

IV. Ongoing Matters
D. DV Orders Processing Into ACIJIS and NCIC

Protection Order Life Cycle Information Flow

Arizona Courts Process Flow



Last Updated Date: January 30, 2008
Last Updated By: Robert Roll

Protection Order Life Cycle Information Flow
Arizona Courts Process Flow

Protective Order Life Cycle Legend



Process flow



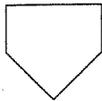
Data flow to AZTEC
Statewide
Case Management System



Paper Trail



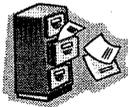
Electronic Transfer



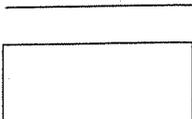
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Objects with this color/line
style pertain to Foreign
Orders of Protection



Paper form storage

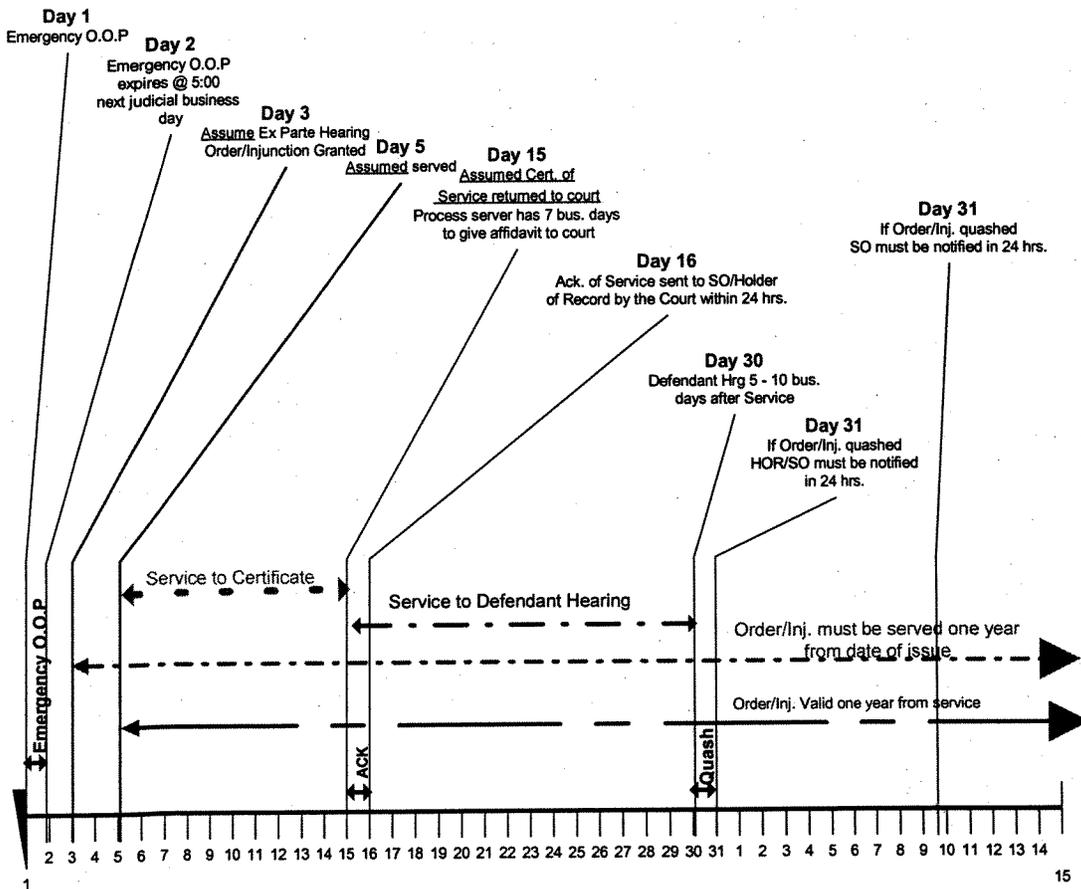


Parallel Processing

Protection Order Life Cycle Information Flow Arizona Courts Process Flow

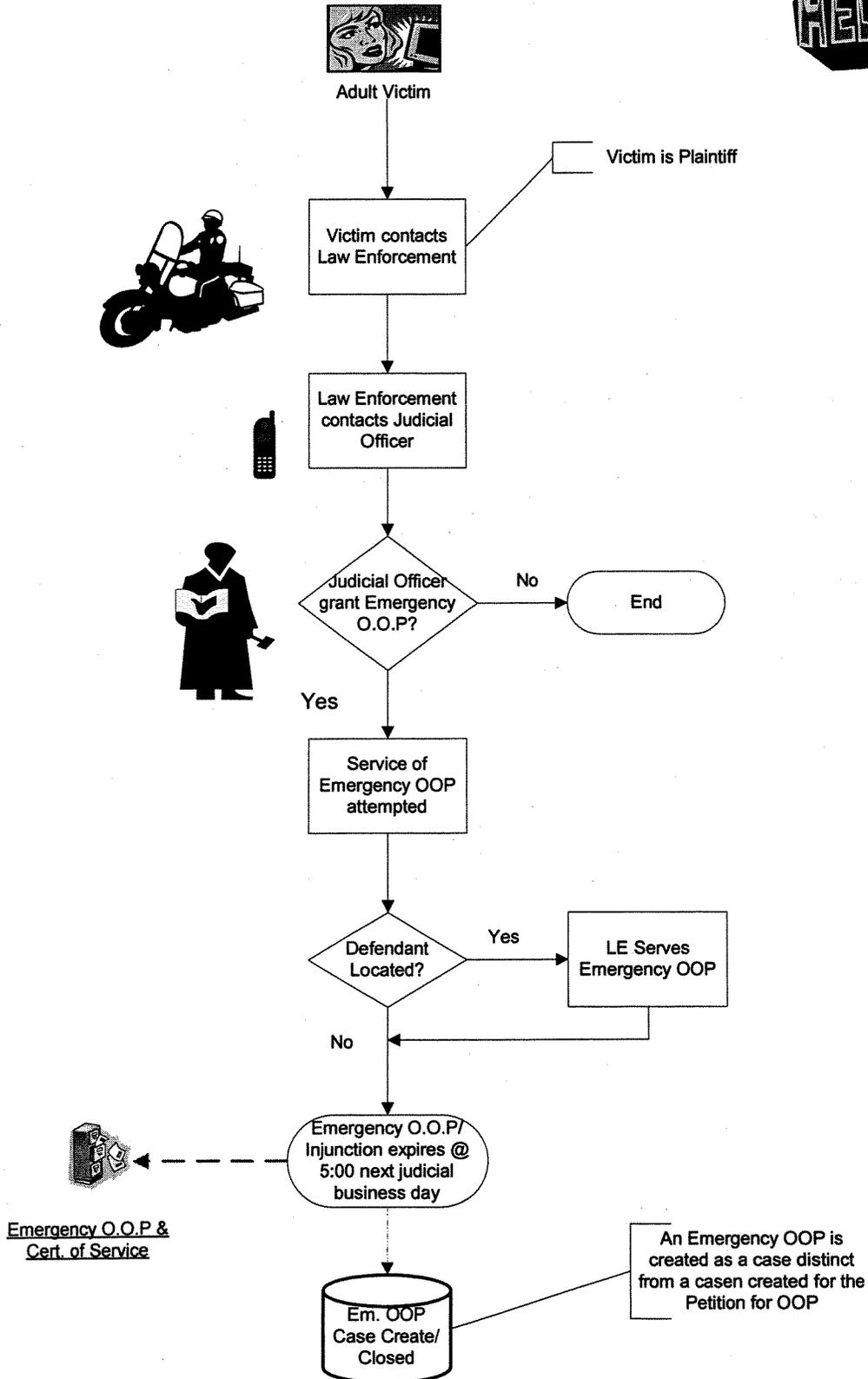
Timeline

Whenever business days are used in the timeline, e.g. 7 days from service to Certificate given to court, a three day weekend is included in order to demonstrate the maximum length of time for an action



