



## Task Force on Fair Justice for All

### Meeting Agenda

**Task Force meeting:** May 2, 2017 - 10:00 a.m. to 1:00 p.m.

**Committee on Post-conviction Set-aside:** May 2, 2017 – 1:00 p.m. to 3:00 p.m.

State Courts Building ♦ 1501 West Washington ♦ Conference Room 101 ♦ Phoenix, Arizona

Fair Justice for All Task Force [Webpage](#)

Chair – Dave Byers Vice-Chair – Tom O’Connell

TIME	AGENDA ITEM	PRESENTER
10:00 a.m.	Welcome and opening remarks	<i>Dave Byers, Chair Tom O’Connell, Vice-chair</i>
	Approval of minutes from December 13, 2016 <input type="checkbox"/> <b>Formal action or request</b>	
10:05 a.m.	Update on recommendations in progress <ol style="list-style-type: none"> <li>1. CAP programs</li> <li>2. Notification system contract</li> <li>3. Bench card and other resources</li> <li>4. Judicial officer training</li> <li>5. Municipal Court Governance Roles and Responsibilities (Formerly Q&amp;A)</li> <li>6. Pima County Mental Health Summit <a href="https://webcms.pima.gov/cms/One.aspx?portalId=169&amp;pageId=321277">https://webcms.pima.gov/cms/One.aspx?portalId=169&amp;pageId=321277</a></li> <li>7. Pima County MacArthur Grant update <a href="http://webcms.pima.gov/cms/One.aspx?portalId=169&amp;pageId=226609">http://webcms.pima.gov/cms/One.aspx?portalId=169&amp;pageId=226609</a></li> </ol> <input type="checkbox"/> <b>Formal action or request</b>	<i>Don Jacobson Kent Batty</i>
11:40 a.m.	Update on legislative packet modifications <input type="checkbox"/> <b>Formal action or request</b>	<i>Jerry Landau</i>
12:15 a.m.	☞ ☞ Working Lunch Break ☞ ☞	
12:30 p.m.	Update on rule change petition (R-17-0015) <input type="checkbox"/> <b>Formal action or request</b>	<i>Jerry Landau David Withey</i>
12:55 p.m.	Call to the public	<i>Dave Byers</i>
1:00 p.m.	Adjourn	

The Chair may call items on this Agenda, including the Call to the Public, out of the indicated order. Please contact Kathy Sekardi (602) 452-3253 or Susan Pickard (602) 452-3253 with any questions concerning this agenda. Persons with a disability may request reasonable accommodations by contacting Sabrina Nash at (602) 452-3849. Please make requests as early as possible to allow time to arrange accommodations.

### Committee on Post-conviction Set-aside Agenda

TIME	AGENDA ITEM	PRESENTER
1:00 p.m.	Welcome, introductions, and opening remarks	<i>Jerry Landau</i>
1:15 p.m.	Committee Mission	<i>Jerry Landau</i>
1:30 p.m.	Discuss set-aside and expungement	<i>Jerry Landau</i>
2:30 p.m.	Preliminary review of statutes and rules	<i>Jerry Landau</i>
2:45 p.m.	Preliminary plan for next meeting	<i>Jerry Landau</i>
2:55 p.m.	Call to the public	<i>Jerry Landau</i>
3:00 p.m.	Wrap-up and setting of next meeting	<i>Jerry Landau</i>
	Adjourn	

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**Draft Minutes**  
 December 13, 2016  
 State Courts Building ♦ 1501 West Washington St. ♦ Conference Room 101  
 Phoenix, Arizona

**Present:** Dave Byers, Chair, Tom O’Connell, Vice Chair, Kent Batty, Judge Michael Bluff, Nancy Grey-Eade (proxy for Judge Maria Elena Cruz), India Davis, Jeffrey Fine, Kirstin Flores, Ryan Glover, Bob James, Paul Julien, Doug Kooi, Jeremy Mussman, Tony Penn, Dianne Post, Judge Antonio Riojas, Judge Thomas Robinson, Leonard Ruiz, MaryEllen Sheppard, Alessandra Soler, Kathy Waters

**Absent:** Judge John Hudson, Officer Michael Kurtenbach, Judge Dorothy Little, Rebecca Steele, Judge Lisa Roberts, Judge Don Taylor

**Presenters/Guests:** Candace Atkinson, Jennifer Greene, Dorothy Givens, Donald Jacobson, Megan Kintner, Jerry Landau, Heather Murphy, David Nicholas, Marcus Reinkensmeyer, Judge Ron Reinstein, Gary Reitano (U.S. Attorney’s Office), David Withey

**Staff:** Theresa Barrett, Kathy Sekardi, Susan Pickard, Sabrina Nash, Patrick Scott, Administrative Office of the Courts (AOC)

**CALL TO ORDER** - Dave Byers called the meeting of the Task Force on Fair Justice for All to order at 10:02 a.m. without a quorum.

**WELCOME AND OPENING REMARKS** – Everyone present made self-introductions, including the newest appointee, Kirstin Flores, Executive Director, Office of Victim Services, Arizona Attorney General’s Office. During the introductions a quorum of the membership was reached. Mr. Byers announced that Chief Justice Bales had extended the task force to August 31, 2017.

The *Report and Recommendations of the Task Force on Fair Justice for All* was, or will be, presented to the following organizations:

- Humanist Society of Greater Phoenix
- State Bar of Arizona
  - Military Legal Affairs Committee
  - Board of Governors
- Governor’s Office of Highway Safety
- Inn of Courts
- Sandra Day O’Connor Law School
- Conference of State Court Administrators
- Arizona Attorneys for Criminal Justice
- Pending presentations include:
  - Mohave County Strategic Planning Session, January
  - Inn of Courts in the Valley, February
  - Problem-Solving Court Conference, April
  - Arizona Courts Association, April
  - State Bar Conference, June

Presenters continue to report positive feedback, and evidence of modest culture change.

Mr. Byers shared news from around the country, which included:

- New Mexico passed a Constitutional amendment that allows judges to deny bail to defendants considered exceptionally dangerous.
- American Legislative Exchange Council (ALEC) resolution on criminal justice fines and fees was adopted on September 12, 2016. This Resolution supports ensuring that fines and fees imposed by the criminal justice system are reasonable, transparent, and proportionate, and not in conflict with the goals of improving public safety, reducing recidivism, ensuring victims receive restitution, and enabling offenders and ex-offenders to meet obligations to their families, especially children.
- The National Task Force on Fines, Fees and Bail Practices has released the *Lawful Collection of Legal Financial Obligations, A Bench Card for Judges* intended to assist judges in ability-to-pay determinations.

