civil attorneys prefer to have trial date predictability, and having credible trial dates is a means for the court to prompt the attorneys to give early attention to whether a matter can be resolved by negotiation rather than by trial. Having actual trial commencement within 16 months in most cases where it is needed can serve as a helpful means to assure that almost all cases are concluded within 18 months.

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[25] See S. Keilitz, R. Hanson and H. Daley, "Is Civil Discovery in State Courts Out of Control?" *State Court Journal* (Vol. 17, No. 2, Spring 1993) 8.

[26] See S. Keilitz, R. Hanson and R. Semiatin, "Attorneys' Views of Civil Discovery," *Judges' Journal* (Vol. 32, No. 2, Spring 1993) 2, at 38. Institute for the Advancement of the American Legal System (IAALS), *Interim Report & 2008 Litigation Survey of the Fellows of the American College of Trial Lawyers on the Joint Project of the American College of Trial Lawyers Task Force on Discovery and the Institute for the Advancement of the American Legal System* (Denver, CO: IAALS, 2008); http://www.du.edu/legalinstitute/pubs/Interim%20Report%20Final%20for%20web1.pdf; IAALS, *Survey of the Oregon Bench and Bar on the Oregon Rules of Civil Procedure* (Denver, CO: IAALS, 2010). http://www.du.edu/legalinstitute/pdf/IAALSOregonSurvey.pdf; IAALS, *Survey of the Arizona Bench and Bar on the Arizona Rules of Civil Procedure* (Denver, CO: IAALS, 2010). http://www.du.edu/legalinstitute/pdf/IAALSArizonaSurveyReport.pdf; IAALS, *Civil Litigation Survey of Chief Legal Officers and General Counsel belonging to the Association of Corporate Counsel (*Denver, CO: IAALS, 2010) http://www.du.edu/legalinstitute/pubs/GeneralCounselSurvey.pdf.

SUMMARY CIVIL CASES

Case Type	Proposed Overall Standard
Summary Civil Matters	**75% within 60 days** **90% within 90 days** **98% within 180 days**

COMMENTARY

Definition. Small claims[27] and landlord/tenant[28] matters are the most common cases in this category. Other kinds of matters that might be included are harassment, garnishment, and civil infractions. For foreclosure cases and other limited non-summary civil cases, see the commentary above on standards for general civil matters.

Earlier National Time Standards. The COSCA time standards have no provision for summary civil matters. The ABA time standards do include a specific provision for summary matters, suggesting that 100 percent be disposed within 30 days.

Time Standards in State Court Systems. There are specific time standards for summary civil matters in 21 states and the District of Columbia. No court system agrees with the ABA 30-day standard. Highlights of the variations among states include the following:

- The state with the shortest time expectation calls for all unlawful detainer matters to be disposed within 45 days, but allows up to 95 days for all small claims.
- The two jurisdictions with the longest time expectation allows up to 12 months for all cases. No other state has an upper limit longer than six months.
- In 18 states, the upper limit is from three to six months.
- In 11 states, there is a single specific time within which all cases must be disposed.
- Nine states have tiers giving times within which specified percentages must be disposed.
- In five states, the upper time limit is for a percentage lower than 100 percent, reflecting an expectation that some cases will unavoidably need more time to be disposed.

Overall Time Standards for Summary Civil Matters. In 1992, a study was published about times to disposition in 1990 for small claims cases in 12 courts.[29] The researcher found that only one court was able to dispose of as many as 75 percent of its small claims cases within the ABA 30-day time standard. In fact, eight of the 12 courts took longer than 30 days to dispose of just

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[27] "A subcategory of civil cases (tort, contract, or real property claims) that are governed by statutorily defined summary procedures and in which the remedy sought is a specific, limited amount of monetary damages. Typically these cases dispense with written pleadings, legal counsel, and strict rules of evidence." *Guide to Statistical Report, supra,* note 2, at 10.

[28] "Contract cases alleging a breach of contract (lease/rental agreement) between a landlord and commercial or residential tenant in which a landlord alleges that the tenant's right to occupy the real property has terminated." *Id.* At 9.

[29] See J. Goerdt, *Small Claims and Traffic Courts: Case Management Procedures, Case Characteristics, and Outcomes in 12 Urban Jurisdictions* (Williamsburg, VA: National Center for State Courts, 1992).

25 percent of their cases. On the other hand, only four courts needed more than 125 days to dispose of 90 percent of all their small claims cases.

The time standards offered here for summary civil matters are premised on the actual experience of courts in summary matters.[30] They suggest that most summary civil cases be disposed within two or three months. Yet they also show an appreciation for the fact that contested matters actually going to trial may need more time.

Intermediate Time Standards.

In 98% of cases, service of process should be completed within 30 days.

In 98% of cases, responsive pleadings should be filed or default judgments entered within 60 days.

In 98% of cases, trials should be initiated within 120 days.

As with other trial court matters, providing prompt and affordable justice in summary civil matters calls for the court to exercise early and continuous control of case progress. It may be even more important in summary matters than in general civil cases that the court finds an efficient way to monitor service on a defendant and the filing of an answer. The time standards offered here consequently provide an expected elapsed time within which an answer or a request for default judgment has been filed. Sixty days is a reasonable time period for summary civil cases because the time periods for service of process and for filing a responsive pleading are generally shorter than for general civil matters. Further, service is performed by the court using certified mail in a number of states.

By their very nature, summary civil matters do not usually require a substantial amount of time for the completion of discovery. It is therefore important that the court set an early and credible date for trial commencement, as suggested here.

[30] E.g., Colorado County Courts dispose of 75 percent of summary civil cases within 63 days, but disposition of 90 percent requires up to 113 days, and disposition of 98 percent cases require 267 days.

DISSOLUTION/DIVORCE CASES

Case Type	Proposed Overall Standard
Family Dissolution/ Divorce/Allocation of Parental Responsibility	**75% within 120 days*** **90% within 180 days*** **98% within 365 days***

* Not including a statutorily imposed waiting period if any.

Definition. This case category includes custody, visitation, and spousal and child support matters that are subsumed as part of a dissolution/divorce proceeding. It also includes cases involving custody, visitation, or support of the children of unmarried couples who may be dissolving their relationship, and paternity/parentage or non-divorce custody, support or visitation proceedings.[31] It does not include post-decree proceedings to enforce or modify court orders on custody, visitation and support.

Earlier National Time Standards. The 1983 COSCA time standards for domestic relations matters distinguish between uncontested cases, which are to be tried or otherwise disposed within three months after filing, and contested cases, which are to be disposed within six months after filing. The 1992 ABA time standards do not make such a distinction. Instead, they provide that 90 percent of all domestic relations cases should be tried or otherwise disposed within three months after filing; 98 percent within six months; and 100 percent within 12 months.

Time Standards in State Court Systems. At least 27 states and the District of Columbia have overall time standards for Family Dissolution/Divorce cases.[32] The standards for the great majority of these states exceed the COSCA time standard of six months and are more in line with the proposed standard of 98 percent within 12 months.

- Five states have separate standards for contested and uncontested matters, but only two states have adopted the COSCA standards as promulgated. In the other three states, the upper time limit for contested cases is 12 or 14 months, and one of them provides that two percent might take longer.
- In two states, a difference in time expectations is based not on whether a matter is contested, but on whether there are children involved.
- No state has adopted the ABA standards as promulgated. Two states come close: one provides that 90 percent of all cases should be disposed within three months, 95 percent within six months, and 99 percent within 12 months; and the other provides that 90 percent should be disposed within three months, 95 percent within nine or ten months (depending on whether there are children), and 100 percent within 12 months.
- In nine states, the maximum time standard is 12 months, like that of the ABA standard, while six states set the maximum time at 18 months. Only one state has a maximum time standard longer than 18 months.

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[31] *Guide to Statistical Reporting, supra,* note 2, at 12.
[32] See CPTS Database, *supra,* note 3.

- A common approach (adopted in nine states) is simply to indicate how long it should take for 100 percent of all cases to be disposed, with no provision for the percentage of cases that should be disposed within a shorter time. Ten states allow that a small percentage of cases (from one percent to ten percent) may take longer than the stated maximum.
- Only one state has a separate time standard for complex cases.

Overall Time Standards. Compared to the prior COSCA standard, the proposed time standard allows for additional time for the final disposition of dissolution/divorce cases. It is comparable to the current ABA standard and is in line with standards established by the state courts, based on their experience of the length of time needed to resolve the complex financial and parenting issues present in some of these cases.

A 1992 national study of case processing and the pace of litigation in urban trial courts hearing divorce matters supports the ABA 12-month maximum time standard as an achievable goal for divorce cases. In that study, researchers found that three of the 16 courts in the study were within four percent of meeting the 12-month time standard, and six courts came within ten percent. Yet only two courts were able to come close to the six-month time standard (100 percent of all cases for COSCA and 98 percent for ABA). In fact, 14 of 16 courts had less than 75 percent of their cases disposed within six months.[33]

Although there are no more recent multi-jurisdiction assessments of disposition times for divorce cases in American trial courts,[34] there has been a recent analysis of case processing times of divorce cases in Canadian courts, with results very similar to those in the 1992 study in American courts. While common law court practices in Canada are not identical to those in the US, the data tend to support the time standards offered here. For 2008/2009 divorce cases in four provinces and three territories, 77 percent reached initial disposition within six months after case initiation; 92 percent within 12 months; and 99 percent within 24 months.[35]

The proposed standard takes into account that statutes and court rules in most states reflect the state's policy that spouses, and particularly those with children, must wait for a period of time to reflect on the consequences of their actions before their divorce may become final. These waiting periods are generally between 30 to 90 days, although in some states they are as short as 20 days and in others as long as six, 12, and 18 months. The existence of a waiting period should not deter courts from moving a case as far along in the process as expeditiously as possible before the waiting period concludes.

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[33] J. Goerdt, *Divorce Courts: Case Management Procedures, Case Characteristics, and the Pace of Litigation in 16 Urban Jurisdictions* (NCSC, 1992), pp. 9-11.

[34] The limited single-state data available shows that Missouri disposes of 90 percent of its domestic relations cases within 300 days; Colorado is able to dispose of 90 percent of its domestic cases within 328 days; and Minnesota 91.3 percent of its dissolution cases within 365 days.

[35] See M. B. Kelly, "The Processing of Divorce Cases Through Civil Court in Seven Provinces and Territories," *Statistics Canada* (May 2010), Table 4, http://www.statcan.gc.ca/pub/85-002-x/2010001/article/11158-eng.htm.

The proposed standard also takes into account the statutes and court rules in some states that require mediation/arbitration and/or parenting classes as preconditions to a trial and/or issuance of judgment.