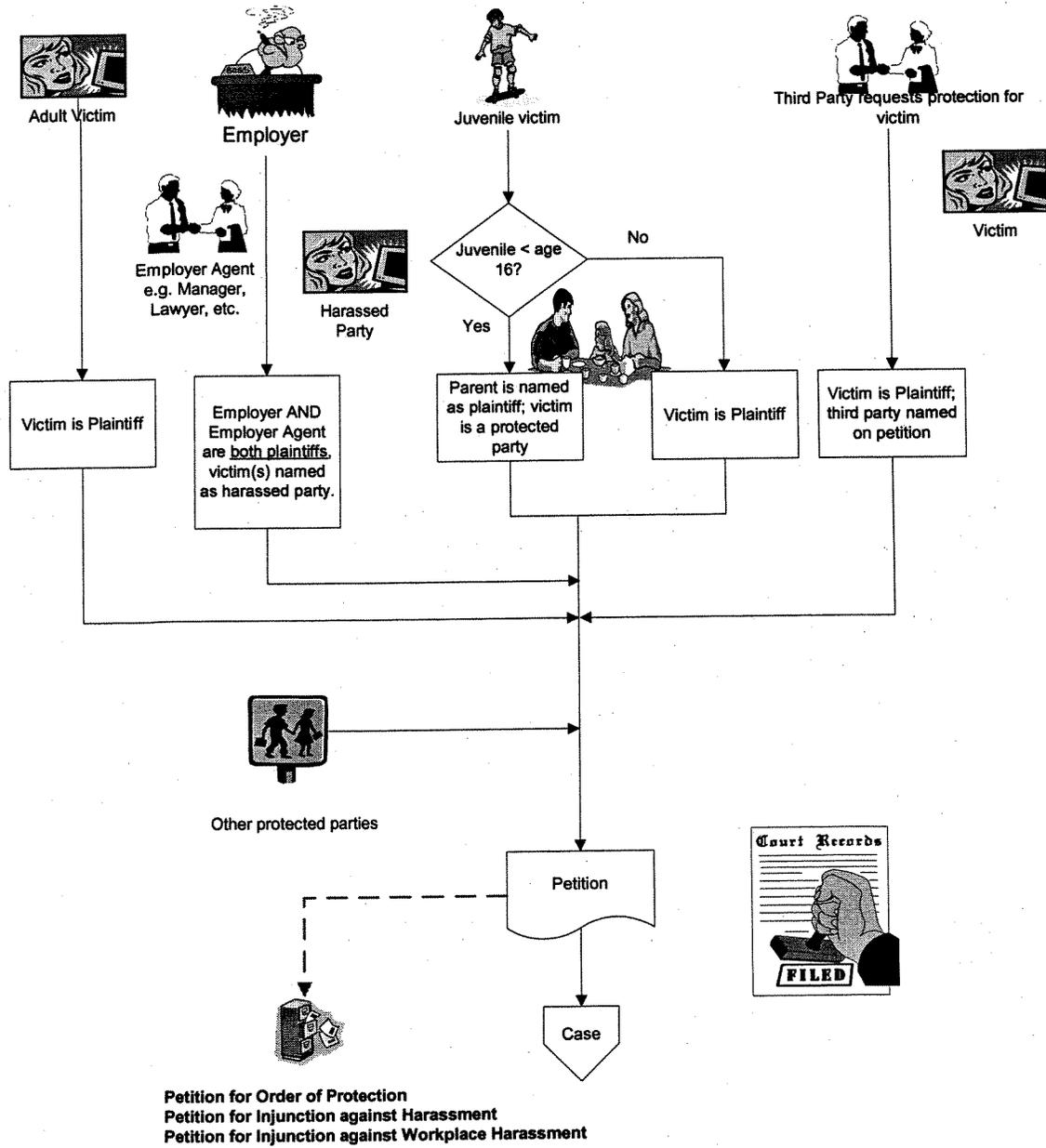
Protection Order Life Cycle Information Flow
Arizona Courts Process Flow