#### **APPROVAL OF MINUTES FROM NOVEMBER 3, 2016**

**MOTION:** To approve the November 3, 2016, minutes as presented. Motion seconded.

**VOTE:** Passed unanimously.

**UPDATE ON LEGISLATIVE PACKET MODIFICATIONS** – (This agenda item was taken out of order.) Jerry Landau provided the members with updated fact sheets for the following legislative proposals noting the changes to each:

- **2017-01: Sentencing; fines; fees; probation** – clarifies that assessments, fees, and forfeitures can be mitigated the same as fines.
- **2017-02: Driving; violations; restricted license; penalties** – 1) removes provisions permitting the court to restrict a driver license as a result of a conviction of a major traffic violation, 2) permits the court to order a restriction of a driver license if a person fails to pay a civil or traffic violation, 3) the Arizona Department of Transportation (ADOT) has agreed to the January 1, 2018, effective date. Logistics are still being worked out with Motor Vehicle Department.
- **2017-03: Bailable offenses; hearing; schedule** – the language requiring that the *Simpson* hearing be held within 24 hours and some of the court procedural language has been removed from the statute and will be addressed by court rule; and cleans up some language in the mandatory bond card.
- **2017-04: Competency examination; jurisdiction** – No changes reported.

**UPDATE ON RECOMMENDATIONS IN PROGRESS** – Mr. Byers and Don Jacobson provided an update on the progress of recommendation implementation:

- The Legislative Summit is scheduled for January 10, 2016 from 11:00 a.m. to 1:30 p.m. This meeting is expected to garner legislative support and build momentum of the task force's recommendations. Ninety legislators and their staff, key staff from the Governor's Office, one representative from each county board of supervisors, and representatives from the League of Towns and Cities have been invited. In addition, members of the press will be present. RSVP's from the task force members was requested by December 30.
- Arizona Judicial Automated Case System (AJACS) Online Payment – Pending successful pilots in Apache Junction Municipal Court and a justice court, courts using the AJACS case management system will be receiving an integrated online payment system.
- Proof of Compliance – Acknowledging that the City of Tucson already has a program in place, Mr. Byers announced that the City of Phoenix will be viewing a demonstration of the Matterhorn online case resolution platform soon. (See MJ Cartwright's presentation later in the minutes.) Additional programs available from an e-filing vendor, Xerox, and a company that developed online check deposit for a California credit union are being reviewed.

- Presiding Judge Mental Health Stakeholder Meetings – Pima County will be hosting a summit for all presiding judges in May regarding how to reduce criminal justice system involvement with those who have mental health issues.
- Income Verification – Work to identify accurate income verification software continues. Discussions have begun with Harvard to find additional data avenues.
- Yuma Fine Reduction Pilot Program – Scheduled to rollout in January with up to 50% reductions on civil traffic, reinstatement of driver license, and payment plans.
- Arizona Traffic Ticket and Complaint (ATTC) – The ATTC will be updated to include fields for cell or alternate telephone numbers as well as information about not ignoring financial responsibility and the availability of payment plans.
- Expanded Use of the Public Safety Assessment – Opening discussions with the Arnold Foundation and IBM regarding the use of Watson Analytics’ predictive forecasting to make the assessment more resource-effective and financially affordable.
- Education – The AOC, Education Services Division (ESD) is planning the June 2017 Judicial Conference, as well as developing special training for judges pro tem and part-time judges who conduct Initial Appearance Hearings. ESD staff are discovering that the educational aspect of this project goes way beyond the educational recommendations to include almost all of the task force recommendations.

**OTHER PROGRESS OF NOTE:**

- Starting January 3<sup>rd</sup>, Tucson City Court will be implementing their version of Phoenix CAP program. All fines and fees owed on criminal, civil, and parking will be consolidated, and with 10% or \$500, whichever is less, down payment, the defendant’s driver license will be reinstated and a payment plan established based upon on much the defendant can afford to pay monthly.
- Maricopa County Justice Courts’ (MCJC) video appearance program has reduced pre-trial confinement time by 53%. Another 30% reduction is anticipated when MCJC moves to the Intake and Release Facility (ITR). Weekend appearance hearings are also being considered.

**UPDATE ON RULE CHANGE PETITION (R-16-0041)** – A number of comments were received from several stakeholders. Modifications were made to the petition based upon some of the comments. The amended petition was filed. The Supreme Court met on December 12 and adopted all of the recommended changes as modified.

**PRESENTATION OF ONLINE CASE RESOLUTION SOFTWARE** – MJ Cartwright demonstrated Matterhorn, a mobile online platform developed by Court Innovations with the University of Michigan to help reduce congested courtrooms and address those for whom appearing at court is a near impossibility (37% of Michigan cases). Matterhorn can provide efficiencies for not only courts, judges, and court staff, but also law enforcement, lawyers and the general public. It provides a vehicle for resolving traffic tickets, parking tickets, warrants, license suspension, small claims and family law matters.

**NOTE:** Kirsten Flores announced that she would be abstaining from the following rule-related votes.

**REPORT FROM ARS § 13-810/OSC SUB-WORKGROUP** – Jennifer Greene, AOC Counsel, presented the amendments to Criminal Rules 26.12, 27.8, and 27.9 that resulted from the sub-workgroup’s meeting on November 23, 2016.

**Rule 26.12** – The Purge Review Hearing process from probation violation and order to show cause to possible civil contempt and incarceration.

**Motion:** To submit the amendments to Criminal Rules 26.12 as presented. Motion was seconded.

**Discussion:** The *Bearden* language as it appeared in the green handout regarding Criminal Rule 26.12(c)(5) needs to be added to ensue due process.

**Motion:** To amend motion to add *Bearden* language. Motion was seconded.

**Vote:** Passed 20-0-1

**Amended Motion:** To submit the amendments to Criminal Rules 26.12 including the *Bearden* language. Motion was seconded.

**Vote:** Passed 20-0-1

### **Rule 27.8 and 27.9**

**Motion:** To approve the amendments in concept limiting the protections to the case in question. Motion was seconded.

**Vote:** Passed 20-0-1

**REPORT FROM RULES 4.2 AND 7.2 SUB-WORKGROUP** – David Withey, AOC Chief Counsel, reviewed Maricopa County data regarding charges and set bond amounts for calendar year 2016, then presented the amendments to Criminal Rules 4.2 and 7.2 that resulted from the sub-workgroup’s meeting on November 23, 2016. Jeremy Mussman expressed the concerns of criminal defense attorneys regarding limiting entry and procedural protections.

