

**Task Force on Plea Bargaining, Sentencing, and Dispositions**  
**State Courts Building, Phoenix**  
**Meeting Minutes: October 29, 2021**

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**Members Present:**

Melissa Acosta	Jason Kalish	Rosemarie Lynch
Hon Krista Carman (Zoom)	Lawrence Koplow (Zoom)	Hon Frankie Jones (Zoom)
Domingo Corona (Zoom)	Andrew LeFevre	Xochitl Orozco (Zoom)
Hon David Cunanan	Steven Lessard (Zoom)	Sheila Polk (Zoom)
Sandra Diehl (Zoom)	Hon Danelle Liwski (Zoom)	Hon Antonio Riojas
Will Gonzalez (Zoom)	Hon Justice Lopez (Chairperson)	Hon Valerie Wyant (Zoom)

**Members Absent:**

Elizabeth Ortiz	Jon Smith
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**AOC Staff:**

Shanda Breed  
Edward Gilligan  
Carissa Moore

**Guest:**

Herb Garcia, Attorney Supervisor Maricopa  
County Office of Public Defense Services

**Members of the Public:**

None

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- 1. Call to Order, Welcome, Introductions, and Opening Remarks** - Justice John Lopez called the meeting to order at 9:45am. Justice Lopez welcomed committee members and members introduced themselves. Justice Lopez asked members to be open with their thoughts and opinions and to critically evaluate any potential criminal justice disparities. He encouraged the Task Force to approach the work with an open mind and to attempt to put aside any preconceived notions.

Justice Lopez provided the following opening remarks:

- He advised that the Task Force is to provide guidance to the Arizona Judicial Council (AJC) that will help determine whether Arizona's criminal justice system generates disparate sentencing outcomes for minority defendants; and if that is the case, why?
- Justice Lopez advised that the Task Force examine contributing factors and consider if disparate outcomes are related to race and ethnicity, socioeconomic status (SES), or other factors.
- There are countless factors that relate to sentencing outcomes such as: the facts and circumstances of the case; the defendant's attitude during sentencing (is he remorseful?); and various contributing factors such as gang affiliation and criminal history, to name a few. The Task Force should plan to capture data beyond race and ethnicity to critically evaluate all potential disparities.

- Consider inviting subject matter experts to apply a holistic approach with developing and providing implicit bias trainings.
- The Task Force report is due to AJC on June 1, 2022.
- Edward Gilligan is hopeful that potential speakers and data can be identified and explained that his team has begun research to provide information to the group. He encouraged the Task Force to ensure the broadest perspective is explored to adequately document all information that was utilized and considered for the final report and recommendations.

**2. Adoption of Rules** – Justice Lopez reviewed the Rules for Conducting Business as a Task Force.

- Quorum is 10.
- Decision making will be made by motion and majority vote.

**Motion:** Andrew LeFevre moved to adopt the Rules for Conducting Business.

**Seconded:** Steve Lessard.

**Vote:** Unanimous.

**3. Review Administrative Order (AO) No. 2021-84** – Justice Lopez reviewed the AO.

The mission and reason for this Task Force: “The penalties imposed at sentencing are the most visible, impactful, and measurable point of comparison for similarly situated individuals. Because most defendants in our courts arrive at sentencing through a negotiated plea, it is important to determine if there are ways to improve transparency, fairness, and consistency in the process. Additionally, we must ensure all pleas and the resulting orders are complete, accurate, and clear enough for clerks to be able to do data entry into the court’s case management system to correctly capture and process results of the plea hearing.” The Task Force will examine and make recommendations regarding:

- Compiling and publishing demographic data on plea bargains, sentencing, and dispositions.
- Developing and providing implicit bias training for attorneys.
- Developing and providing judicial training on plea agreements to improve bias awareness, ensure sufficiency of facts, and to utilize data to inform decision making, and increase awareness of disproportionate sentencing outcomes for minority defendants.
- Identifying and training judges on best practices for ensuring sentencing orders are complete and legible for those responsible for data entry into the court’s case management system.
- Doing more to advise defendants of the possible collateral consequences of a guilty plea.
- Propose amendments to the Rules of Criminal Procedure, as needed, to accomplish the goals.