Emergency Order of Protection

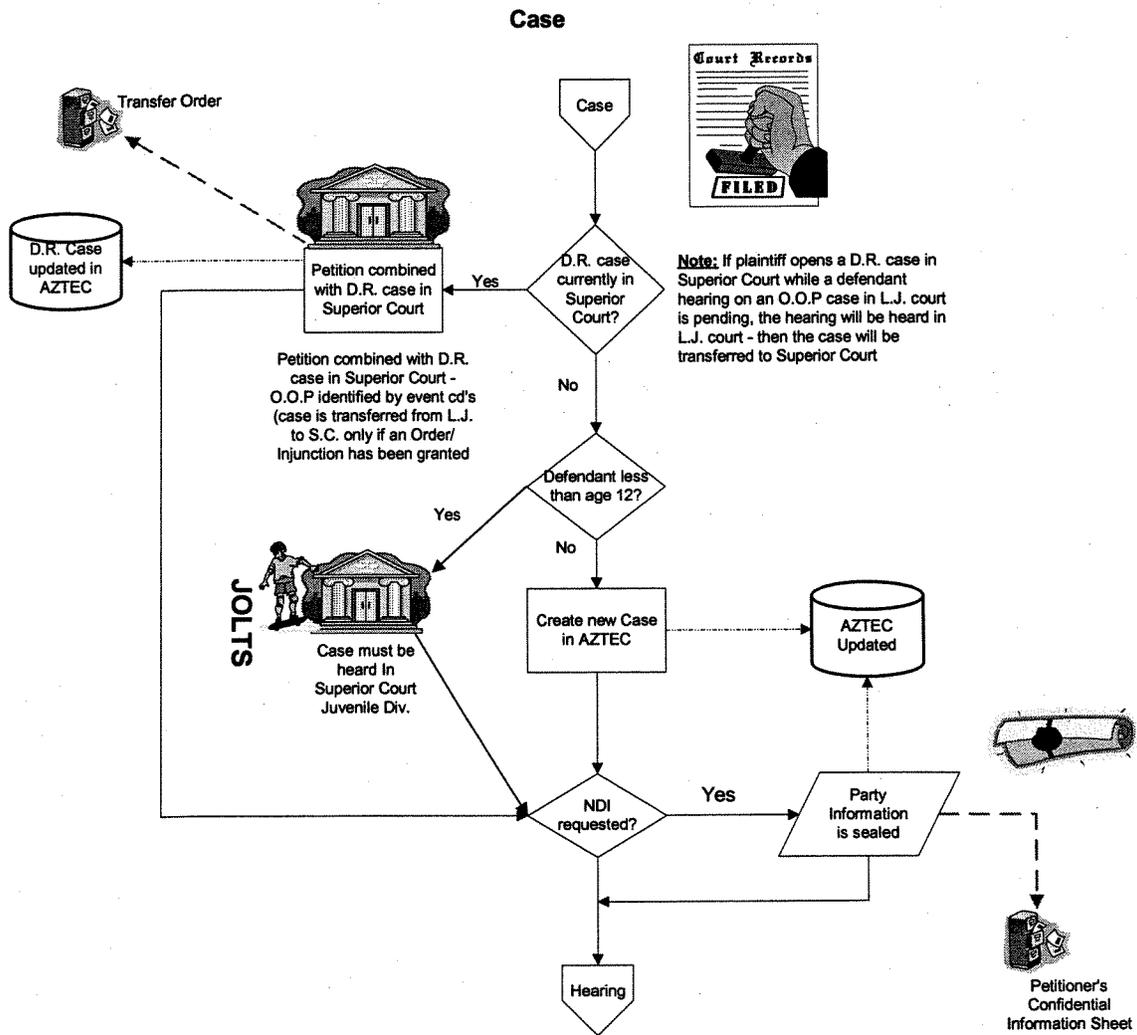


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Plaintiff/Petition

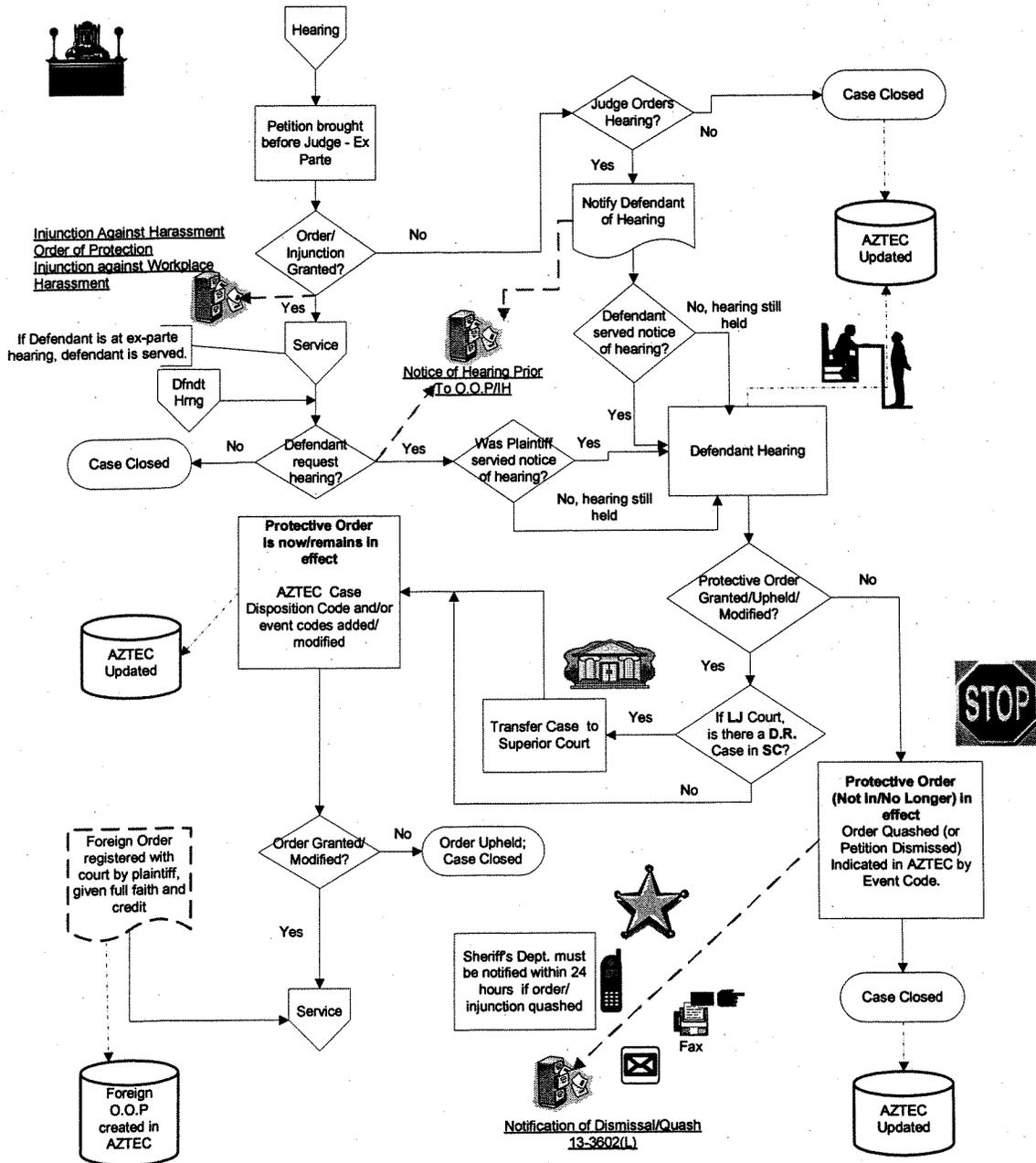