**Motion:** While moving forward with the legislation, to file the rule change petition with the best possible versions of the rules in January. Motion was seconded.

**Vote:** Passed 16-3-1

Members of this workgroup will be notified of the next meeting possibly occurring during the first week of January 2017.

**CHIEF JUSTICE BALES** – Midway through the discussion above, Chief Justice Bales dropped in to express his sincere gratitude to the members for the remarkable accomplishments of the task force toward the Court’s top priority, fair justice.

**CALL TO THE PUBLIC** – Officer David Nichols, Buckeye Police Department, on behalf of Chief of Police Larry Hall, spoke.

Meeting adjourned at 1:45 p.m.

**NEXT MEETING** – To be determined.

Fair Justice for All

Update 4/25/2017

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Sentencing Reform

- Legislative proposals
- Administrative Order on Facilitating Processing of Financial Obligations
- Notification Process
  - ATTC changes, Rule change submitted, R-17-0034
  - Texting, State-wide process being considered
- Ticket Processing Website

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Sentencing Reform

- Court Assistance Programs (CAP):
  - Phoenix
  - Glendale
  - Tucson
  - Scottsdale
- Fine Reduction Programs (FRP):
  - Yuma

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### Sentencing Reform - CAPs

	Phoenix	Glendale	Scottsdale	Tucson
Start Date	1/25/2016	7/25/2016	11/18/2016	1/30/2017
Charge Types	Civil traffic, civil local ordinance and parking charges	Civil traffic, civil local ordinance and parking charges	Civil traffic, civil local ordinance, parking charges and criminal charges w/o warrant	Civil traffic, civil local ordinance, parking charges and criminal charges w/o warrant
Down Payment	Must be at least \$50: includes \$7 FARE GS Fee, \$35 FARE Delinquency Fee, \$20 Time Payment Fee and City default fees	Includes \$35 FARE Delin. Fee, \$20 Time Payment Fee, City default fee totaled and 19% Special Collection Fee of total above	20% of case balance	10% of case balance, no more than \$500

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### Sentencing Reform - CAP Results

As of 3/1/2017	Phoenix Muni	Glendale Muni	Tucson Muni
Program Start Date	1/25/2016	7/25/2016	1/30/2017
Cases in program currently	4,615 (defendants)	367	425
Cases removed from program	3,700 (defendants)	150	0
Total cases in program since inception	12,906 (defendants)	517	425
Cases paid off in full	4,472 (pay plans)	137	0
\$ Amount In Down Payments	\$2,116,563	\$100,939	\$102,680
\$ Paid into Program (outside of down payments)	\$4,647,507	\$91,353	Does not measure at this time
Total \$ Collected since inception	\$6,764,070	\$192,293	\$102,680

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### Sentencing Reform - Yuma FRP

- 14,211 cases eligible for program
- 13,000 notices mailed
- 4,200 auto-dialer messages sent
- As of April 24, 2017
  - 789 cases in program
    - 534 cases reduced balance paid in full
    - 255 cases on payment plans
  - \$159,550 collected on eligible cases
- Oldest case closed is from 1986




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### Sentencing Reform - Mitigation

- Provide Credit/Waiver of Criminal Fines, Surcharges, Assessments
  - Bench Card for OSCs
  - Tiered Approach
    - Based of Federal Poverty Level (FPL)
    - 25% (At 200% of FPL) to 50% (at 130% of FPL) as a guideline
    - Judicial discretion maintained throughout process
- Do these percentages appear fair?

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### Sentencing Reform

- Working within the current sentencing structure
  - Fine and penalty mitigation
    - Non-mandatory minimums - reduce all elements proportionally, with exceptions\*, community restitution available
    - Mandatory minimums - waive surcharges\*, community restitution available
    - DUI - community restitution on fines, all surcharges non-waivable (A.R.S. §28-1389)
  - Direct Sentencing
    - Community Restitution (on fines, penalties, and fees, i.e. time payment and probation fee, A.R.S. § 13-824)
    - Probation with education and treatment programs
- Plea by mail for criminal traffic and boating cases, R-16-0036
- Are there additional tools we can provide to judges?

\* A.R.S. §12-116.01(F), Exceptions: Clean Elections 10% §16-954(A) see *State v Rogers* 2010 and Time Payment §12-116(A)

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### Sentencing Reform - Civil Traffic

- Suspend license as a last resort
  - Notify defendant prior to FTA suspension
    - A.R.S. §28-3308, requires MVD to suspend after notification by the Court
    - Traffic Violation Cases Civ. Proc., Rule 22a, sending notification to MVD
  - Notify defendant prior to FTP suspension per A.R.S. §28-1601A
    - Permissive about suspension, under the Court's discretion
    - Allows for the establishment of a time payment plan
- Restricted driver's license (available for insurance violations A.R.S. §28-4145)
- Reduce civil penalty by 5% if paid when imposed, A.R.S. §28-1601B

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### Bail Reform - Eliminate Money for Freedom

- Development of on-line payment and submission of proof site.
- Delegating Process to staff/clerk
  - Local AO for each court would need to be developed
- Verification tools for staff to determine level of need
  - DES benefits verification
  - Automated income verification

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### Bail Reform - Eliminate Money for Freedom

- New/Proposed Rule Changes
  - Appointment of Counsel at Initial Appearance, Rule 6.1b(1), issues?
- Eliminate Use of Criminal Bail Schedules
  - Civil Traffic penalty/deposit schedules to remain in place
- Tools for helping judges make release decisions:
  - Expand use of lesser used bond types
    - Deposit bonds, unsecured bonds, surety bonds
  - PSAs for all courts
    - Automated Process
    - Manual Process
- Developing suggestions for default on an unsecured bond.

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### Education Program

- Judicial Conference
- Presiding Limited Jurisdiction Court Judges
- Targeted training on use of Guidelines

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Courts may not incarcerate a defendant/respondent, or revoke probation, for nonpayment of a court-ordered legal financial obligation unless the court holds a hearing and makes one of the following findings:

1. The failure to pay was not due to an inability to pay but was willful or due to failure to make bona fide efforts to pay; or
2. The failure to pay was not the fault of the defendant/respondent and alternatives to imprisonment are not adequate in a particular situation to meet the State's interest in punishment and deterrence.

