

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
AMENDING ARIZONA CODE OF)	Administrative Order
JUDICIAL ADMINISTRATION)	No. 2023 - <u>191</u>
§ 5-201: EVIDENCE BASED PRETRIAL)	(Affecting Administrative
SERVICES)	Order No. 2014-12)
)	

Pursuant to the Arizona Code of Judicial Administration (ACJA) § 1-201(E), the Chief Justice may adopt technical changes in existing administrative code sections by administrative order without prior distribution for comment and action by the Arizona Judicial Council.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the amendments to ACJA § 5-201 as indicated on the attached document are adopted. All other provisions of § 5-201 remain unchanged and in effect.

Dated this 8th day of November, 2023.

ROBERT BRUTINEL
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 5: Court Operations
Chapter 2: Programs and Standards
Section 5-201: Evidence Based Pretrial Services

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

* * *

“Evidence based practices” means programs, assessments, and supervision policies and practices that scientific research demonstrates reduce instances of a pretrial defendant's failure to appear in court and involvement in criminal activity.

* * *

“Pretrial services” means programs that perform functions to assist the court in making prompt, fair, and effective decisions regarding the release, detention, or conditions of release of persons arrested.

* * *

“Risk” means measurable factors that correlate to a pretrial defendant’s probability of committing a new crime or failing to appear while on pretrial release that are gathered through a standardized risk assessment instrument, information from the defendant, victims, interested parties, or other sources of information.

B. Purpose.

This code section provides the scope, requirements, and procedures for Arizona courts to establish and operate pretrial services consistent with evidence-based practices. The superior court in each county may operate pretrial services in the probation department, pretrial services department, or court administration. Municipal and justice courts may also establish and operate pretrial services.

The purpose of pretrial services is to provide information that will assist the court in making pretrial release decisions, as well as supervising defendants who are released pursuant to A.R.S. § 13-3967(D)(5).

C. Authority.

1. Az. Const. Art. 6, § 3, provides that the supreme court shall have administrative supervision over all the courts of the state. As part of that administrative supervision, this ~~code~~ section establishes requirements for the formation and operation of pretrial service programs consistent with Az. Const. Art. 2 § 22(A), and (B) and A.R.S. § 13-3967.
2. In order to assist the court in making determinations regarding release, the imposition of conditions of release, or to make determinations regarding violations of conditions of

release pursuant to Az. Const. Art. 2 § 22(A), and (B), and A.R.S. § 13-3967(C), and (D)(5), pretrial services shall have authority to interview and process all persons charged with an offense either before or after first appearance.

D. Applicability.

This ~~code~~ section applies to all courts or court departments that operate pretrial services including interviewing pretrial defendants, administering pretrial risk assessments, providing recommendations regarding release conditions, and/or supervising persons released to pretrial supervision.

E. Program Operations.

1. [No change]
2. To the extent this information is available, pretrial services staff shall assist in providing the following for the court's consideration in determining release decisions, pursuant to A.R.S. § 13-3967(A), and (B):
 1. The views of the victim.
 2. The nature and circumstances of the offense charged.
 3. Whether the accused has a prior arrest or conviction for a serious offense or violent or aggravated felony as defined in section 13-706 or an offense in another state that would be a serious offense or violent or aggravated felony as defined in section 13-706 if committed in this state.
 4. Evidence that the accused poses a danger to others in the community.
 5. The results of a risk or lethality assessment in a domestic violence charge that is presented to the court.
 - ~~3-6.~~ The weight of evidence against the accused.
 - ~~4-7.~~ The accused's family ties, employment, financial resources, character and mental condition.
 - ~~5-8.~~ The results of any drug test submitted to the court.
 - ~~6-9.~~ Whether the accused is using any substance if its possession or use is illegal pursuant to chapter 34 of this title.
 - ~~7-10.~~ Whether the accused violated section 13-3407, subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01.
 - ~~8-11.~~ The length of residence in the community.
 - ~~9-12.~~ The accused's record of arrests and convictions.
 - ~~10-13.~~ The accused's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.
 - ~~11-14.~~ Whether the accused has entered or remained in the United States illegally.
 - ~~12-15.~~ Whether the accused's residence is in this state, in another state or outside the United States.
3. A.R.S. § 13-3967(D)-(E) states:

D. After providing notice to the victim pursuant to section 13-4406, a judicial officer may impose any of the following conditions on a person who is released on his own recognizance or on bail:

1. Place the person in the custody of a designated person or organization agreeing to supervise him.
2. Place restrictions on the person's travel, associates or place of abode during the period of release.
3. Require the deposit with the clerk of the court of cash or other security, such deposit to be returned on the performance of the conditions of release.
4. Prohibit the person from possessing any ~~dangerous~~ deadly weapon or engaging in certain described activities or indulging in intoxicating liquors or certain drugs.
5. Require the person to report regularly to and remain under the supervision of an officer of the court.
6. Impose any other conditions deemed reasonably necessary to assure appearance as required including a condition requiring that the person return to custody after specified hours.

E. In addition to any of the conditions a judicial officer may impose pursuant to subsection D of this section, the judicial officer shall impose both of the following conditions on a person who is charged with a felony violation of chapter 14 or 35.1 of this title and who is released on his own recognizance or on bail:

1. Electronic monitoring where available.
2. A condition prohibiting the person from having any contact with the victim.

4. [No change]

5. Pretrial services staff supervising defendants released to pretrial supervision shall:

a. through e. [No change]

f. Provide reports to the court to inform of violations or assist the court in modification or revocation of conditions of release pursuant to Rule 7.4(~~b~~) or 7.5(~~e~~), Rules of Criminal Procedure.

6. When juveniles transferred or charged in adult court are released to pretrial supervision, pretrial services staff shall assist the court as necessary in notifying the appropriate school-~~district~~, pursuant to A.R.S. § 13-3967(J) which provides:

A judicial officer who orders the release of a juvenile who is enrolled in a school and who has been transferred to the criminal division of the superior court pursuant to section 8-327 or who has been charged as an adult pursuant to section 13-501 shall notify the appropriate school-~~district~~ on the release of the juvenile from custody.

7. [No change]

F. General Administration.

1. [No change]
2. A presiding judge or designee operating pretrial services or pretrial supervision shall provide data reports to the Administrative Office of the Courts ~~AOC~~ as requested.

G. [No change]