Protection Order Life Cycle Information Flow Arizona Courts Process Flow



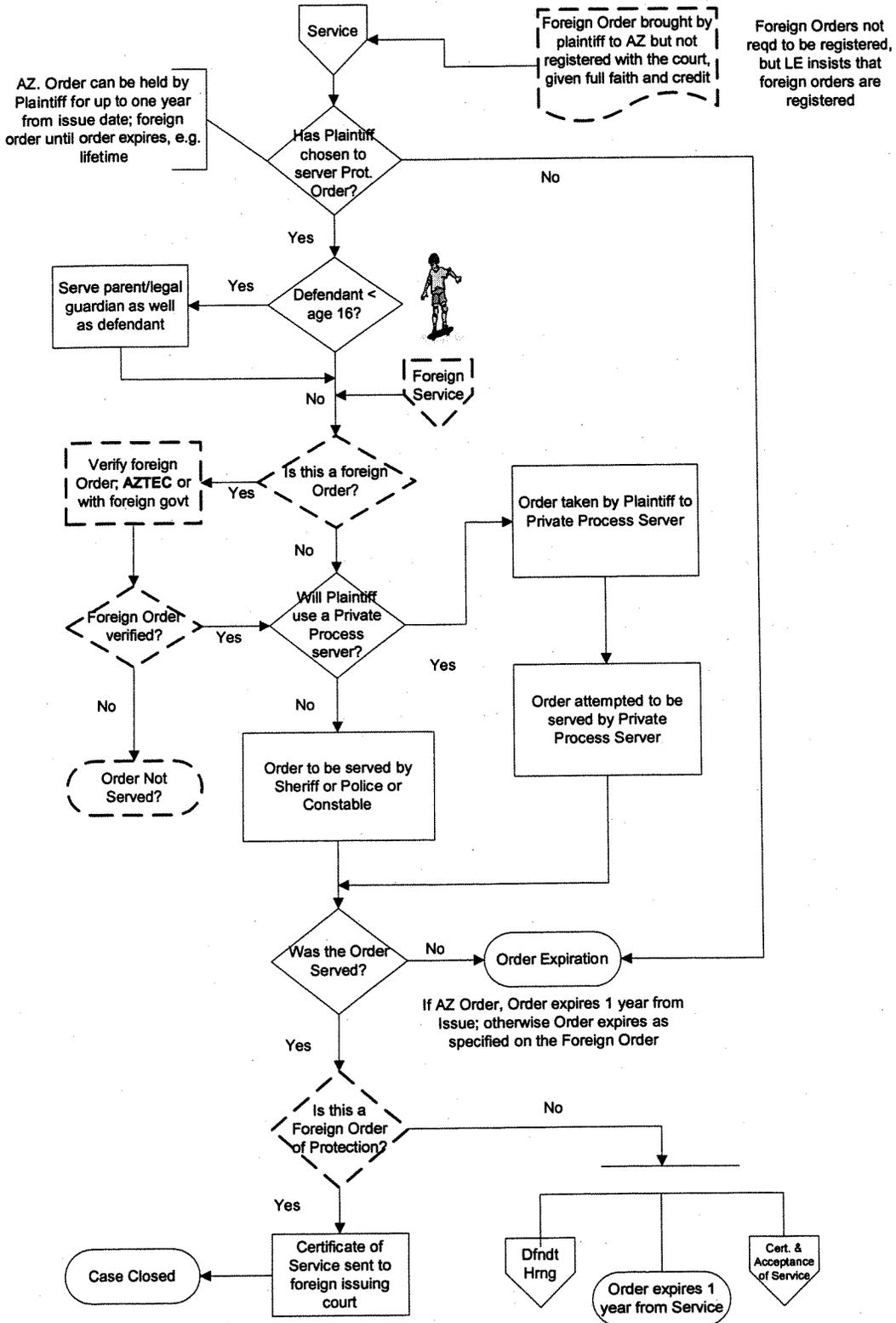
Protection Order Life Cycle Information Flow Arizona Courts Process Flow