Court-ordered legal financial obligations (LFOs) are ordered financial obligations that include all local or State, discretionary and mandatory fines, costs, fees, surcharges, assessments, restitution and/or other court ordered financial sanctions in civil and criminal cases.

**In order to make the determination of willfulness in nonpayment the court should:**

**1. Confirm that adequate notice of the hearing to determine ability to pay was provided.**

**Notice should include the following information:**

- a. Hearing date and time;
- b. Total amount claimed due;
- c. That the court will evaluate the person's ability to pay at the hearing;
- d. That the person should bring any documentation or information the court should consider in determining ability to pay;
- e. That incarceration may result only if alternate measures are not adequate to meet the state's interests in punishment and deterrence or the court finds that the person had the ability to pay and willfully refused;
- f. Right to counsel<sup>1</sup>; and
- g. That a person unable to pay can request payment alternatives, including, but not limited to, community restitution, time payment plan and/or a reduction of the amount owed.

**2. Provide meaningful opportunity to explain at the hearing.**

**The person must have an opportunity to explain:**

- a. Whether the amount charged as due is incorrect; and
- b. The reason(s) for any nonpayment (e.g., inability to pay).

**3. Examine the following factors the court should consider to determine willfulness<sup>2</sup>**

- a. Receipt of needs-based, means-tested public assistance, including, but not limited to, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), veterans' disability benefits, or other state based benefits provided through the Arizona DES. (All such benefits are not subject to attachment, garnishment, execution, levy, or other legal process);
- b. Income, including whether income is at or below 130% or between 130% and 200% of the Federal Poverty Level (FPL);<sup>3</sup>
- c. Financial resources, assets, financial obligations, and dependents;
- d. Whether the person is homeless, incarcerated, or resides in a mental health facility;
- e. Basic living expenses, including, but not limited to, food, rent/mortgage, utilities, medical expenses, transportation, and child support;
- f. The person's efforts to acquire additional resources, including any permanent or temporary limitations to secure paid work due to disability, mental or physical health, homelessness, incarceration, lack of transportation, or driving privileges;
- g. Other LFOs owed to the court or other courts;
- h. Whether LFO payment would result in manifest hardship to the person or his/her dependents; and
- i. Any other special circumstances that may bear on the person's ability to pay.

**2016 FPL Income Based on Family Size**

<i>Family Size</i>	<i>130% of FPL</i>	<i>200% of FPL</i>	<i>Family Size</i>	<i>130% of FPL</i>	<i>200% of FPL</i>
<i>Individual</i>	<i>\$15,444;</i>	<i>\$23,760;</i>	<i>Household of 4</i>	<i>\$31,590;</i>	<i>\$48,600;</i>
<i>Household of 2</i>	<i>\$20,826;</i>	<i>\$32,040;</i>	<i>Household of 5</i>	<i>\$36,972</i>	<i>\$56,880</i>
<i>Household of 3</i>	<i>\$26,208;</i>	<i>\$40,329</i>	<i>Household of 6</i>	<i>\$42,042</i>	<i>\$64,680</i>

#### 4. Record findings by the court.

**The court should find on the record:**

- a. If the person was provided prior adequate notice per 1 above.
- b. If the person was given a meaningful opportunity to explain the failure to pay.
- c. A determination of willfulness in the failure to pay.
- d. Any fine payment alternatives imposed in 5 below.

#### 5. Consider alternative sanctions for both those who have been found willful and not willful of nonpayment (A.R.S. 13-810 D, E)

The options for those defendants who have been determined to have not been willful in nonpayment or have made a good faith effort to pay include:

- a. Modify the manner in which the amount owed is to be paid. This may include an extension of time to pay, the establishment or the modification of a reasonable payment plan, ordering community restitution or a relevant, court-approved program (e.g. education, job skills, mental health, veterans program or drug treatment program) or allowing credit for community restitution or completion of a relevant, court-approved program; and/or
- b. Enter a reasonable order that would assure compliance with the order to pay. This may involve elements of modification of the manner of payment as noted in 1 above or may be a reduction in the amount due by waiver, suspension or other credit including, but not limited to, credit for time served, credit for community restitution or credit related to a manifest hardship. As a guideline for the credit for manifest hardship the court may consider:

**25% credit for financial hardship if the household income is between 200% and 130% of FPL; or  
50% credit for financial hardship if the household income is less than 130% of FPL; or  
50% credit for financial hardship if the household is receiving income based benefits;**

and/or

- c. Enter a writ of criminal garnishment pursuant to A.R.S. §13-812. This does not discharge a defendant who is incarcerated for nonpayment until the amount owed or a portion of the amount owed is paid.

The options for those who have been determined to have willfully not paid, nor have made a good faith effort, after a finding of contempt include:

- d. Order the defendant to perform community restitution; and/or
- e. Enter a writ of criminal garnishment pursuant to A.R.S. §13-812. This does not discharge a defendant who is incarcerated for nonpayment until the amount owed or a portion of the amount owed is paid; and/or
- f. Order the defendant incarcerated in the county jail until the amount owed, or a portion of the amount owed, is paid; and/or
- g. Revoke the defendant's probation, parole or community supervision and sentence the defendant to prison pursuant to law.

#### If the Court determines that incarceration must be imposed, the Court should make findings about:

1. The financial resources relied upon to conclude the nonpayment was willful; and/or
2. Why alternative measures are not adequate to meet the state's interests in punishment and deterrence given the particular violation.

(Insert here the name and symbol of the law-enforcement agency, city or town or court under whose authority arrest is made.)