**4. Project Timeline**

- Four meetings are planned, and each meeting will focus on developing specific recommendations.
- Meeting materials will be sent via email. Research, articles, and the report will be available on a SharePoint site for viewing.
- The APSD team will research trainings currently available and conduct a comprehensive survey to see what’s out there and what is working best.

Roundtable discussion:

- Hon. Cunanan – suggests data will be what drives the discussion and recommendations for the report.
- Sheila Polk –Wants to look at the data that is already being collected and suggests that H.B. 2166 be reviewed and discussed. The Department of Justice -Justice Counts National Steering Committee is working to identify key metrics that every state would report into a national data collection system. The goal is to have the website available by early 2022. The benefit of a national data dashboard is to compare and review criminal cases from state to state. Sheila could provide an overview of Yavapai County Attorney’s website and suggests that Maricopa County Attorney’s website would also be good to review.
- Andrew LeFevre - the State paid for Pinal & Yavapai counties to set up dashboards through their websites. The Bill designated the Arizona Criminal Justice Commission (ACJC) to be the central repository agency and is currently working with vendors to look at what data will be captured. ACJC wants to understand common data elements throughout the Courts.
- Jason Kalish - teaches on cognitive biases and believes that focusing on implicit bias training may be the wrong approach and that just providing the training does not counteract what is happening in individuals’ minds.
- Steve Lessard – agrees that providing training does little to change thoughts and behaviors; he believes this begins at the individual level. Individuals need insight before any change can take place. He recommends everyone on the Task Force read the book “The Conversation” that helps look at bias.
- Judge Jones – partners with Arizona School of Race and Democracy. Notes that many municipal courts do not provide attorney representation. She suggests that felony cases vs. misdemeanor cases be differentiated.
- Judge Riojas – custody status may impact motivation to accept a plea agreement.
- Rosemarie Pena-Lynch - finds that what the person can afford impacts the acceptance of the agreement. Anecdotally, economics is a big part of the defendant’s decision on whether to accept the plea as presented.
- Sheila Polk – in custody and out of custody status is of great interest at the National level. This may make it into the data reporting system; however, custody status is fluid and can change quickly. The victim population needs to be included in the demographic data. She believes there is an implicit bias factor to what victims should look like.
- Sandy Diehl – custody status is tracked in Karpel and the Court manually enters. Geography is an important factor to consider as these issues come into play frequently especially in Coconino county. This makes a huge impact on conditions and whether a judge is willing to release the defendant.
- Andy LeFevre - ACJC could explore coordinating information with the Task Force. Recommends that we consider the common data elements list that will be collected. He encourages the Task Force to keep in mind how race and ethnicity is broken down on police reports and if this is accurate or observed.
- Ed Gilligan - focus on data specificities; identify what data needs to be captured. This will allow examination at all facets.

- Summary:
  - Demographics
  - Victim crime
  - Define the victim and offender population
  - Custody status at the time of the plea offer
  - Release conditions – the amount of the bond may impact if the plea is accepted
  - Early resolution court – process is much different than the standard indictment system
  - Felonies vs. Misdemeanors
  - Time of sentencing
  - Was the defendant represented at the IA stage
  - The case management system that is being used
  - Geography
  
- Rule change petition - R-21-0030 Criminal Rule 17.4 authorizing deadline for plea agreements was discussed and a member noted that two organizations have filed objections to this change.
  - Filed: June 4, 2021  
Would amend Ariz. R. Crim. P.17.4 to authorize the presiding judge to approve a county policy requiring the parties to advise a trial judge of a plea agreement sufficiently in advance of trial to avoid assembling a jury panel unnecessarily.

**5. Call to the Public**

No public comment was received.

**6. Adjournment**

The meeting adjourned at 11:35am.

**Next Meeting:** State Courts Building, December 10, 2021

*\*Note: an audio recording of this meeting is available upon request. \**