Intermediate Time Standards. Only two states have time standards for intermediate stages in dissolution cases. One has established a standard of three months for the issuance of a temporary/interim order, even in complex cases involving children, in order to establish stability and financial support for the children. The other provides that a case management order for custody and visitation is to be filed within 90 days after the return date.

Four intermediate time standards for family dissolution/divorce cases are proposed:

In 98% of cases, service of process should be completed within 45 days.

In 98% of cases, temporary orders should be issued within 60 days.

In 98% of cases, responsive pleadings should be filed or a default judgment entered within 90 days.

In 98% of cases, trials should be initiated within 300 days.

- Especially when children may be involved, courts should be vigilant to ensure that the early stages of dissolution cases do not fall prey to party-caused delay. This includes timely service of process. As suggested with regard to general civil cases, setting an interim time standard for completion of service of process encourages courts to monitor the performance of this critical procedural step and to take action – such as setting an early hearing for self-represented litigants who have not filed a return of service or sending the plaintiff a notice that the case will be dismissed for failure to prosecute – when it has not been completed in a timely fashion.
- In many instances, the most important pre-trial step is the issuance of a temporary order to stabilize the financial and parenting situation pending final judgment. For the safety and security and well-being of the spouses and children, it is important that an order be established early on addressing child support, spousal support (maintenance), custody (parental rights and responsibilities), and visitation (parent/child contact). Other matters that may need to be resolved early include possession of the dwelling, and, if not resolved through a domestic violence proceeding, orders to protect the safety of either spouse. Sixty days should be considered the maximum amount of time for issuance of a temporary order in all or nearly all cases.
- An intermediate standard of 90 days for the issuance of a default judgment is established for those cases in which there are no contested issues. This would be evident to the court by a failure of a party, properly served, to respond to the complaint. It would also be evident by parties filing a stipulation to judgment that resolves all issues to the satisfaction of the judge.
- A standard of 300 days for the start of the trial is needed for the overall time standard to be met. Many cases that go to trial contain complex issues that require extensive findings by the judicial officer.

As is the case with the overall time standards, states should take into account the waiting period, if any, prescribed in their statutes or court rules in setting their specific standard.

POST JUDGMENT MOTIONS (Domestic Relations)

Case Type	Proposed Overall Standard
Post Judgment Motions	**98% within 180 days**

Definition. This category includes motions for modification of child support, spousal support, visitation and custody, and other requests for review of matters determined during a divorce, dissolution, or allocation of parental responsibility proceeding.[36]

Earlier National Time Standards. Neither the 1983 COSCA nor 1992 ABA time standards specifically address post judgment motions in domestic relations cases.

Time Standards in State Court Systems. Only four states directly address disposition of post judgment domestic relations matters.

- Two use a three-tiered standard with all but one or two percent of the cases to be disposed in 180 days or 365 days respectively and at least 75 percent of the cases disposed within 60 to 90 days.
- One state employs a COSCA type standard calling for 100 percent of post judgment matters to be disposed within 180 days.
- One state differentiates the amount of time by the subject matter of the proceeding: child support enforcement and modification of parental contact motions – 60 days; child support contempt, child support modification, and parental role and responsibility – 90 days; spousal maintenance – 120 days.

Overall Time Standards. Post judgment motions constitute a significant portion of the caseload of any court hearing domestic relations matters and often address issues of great significance to parties or their children. Hence, they should be resolved as quickly as is possible. These motions range from clarifying some aspect of the initial divorce, child support, or custody order; to modifying an order because of changed circumstances; to, in essence, re-litigating the entire case. Little data is currently available regarding how long these motions take to resolve in practice. Thus, rather than establishing tiers, the proposed standard urges that nearly all post judgment motions be disposed of within six months, with the expectation that the vast majority will be resolved much more quickly.

Intermediate Time Standards. The intermediate time standards for post judgment motions, like those for other types of proceedings are intended to facilitate the ability of courts to decide these matters within the overall time limits.

In 98% of cases, service of process should be completed within 30 days.

In 98% of cases, responsive pleadings should be filed or a default judgment entered within 75 days.

In 98% of cases, hearings should be initiated within 150 days.

[36] The *Guide to Statistical Reporting* classifies these matters as "reopened" domestic relations cases, *supra*, note 2, at 13.

DOMESTIC VIOLENCE CASES

Case Type	Proposed Overall Standard
Domestic Violence	98% within 10 days

Definition. This time standard applies only to cases involving a civil protection order or a restraining order issued by the court to limit or eliminate contact between two or more individuals.[37] It does not apply to criminal proceedings involving charges of domestic violence.

Earlier National Time Standards. The COSCA time standards and the ABA time standards do not include provisions relating to domestic violence cases.[38]

Time Standards in State Court Systems. At least ten jurisdictions have time standards for family domestic violence cases.[39] The shortest time standard is that 99 percent of domestic violence cases be disposed within ten days. Five states call for all domestic violence cases to be concluded within 21 – 30 days. Two jurisdictions have a 60-day standard; one a 120-day standard. Three have adopted time standards that include tiers with the top tier setting the disposition time for less than 100 percent of the cases.

Overall Time Standards. The proposed standard comports with national and state policy that domestic violence will not be tolerated in this country and that victims of domestic violence need to be able to access the courts to receive orders protecting them from their abuser as quickly as possible.

Intermediate Time Standards.

In 100% of cases. *ex parte* hearings should be concluded within the period specified by state law.

All states and territories in the US have adopted legislation to protect victims from domestic violence.[40] Some states require that courts be available to accept the filing of domestic violence complaints 24 hours-a-day and seven days-a-week and to issue orders within hours of the filing of the complaint. Other states require that states accept complaints and issue orders within 24 hours. The proposed standard calls for 100 percent of *ex parte* hearings to be held and orders issued in compliance with state law.

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[37] *Guide to Statistical Reporting, supra,* note 2, at 43.
[38] In National Conference of Juvenile and Family Court Judges (NCJFCJ), *A Guide for Effective Issuance and Enforcement of Protective Orders* (2005), there are no suggested time standards for these cases.
[39] See CPTS Database, *supra,* note 3.
[40] For state-by-state information on statutory enactments since 1995 on domestic violence matters, see NCJFCJ, "Publications: Family Violence: Legislative Updates," http://www.ncjfcj.org/content/blogcategory/256/302/.

JUVENILE DELINQUENCY CASES

Case Type	Proposed Overall Standard
Delinquency and Status Offense	**75% within 60 days** **90% within 90 days** **98% within 150 days**

COMMENTARY

Definition. This case type includes both delinquency cases (i.e., cases involving an act committed by a juvenile, which, if committed by an adult, would result in prosecution in criminal court and over which the juvenile court has been statutorily granted original or concurrent jurisdiction),[41] and status offense cases (i.e., non-criminal misbehavior by a juvenile such as a curfew violation, running away, truancy, or incorrigibility).[42] In some jurisdictions, status offense cases are called CHINS or CINS cases (child or children in need of supervision), PINS cases (person in need of supervision), or JINS cases (juvenile in need of supervision). The time period begins with the filing of the complaint or petition and runs through the issuance of the dispositional order.

Earlier National Time Standards. The 1983 COSCA time standards did not address juvenile delinquency cases. The 1992 ABA time standards specify that 90 percent of delinquency cases should be disposed within three months; 98 percent within six months; and 100 percent within 12 months. The National Advisory Committee on Juvenile Justice and Delinquency Prevention (NACJJDP) standards issued in 1980 recommend 30 days from filing to disposition for juveniles in custody, and 45 days for juveniles who are not detained.[43] The most recent set of recommendations are contained in the 2005 *Guidelines* issued by the National Council of Juvenile and Family Court Judges (NCJFCJ). Those *Guidelines* distinguish between youth who are detained and those who are not detained, setting a maximum time of 30 calendar days between arrest and disposition for detained youth, and 58 calendar days for juveniles who have been released.[44]

Time Standards in State Court Systems. At least 27 states and the District of Columbia have overall time standards for juvenile delinquency cases.[45] Two offer standards for Status Offense cases. All but one set of state standards exceed the NCJFCJ *Guidelines;* however, all but four specify a maximum time to disposition for all cases well below the ABA's one year limit.

- Six jurisdictions make a distinction between the time period for cases in which the youth is detained and those in which the juvenile has been released, with two making

[41] *State Court Guide to Statistical Reporting*, *supra*, note 2, at 24.
[42] *Id.*
[43] National Advisory Committee on Juvenile Justice and Delinquency Prevention, *Standards for the Administration of Juvenile Justice*, Standard 3.161 (Washington, DC: OJJDP 1980).
[44] National Council of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*, 90, 121, 137 (Reno, NV: NCJFCJ, 2005).
[45] See CPTS *supra*, note 3.

an additional differentiation between secure and non-secure detention. All but three set the end point as the disposition rather than adjudication. The beginning point, if stated, varies from arrest, to filing, to first appearance.

- One jurisdiction sets separate time periods for the most serious cases and another has established different time standards for jury and non-jury cases.
- While eight jurisdictions have established tiers of time standards, no state has adopted the ABA standards as promulgated. Both the percentages and prescribed time maximums vary widely. The most frequent maximum time limits are 90 days (five states), 180 days (five states) and 270 days (four states). Only one state's standard exceeds one year; one sets a time limit of 37 days for detained youths.
- Seven states provide for a percentage of cases to exceed the maximum time limit – two percent (three states); one percent (two states); five percent (one state); and 25 percent (one state).

Overall Time Standards. As stated in the National Council of Juvenile and Family Court Judges *Guidelines*:

> . . . [T]imeliness throughout the juvenile justice process is critical for two reasons:
>
> - One purpose of the juvenile justice process is to teach offenders that illegal behavior has consequences and that anyone who violates the law will be held accountable. A youth …who must wait a significant period of time between offense and consequence may not be able to sufficiently connect the two events. . . .
> - If the juvenile justice process is not timely, many youth will experience prolonged uncertainty [which] can negatively impact trust and a sense of fairness. If a youth does not perceive the juvenile justice system to be predictable and fair, then the system's goal of changing behavior is less likely to be achieved.