### Arizona Traffic Ticket and Complaint

Complaint No.		SSN		Military		<input type="checkbox"/> Accident <input type="checkbox"/> Fatality <input type="checkbox"/> Commercial <input type="checkbox"/> Serious Physical Injury <input type="checkbox"/> Haz. Material		Agency Use or Report Number															
Driver's License Number		State		Class		Endorsements				Agency Use													
Interpreter Required? <input type="checkbox"/> Spanish <input type="checkbox"/> Other Language				M		H		N		P		T		X		D							
<b>DEFENDANT</b>																							
First		Middle						Last															
Residential / Commercial Address												City			State			ZIP			Telephone: (Cell Phone) <input type="checkbox"/>		
MAILING ADDRESS												<input type="checkbox"/> SAME AS ABOVE						Email Address:					
Sex		Height		Weight		Eyes		Hair		Origin		Date of Birth		Restrictions									
<b>VEHICLE</b>		Color		Year		Make		Model		Style		License Plate		State		Expiration							
Registered Owner										Address				Vehicle Identification Number									
<b>The undersigned certifies that:</b>																							
<b>ON</b>		Month	Day	Year	Time	AM	PM	<b>SPEED</b>		Approx.	Posted	R&P	Speed Measurement Device			Direction of Travel							
<b>AT</b>		Location										County		State of Arizona	Beat								
<b>The defendant committed the following:</b>																							
A	Section		ARS CC	Violation				Domestic Violence <input type="checkbox"/>		<input type="checkbox"/> Criminal <input type="checkbox"/> Criminal Traffic <input type="checkbox"/> Municipal Code													
	Docket Number		Disp. Codes		Date of Disposition		Sanction		<input type="checkbox"/> Civil Traffic <input type="checkbox"/> Petty Offense														
B	Section		ARS CC	Violation				Domestic Violence <input type="checkbox"/>		<input type="checkbox"/> Criminal <input type="checkbox"/> Criminal Traffic <input type="checkbox"/> Municipal Code													
	Docket Number		Disp. Codes		Date of Disposition		Sanction		<input type="checkbox"/> Civil Traffic <input type="checkbox"/> Petty Offense														
C	Section		ARS CC	Violation				Domestic Violence <input type="checkbox"/>		<input type="checkbox"/> Criminal <input type="checkbox"/> Criminal Traffic <input type="checkbox"/> Municipal Code													
	Docket Number		Disp. Codes		Date of Disposition		Sanction		<input type="checkbox"/> Civil Traffic <input type="checkbox"/> Petty Offense														
D	Section		ARS CC	Violation				Domestic Violence <input type="checkbox"/>		<input type="checkbox"/> Criminal <input type="checkbox"/> Criminal Traffic <input type="checkbox"/> Municipal Code													
	Docket Number		Disp. Codes		Date of Disposition		Sanction		<input type="checkbox"/> Civil Traffic <input type="checkbox"/> Petty Offense														
E	Section		ARS CC	Violation				Domestic Violence <input type="checkbox"/>		<input type="checkbox"/> Criminal <input type="checkbox"/> Criminal Traffic <input type="checkbox"/> Municipal Code													
	Docket Number		Disp. Codes		Date of Disposition		Sanction		<input type="checkbox"/> Civil Traffic <input type="checkbox"/> Petty Offense														
<b>You must appear at ►</b>		Insert here the place of appearance, title and name of Court, Judge, or Juvenile Referee or officer, street address, city or town, Arizona, and court or room number, if applicable; and time of appearance, hour, day, month, and year.)										Court Number:											
<b>At the date and time indicated ►</b>		Month			Day			Year			Time		AM PM										
CRIMINAL <input type="checkbox"/> Without admitting guilt, I promise to appear as directed hereon. CIVIL <input type="checkbox"/> Without admitting responsibility, I acknowledge receipt of this complaint										VICTIM? <input type="checkbox"/>		VICTIM NOTIFIED? <input type="checkbox"/>		TEN-PRINT FINGERPRINT <input type="checkbox"/> Yes <input type="checkbox"/> No									
<b>X</b> _____										I certify that upon reasonable grounds I believe the defendant committed the above violation (s) and I have served a copy of the complaint upon the defendant.													
										Officer _____				Number _____									
Agency Use																							






### What

A first-of-its-kind conference in Pima County and Southern Arizona bringing together respected local and national leaders in the specialized field of mental health diversion. Workshops, panel discussions, and speakers will spotlight the need for alternatives to jail for local courts and law enforcement, who frequently encounter people with untreated or undertreated mental illnesses that are often coupled with substance-use disorders. Discussion topics include the impacts of incarceration on communities and families. The conference will also feature a resource fair for mental health and social justice service providers.

### Why

While the United States has just 5% of the world's population, its jails and prisons hold nearly 25% of global prisoners. According to some reports, jails across the nation serve an estimated 2 million people with mental illnesses each year – almost three-quarters of whom also have substance use disorders. That's why jurisdictions like Pima County continue to work to develop arrest, pretrial, and sentencing options to provide alternatives to incarceration for individuals with mental illnesses.

### Conference Information

Download a copy of the full agenda [here](#). 

### Where

DoubleTree by Hilton  
Tucson Reid Park  
445 S. Alvernon Way  
Tucson, AZ 85711

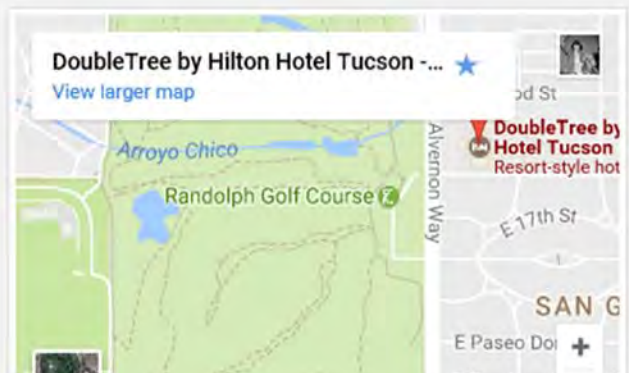
### When

Tuesday, May 16, 2017 from 9 a.m. - 5 p.m.  
Wednesday, May 17, 2017 from 9 a.m. - 12 noon



*Keynote Speaker*

*Judge Steven Leifman  
of Miami/Dade County,  
Florida (click picture for  
bio)*





## May 16<sup>th</sup> Agenda

### Registration

7:15 am | Registration Opens

### Conference

8:00 am to 9:00 am	Breakfast
9:00 am to 9:05 am	Introduction by Judge Kyle Bryson, Presiding Judge for Pima County Superior Court
9:05 am to 9:15 am	Opening Welcome by Chief Justice Scott Bales
9:15 am to 10:15 am	Keynote Speech by Honorable Stephen Leifman
10:15 am to 10:30 am	Break
10:30 am to 11:30 a	Panel Discussion: Hank Steadman, Cindy Schwartz, Judge Leifman, and Ed Gilligan
11:30 am to 1:00 pm	Lunch
1:00 pm to 1:10 pm	Pima County Attorney Barbara LaWall
1:10 pm to 1:30 pm	Pima County Sheriff Mark Napier
1:30 pm to 1:50 pm	Tucson Police Chief Chris Magnus
1:50 pm to 2:15 pm	Break
2:15 pm to 2:45 pm	Pima County Pretrial Services/Probation
2:45 pm to 3:15 pm	Cenpatico
3:15 pm to 3:30 pm	Breaks