Hearing

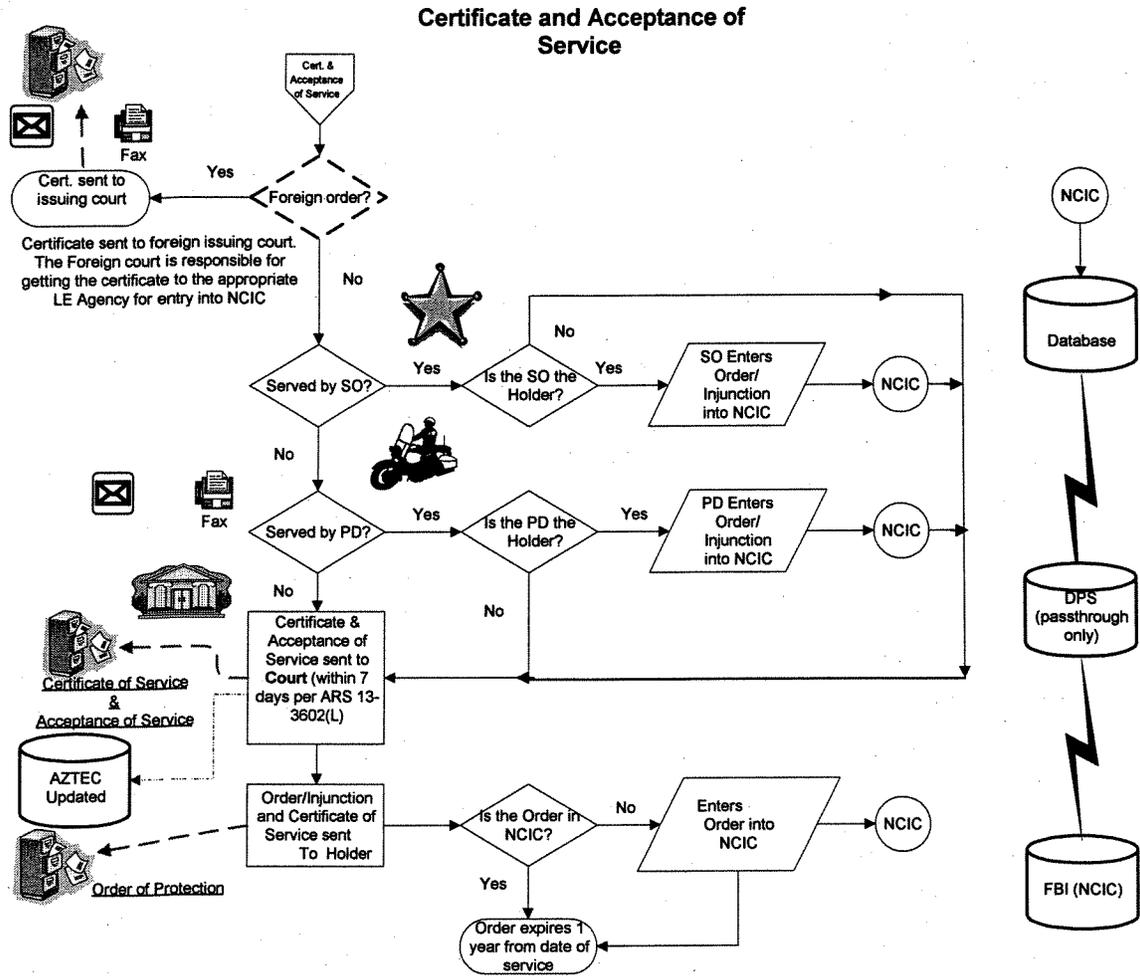


Protection Order Life Cycle Information Flow Arizona Courts Process Flow

Service

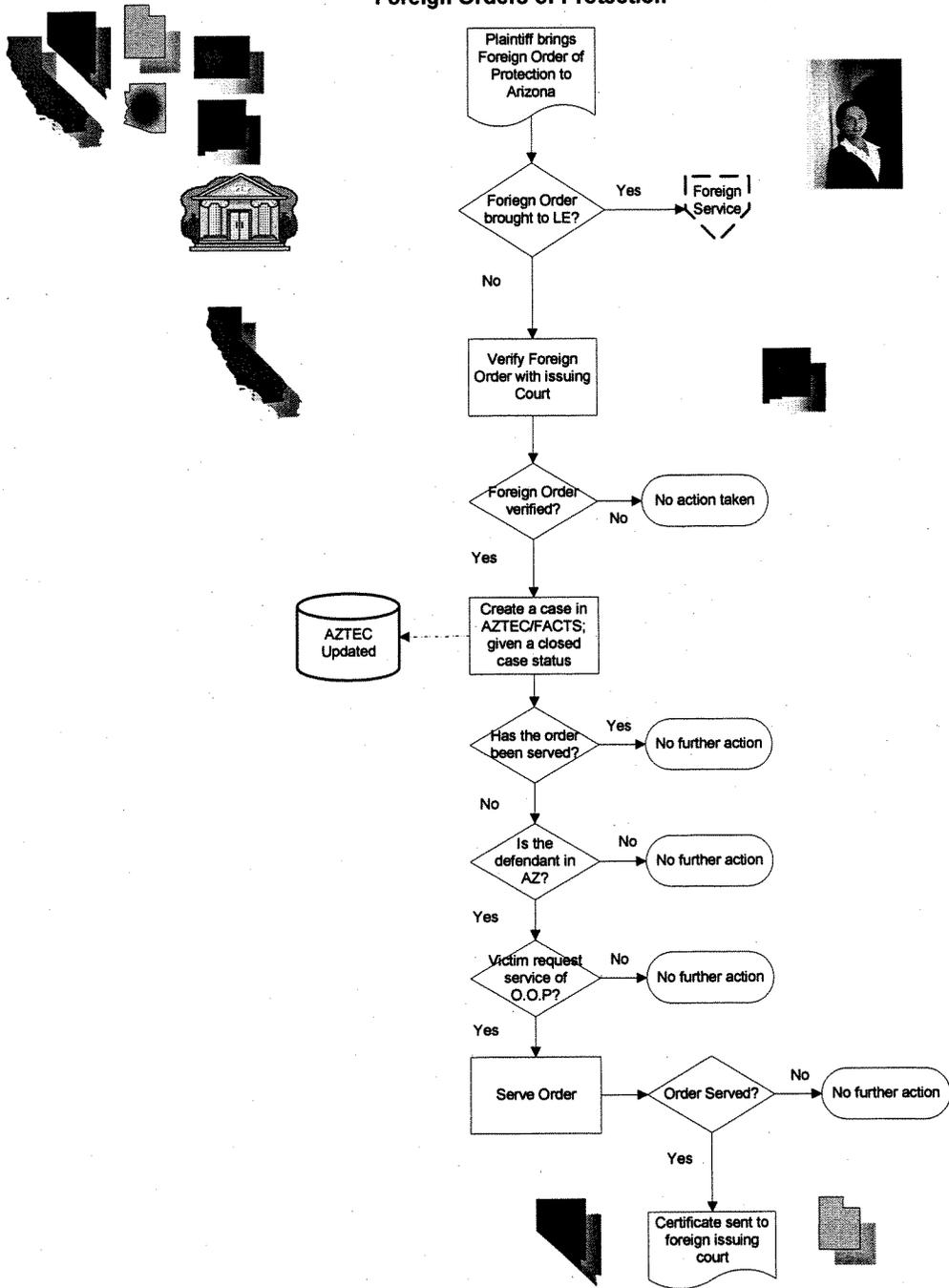


Protection Order Life Cycle Information Flow Arizona Courts Process Flow



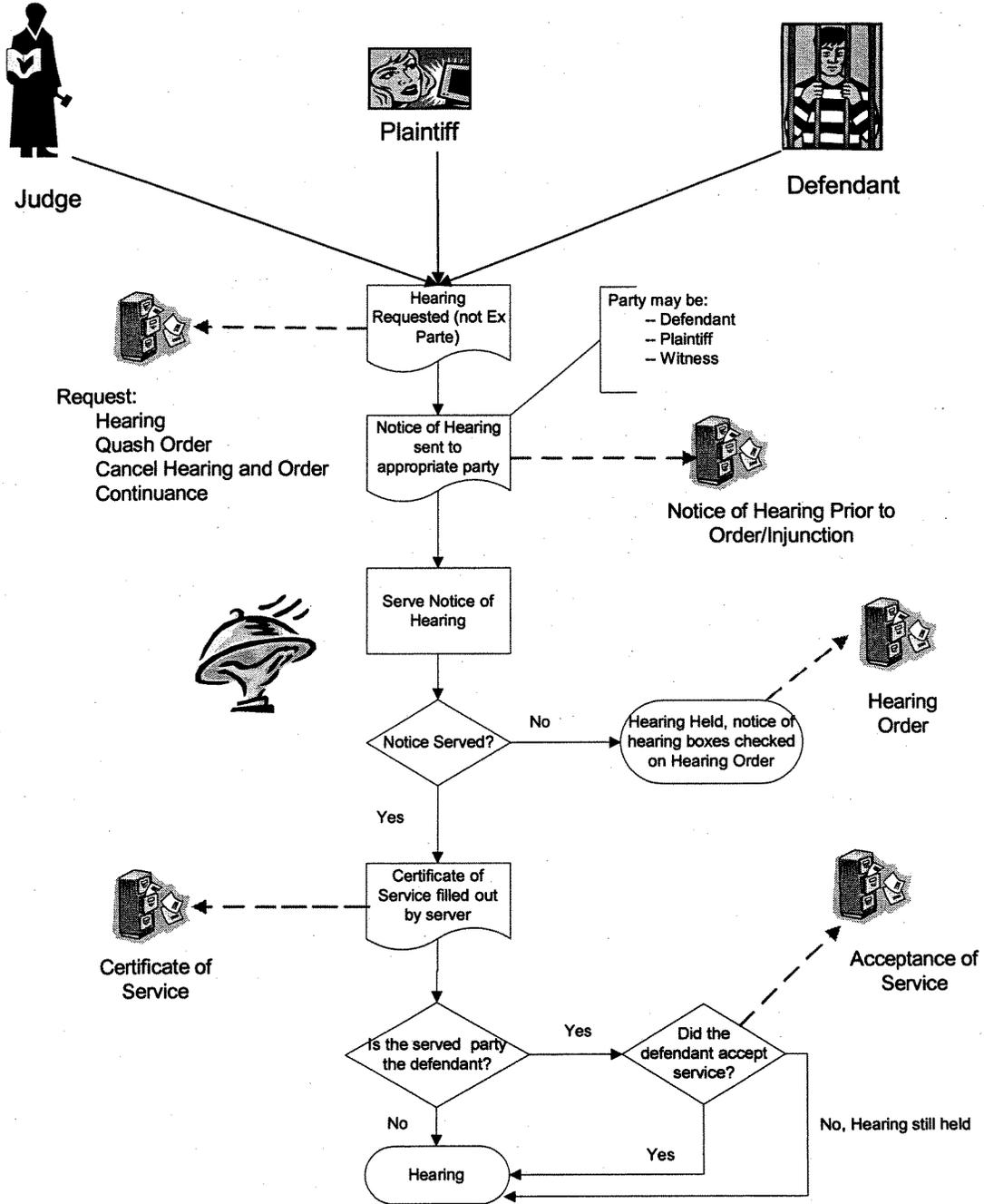
Protection Order Life Cycle Information Flow Arizona Courts Process Flow