The most comprehensive information regarding the time required to dispose of delinquency cases is reported in a 2009 study of juvenile courts in 392 counties by Butts, Cusick, and Adams.[46] In 2004, 71 percent of the delinquency cases were disposed within 90 days of filing. Cases in which the youth was not detained proceeded slightly more slowly than those involving detention (67 percent disposed within 90 days vs. 71 percent).[47] A report of 2007 caseload information in one state revealed that only 32 percent of <u>contested</u> juvenile delinquency cases were disposed within 30 days, about 78 percent were concluded within 90 days, and approximately 90 percent within 180 days. However, the report points out that there is no data available on uncontested cases which are generally "too short" to make data collection worthwhile. Data on total delinquency dispositions in 2009 is available from three other states. One reported that 74 percent of juvenile delinquency cases were disposed within 90 days, 88 percent within 150 days, and over 92 percent within 180 days. The second reported that 80.6 percent were concluded within 90 days, 92.5 percent within 150 days, and 95 percent within 180

[46] J.A. Butts, G.R. Cusick, and B. Adams, *Delays in Youth Justice* (Chicago, IL: Chapin Hall, University of Chicago, 2009).
[47] *Id.,* at 62.

days. The third reported that 75 percent of the delinquency cases were concluded within the time standards (180 days for non-jury cases; 240 days for jury cases).

Intermediate Time Standards. Only three states establish interim time standards for delinquency and status offense cases. Two include a standard for holding the detention hearing (one 24 hours, the other 48 hours); one has a standard for the filing of trial briefs (30 days); all three set a standard for holding the adjudication hearing or making a decision; and one establishes a time limit for holding a dispositional hearing after adjudication.

In 98% of cases, detention hearings should be held within 48 hours.

In 98% of cases, waiver hearings, if needed, should be held within 45 days.

In 98% of cases, the trial/adjudication hearing or acceptance of an admission should be held within 120 days after the detention hearing if the juvenile is detained.

In 98% of cases, the trial/adjudication hearing or acceptance of an admission should be held within 120 days after detention hearing if the juvenile is not detained.

Effective case management is essential if the time standards for disposition of juvenile delinquency cases are to be met. Setting and enforcing intermediate time standards are part of an effective case management strategy. Three intermediate time standards are proposed. The first is for holding the detention hearing, i.e., the initial appearance of an alleged delinquent youth before the judge to advise the juvenile of the charges and her or his rights; ensure that the juvenile has counsel; determine whether there is probable cause to proceed; and decide custody status. Frequently at these hearings, the court is advised whether the prosecution is seeking to transfer the youth to the criminal court and the youth will be asked whether he/she denies or admits the allegations.[48] It has long been accepted that when the juvenile is being detained, this initial hearing must be held within a day or two days at most. Difficulty in notifying the parents of the need to appear…should be the only reason to delay the detention hearing….”[49]

The second proposed intermediate standard addresses the timing of the hearing to determine whether the juvenile court will waive jurisdiction and transfer the case to the criminal court. Because transfer of jurisdiction has significant short-term and long-term consequences if the youth is ultimately convicted, time is required by both the state and defense to prepare. On the other hand, because the standard of proof is generally low (usually probable cause), the preparation time can be less than that required for a full-scale trial or adjudication hearing.[50]

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[48] NCJFCJ, *supra,* note 45, at 89.
[49] *Id.,* at 90.
[50] *Id.,* at 102-104.

The third intermediate standard is for the adjudication hearing or trial. It sets the time for the adjudication hearing sufficiently before the expiration of the overall standard to permit a determination of what services and level of supervision are needed following a finding that the youth is delinquent.

NEGLECT AND ABUSE CASES AND TERMINATION OF PARENTAL RIGHTS

Case Type	Proposed Overall Standard
Neglect and Abuse	**Disposition** **98% within 90 days of removal** **Permanency Plan** **75% within 120 days of removal;** **98% within 360 days of removal**
Termination of Parental Rights	**98% within 120 days**

COMMENTARY

Definition. Neglect and abuse cases are actions brought by the state alleging that a child has been hurt or maltreated or that the person legally responsible for a child's care has failed to provide the child with suitable food, shelter, clothing, hygiene, medical care, or parental supervision. In each of these circumstances, it is usually required that the maltreatment or omission threatens to cause lasting harm to the child.[51] Some jurisdictions characterize these matters as dependency cases. Termination of parental rights matters result from the filing of a petition by the state to sever the parent-child relationship due to allegations of abandonment by a parent, child abuse, or unfitness of a parent.[52]

Earlier National Time Standards. The 1983 COSCA time standards did not address juvenile delinquency cases. The 1992 ABA time standards specify that 90 percent of neglect and abuse cases and terminations of parental rights should be disposed within three months; 98 percent within six months; and 100 percent within 12 months. The federal Adoption and Safe Families Act (ASFA) (P.L.105-89) requires that in order for states to receive funds under Titles IV-B and IV-E of the Social Security Act, they conduct a permanency hearing for a neglected or abused child no later than 12 months after the child has entered foster care.[53] A child is considered to have entered foster care upon a judicial finding that the child has been subjected to abuse or neglect or 60 days after the child has been removed from her/his home, whichever occurs earlier.[54] A permanency hearing is the proceeding at which a court determines:

> …the final plan in a neglect or abuse case that will move the child out of temporary foster care and into a safe, nurturing and permanent home. At the permanency hearing, the judge must order one of the following permanent plans for the child and specify the date that the plan will be implemented:

[51] *Guide to Statistical Reporting*, *supra,* note 2, at 27.
[52] *Id.*
[53] 42 U.S.C §675(5)(C).
[54] 42 U.S.C §675(5)(F).

- Return to the parent
- …[A]doption …with the state filing a petition to terminate parental rights, if necessary;
- …[L]egal guardianship;
- …[P]ermanent placement with a relative, foster parent or other non-relative; or
- …[A]nother specified permanent living arrangement….[55]

Termination proceedings under ASFA must be initiated, in most instances, if "a child… has been in foster care under the responsibility of the state for 15 of the most recent 22 months."[56]

Time Standards in State Court Systems. Fourteen states have standards addressing neglect and abuse cases, termination of parental rights proceedings, or both. The four that specifically address the permanency hearing are all consistent with ASFA.

- Four states set overall time limits covering the time to a permanent placement with 18 months as the most frequently used goal. Eight address only the hearing to determine that a child has been neglected or abused. These standards vary from 33 to 180 days, with four in the 88 to 120-day range. One state has standards for both achievement of permanency and adjudication hearings.
- Five jurisdiction's standards distinguish between the time limits that should apply to cases in which a child has not been removed from her/his home and those in which removal has occurred. One also sets different time limits for standard and complex cases in each category.
- Six jurisdictions have specific time standards for termination proceedings (two at 180 days, two at 360 or 365 days, and one each at 120 and 150 days respectively). Four states address both neglect and abuse cases and termination cases.
- Three states provide for a percentage of cases to exceed the maximum time limit – one percent (one state); five percent (one state); 25 percent (one state).

Overall Time Standards. The proposed time standard is based upon the federal ASFA requirements leavened with a recognition that because of the difficulty in securing a safe permanent placement, a small percentage of cases will exceed the federal timeframe. Accordingly, the proposed standard sets a goal of holding three-quarters of permanency hearings within four months, leaving only the most difficult cases to be heard in the eight remaining months until the one year deadline. It is important that the exceptions that take more than one year be kept to an absolute minimum. As noted in the NCJFCJ *Guidelines*, uncertainty over placements and frequent transitions from one home to another "can seriously and permanently damage a child's development of trust and security."[57]

States around the nation, inspired by the three National Judicial Leadership Summits for the Protection of Children, enabled by the grant funds provided through the federal Court

[55] National Council of Juvenile and Family Court Judges, *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, 18 (Reno, NV: NCJFCJ, 2000).
[56] 42 U.S.C §675(5)(E).
[57] National Council of Juvenile and Family Court Judges, *supra*, note 56, at 5.

Improvement Program, and challenged by the federal Child and Family Services Reviews have been striving to meet the prescribed timeframes. Based on 2008 data submitted by the more than 40 states participating in Summit III:

- The average mean time from filing of the protection order to the adjudication hearing was 137.2 days.
- The average median time from filing of a complaint to permanent placement was 627.1 days.
- The average mean time from notice of appeal to the final appellate decision was 197.9 days.[58]

Comparable data was not collected regarding disposition of termination of parental rights proceedings.

Intermediate Time Standards.

Neglect and Abuse	**In 98% of cases, the preliminary protective hearing should be held within 72 hours.**
	In 98% of cases, the trial/adjudication hearing, if required, should start within 60 days.
Termination of	**In 98% of cases, the trial/termination hearing should start within 60 days after service of process.**

The proposed intermediate time standards address key decision points in the process. For neglect and abuse proceedings, the first point of concern to the parties is the initial hearing to determine whether removal was appropriate. If it is determined that removal was required to protect the child, then the court should set the timetable for further proceedings and assure that permanency planning is undertaken from the start. If it is determined that removal was not appropriate or is no longer appropriate, immediate action should be taken to safely reunite the family. The second interim point is the adjudication hearing. In order to achieve the goal of concluding 98 percent of adjudications within 90 days, the bulk of the hearings must occur well before that date to accommodate both the evidentiary process and time required to make a decision and craft an order. Four states have established standards for both adjudication and permanency hearings, with the time set for the adjudication hearing ranging from 33 to 153 days.

With regard to termination proceedings, ASFA requires that a termination of parental rights petition must be filed for any child who has been in foster care for 15 of the most recent 22 months unless timely services were not provided to the family, the child is being cared for by a relative, or other compelling circumstances.[59] This requirement is intended to avoid "the documented substantial and unjustified delays in many states in legally freeing children for

[58] R. Van Duizend & N. Sydow, "A New Judicial Commitment to Improving the Child Protection Process and the Quality of Outcomes for Children," *Future Trends in State Courts 2010*, 107, 109 (Williamsburg, VA: NCSC, 2010).
[59] 42 USC §675 (5) (E) and (F).

adoption."[60] An intermediate standard is not included because the filing of the petition is not a matter directly within a court's control.[61] The second intermediate standard seeks to balance the need for a prompt determination with the recognition of the time required to perfect service and prepare for a proceeding at which a fundamental right is at issue. It calls for the vast majority of hearings to take place within 60 days so that the overall 120 day to disposition goal can be met. The NCJFCJ *Guidelines* recommend that all termination proceedings that require a trial begin within 90 days, with a decision no later than 14 days after conclusion of the trial. The *Guidelines* also encourage use of mediation and other settlement techniques to achieve voluntary terminations and settlement of related issues so as to avoid as many trials as possible.[62] The one state that includes an interim standard for termination cases calls for hearings within 60 days and all dispositions within 150 days.

[60] National Council of Juvenile and Family Court Judges, *supra*, note 56, at 26.
[61] If a state wishes to adopt an intermediate standard regarding the filing of a termination of parental rights petition. one approach could be: In 90% of cases, TPR petitions, if required, should be filed within 455 days (15 months) after the preliminary protective hearing; in 98% of cases, TPR petitions, if required, should be filed within 670 days (22 months) after the preliminary protective hearing.
[62] National Council of Juvenile and Family Court Judges, *supra,*, note 56, at 27.