### WORKSHOPS 3:30 pm to 5:00 pm

Workshop 1	Nuts of Bolts of creating a diversion Program Workshop intended for court personnel (Hank Steadman/Judge Leifman/Cindy Schwartz – Facilitators)
Workshop 2	Law Enforcement & Diversion Panel Discussion with the Sheriff’s Department/Tucson Police Department/Cenpatico (Kate Lawson – CA Facilitator)
Workshop 3	Data Driven Justice/Data Dashboard Danna Whiting – Behavioral Health/Sloane Steele- Cenpatico/India Davis – Behavioral Health Manager (Amy Fish– BH Facilitator)

5:00 pm | *No host reception – light snacks provided*



## May 17<sup>th</sup> Agenda

### Conference

8:00 am to 9:00 am	Breakfast
9:00 am to 9:45 am	Justin Volpe – Miami/Dade Peer Navigator (Personal Story)
9:45 am to 10:30 am	Pima County Personal Journeys in the Mental Health System Sally Hueston/Manny Mejias/Michele Keller (Justin Volpe – Facilitator)
10:30 am to 10:45 am	Break
10:45 am to 11:15 am	Danna Whiting – Pima County Behavioral Health Director
11:15 am to 11:45 am	Margie Balfour
11:45 am to 12:00 pm	Conference Adjourns

#### Title Sponsors



#### Presenting Sponsors



#### Family Sponsors



#### Friends

Old Pueblo Community Services



## **HB2402: criminal offenses; traffic offenses; disposition**

### **Senate Judiciary strike-everything**

*Modifies requirements of various court ordered financial obligations, increases judicial discretion with respect to sentencing of misdemeanants, permits debt removal from court accounting systems under specified circumstances, and modifies the ability to receive credit for time served.*

#### **Section 1. §12-114.01. Probation assessment; deposit**

Permits the court to mitigate a probation assessment fine instead of waiving it. Modifies cross references related to the limitations allowed for mitigation.

#### **Section 2. §12-116.01. Surcharges; fund deposits**

Repeals language permitting a judge to waive all or part of a civil penalty, fine, forfeiture and surcharge in certain instances. New language is added in §13-826 providing for authority for the court to mitigate civil penalties, forfeitures or fines.

#### **Section 3. §12-116.02. Additional surcharges; fund deposits**

Repeals language permitting a judge to waive all or part of a civil penalty, fine, forfeiture and surcharge in certain instances. New language is added in §13-826 providing for authority for the court to mitigate civil penalties, forfeitures or fines.

#### **Section 4. § 12-137. Removal of debts from superior court accounting system**

Permits the superior court to order the removal all or part of any debt due to the court as the result of a misdemeanor or felony conviction from the court's accounting system if 20 years has elapsed from the date the fine resulting in the debt and the court:

- Notifies the prosecutor and the defendant and victim, if their whereabouts are known and waits thirty days for the either party or the victim to file an objection. The court must consider any objection in determining whether to remove the debt, and
- Makes reasonable attempts to collect the debt, including billing the debtor at least four times, and
- Submits the debt for collection to a collection agency licensed pursuant to Title 32, Chapter 9 and waits at least one year while the agency attempts collection, and
- Notifies the Department of Revenue of the debt pursuant to section §42-1122, and
- Notifies the county treasurer.

#### **Section 5. §13-603. Authorized disposition of offenders**

Permits the court in addition to any other misdemeanor sentencing provision to order a defendant convicted of a misdemeanor to perform community restitution or complete an education or treatment program. Additional requirements for each are outlined in new sections 13-825.

#### **Section 6. §13-805. Jurisdiction**

Reduces the annual interest that accrues on a criminal restitution order for restitution owed for monetary obligations other than victim restitution from 10% to 4%. Maintains the interest on victim restitution at 10%. Allows the court to waive all or part of the interest on victim restitution upon agreement of the state and victim.

## **HB2402: criminal offenses; traffic offenses; disposition Senate Judiciary strike-everything**

### **Section 7. §13-810. Consequences of nonpayment of fines, fees, assessments, restitution or incarceration costs**

Adds assessments to the monetary obligations subject to an order to show cause for non-payment. Removes revocation of probation as a sanction or failure to pay under this section as the section deals with a civil proceeding. A person who fails to pay a monetary obligation is still subject to revocation of probation under other statutes and court rules. Requires the clerk of a sentencing court to make a defendant's payment history available to the prosecutor, victim, victim's attorney, probation department and court without cost if a defendant is sentenced to pay a fine, fee, assessment, restitution or the cost of incarceration.

### **Section 8. §13-812: Garnishment for nonpayment of fines, fees, assessments, restitution or incarceration costs**

Adds assessments to the list of financial obligations for which a court may issue a writ of criminal garnishment.

### **Section 9. §13-824. Community restitution in lieu of fines, fees, surcharges, assessments or incarceration costs**

Adds civil penalties and surcharges to the list of financial obligations for which a court may order community restitution in lieu of payment after a finding that the defendant is unable to pay all or part of a fine. Expands the program to superior court. Does not apply to the Clean Elections surcharge.

### **Section 10. §13-825. Misdemeanors; community restitution**

Requires the court to order a definite period of time for a defendant ordered to perform community restitution if convicted of a misdemeanor. A court may order a period of education or treatment for a person convicted of a misdemeanor not to exceed the period of probation permitted under law. Any treatment program selected will be determined by the court or the defendant's probation officer.

### **§13-826. Mitigation of civil penalty or fine; community restitution waiver or mitigation**

Unless otherwise provided by law, permits the court to mitigate any civil penalty or fine, including a mandatory penalty or fine if the payment would pose a hardship on the person ordered to pay or the person's immediate family. If mitigated, the amount assessed must be divided according to the proportion that the civil penalty, fine, surcharge, fee, forfeiture, assessment, or incarceration cost represent to the total amount due. Does not apply to community restitution ordered in lieu of payment of a monetary obligation pursuant to section §13-824 or to the Clean Elections surcharge.

### **Section 11. §13-918. Employment; distribution of wages**

Modifies conditions of intensive probation with respect to the distribution of a person's wages. Removes the requirement that a person's entire paycheck be paid into an account established by the chief adult probation officer; rather, the person's probation officer will monitor the person's payments to insure restitution, probation fees, fines and other court ordered obligations are secured. Repeals language allowing for the distribution of any balance of the monies in the person's account.

### **Section 12. §13-924. Probation; earned time credit; applicability**

Removes the requirement that a probationer be current on the payment of monetary obligations (however, must be current on restitution) in order to receive earned time credit.