Foreign Orders of Protection



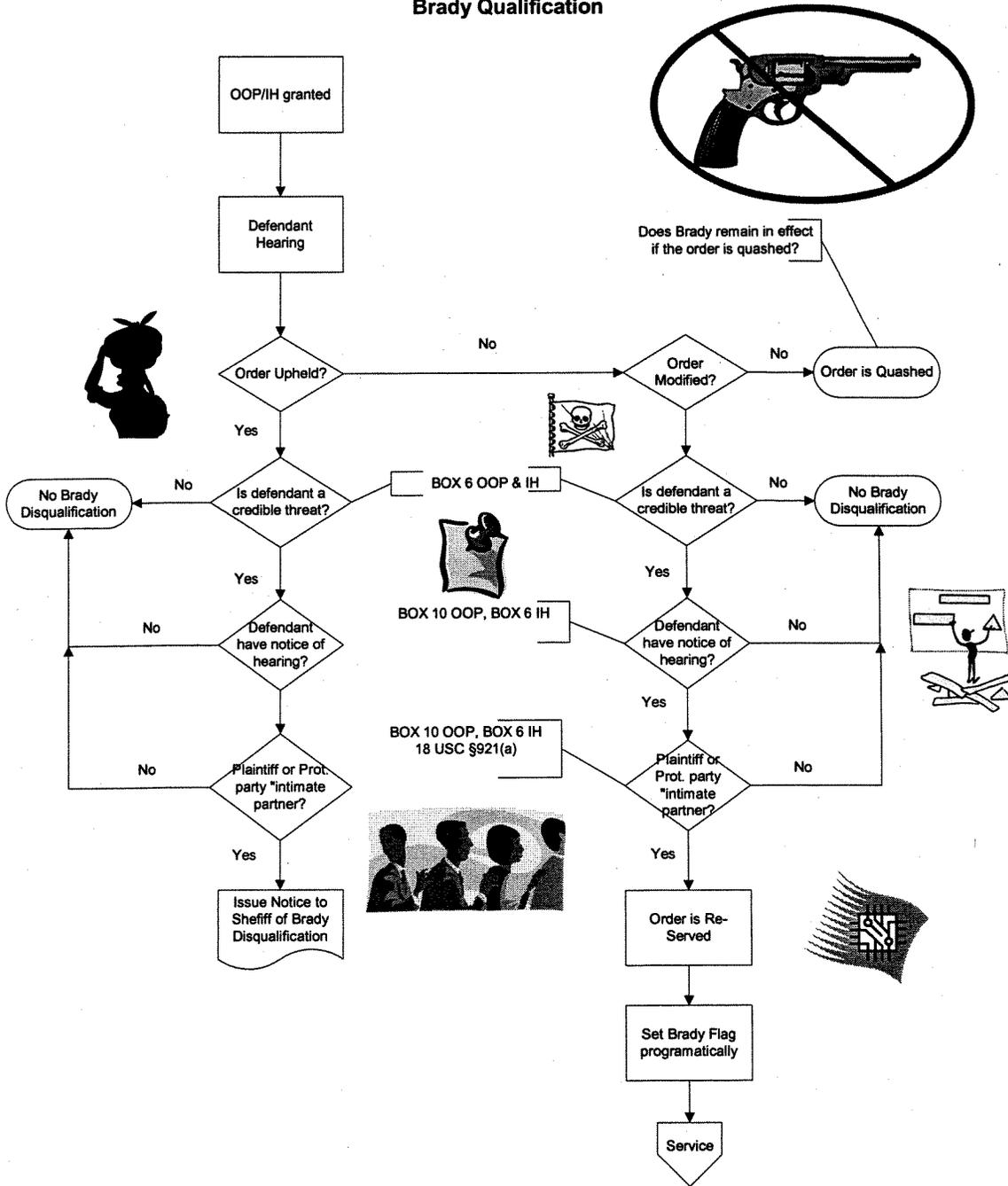
Protection Order Life Cycle Information Flow Arizona Courts Process Flow

Notice of Hearing



Protection Order Life Cycle Information Flow Arizona Courts Process Flow

Brady Qualification



VI. New Matters

A. Tribal Sex Offender Registration Requirements

TITLE 7 - CRIMES

CHAPTER 3 - SEX OFFENDER REGISTRATION AND NOTIFICATION

Legislative History: The "Sex Offender Registration and Notification Law," was ordained as Ordinance No. 2000-02 on May 10, 2000.

ORDINANCE OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Sex Offender Registration and Notification Law)

ORDINANCE NO. 2000-02

1 WHEREAS, the Legislative Council of the Tohono O'odham Nation has a constitutional obligation
2 and responsibility to protect our greatest resources, our children; and

3 WHEREAS, the Sex Offender Registration and Notification Law would inform Districts and
4 communities if a known convicted sex offender will be returning to their
5 communities; and

6 WHEREAS, the Domestic Affairs Committee and the Effective Sex Offender Management Task
7 Force did present this ordinance to the Districts and communities of the Tohono
8 O'odham Nation as requested, for their support and approval; and

9 WHEREAS, the Tohono O'odham Police Department will be the lead agency in the notification
10 to the Districts and the communities.

11 NOW, THEREFORE, BE IT ORDAINED by the Tohono O'odham Legislative Council that it hereby
12 enacts the following ordinance:

13
14 **Registration of Sex Offenders; Community Notification**

15
16 A. **Mandatory Registration.** Any member or non-member residing upon or
17 entering the Tohono O'odham Nation who has ever been convicted of any sexual
18 offense shall register with the Tohono O'odham Nation Police Department. For
19 purposes of this statute, "sexual offense" means

- 20 1. a violation of the Tohono O'odham Criminal Code, Chapter 9, "Sexual and
21 Related Offenses", or any conviction for attempt, conspiracy, or aiding and
22 abetting such an offense; or
23 2. a conviction in a tribal, state, or federal jurisdiction that, if committed on
24 the Tohono O'odham Nation, would be a sex offense.

25 For purposes of this ordinance, "non-member" means any non-Indian or Indian
26 who is not an enrolled member of the Tohono O'odham Nation.

27 B. **Timeliness.** Any person required to register under this ordinance shall do so:

- 28 1. within twenty-four (24) hours of release from custody in any jail, prison,
29 rehabilitative facility, or confinement of any kind;
30 2. upon the sentencing date, if the offender is not sentenced to serve a term of
31 confinement;

3. within twenty-four (24) hours of entering, establishing or re-establishing a residence, residences, or temporary domicile(s) for thirty (30) days or more on the Tohono O'odham Nation;
4. immediately if the offender is currently residing or temporarily domiciled on the Tohono O'odham Nation for thirty (30) days or more.

C. **Information to be provided.** A convicted offender shall sign and date a form providing the Tohono O'odham Police Department with the following information when registering:

1. Full name and aliases;
2. Physical and mailing addresses, including temporary addresses where offender may stay overnight;
3. Date and place of birth;
4. Social Security Number;
5. Place of employment;
6. Offense(s) committed, including offense date(s), age(s) and gender(s) of victim(s), and probation/parole or other release status;
7. Date and place of conviction.

Tohono O'odham Police Department shall obtain the offender's photograph and a copy of the offender's fingerprints. The offender shall also sign and date a statement acknowledging the duty to register.

D. **Changes in information.**

1. The offender shall keep all required information current at all times and shall submit any changes in person to the Tohono O'odham Police Department.
2. If any person required to register under this ordinance changes their address following such registration, the offender must present a written notice of change of address and their new address in person to the Tohono O'odham Police Department within ten (10) days prior to establishing a new residence or domicile.

E. **Penalties.** Failure to register as required constitutes a per se violation of this ordinance. Any person who fails to register as required by this ordinance shall

1 be sentenced to the following:

- 2 1. Imprisonment in jail for not less than one hundred and eighty (180) days
3 nor more than three hundred and sixty (360) days for each offense.
4 2. Any person found guilty of failure to register shall not be eligible for
5 concurrent sentencing, suspension or commutation of sentence, probation,
6 pardon, parole or release on any other basis.
7 3. The sentencing court may impose any additional penalties or remedies or
8 order any equitable relief it deems necessary.
9 4. Any non-member of the Tohono O'odham Nation shall be subject to
10 permanent exclusion for failing to register as required by this ordinance.

11 F. Community Notification. The Tohono O'odham Nation Police Department shall
12 maintain a sex offender profile and notification data base. The data base shall
13 include all registration information required by this ordinance and the
14 offender's date of release from confinement or, if the offender is sentenced to
15 probation without jail time, the date the sentence is imposed.