ADMINISTRATION OF ESTATES

Case Type	Proposed Overall Standard
Administration of Estates	**75% within 120 days** **98% within 360 days**

COMMENTARY

Definition. Cases of this type involve the estate of a deceased person, including the determination of the validity and proper execution of a will or, in the absence of a will, the disposition of the decedent's estate. Also included is the adjudication of disputes over a will and the oversight of actions by an executor, administrator, or personal representative.[63]

Earlier National Time Standards. The COSCA time standards and the ABA time standards do not include provisions on administration of decedents' estates. Although it emphasizes that probate proceedings, in general, and estate administration, in particular, should proceed in a timely manner, the National Probate Court Standards[64] do not prescribe specific time standards.

Time Standards in State Court Systems. At least 12 jurisdictions have time standards for cases involving the administration of decedents' estates. They vary considerably:[65]

- Two states have a time standard only for contested estates, while two others have one time standard for uncontested estates and another for contested estates.
- One jurisdiction has separate time standards for small and large estates, while another separates the time requirement for estates with a federal estate tax from that for all others.
- Two states have one time standard for cases with no formal administration and another for those with full administration.
- Maximum times vary from three months to three years, with the most common expected duration (five states) being 360 days.
- All 12 states expect that a substantial portion of the estates should be settled within 12 months or less.

Overall Time Standards. The 360-day time standard offered here is reasonably consistent with the estate administration norms for all of the court systems with time standards. In some states, however, current experience may be that the portion of all decedents' estates taking longer than a year to reach conclusion may be greater than two percent.

Intermediate Time Standards. Time standards are suggested here for two intermediate steps in the administration of a decedent's estate.

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[63] See *Guide to Statistical Reporting, supra,* note 2, at 19.
[64] National College of Probate Court Judges, *National Probate Court Standards* (NCPJ and NCSC, 1993), http://www.ncsconline.org/WC/Publications/Res_PropCt_NatlProbateCrtStandardsPub.pdf.
[65] See CPTS database, *supra*, note 3.

In 98% of cases, letters of administration should be issued within 90 days.

In 98% of cases, accountings should be filed within 270 days.

The first critical step in a probate estate case is when the court "issues letters" – that is, when it gives formal approval for an executor or administrator to gather the estate and prepare for its distribution to beneficiaries. Since most estates are uncontested and may require little or no active and formal probate court supervision, the intermediate time standard from filing to issuance of letters is short.

The second critical point has to do with the filing of an accounting – a report by the executor or administrator on the receipts and income to the estate; debt and tax payments and other disbursements; and the balance of assets in the estate at the time of the report. After this accounting to the court on behalf of the beneficiaries, the executor or administrator is typically in a position to distribute the remaining assets of the estate in keeping with the law or the terms of the will, in order to close out the estate.

ADULT GUARDIANSHIP/CONSERVATORSHIP CASES

Case Type	Proposed Overall Standard
Guardianship/ Conservatorship of Incapacitated Adults	**98% within 90 days**

COMMENTARY

Definition. This case type includes matters involving the establishment of a fiduciary relationship between a person charged with taking care of either the personal rights of an adult who is found by the court to be unable to care for himself or herself (guardianship) or the property of an adult found by the court to be unable to manage his or her own affairs (conservatorship).[66] It includes both full and limited guardianship and/or conservatorship for adults, but does not include guardianship of a minor or elder abuse cases.

Prior National Time Standards. The COSCA time standards and the ABA time standards do not include provisions for this case type. The National Probate Court Standards call for early court control and expeditious case processing, with hearings set at the earliest date possible, but do not offer specific time standards.[67] The terms of the Uniform Guardianship and Protective Proceedings Act (UGPPA 1997) provide simply that the court should set a date and a time for a hearing.[68]

Time Standards in State Court Systems. There appear to be only two state court systems with time standards specifically for guardianship and conservatorship cases.[69] One calls for all such cases to be disposed within eight months after filing; the other specifies that 75 percent of guardianship/conservatorship cases should be disposed within six months, 90 percent within nine months, and 100 percent within 12 months.

At least three states have a statutory requirement for how soon a court hearing should be held after the filing of a petition for guardianship and conservatorship.[70] One requires that a hearing be held within 120 days after filing; the other two within 60 days after filing.

Overall Time Standards. The time standard offered here addresses the time from the filing of the petition to denial of the petition or issuance of a court order appointing a fiduciary on a non-temporary basis. It is premised on two considerations. First, there should be a prompt court decision balancing the due process rights of a disabled person with the need to protect that

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[66] See *Guide to Statistical Reporting, supra,* note 2, at 19.
[67] See National Probate Court Standards, *supra,* note 65, Sections 3.3.3, 3.3.8, 3.4.3, and 3.4.8.
[68] See National Conference of Commissioners on Uniform State Laws, Uniform Guardianship and Protective Proceedings Act (1997), Sections 305 and 406, http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/ugppa97.htm.
[69] See CPTS database, *supra*, note 3.
[70] See American Bar Association, Commission on Law and Aging, "State Law Charts and Updates: Guardianship: Conduct and Findings of Guardianship Proceedings (as of Dec. 31, 2009)" (August 2010), http://new.abanet.org/aging/PublicDocuments/chart_conduct_08_10.pdf.

person or her or his estate. Moreover, in most such cases there is no dispute over either the disabled person's capacity or the suitability of the individual proposed to be his or her fiduciary.

Intermediate Time Standards.

In 98% of cases, temporary appointments should be ordered within 72 hours.

In 98% of cases, trials/hearings regarding a permanent appointment should be started within 75 days.

In some circumstances, it is important for quick action to be taken to protect a disabled person or the estate. For this purpose there should be provision for prompt temporary appointment of a fiduciary. A requirement for temporary appointment in most circumstances within 72 hours allows time for notice and the scheduling of a court hearing while still assuring prompt action. Holding a hearing in most cases within 75 days should provide sufficient time for an investigation and also for possible mediation if there is a dispute.

CIVIL COMMITMENT CASES

Case Type	Proposed Overall Standard
Civil Commitment	**98% within 15 days**

COMMENTARY

Definition. In terms of court statistical definitions, civil commitments are "mental health cases" in which a court is requested to make a legal determination whether a person is a danger to him or her or others due to mental illness or incompetency and "should be placed, or should remain, under care, custody and/or treatment."[71] This case type does not include court determination of competency to stand trial, nor does it include proceedings for civil commitment of sexually violent predators.

Earlier National Time Standards. Neither COSCA time standards nor ABA time standards include provisions relating to civil commitments. The National Guidelines for Involuntary Civil Commitment urge that a court hearing should be held no more than three days after a respondent was taken into custody or a petition was filed.[72] More recently, the Model Law for Assisted Treatment provides that on any petition a court does not dismiss, the court should schedule a hearing to be held within ten calendar days after the petition was filed.[73]

Time Standards in State Court Systems. Two state-level court systems have promulgated time standards relating to civil commitment proceedings.[74] One provides that 80 percent of mental health cases should be disposed within 30 days, 90 percent within 45 days, and 99 percent within 60 days; the other specifies that 90 percent of civil commitment matters should be disposed within 14 days, and 100 percent within 28 days. Some states have statutory requirements for the timing of court hearings.[75] In Florida, for example, "Baker Act" hearings on involuntary treatment must be held within five days, unless a continuance is granted; and in North Carolina, a court hearing must be held within ten days after a respondent has been taken into custody, with the court authorized to grant a continuance of up to five additional days.

Overall Time Standards. Since the 1986 recommendation by the Task Force on Guidelines for Involuntary Civil Commitment that there be a court hearing on involuntary treatment within

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[71] *State Court Guide to Statistical Reporting, supra,* note 2, at 19.
[72] Task Force on Guidelines for Involuntary Civil Commitment, *National Guidelines for Involuntary Civil Commitment* (NCSC, Institute on Mental Disabilities and the Law, 1986), Guideline F2, http://contentdm ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=12.
[73] Treatment Advocacy Center, "Model Law for Assisted Treatment" (2009), § 5.3, http://www.treatmentadvocacycenter.org/LegalResources/index.php?option=com_content&task=view&id=49&Itemid=78.
[74] See CPTS database, *supra*, note 3.
[75] For a state-by-state summary of statutory provisions on involuntary treatment, see Treatment Advocacy Center, "Home Page>Legal Resources>In Your State," http://www.treatmentadvocacycenter.org/LegalResources/index.php?option=com_content&task=view&id=48&Itemid=271.

three days after custody or petition, there has been time to observe whether so expeditious a process is workable. The 2009 Model Act allows a longer elapsed time – ten days. The statutory provisions relating to the timing of a court hearing in both Florida and North Carolina explicitly allow for the hearing to be continued. The time standard offered here for civil commitment proceedings seeks to balance the need for a prompt court determination of the need for involuntary treatment with the practical problem of completing an evaluation and scheduling the court event with adequate prior notice.

Intermediate Time Standards.

In 98% of cases, assessment reports should be filed within ten days.

In order to protect the legal rights of a respondent while addressing a possible need for prompt care, the critical intermediate event is the completion and submission of the assessment report regarding the need for care and treatment. The timing for such a report should give sufficient time for it to be reviewed by the respondent and his or her representatives prior to the hearing by the court.

POST-CONVICTION PROCEEDINGS

Case Type	Proposed Overall Standard
Post-conviction proceedings (following a criminal conviction)	**98% within 180 days**

COMMENTARY

Definition. This case type involves petitions for collateral review of a criminal conviction, whether under statutory post-conviction review provisions or through proceedings on common law *habeas corpus* or *coram nobis* petitions. It does not include direct appeals or proceedings on motions for new trial or in arrest of judgment.

Prior National Time Standards. The COSCA time standards and the ABA time standards do not include provisions for such proceedings. ABA standards relating to post-conviction review call for there to be a "prompt response" by the prosecution and court assignment of "suitable calendar priority" if there is reason for expedition, but they do not provide any specific time standard within which such proceedings should be concluded.[76]

Time Standards in State Court Systems. One state has established time standards for post-conviction review proceedings -- 100 percent be disposed within 3 months after the filing of a petition.[77]

Overall Time Standards. Many petitions for post-conviction relief may be decided by a court without need for an evidentiary hearing. The time standard offered here recognizes that, while allowing time for prosecution and petitioner to prepare for hearing if one is required.

Intermediate Time Standards.

In 98% of cases, responses with affidavits should be filed by the prosecution within 120 days.