## **HB2402: criminal offenses; traffic offenses; disposition Senate Judiciary strike-everything**

### **Section 13. §13-3423. Fine; mitigation**

Permits mitigation of a fine as outlined in §13-826, imposed as a result of a conviction for a violation of Title 13, Chapter 34.

### **Section 14. §13-3961. Offenses not bailable; purpose; preconviction; exceptions**

Embeds in statute the burden of proof, clear and convincing evidence, in proving that no condition or combination of conditions of release may be imposed that will reasonably assure the safety of the other person or the community. Requires a person ordered held without bond to ensure the safety of a person or the community to be afforded a hearing within seven calendar days. A continuance may be granted under certain circumstances, the state must show good cause. Removes some of the procedural requirements for the hearing to determine if a person should be held without bond based upon being a danger to the community (to be addressed by court rule). The filing of a complaint does not add to the strength of the proof or the presumption required by the section.

### **Section 15. §22-124. Justice of the peace compensation; judicial productivity credits**

Adds the offense of Driving on a suspended license to the list of offenses that are counted on a 1:10 ratio in calculating judicial productivity credits. Maintains the status quo, which would have changed since a portion of the Driving on a suspended license statute is reclassified as a civil traffic violation. Civil traffic violations are counted on a 1:60 ratio.

### **Section 16. §22-126. Removal of debts from justice of the peace court accounting system**

Permits a justice of the peace court to order removal of all or part of any debt due to the court as the result of a misdemeanor or felony conviction from the court's accounting system if 20 years has elapsed from the date the fine resulting in the debt and the court:

- Notifies the prosecutor and the defendant and the victim, if their whereabouts are known and waits thirty days for the either party or the victim to file an objection. The court shall consider any objection in determining whether to remove the debt, and
- Makes reasonable attempts to collect the debt, including billing the debtor at least four times, and
- Submits the debt for collection to a collection agency licensed pursuant to Title 32, Chapter 9 and waits at least one year while the agency attempts collection, and
- Notifies the Department of Revenue of the debt pursuant to section §42-1122, and
- Notifies the county treasurer.

### **Section 17. §22-410. Removal of debts from municipal court accounting system**

Permits the municipal court to removal of all or part of any debt due to the court as the result of a misdemeanor or felony conviction from the court's accounting system if 20 years has elapsed from the date the fine resulting in the debt and the court:

- Notifies the prosecutor and the defendant and the victim, if their whereabouts are known and waits thirty days for the either party or the victim to file an objection. The court shall consider any objection in determining whether to remove the debt, and
- Makes reasonable attempts to collect the debt, including billing the debtor at least four times, and:

## **HB2402: criminal offenses; traffic offenses; disposition Senate Judiciary strike-everything**

- Submits the debt for collection to a collection agency licensed pursuant to Title 32, Chapter 9 and waits at least one year while the agency attempts collection, and
- Notifies the Department of Revenue of the debt pursuant to section §42-1122, and
- Notifies the city treasurer.

### **Section 18. §28-144. Driver license or permit; restrictions**

Defines the scope of the restriction placed on a person's driver license as a result of a conviction of leaving the scene of an accident, aggressive driving or racing on a highway. Restrictions may include any or all of the following requirements that the person may only drive:

1. Between the person's residence and place of employment during specified periods of time while at employment
2. Between the person's residence or place of employment and the person's school according to the person's employment or education schedule
3. Between the person's residence, place of employment or school and the office of a health care professional as defined in section 32-3201
4. Between the person's residence, place of employment or school and a screening, education or treatment facility for scheduled appointments
5. Between the person's residence, place of employment or school and the office of the person's probation officer for scheduled appointments
6. Between the person's residence, place of employment or school and a certified ignition interlock device service facility
7. Transporting a dependent person who is living with the person, between the person's residence and the dependent person's employment, school or medical appointment.
8. Between the person's residence and a location designated for the purposes of parenting time.

### **Section 19. §28-661. Accidents involving death or physical injuries; failure to stop; violation; classification; driver license revocation; restricted privilege to drive; alcohol or other drug screening**

Conforms the restricted license provisions of the statute to other restricted license provisions in the code.

### **Section 20. §28-1387. Prior convictions; alcohol or other drug screening, education and treatment; license suspension; supervised probation; civil liability; procedures**

Conforms a restricted license reference of the statute to the new restricted license provisions in the code. Permits the court to order education or treatment in lieu of community restitution if more appropriate.

### **Section 21. §28-1401. Special ignition interlock restricted driver licenses; application fee**

Conforms a restricted license reference of the statute to the new restricted license provisions in the code.

### **Section 22. §28-1402. Issuance of special ignition interlock restricted driver license; restrictions**

Conforms the restricted license provisions of the statute to other restricted license provisions in the code.

### **Section 23. §28-1601. Failure to pay civil penalty; suspension or restriction of privilege to drive; collection procedure**

## **HB2402: criminal offenses; traffic offenses; disposition**

### **Senate Judiciary strike-everything**

**Permits the court** to order a restricted driver license in lieu of a suspended license if a person fails to pay a civil traffic violation.

#### **Section 24. §28-2322. License plate requirement for nonresident's foreign vehicle**

Reclassifies the violation for failure to have current registration on an out of state vehicle from a Class 2 misdemeanor to a civil traffic violation.

#### **Section 25. §28-2328. Violation; classification**

The Class 2 misdemeanor penalty for certain traffic violations committed by nonresidents is not applicable if another penalty is prescribed by law in the same article (to permit the change to §28-2322).

#### **Section 26. §28-2532. Registration; violation; civil penalties**

Clarification of court's ability to waive the civil penalty. No change in law.

#### **Section 27. § 28-3308. Mandatory suspension; failure to appear**

Applies the statute requiring suspension of driving privilege for failure to appear in court after service of a complaint for criminal traffic only. Driving privilege is suspended until the person appears and suspended or restricted until the person appears in court. Driving privilege is suspended or restricted until the fine, surcharge and assessments are paid or a bond is forfeited. Civil traffic is covered by §28-1601.

#### **Section 28. §28-3473. Driving violations on a suspended, canceled, revoked or refused license; classification; restricted privilege to drive**

The Class 1 misdemeanor classification for driving on a suspended license does not apply in cases where the person's driver license is suspended for failure to appear or failure to pay on a traffic violation. Conforms the restricted license provisions of the statute to other restricted license provisions in the code. Removes internal ADOT procedures regarding a restricted license and places them in a new section. (To accomplish this change the statute is split into three).