- 16 1. Within ten (10) days of receiving registration information, the Chief of
17 Police or his designee shall distribute registration information including
18 the offender's photograph, address, and summary of the offender's status
19 and criminal background to the victim, public, local publications and/or
20 media, current and prospective employers.
21 2. Registration information shall be distributed by the Tohono O'odham
22 Nation Police Department and shall be available to the public at the Tohono
23 O'odham Nation Justice Center, Police Department and substations,
24 Administration Building, District Offices, and all schools on or near the
25 Tohono O'odham Nation.
26 3. The Chief of Police, his designee, or Tohono O'odham Nation law
27 enforcement officers may use any additional means to make community
28 notification of circumstances or persons that may pose a danger to the
29 community or its members.
30 4. The Tohono O'odham Nation Police Department shall register all sex
31 offenders' convictions and warrants into the National Crime Information

Center data base. The Chief of Police is authorized to share registration information with any law enforcement agency.

G. Severability. If any provision(s) of this ordinance or any application of its provisions is held invalid, the application of the remaining provisions of this ordinance shall not be affected thereby.

H. Amendments. This ordinance may be amended by action of the Legislative Council.

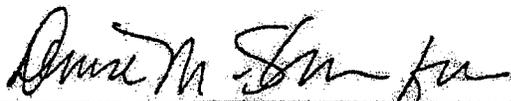
The foregoing Ordinance was passed by the Tohono O'odham Legislative Council on the 04TH day of MAY, 2000 at a meeting at which a quorum was present with a vote of 1,915.6 FOR; 145.1 AGAINST; 104.8 NOT VOTING; and [03] ABSENT, pursuant to the powers vested in the Council by Section 1 (c)(1), (2), (6), and (7) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL


Dennis Ramon, Legislative Chairman

8th day of May, 20 00

ATTEST:


Julianna Saraficio, Acting Legislative Secretary

04th day of May, 20 00

Said Ordinance was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 8th day of May, 20 00 at 5:07 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL


Dennis Ramon, Legislative Chairman

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APPROVED

on the 10th day of May, 20 00

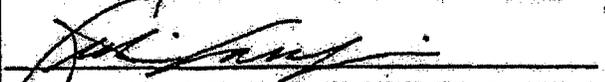
DISAPPROVED

at 1:15 o'clock, 1 M.


EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 10th day of

May, 20 00, at 3:10 o'clock, P M.


Julianna Saraficio, Acting Legislative Secretary

VI. New Matters

B. Exercise of Criminal Jurisdiction in and around Indian country

INDIAN COUNTRY CRIMES JURISDICTION

Offender	Victim	Occurrence	Jurisdiction
Indian	Indian	Indian Country (w/in recognized Indian reservation boundaries)	18 U.S.C. 1153: Jur: <u>Exclusive Federal</u> for Major Crimes & Assimilative Crimes ¹ ; <u>Tribal</u> for Misd. Crimes.
Indian	Non-Indian	Indian Country	<u>Fed. Jur.</u> , for Major Crimes & felonies not listed in the Major Crimes Act <u>unless</u> , defendant punished by the tribe; <u>Tribal for Misd.</u>
Non-Indian	Indian	Indian Country	Fed. for felonies & Misd (18 USC 1152) & Assimilative Crimes (18 USC 13 & 7); No Tribal Jur (<u>U.S. v. Oliphant</u> ²)
Indian	Victimless Crime	Indian Country	Tribal Jurisdiction & in some cases Federal
Non-Indian	Victimless Crime	Indian Country	State Jurisdiction & in some cases Federal

* By Diane Humetewa (training purposes only)

¹Title 18 U.S.C. § 13 provides that in the absence of a federal law definition of a MCA crime, state law definition & penalties may be substituted.

²Indian tribes, and thus tribal courts, do not have jurisdiction to prosecute non-Indians for crimes occurring on Indian lands. *United States v. Oliphant*; 435 U.S. 191 (1978) Indian tribes do have inherent authority to exercise criminal jurisdiction over Indians. *United States v. Lara*, 541 U.S. 193 (2004).

CRIMINAL JURISDICTION in INDIAN COUNTRY

Vincent Q. Kirby (602) 514-7500
Tribal Liaison/Senior Litigation Counsel
United States Attorney's Office
District of Arizona

(State, Tribal and Federal Court Forum, February 1, 2008)

Background

Caveat: Data Changes from Year-to-Year . . .

- 500+ Federally Recognized Indian Tribes in U.S.
 - ▶ 227 Alaska Native Villages
 - ▶ 108 "Rancherias" in California
 - ▶ Remaining are located in 32 States
 - Navajo (240,000) & Oklahoma Cherokee (200,000)
- 2000 Census - 4.1 Million Indians Nationwide
 - ▶ 1.5% of Total U.S. Population
 - ▶ Top 10 States: Arizona, Washington, New Mexico, Oklahoma, Alaska

Doctrinal Basis for Jurisdiction in Indian Country

- United States Constitution
- Supreme Court Doctrine
- Federal Statutes

Essential 1st Step

- 1. Where did the crime occur?
 - Indian Country (18 USC 1151)
 - A) Reservations under US Jurisdiction; B) Dependent Indian Community; C) Indian Allotments;
- 2. Is the suspect/defendant an Indian or non-Indian?
 - Proof of tribal enrollment
- 3. Is the victim an Indian or non-Indian?

FEDERAL JURISDICTION

If offender or victim is an Indian AND the crime occurred w/in the confines of an Indian reservation = federal jurisdiction will attach.

Primary sources of federal jurisdiction include:

- (1) Major Crimes Act 18 USC 1153
- (2) Federal Enclaves Act 18 USC 1152
- (3) Miscellaneous federal statutes

MAJOR CRIMES ACT

Charges permissible if the offender is an Indian & the crime occurred in Indian Country:

- (1) Murder and manslaughter
- (2) Kidnap
- (3) Rape, child molest & Chap 109A Offenses
- (4) Maiming & various aggravated assaults
- (5) Arson
- (6) Robbery
- (7) Burglary
- (8) Felony theft (\$1,000+)

Major Crimes Act Cont . . .

- Not a Double Jeopardy bar to tribal prosecution.
Tribal prosecution of a non-member Indian may be a DJ bar to fed prosecution (see **US v. Lara**)
- Permits fed prosecution of certain misdemeanors
(18 USC §113a(5): assault on a minor under 16, and 18 USC § 2244b, abusive sexual contact)

FEDERAL ENCLAVES ACT

18 USC 1152 (General Crimes Act or the IC Crimes Act)

- Applies to:
 - (1) Non-Indian offenders, and
 - (2) Indian offender with a non-Indian victim for a non-Major Crime (such as 18 USC 662, receiving stolen property), so long as the offender has **not** been punished by tribe.
- Compare §1153 and §1152

MISCELLANEOUS

FEDERAL CRIMES SPECIFIC TO INDIAN COUNTRY

- (1) Liquor violations - see §§1154-1156 and 1161
- (2) Counterfeit Indian goods - §§1158-1159
- (3) Double damages for property damaged in commission of offense by non-Indian -§1160
- (4) Embezzlement/theft from Indian tribal orgs. -§1163
- (5) Hunting & fishing violations - §§1164-1165
- (6) Gambling-related offenses - §§1166-1168
- (7) Failure to report child abuse - §1169

**MISCELLANEOUS
CONTINUED**

- (8) Artifacts trafficking - §1170
(NAGPRA)(IC not required)
 - (9) Unlawful timber cutting - §1853
- *Apply to *all* offenders, both Indian and non-Indian.