Given the nature of a petition for collateral review, it is important that the prosecution respond with reasonable expedition. Statutes in some states indicate a time within which a prosecutor must file a response to a post-conviction petition.

[76] See American Bar Association, Standards for Criminal Justice (2nd Edition, 1980, with 1986 supplement), Chapter 22, Standards 22-4.1 – 22-4.7, http://www.abanet.org/crimjust/standards/postconviction_toc.html. Proposed revisions to the post-conviction remedies standards are being considered by the Standards Committee in 2010.

[77] See CPTS database, *supra*, note 3.

Implementation of Model Time Standards

By providing goals for judges and other key participants in the court process to meet in managing caseloads, time standards can play an important role in achieving the purposes of courts in society. Yet, the mere promulgation of time standards is not sufficient to assure that courts will provide prompt and affordable justice. It is important for court leaders to create circumstances that will promote the likelihood of success.

Time standards provide a yardstick for measuring court performance and management effectiveness, serving as benchmarks for determining whether the pace of court proceedings is acceptable. Time standards are useful only if judges and other participants in the court process receive information on the extent to which they are being achieved; they should lead to the development of systems for monitoring caseload status and progress toward caseflow management goals.

Moreover, time standards provide a starting point for developing practices and procedures to meet the goals they set forth. These involve the exercise of early and continuous court control of case progress through the application of caseflow management principles and techniques. Success in such an effort requires attention to two separate levels of concern. First, it is important that judicial leaders at the state level set the tone and provide means to promote statewide compliance. Second, it is critical that prompt and affordable justice in each judicial district or trial jurisdiction be a matter of court policy and not be subject to any substantial differences among individual judges. The policy should be reflected in a published caseflow management plan in each judicial district or individual trial court.

Adoption and implementation of time standards is also likely to have an effect on the use of available resources and the level of resource needs for judges, prosecutors, public defenders, law enforcement and jail personnel, and administrative support personnel. Research has shown that there is more efficient use of the time of judges, lawyers and support staff when trial courts take effective steps to meet time standards in criminal cases.[78] Moreover, taking management steps to reduce wasted time for case participants can affirmatively reduce pressure for more resources.[79] Yet even fast courts can reach a "saturation point," at which they cannot absorb and process more cases without additional judicial or nonjudicial staff resources.[80] In a setting where the court is managing its caseflow, time standards help to highlight the level of its judicial and nonjudicial personnel needs.

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[78] *Efficiency, Timeliness, and Quality, supra,* note 6, at 104-106.

[79] See, for example, David Steelman and Jonathan Meadows, *Ten Steps to Achieve More Meaningful Criminal Pretrial Conferences in the Ninth Judicial Circuit of Florida* (Denver, CO: National Center for State Courts, 2010). In that report, the authors demonstrate how effective felony caseflow management can have a significant and measurable impact by reducing wasted time and thereby moderating the need for more judgeships, prosecution and public defender attorney positions, uniformed law enforcement officer positions, and associated support staff positions.

[80] *Examining Court Delay, supra,* note 4, at 30.

1. Adoption and Use of Model Time Standards.

To emphasize the commitment by judges and all members of the court community to the provision of prompt and affordable justice, court leaders in each state should adopt time standards for all major case types, patterned on the model time standards and actively applied in a consistent fashion throughout the state. Because they serve as a measure of what all citizens in the state can reasonably expect in terms of timely justice, time standards should be developed and promulgated by state court leaders in communication and consultation with all key justice partners.

Time standards should be viewed as a tool of successful court management, and should not be confused with speedy-trial requirements. Time standards should be used as a measure of accountability for both the court system as a whole and for individual court locations and judges. By serving as a measure of what constitutes high court performance, time standards should provide a basis for the courts to exercise ongoing leadership in efforts with their key justice partners to develop appropriate caseflow management measures and assure their active and consistent application by all judicial officers for all case types.

Together, time standards and caseflow management measures should promote justice, both in individual cases and through the effective and efficient use of time and other available resources by all participants in the court process. They should also be used as a means to determine with public funding authorities what level of resources the judicial branch of government requires to achieve high performance of its constitutional functions.

COMMENTARY

Establishment and compliance with recognized guidelines for timely case processing has been recognized as a key measure of court performance.[81] Setting or revisiting expectations for timely justice serves (a) to emphasize the need for judges and court personnel to see this as an essential part of their work[82] and (b) to promote public trust and confidence that the courts are committed to expeditious processing of cases.[83] That process both requires and provides an opportunity for the exercise of judicial leadership to generate and maintain broad consensus on what constitutes timely justice and on what must be done for that goal to be achieved within available resources.

Timely justice as defined in the time standards should be available in all kinds of cases and throughout a state. In adopting their own standards based on these national standards, state court leaders should take into account their own statutory requirements, jurisdictional environment, and demographic and geographic factors. While the "tailoring" of the model

[81] See Commission on Trial Court Performance, *Trial Court Performance Standards with Commentary* (Williamsburg, VA: National Center for State Courts, 1990, 1997), Standard 2.1.
[82] See Mahoney, et al., *Changing Times in Trial Courts* (Williamsburg, VA: National Center for State Courts, 1988), p. 202.
[83] See *Trial Court Performance Standards, supra,* note 81, at Standard 5.2.

standards to local circumstances may create variation from one state to the next, the process of adjusting to local conditions is necessary for realistic implementation of the standards throughout a diverse nation. Yet courts must respond to the quickening pace of everyday life, and the public is justified in expecting that their legal disputes can be resolved more quickly than they have been in the past. Consequently, any substantial deviations from the model time standards should be justified by the requirements for doing justice in an individual state; they should not be based merely on local disagreement with a national time standard.

Historically, time standards can be seen as a reflection of public policy considerations akin to those underlying the federal and state constitutional requirements that a criminal defendant be given a speedy and public trial. It is critically important, however, to understand that the provision of prompt and affordable justice means much more than simply avoiding dismissal of a case on speedy-trial grounds. Promptness is a necessary but not sufficient condition for effective justice; speed by itself does not constitute justice. This principle is recognized by the four "administrative principles" emphasized in the "High Performance Court Framework," which clarifies what court leaders and managers can do to produce high quality in the administration of justice:[84]

- Giving every case individual attention
- Treating cases proportionally
- Demonstrating procedural justice
- Exercising judicial control over the court process

Adoption and promulgation of time standards for the measurement of court performance is only part of what is necessary for achievement of high court performance. First the nature and importance of the standards as performance goals must be communicated to judges and staff throughout the state, as well as to justice system partners. Second, information must be used by court leaders and managers throughout the court system to measure compliance with time standards (see Section 2) in terms of both efficiency (age of pending caseload) and productivity (times to disposition) and take any necessary corrective action:[85]

- At the state level by the chief justice, court of last resort, and state court administrator to assess system performance by broad case types and by judicial districts.
- In a judicial district or individual court by the chief judge and court administrator to assess the overall status of its calendars and to troubleshoot for problems, bottlenecks or difficulties.
- By each individual judge to manage individual cases and all the cases on his or her docket.

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[84] Brian Ostrom and Roger Hanson, *Achieving High Performance: A Framework for Courts* (Williamsburg, VA: National Center for State Courts, 2010). See also National Center for State Courts. *CourTools, Trial Court Performance Measures,* (Williamsburg, VA: NCSC, 2004).

[85] *Caseflow Management, supra,* note 10, at 83-84. IAALS, A Roadmap for Reform: Civil Caseflow Management Guidelines (2009),www.du.edu/legalinstitute/pubs/civil_caseflow_management_guidelines.pdf

A sizeable body of research shows that meeting the obligation to provide timely and affordable justice calls for courts to monitor and control the progress of cases from initiation to conclusion through consistent application of caseflow management principles. A third step for court leaders to assure successful compliance with time standards is therefore to take a leadership role in collaboration with judges, court managers and staff, lawyers, and others in the court process to develop and maintain broad support and understanding of policies and programs to reduce and avoid delay (as discussed further in Section 3).

Finally, effective use of time standards involves resources. Caseflow management programs can serve as an important way to avoid wasted time for judges and others.[86] If reasonably efficient use of time and other available resources does not result in substantial compliance with applicable resources, this should provide a basis for courts and their justice partners to seek additional resources from public funding authorities. (See Section 4.)

2. Measurement of Court Compliance with Time Standards

By establishing time standards, court leaders demonstrate their commitment to court performance, and, in particular, a commitment to meeting the needs of litigants and the public by hearing and resolving cases in a timely manner. By measuring and monitoring compliance with time standards, court leaders demonstrate their commitment to court management and to operating an effective judicial system.

Court leaders should publish the courts' measures of compliance with their time standards in order to demonstrate their commitment to accountability and transparency and in order to identify methods of improving compliance and performance.

Measurement of compliance with standards must:

- **Be consistent from court to court**
- **Be accomplished in a manner to**
  - **Encourage timely disposition**
  - **Encourage judges to take the time needed to do individual justice in cases when additional time is needed**
- **Be used by**
  - **Court leaders to identify and apply best practices**
  - **Judges and administrators to identify and give appropriate attention to cases that are not disposed within the time standard**

[86] See Steelman and Meadows, *Ten Steps to Achieve More Meaningful Criminal Pretrial Conferences, supra,* note 80.

COMMENTARY

State court leaders have a duty to hold their organizations accountable to the public and to inter-branch partners by instituting a set of empirical measures and a program of on-going assessment of court outcomes which includes the wide publication of the results of those assessments. Court performance measurement is the evaluation of overall systems and programs rather than individual judicial performance. Time to disposition is one of the important measures courts should adopt as part of their quantitative and qualitative assessment of court effectiveness.[87]

The establishment of a time standard for the disposition of a case type is a first step. A time to disposition standard enables a state to define the concept of backlog and to identify a case "in backlog" as any case older than the standard.[88]

Thus, time standards can be helpful at the local court level to enable the local judge and administrator to focus on cases in backlog, determine whether there is a good reason why that case has not yet been disposed, and then to take appropriate steps to move the case to disposition.

Time standards can also be helpful to enable state and local court leadership and the public to monitor compliance with time standards throughout the jurisdiction, to identify best practices used by courts who meet the standards, and to work with courts not meeting the standards to improve their performance in the future.

To provide a complete picture of a court's compliance with the time standards, courts need to adopt multiple ways to measure compliance with the adopted standards.

- Count the number of cases disposed within a time period and then determine what percentage of those cases were disposed of within the time standard.
  - This measure most clearly measures compliance with these standards. Courts can use this approach to measure whether 75 percent, 90 percent or 98 percent of their cases were disposed of within the adopted time standards. However, the measure is not very useful as a way to measure success or failure when a court has just embarked on a caseflow reform effort, because in the early stages of the program, disposition times will be skewed by the disposition of old cases in the inventory.[89]

- Count the number of "old cases"-- the number of pending cases that exceed their time disposition guideline age.
  - This measure is helpful to the local judge and administrator. As the number of "old cases" decreases, the court will know that it is on the right track. However, the measure is not helpful to court leadership attempting to compare courts within their jurisdiction and to identify which courts most need attention to improve their

[87] Conference of State Court Administrators, *White Paper on Promoting a Culture of Accountability and Transparency: Court System Performance Measures*, 2008.
[88] J. Greacen, "Backlog Performance Measurement – A Success Story in New Jersey," *Judges Journal*, Winter, 2007.
[89] M. Solomon, *Improving Criminal Caseflow,* October, 2008.

backlog. To compare courts, court leadership must compare the number of old cases to the number of cases filed in each court.

- Count the number of "old, old cases," the number of cases pending for two or three times the time to disposition standard.[90]
  - For reasons stated above, this measure helps judges and administrators to identify those cases that most need attention.

- Count the number of "old cases" and then divide that number by the number of cases filed in the court in the previous year.
  - This backlog percentage enables court leaders to compare courts within their jurisdiction and identify the courts that most need attention.

Judicial leaders should demonstrate a commitment to transparency and accountability through the use of these performance measures. To improve public trust and confidence in the courts, judicial leadership should monitor compliance with time to disposition standards, monitor the effectiveness of the steps taken to improve performance and then make this information available as a matter of public record.[91]

For court leaders to be able to publish court compliance with time standards and to be able to compare compliance among the courts within their jurisdiction, it is crucial that the measures are consistent across the jurisdiction.

- Courts need a common definition of a "case." Courts need to develop consistent and uniform methods for counting multiple criminal charges against one or more defendants; civil cases with multiple defendants and multiple claims; and child custody and child support claims in a divorce case.

- Courts need a common definition of when a case begins. These standards recommend that the time of filing be used as the point of case initiation.

- Courts need a common definition of when a case is disposed; e.g., at the time of dismissal or sentencing in criminal matters.

It is also crucial that the court's case management system is viewed as reliable, is in fact reliable, and that the management reports it produces accurately report compliance with time to disposition standards.

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[90] *Backlog Performance Measurement, supra, note 89.*

[91] National Center for State Courts. *Principles for Judicial Administration: Governance, Case Administration, Core Functions and Dispositional alternatives, and Funding*. January, 2011 Draft. IAALS, A Roadmap for Reform: Civil Caseflow Management Guidelines (2009), A number of states regularly publish court level performance information including time to disposition. See e.g., www.utcourts.gov/courtools; www mass.gov/courts/cmabreport.html. . http://www.superiorcourt.maricopa.gov/MediaRelationsAndCommunityOutreach/docs/annualrep/FY2010AnnualRpt.pdf. www.du.edu/legalinstitute/pubs/civil_caseflow_management_guidelines.pdf

3. Steps to Promote Compliance with Time Standards

A. Statewide Actions

To promote the provision of prompt and affordable justice in compliance with applicable time standards, state-level court leaders should encourage actions at all levels of court. These actions should reflect the requirements of each case type and the differences among metropolitan, urban, suburban, and rural jurisdictions through the state.

Among the actions that should be taken are:

- **Dissemination of the state's time standards to the public.**
- **Provision of annual reports on court system performance with regard to those standards.**
- **Promulgation of statewide administrative rules or guidelines calling for the adoption of caseflow management plans to provide early and continuous court control of case progress from initiation to conclusion.**
- **Encouragement and assistance to judges, court managers, and court staff members to participate in national, statewide, and local educational programs on the importance of:**
  - **prompt and affordable justice**
  - **time standards**
  - **caseflow management**
- **Encouragement and support for educational programs for lawyers and other key justice partners on the purposes and use of time standards and caseflow management.**
- **Provision of technical assistance to improve caseflow management.**

COMMENTARY

It is important to provide a statewide environment in which the courts emphasize the critical importance of providing justice in a prompt and affordable manner. Assuring high performance throughout the court system through timeliness and affordability in compliance with time standards should therefore be an ongoing theme for leadership by the chief justice, the state Supreme Court, and the state court administrator and his or her office.

Public accountability. Statewide commitment by individual courts, judges and court staff members to providing timely and affordable justice in keeping with time standards is difficult or impossible to achieve unless the chief justice and the state Supreme Court regularly emphasize its importance as an element of the purpose and mission of the judicial branch of government. The chief justice and other state court leaders must show their commitment by openly accepting responsibility, and by insisting that all judges as government officials accept

responsibility for the results they provide for citizens in terms of timeliness and affordability.[92] The High Performance Court Framework calls for well-functioning courts to align their internal operating procedures with service to court customers, as a way to promote public trust and confidence in the legitimacy of the courts and to justify the provision of adequate resources by funding authorities.[93] The commentary to the Trial Court Performance Standards emphasizes the link between judicial independence and accountability, observing that each court must manage itself by establishing effective leadership, operating effectively, developing and implementing plans of action, measuring its performance, and accounting publicly for its performance.[94]

Emphasis on court system accountability for compliance with time standards is thus something that the chief justice and other state court leaders can link to judicial independence, public trust and confidence, customer service, and adequacy of funding. By requiring all courts in the system to report regularly on their performance in terms of time standards, and by following up with individual courts should any significant performance issues arise, the Supreme Court can regularly reinforce the importance of the time standards. By publishing annual reports of court system performance in terms of the time standards, the Supreme Court can responsibly reiterate its commitment to timeliness and affordability.

Statewide requirement and support for early and continuous court control. Differences among individual courts in terms of the communities they serve, as well as the importance of local initiative for acceptance of responsibility and accountability by each court and its individual judges, are considerations that make it difficult and unwise for state-level court leaders to impose a detailed caseflow management approach on every court in a state. Yet it is nonetheless important for state-level leaders to provide general guidance on the steps that individual courts should take to promote compliance with time standards.

In broadest terms, this can be done by requiring individual courts to show how they will exercise control of cases from initiation through judgment to the conclusion of all post-judgment work. This can include support for case information systems throughout the state that provide judges and court managers with timely and accurate information to monitor case progress.[95] It should also include a requirement that individual courts work in consultation with key stakeholders to develop and implement a written caseflow management plan for the exercise of early and continuous court control of case progress. This requirement should include that the plan be published locally and filed with the Supreme Court, and that each court report at least annually to both the public and the Supreme Court on its performance under the plan.

Education programs. While state court leaders should not dictate the specific steps that each court should take to manage case progress for compliance with time standards, the state-level court leaders should provide affirmative information on how to do so. An essential part of the foundation for successful caseflow management is ongoing education. The Supreme Court and the state court administrator's office should provide support for judges, court managers and

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[92] See D. Osborne and T. Gaebler, *Reinventing Government* (New York: Penguin Books, 1993), pp. 136-165.
[93] *Achieving High Performance, supra,* note 84, at Preface, vi and vii.
[94] *Trial Court Performance Standards With Commentary*, *supra,* note 84, at Section 4.
[95] See National Consortium for Court Functional Standards, "Court-Specific Standards," http://www.ncsc.org/services-and-experts/technology-tools/court-specific-standards.aspx.

staff, and lawyers to receive regularly recurring education on time standards and caseflow management through in-person and remote learning programs, whether provided at the local, regional, statewide, or national level.[96]

Technical assistance. In addition to providing information on how to manage caseflow, state court leaders should also provide means for individual courts and their justice partners to receive affirmative assistance with how to do it. This may be done by technical assistance programs operated by the state court administrator's office, involving judges and court managers with recognized skills, knowledge and experience in caseflow management. In addition, assistance may be provided through state-level grants, support for grants from the State Justice Institute or other funding sources, or support for individual court engagement of consultants with expertise in caseflow management.

B. Individual Court Actions

In each judicial district or individual trial jurisdiction, caseflow management and compliance with time standards should be a matter of court policy and accountability. Each judicial district or individual trial court should express its policy through:

- **The adoption and publication of a caseflow management plan in consultation with lawyers and other key stakeholders.**
- **Provision of local education programs.**
- **Regular reports to state court leaders and the public on performance under the plan in terms of the time standards.**

The plan should indicate the means by which the court will exercise early and continuous control of cases, including

- **Use of reports from the case information system to monitor the age and status of cases on their dockets from initiation through critical litigation stages to conclusion.**
- **Early court intervention to screen cases for prompt disposition, alternatives to adversarial adjudication, differentiated case management, and scheduling of discovery and other pretrial events.**
- **Emphasis on meaningful pretrial court events and early attention to prospects for disposition by non-trial means.**
- **Provision of credible trial dates, including consistent application of a court policy limiting continuances.**
- **Effective management of jury and nonjury trials.**
- **Management of compliance and court events after initial disposition.**

[96] This may be done with assistance as needed from such organizations as the National Judicial College, the Institute for Court Management of the National Center for State Courts, the National Association for Court Management, the National Association of State Judicial Education, other national organizations, or colleges and universities.

COMMENTARY

Whatever may be the difference in circumstances from one court to another, the provision of timely and affordable justice in compliance with time standards should be an integral part of the management culture of each court. Both in terms of customer service and internal operating procedures, a court should make compliance with time standards an important indicator of its performance.[97] To reinforce this, the court should make timely and affordable justice a matter of its express court policy, as reflected in the adoption, publication and consistent enforcement of a caseflow management plan emphasizing early and continuous court control of case progress from initiation to conclusion.

Leadership and compliance with local court policy. In any court of two or more judges, there should be reasonably consistent application of caseflow management practices and procedures from one judge to the next. Individual judges should be fully accountable to comply with court policy to the greatest extent possible consistent with their obligation to do justice in individual cases. They should actively enforce reasonable compliance by other case participants with caseflow management requirements. When compliance with such requirements cannot be accomplished by an individual judge in individual cases, it should be the responsibility of the chief or presiding judge of a court to confer with the judge and leaders of court-related organizations (such as the prosecutor's office or public defender's office) to address legitimate concerns and promote compliance with caseflow management requirements.

Published caseflow management plan. When a court has decided on the course it will take to maintain timely case disposition, it should articulate its program in a caseflow management plan that is published, perhaps by administrative order of the court. The plan should give details about the caseflow management techniques that will be employed, include any forms (such as case information sheets to be filed with cases to facilitate differentiated case management), address overall and intermediate time standards, and present a transition plan for achieving the time standards if the court has a pre-existing backlog problem.[98] Having a published plan shows the court's commitment to caseflow management, and it serves as a reference for the court and other case participants.