**CRIMES OF
"NATIONWIDE APPLICABILITY"**

- Federal Crimes That Apply Regardless of Where They Occur
- Drug Offenses
- Carjacking
- Conspiracy
- Firearm Offenses

Indian Tribal Jurisdiction

- Exclusive of both Federal & State Jurisdiction
- Indian Civil Rights Act of 1968 (ICRA)
- *United States v Lara*
 - ▶ Inherent vs delegated (by Congress) power
 - ▶ Indians (including non-member Indians)
- No Double Jeopardy Bar to Federal prosecution
- Indian Civil Rights Act
 - ▶ Maximum Penalty: 1 year and/ or \$5000 fine

Tribal Jurisdiction Cont...

- Tribal Adjudication Process
 - Tribal Miranda: No guaranteed Right to Counsel (exceptions)
 - Tribal Court Advocacy – non lawyers – prior tribal convictions usually not counted by Sentencing Guidelines
 - Admissions in Tribal Court – not admissible in Federal Trials

State Jurisdiction Over Crimes in Indian Country

- None over Indians in Indian Country
 - *U.S. v. McBratney* (1881); *Draper v. U.S.*, (1896)
- Exception: P.L. 280 (Misc. Tribes in states)
- Some over non-Indian offenders
 - If victim is also non-Indian (See *Arizona v. Flint*, 756 P.2d 324 (1988)
 - Victimless crimes (*Arizona v. Burrola*, 669 P.2d 614 (1983))

Other . . .

- 1) Juveniles (See 18 U.S.C. § 5031 et seq.)
- Normally no mandatory transfer to adult status.
- Not public proceedings

VII. Subcommittee Work
A. Service of Process Rule

Rule 4.1(p) New

Service of Summons Within Arizona Indian Country

Service upon any party located within Indian country, as defined in 18 U.S.C. § 1151, within the state may be made using the provisions of Rule 4.2(b)-(h). For this purpose, Indian Country shall be treated as an out-of-state jurisdiction.

COMMENT

This subdivision clarifies that methods of serving process that are allowed for out-of-state service may be used on Indian reservations within the state. This rule codifies the ruling in *Dixon v. Picopa Const. Co.*, 160 Ariz. 251, 772 P.2d 1104 (1989), seeks to minimize disputes concerning the scope of state power to personally serve process on reservations, and provides a valid means of service that does not depend on whether the person to be served is an Indian or non-Indian. See *State v. Zaman*, 194 Ariz. 442, 984 P.2d 528 (1999); *Francisco v. State*, 113 Ariz. 427, 556 P.2d 1 (1976).

SERVICE OF PROCESS WITHIN ARIZONA INDIAN COUNTRY

Indian Tribe	Tribal Law or Policy
Fort McDowell Yavapai Nation	The Fort McDowell tribal court bailiff acts as the process server on the reservation.
Gila River Indian Community	The Gila River Indian Community code governs service of process. For matters filed in Community court, personal service may be made by a Community law enforcement official or special appointee who meets certain qualifications. Foreign court orders or summons must be filed with the Community court and, if found valid, shall be served by a Community law enforcement official or other designated person.
Hopi Tribe	The Hopi Indian Rules of Civil and Criminal Procedure establish that personal service may be completed by "any law enforcement officer or other person, not a party, 18 years of age or older."
Navajo Nation	The Navajo Rules of Civil Procedure govern service of process and require that service attempts be made in the following order: 1) personal service, 2) certified mail, 3) publication. Personal service may be completed by a Navajo police officer, special appointee made by presiding judge, or a private process server registered with the court.
Salt River Pima-Maricopa Indian Community (SRPMIC)	SRPMIC's tribal court employs process servers. These employees serve process on all matters filed through the tribal court. SRPMIC's general counsel, Charleen Greer, issued a written statement establishing that no outside process servers are allowed to serve process on the reservation. If process needs to be served on a state or federal court matter, then it is done by certified mail or by filing for comity through the tribal court.
San Carlos Apache Tribe	The San Carlos tribal court employs its own process server, who serves on all civil matters filed in the tribal court. Foreign court orders must be processed through the tribal court for a \$20 fee and will be served by the court's process server.

Indian Tribe	Tribal Law or Policy
Tohono O'odham Nation	The Tohono O'odham Justice Center does not have any written code section or policy that covers service of process. The Justice Center employs their own process servers, who are employees of the judicial branch. Foreign court summons and orders are processed through the Justice Center and served by the tribe's process server.
Yavapai-Apache Tribe	Tribal police officers and the tribal court bailiff act as process servers on the reservation. Foreign judgment orders must be filed with the tribal court, who will then set a hearing. Foreign judgments approved by the court shall be served like any other civil matter.

VII. Subcommittee Work

B. Recognition of Tribal Judgments Rule Amendment

ARIZONA ENFORCEMENT OF FOREIGN JUDGMENTS ACT

12-1702. Filing and status of foreign judgments.

A copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of this state may be filed in the office of the clerk of any superior court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the superior court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a superior court of this state and may be enforced or satisfied in like manner.

Last Legislative Year: 1971

12-1704. Stay of enforcement of judgment.

A. If the judgment debtor shows the superior court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

B. If the judgment debtor shows the superior court any ground upon which enforcement of a judgment of any superior court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

C. No execution or other process for enforcement of a foreign judgment filed under section 12-1702 shall issue until twenty days after the date the judgment creditor mails the notice of filing of the foreign judgment and files proof of mailing with the clerk as required under section 12-1703.

Last Legislative Year: 1997

RULES OF PROCEDURE FOR THE RECOGNITION OF TRIBAL COURT CIVIL JUDGMENTS

Rule 5. Recognition of tribal judgments.

Rules text

(a) Enforcement of tribal judgment. A tribal judgment, unless objected to in accordance with Rule 4, shall be recognized and enforced by the courts of this state to the same extent and shall have the same effect as any judgment, order, or decree of a court of this state.

(b) Certification by clerk of court. If no objections are timely filed, the clerk shall issue a certification that no objections were timely filed, and the tribal judgment shall be enforceable in the same manner as if issued by the superior court.

(c) Mandatory considerations following objection. A tribal judgment shall not be recognized and enforced if the objecting party demonstrates to the court at least one of the following:

1. The trial court did not have personal or subject matter jurisdiction.
2. The defendant was not afforded due process.

(d) Discretionary considerations following objection. The superior court may, in its discretion, recognize and enforce or decline to recognize and enforce a tribal judgment on equitable grounds, including:

1. The tribal judgment was obtained by extrinsic fraud.
2. The tribal judgment conflicts with another final judgment that is entitled to recognition.
3. The tribal judgment is inconsistent with the parties' contractual choice of forum.
4. Recognition of the tribal judgment or the cause of action upon which it is based is against fundamental public policy of the United States or the State of Arizona.

Recent legislative history: Adopted May 31, 2000, effective December 1, 2000.