The process of preparing and reviewing drafts of the plan can serve as a means to identify detailed problems and to think through what will be the main tasks, who will be the key individual persons and what will be their specific roles and responsibilities, and the target dates for accomplishment of implementation steps. It is also an opportunity to engage the perspectives and energies of the court's justice partners, including the bar; the court requires the commitment of numerous entities and individual lawyers to accomplish the goal of timely case resolution across all case types. Once completed, the plan can be a key reference for those who seek to understand what the court seeks to accomplish, when and how. Finally, it can serve as a

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[97] *Achieving High Performance, supra,* note 4.

[98] See American Bar Association, *Standards Relating to Trial Courts, 1992 Edition,* Section 2.54A; IAALS, *A Roadmap for Reform: Civil Caseflow Management Guidelines* (2009), www.du.edu/legalinstitute/pubs/civil_caseflow_management_guidelines.pdf

reference in the evaluation of the implementation effort, as the document in which the goals and expectations for the caseflow-management improvement program are set forth.[99]

If caseloads are to be managed effectively in the court, it must be clear who is responsible for their management. The plan for caseflow management and its operational implementation should set forth unambiguous lines of accountability. Time standards and goals provide one measure of accountability; specific assignment of responsibility to persons in particular positions is another effective mechanism. If one of the court's problems is a large backlog of pending cases that cannot be addressed within an acceptable period of time, then the improvement plan should include steps for backlog reduction. Once the backlog in the court's prior pending inventory is reduced to more manageable proportions, it should be an ongoing objective of the court to keep its pending inventory at a manageable level.[100]

Monitoring status of cases and dockets. To translate "time standards" and "caseflow management" from concepts into actual court practice and performance, judges must actually *do* the activity of managing case progress with the aid of court managers. In its simplest terms, "doing" active management involves monitoring the status of cases and dockets in view of overall and intermediate time standards, and then taking steps to assure that the actions by attorneys and other participations in specific cases actually meet the expectations set forth in time standards and court orders. Using information for monitoring thus provides the management nexus between the expectations reflected in time standards and the action of judges, court managers and others to see that dockets are current and that individual cases progress to just outcomes without undue delay and wasted time.

Early and continuous court control of case progress. The essence of caseflow management is for the court to intervene early and then to exercise ongoing control of the movement of cases. It is the court's responsibility to see that justice is done in individual cases, to protect citizens from arbitrary government action, to assure the rights and responsibilities of parties to litigation, and to protect the best interests of children and vulnerable adults. This cannot be done effectively if court processes are controlled by advocates rather than by the court as the disinterested participant in such processes. Court control assures the quality of our adversary process while promoting efficient use of the finite public resources of courts and court-related organizations.[101] Recent surveys of trial attorneys show that the bar in general supports early and active judicial control of the pace of litigation.[102]

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[99] For a recent guide to evaluation of civil rule and caseflow management initiatives, see IAALS, 21st Century Civil Justice System: A Roadmap for Reform (2010) ,.du.edu/legalinstitute/pdf/MeasuringInnovationforWeb.pdf (a joint product of IAALS and NCSC).

[100] *Changing Times in Trial Courts, supra,* note 80, at. 203-204.

[101] See, *Efficiency, Timeliness, and Quality, supra,* note 6.

[102] Institute for the Advancement of the American Legal System(IAALS), Excess and Access: Consensus on the American Civil Justice Landscape (2011), www.du.edu/legalinstitute/pubs/ExcessandAccess.pdf;,IAALS Final Report on the Joint Project of the American College of Trial Lawyers (ACTL) Task Force on Discovery and the Institute for the Advancement of the American Legal System (2009); www.du.edu/legalinstitute/pubs/ACTL-IAALS%20Final%20Report%20rev%208-4-10.pdf; IAALS, Survey of the Arizona Bench & Bar on the Arizona Rules of Civil Procedure (2010), www.du.edu/legalinstitute/pdf/IAALSArizonaSurveyReport.pdf; IAALS, Surveys of the Colorado Bench & Bar (2010), www.du.edu/legalinstitute/pdf/16.1FINALForWeb.pdf;IAALS, Civil Litigation Survey of Chief Legal Officers and General Counsel (2010),

"Early court control" should begin with continuous court attention to the age and status of cases from initiation, as is implied in the model time standards. Whether by rule or scheduled hearing, early court intervention should also include any necessary "triage" efforts soon after initiation to identify cases suitable for prompt disposition; referral to diversion, problem-solving court programs, or alternative dispute resolution; and entry of court orders to schedule completion of any discovery and subsequent court events.

Differentiated case management. Within the broad case types covered by the model time standards, it is predictable that many cases will be relatively simple and straightforward, while a small portion will be so complex and difficult that their timely resolution will require considerable attention from judges, lawyers and other case participants. Differentiated case management (DCM) is a way for a well-performing court to distinguish among individual cases in terms of the amount of time and attention they need so that there can be proportional allocation of finite resources by the court and other case participants.[103] DCM also serves as a court management tool to assure compliance with the model time standards, providing a framework for 75 percent and 90 percent of all cases in any case type to be disposed with relative expedition, while allowing specially-tailored treatment of the most difficult one to two percent of such cases.

The operation of a DCM program depends on early court cognizance of each case – at the moment of filing (or even before in some kinds of cases, such as delinquency cases and many criminal matters). Based on case information sheets filed by parties, the judge or a court staff member can screen cases for complexity based on criteria established by the court. As a result of the case-screening assessments, cases are assigned to different case-management tracks. Each track has its own specific intermediate event and time standards, as well as different management procedures. There is continuous court monitoring of case progress and compliance with deadlines by parties and counsel.[104] The level of judge involvement in any particular case is determined by its specific track assignment.[105]

Meaningful court events and prospects for non-trial disposition. Trials in contested matters are the hallmark of American justice, and they consume an enormous amount of time for judges, court staff and lawyers. In the American court process, however, most cases of any kind (often 95 percent or more) are disposed by negotiation or other non-trial means. While court rules of procedure govern the preparation of cases for trial, effective management to assure prompt and affordable outcomes in the court process requires attention to achieving non-trial dispositions at the earliest opportunity consistent with justice in the individual circumstances of each case.

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www.du.edu/legalinstitute/pubs/GeneralCounselSurvey.pdf; IAALS, Survey of the Oregon Bench & Bar on the Oregon Rules of Civil Procedure (2010),http://www.du.edu/legalinstitute/pdf/IAALSOregonSurvey.pdf.

[103] On DCM as a management strategy for proportional treatment of cases, see *Achieving High Performance: A Framework for Courts, supra, note 98, at* pp. 13-14.

[104] In some categories of cases, including marital dissolution, child protection and probate guardianships or conservatorships, there can be a requirement for substantial court activity after the initial entry of judgment. For such cases, post-judgment DCM may also be critically important. See below, **Court events and compliance monitoring after entry of judgments.**

[105] See Holly Bakke and Maureen Solomon, "Case Differentiation: An Approach to Individualized Case Management," 73 *Judicature* (No. 1, 1989) 17.

To do this, the court must create the realistic expectation that court events will occur as scheduled and that they will be "meaningful" -- in other words, that their expected purpose will be achieved and that they will otherwise contribute substantially to progress toward disposition. Professor Ernest Friesen has famously observed that it is lawyers who settle cases, and not judges; lawyers settle cases when they are prepared; and lawyers prepare for significant and meaningful court events.[106] Providing meaningful court events thus promotes timely justice by assuring that lawyers and parties will be prepared.

To make events meaningful, it is important to address problems of discovery and requests for continuances. Lawyers must be reasonably confident that they have discoverable information required to grasp the essential nature of a case in order to negotiate with opposing counsel without undue risk of malpractice or ineffective assistance of counsel. Unless the court gives timely attention to legitimate discovery issues, the pretrial process in cases may be characterized by frequent rescheduling of court events based on requests for continuances. If events are continued without good cause, then the emotional and financial costs of litigation may be increased for parties because of the need to prepare for and participate in additional court appearances.

Credible trial dates. If it is far more likely than not that a court will be prepared to commence a trial on the first-scheduled trial date, then counsel and parties will begin preparation for trial in time to decide whether to go to trial or to reach a negotiated resolution. Since most cases are disposed by plea or settlement, success in providing reasonably firm trial dates has the effect of producing earlier pleas and settlements, while at the same time encouraging trial preparation in cases that cannot be resolved by other means.

National research shows that a court's ability to provide firm trial dates is associated with shorter times to disposition in civil and felony cases in urban trial courts.[107] Furthermore, a court's ability to provide a firm trial date in felony cases has been found to be associated with shorter *civil* jury trial case processing times.[108]

Effective caseflow management calls for a court to take four steps to provide firm and credible trial dates.[109] First, the court should maximize dispositions *before* cases are put on a trial list. Second, the court should have realistic trial list setting levels that avoid both listing too few cases and having excessive "overbooking" in terms of the portion of cases that will be settled or that must be continued for good cause rather than being tried. Third, the court must create some "backup judge" capacity, so that there is a judge available to help a colleague with two cases ready for trial. Finally, the court should adopt, publish and consistently enforce a written policy to limit continuances without a showing of good cause and in the interest of justice.

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[106] See Ernest Friesen, "Cures for Court Congestion," 23 *Judges' Journal* (No. 4, 1984) 4.

[107] See *Examining Court Delay, supra, note 4* (1989), Figure 14, p. 38 (civil cases), and Figure 26, p. 87 (felony cases), and related text. Having firm trial dates has an especially strong correlation with shorter disposition times in felony cases. See *Reexamining the Pace of Litigation, supra, note 4, at*, Figure 2.7, p. 23. Recent research has shown the same to be true for civil cases in the federal courts. IAALS, Civil Case Processing in the Federal District Courts: A 21st Century Analysis (2009) http://www.du.edu/legalinstitute/form-PACER-success.html.

[108] *Reexamining the Pace of Litigation supra,* note 4, at Figure 4.1 and text on p. 63.

[109] *Caseflow Management, supra,,* note 10 at 7-11.

Trial management. Although only a small proportion of cases actually go to trial, many judges spend from one-third to one-half of their work time conducting jury trials.[110] Nonjury trials are generally not as time-consuming as jury trials, but they take as much or more of a judge's time in court than almost any other non-trial courtroom event.[111]

Research shows that a large majority of judges and attorneys find no lack of fairness or justice in the courts where trials are actively managed by the court so they can be conducted more rapidly. Judges, civil attorneys and criminal prosecutors overwhelming consider it appropriate for judges to control trial length. While criminal defense lawyers expressed the most concern about judicial management of trials, many of the criminal defense lawyers in courts with longer trials expressed support for greater judicial controls.[112] The implications of these findings are significant:

- The variability in trial times from one court to another suggests that, through appropriate actions, judges can make trials shorter.
- Making trials shorter need not defeat the court's responsibility to do justice.
- Judicial management of trials has considerable support among members of the bar as well as judges.
- Shorter trials mean that judges are available for other pretrial or trial events – in effect, increasing the availability of judicial resources.
- Shorter trials mean that trial schedules can be more predictable, thereby reinforcing the court's ability to provide credible trial dates.

In 1992, the American Bar Association adopted trial management standards recommended by the National Conference of State Trial Judges. The basic premise of these standards is that judges should aggressively exercise their responsibility to manage trial proceedings.[113] As part of overall caseflow management, the ABA standards observe that trial management should involve a set of steps. These include (a) preparing in advance for trial; (b) scheduling to start trials on time and provide adequate time for them; (c) managing jury selection; (d) maintaining trial momentum; and (e) establishing and enforcing time limits.[114]

Court events and compliance monitoring after entry of judgment. There is a large array of proceedings in a trial court that occur after the entry of an initial disposition, including:

- Motions in divorce cases to enforce or modify custody, visitation and support.

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[110] B. Ostrom and C. Kauder (eds.), *Examining the Work of State Courts, 1996: A National Perspective from the Court Statistics Project* (1997), pp. 25, 30 and 57.

[111] In a multistate study of trials in nine courts, researchers found that median times for civil nonjury trials were from 4 to 6½ hours, and that average times for criminal nonjury trials ranged from 1 to 8½ hours. See Dale Sipes and M. E. Oram, *On Trial: The Length of Civil and Criminal Trials* (1989), pp. 14-15 and 19-20.

[112] *Id*. at 66-67.

[113] ABA, *Trial Management Standards* (1992).

[114] In addition to the *Trial Management Standards,* see H.J. Zeliff, "Hurry Up and Wait: A Nuts and Bolts Approach to Avoiding Wasted Time in Trial, 28 *Judges' Journal* (No. 3, Summer 1989) 18; and B. Mahoney, *et al*., *Planning and Conducting a Course on 'Managing Trials Effectively:' A Guide for Judicial Educators* (Williamsburg, VA: National Center for State Courts, 1993).

- Placement review, permanency planning, termination of parental rights and adoption proceedings after findings of abuse or neglect.
- Proceedings in probate, guardianship and conservatorship cases after contested or uncontested appointment of a fiduciary.
- Criminal and delinquency compliance reviews to ensure participation in and completion of treatment regimens and adjudication of probation violation allegations.
- Petitions for post conviction review.
- Child support enforcement proceedings after paternity or divorce decisions.
- Proceedings to enforce civil and small claims judgments.
- Enforcement of monetary sanctions in criminal and traffic cases.

Such events as these can consume a great deal of time for parties, judges, court personnel and attorneys. In fact, some types of cases are overwhelming post-judgment in nature. To ensure that timely justice is done in these cases, as well as to allocate court resources effectively and efficiently, it is desirable to give appropriate caseflow management attention to post-judgment court events. The steps a court should take to manage cases after judgment:

- Continuing to monitor the status of cases in a post-judgment status as long as there is an ongoing compliance obligation.
- In cases involving vulnerable adults or children, such as in guardianship or conservatorship cases, exercise of "differentiated compliance monitoring" if there is a large estate, a family dispute, or other situations involving a risk of harm to a ward or beneficiary calling for more active oversight.[115]
- Scheduling post-judgment court events to occur in a timely manner, with management of case progress following the same principles as pretrial management, including the exercise of continuous control and the realistic scheduling of meaningful court events.
- Developing and applying time standards such as the model time standards for post-conviction review to guide monitoring and ensure timely case progress to determination.
- Managing the involvement of any party in other cases, as when a new misdemeanor charge in a limited-jurisdiction court may constitute a probation violation in the general-jurisdiction court in the same district, or when a family in divorce proceedings is also involved in a child protection case.

A final element of management after initial disposition involves the determination of when all court work is done in a case. In a civil case, final closure may depend on the filing of a notice that the matter has been “settled and satisfied.” Divorce or probate cases may linger for years with the possibility that the court’s continuing jurisdiction may be evoked. Periodic review of such cases can aid the court to determine if there is a possibility of any further action, thus permitting the court to ascertain when cases no longer have the potential to require further decisions by the court.

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[115] See *National Probate Court Standards, supra ,* note 65, at Standards 3.3.14 and 3.4.15, relating to the periodic filing of reports by guardians or conservators, *at least* on an annual basis.

4. Resources for the Provision of Prompt and Affordable Justice

In order to dispose of the court's caseload within established time standards, courts must have a sufficient number of judicial officers and administrative and courtroom staff, and must have the facilities, equipment and technology needed to schedule, hear, monitor and dispose of cases. The inability of courts to dispose of cases within the adopted time standards can be used as an indicator of the need for additional resources, but may also be the result of ineffective case management practices. Therefore, courts should use their inability to resolve cases within their time standards as justification for their request for additional resources only after they have assured themselves that they are managing their available resources in an efficient and effective manner.

COMMENTARY

Courts must have an adequate and stable source of funding to execute their constitutional and statutory duties: to protect citizens' constitutional rights, to provide procedural due process, to provide timely justice, and to preserve the rule of law. As a matter of principle, "Courts should be funded so that cases can be resolved in accordance with recognized time standards by judges and court personnel functioning in accordance with adopted workload standards."[116]

While the judiciary is a separate branch of government, it cannot function completely independently. Courts depend upon elected legislative bodies to determine their level of funding. Judicial leaders have the responsibility to justify what funding level is necessary and to establish administrative structures and management processes that demonstrate they are using the taxpayers' money wisely.[117]

Courts need an adequate number of judges in order to hear and dispose of cases in accordance with the adopted time standards. The failure to comply with standards can be an indicator that the court does not have a sufficient number of judges. To justify a request for more judges, however, judicial leadership must first be able to demonstrate that they have looked at other potential reasons for the court's backlog:

- Judicial leadership could compare the caseflow management plan in the court that is not in compliance with those that are in compliance to determine whether the court is exercising the necessary early and continuous control of cases. See Standard 3B above.
- Judicial leadership could compare the number of total cases disposed of per judge in the court having a backlog with the dispositions per judge in the other courts in the jurisdiction.
- Judicial leadership could contract for a weighted caseload study to examine how much time a judge needs to devote to each type of case in order to identify the

[116] National Center for State Courts. *Principles for Judicial Administration: Governance, Case Administration, Core Functions and Dispositional alternatives, and Funding*. January, 2011 Draft.
[117] *Id.*

number of judges needed to provide quality dispositions of the number and type of cases in the court.

- Judicial leadership could use the weighted caseload study to determine whether the judges in the court are working to capacity and by examining whether other courts in the jurisdiction are providing quality resolution of cases while devoting less judge-time to the same number and type of cases.
- Judicial leadership should ensure that the court system is organized to minimize redundancies in court structures, procedures and personnel. Every effort should be taken to avoid overlapping or duplicative jurisdiction among the courts.[118]

Judicial officers are not the only resource that courts need in order to meet time standards. The clerks' offices need an adequate number of administrative and clerical staff and the equipment necessary to enable them to open cases, make docket entries, store and retrieve files, schedule and notice hearings, and prepare orders. Courtrooms must be available, with sufficient support staff and equipment to provide security and to make the record. Courts must have the technology needed to make the time of the judges and staff productive and to provide judges and staff with the management reports that will enable them to identify which cases need their attention.

As with deciding whether to request additional judges, judicial leaders should be in a position of demonstrating that they have thoroughly examined whether they are making the best use of their available staff, whether court procedures are simple, clear and streamlined, and whether they are making the best use of their equipment and technology before they decide that they must request additional resources to reduce the backlog.

Measuring compliance with established time standards is a critical foundation for building evidence-based requests for additional resources. It ties budget proposals to the mission of meeting agreed-upon goals.[119] Courts that adopt model time standards, measure compliance, take steps to promote compliance, and take steps to effectively govern, organize, administer and manage their court system are well positioned to request and justify the resources needed to enable the courts to hear and dispose of cases in a timely manner.

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[118] *Id.*
[119] *CourTools, supra,* note 87.

COMMITTEE ON SUPERIOR COURT

Date Action Required:	Type of Action Required:	Subject:
May 20, 2011	☐ Formal Action/Request ☒ Information Only ☐ Other	PARENTING TIME GUIDE - SPANISH VERSION

FROM: Kay Radwanski

PRESENTER(S): Hon. Colleen McNally

DISCUSSION: In October 2009, the AJC adopted "Planning for Parenting Time: Arizona's Guide for Parents Living Apart," which was prepared by the COSC-authorized Parenting Plans Workgroup. After it was published, the workgroup received requests for a Spanish version. The Arizona Court Interpreters Association volunteered to provide a Spanish translation of the guide. The AOC released the translated version on March 28, 2011. A link to each version is provided on the Arizona Judicial Branch website at http://azcourts.gov/familylaw/DivorceParentingIssues.aspx.

RECOMMENDED MOTION: Information only.

Connecting the Dots

Domestic Violence - Child Welfare: One State, One System

Date: September 9, 2011

Time: 8:30 am—4:30 pm

5:00 pm Reception with Justice Sandra Day O'Connor (Retired)

Location:

Sandra Day O'Connor College of Law

Arizona State University

Tempe, AZ 85004

Questions?

Contact Victor Machiche at vmachiche@courts.az.gov or call 602.452.3525

Description: Domestic violence and child maltreatment intersect in families but often system response is fragmented. Learn about exciting proven practice responses, successes and challenges, from national and local experts.

Who should attend? Judges, attorneys, child welfare workers, decision makers, advocates, law enforcement personnel, social workers, CASA, etc. who deal with domestic violence and child abuse.

Agenda:

- Justice Sandra Day O'Connor - Call to Action
- A focus on the interconnection of domestic violence and child maltreatment
- A discussion about a system-wide response to domestic violence and child abuse
- Jeffrey Edleson, Ph.D., University of Minnesota on the needs of children witnessing domestic violence
- Sarah Buel, J.D., ASU Diane Halle Center for Family Justice on "The Impact of Domestic Violence
- Ruby White Starr, National Council of Juvenile and Family Court Judges, "Through the Eyes of a Child"
- Judge Leonard Edwards (ret) - The Problem With "Failure to Protect"

Registration Information:

- No Cost for registration
- Registration required for attendance.
- Registration deadline August 9, 2011.
- To Register click the **Register** button now:

Register

Certificate of Attendance (CLE if applicable) will be available for participants.