#### **Section 29. §28-3480. Operation in violation of restriction; classification**

Reclassifies the penalty for operating a motor vehicle in violation of the requirement to wear corrective lenses from a Class 2 misdemeanor to a civil traffic violation.

#### **Section 30. §28-3482. Driving on a license suspended for failure to appear or pay a civil traffic violation; restricted privilege to drive; civil penalty**

Driving while the privilege to drive is suspended for failure to appear or failure to pay on a traffic violation is reclassified from a Class 1 Misdemeanor to a civil traffic violation. Conforms the restricted license provisions of the statute to other restricted license provisions in the code.

#### **§28-3483. Driving on suspended license; restricted privilege to drive**

ADOT internal procedures for permitting a person convicted of Driving on a suspended Class D or M license prior to July 29, 2010 to apply for a restricted license. Provisions moved from §28-3473 and cleaned up.

#### **Section 31. §28-3511. Removal and immobilization or impoundment of vehicle; Arizona crime information center database**

## **HB2402: criminal offenses; traffic offenses; disposition Senate Judiciary strike-everything**

Removes the requirement that law enforcement immobilize or impound a vehicle if it is determined that the person is driving on a suspended license. Maintains such action should occur if the person's driver license is revoked.

### **Section 32. §28-4135. Motor vehicle financial responsibility requirement; civil penalties; evidence at hearing**

Adds the authority for the court to order the Department of Transportation to restrict a person's driver license if the person is found responsible for a first offense of driving without evidence of financial responsibility. Current law only provides for suspension of privileges. The option to restrict the privilege is not available for a second or subsequent violation within thirty six months.

### **Section 33. §41-2419 Arizona deoxyribonucleic acid identification system fund**

Modifies a cross references for technical purposes.

### **Section 34. Delayed Effective Date**

Except for Section 13-3961, provides for a delayed effective date of January 1, 2018.

3/21/17

David K. Byers  
Administrative Director  
Administrative Office of the Courts  
1501 W. Washington, Suite 411  
Phoenix, AZ 85007  
(602) 452-3301  
Projects2@courts.az.gov

IN THE SUPREME COURT  
STATE OF ARIZONA

In the Matter of )  
 )  
PETITION TO AMEND RULES 4.2 )  
5.1, 5.4, 7.2, 7.4, 26.12 AND 27.8 OF ) Supreme Court No. R-17\_\_\_\_  
THE ARIZONA RULES OF )  
CRIMINAL PROCEDURE )  
\_\_\_\_\_ )

Pursuant to Rule 28 of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, and Chair of the Supreme Court Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies (“the Task Force”) respectfully petitions this Court to amend Rules 4.2, 5.1, 5.4, 7.2, 7.4, 26.12 and 27.8 of the Rules of Criminal Procedure. These changes are proposed to implement several of the Task Force’s [recommendations](#) dated August 12, 2016.

**I. Background and Purpose of the Proposed Rule Amendments.** The proposed rule changes address two distinct issues: (1) how courts handle convicted defendants who have failed to pay their monetary sanctions in a timely fashion

(hereinafter “the § 13-810 rule proposal”); and (2) procedures for finding a person to be not eligible for bail under the Arizona Constitution (hereinafter “the bail eligibility rule proposal”). The rules addressed in the § 13-810 rule proposal are set forth in Appendix A. The bail eligibility rules are set forth in Appendix B.

The two proposals have been organized into two separate appendices because the bail eligibility rule proposal will likely be impacted by the success of the Task Force’s pending legislative proposals and by this Court’s resolution of the issues in *Simpson v. Miller*, Supreme Court No. CR-16-0227-PR (argued Nov. 8, 2016). Accordingly, the Court may prefer to resolve the bail eligibility rules on a different time frame.

## **II. Resolving Failure to Pay Criminal Fines and Fees – the § 13-810 Rule Proposal**

The proposed changes to Rules 26.12 and 27.8 in Appendix A are intended to follow through on the Task Force’s mission to recommend court rules for collecting court imposed payments and develop options for allowing citizens unable to pay the full amount of a sanction at the time of sentencing,<sup>1</sup> and to implement Task Force recommendations nos. 30 and 32,<sup>2</sup> promoting defendants’ voluntary

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<sup>1</sup> Supreme Court Administrative Order No. 2016-16.

<sup>2</sup> Recommendation 30. *Prior to or in lieu of issuing a warrant to bring a person to court for failure to pay, courts should employ proactive practices that promote voluntary compliance and appearance such as: notifying defendants of non-payment, consequences and resolution options; scheduling of an Order to Show Cause hearing, or sentence review.*  
Recommendation 32. *Promote the use of restitution courts, status conferences, and probation*

appearance in court, and non-jail enforcement alternatives (Task Force [report](#) at pp. 20 and 23-24).

The proposed amendments to Rule 26.12(c)(4) add language to encourage courts to promote voluntary compliance and appearance by defendants before taking more formal steps, in keeping with Task Force Recommendation No. 30. This subsection also contains new language that adds a preference for issuing a summons over a warrant when serving a defendant with an Order to Show Cause for failure to pay monetary obligations, pursuant to A.R.S. § 13-810. If the court finds the defendant to be in contempt for willful failure to pay, the proposal adds the requirement that the court give the defendant time to purge the contempt prior to being incarcerated. The Task Force heard from a superior court judge who employs this practice that the vast majority of defendants do find a way to make the required payment when facing incarceration.

The proposal also adds a new subsection 26.12(c)(5) requiring the court find that no reasonable measures other than incarceration will meet the state's interest before incarcerating a defendant for failure to pay. This language was inspired by the U.S. Supreme Court's decision in *Bearden v. Georgia*, 461 U.S. 660, 672, 103 S. Ct. 2064, 2073, 76 L. Ed. 2d 221 (1983), in which the court overturned a decision

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*review hearings that ensure due process and consider the wishes of the victim. Provide judicial training on the appropriate use of Orders to Show Cause in lieu of warrants and appointment of counsel at hearings involving a defendant's loss of liberty.*

to revoke the probation of an indigent defendant and send him to jail for failure to pay a fine without first inquiring into why he failed to pay. The opinion states:

Only if the sentencing court determines that alternatives to imprisonment are not adequate in a particular situation to meet the State's interest in punishment and deterrence may the State imprison a probationer who has made sufficient bona fide efforts to pay.

Under the statutory scheme in A.R.S. § 13-810, the court has discretion to incarcerate *only* those defendants who willfully fail or refuse to pay, which is an important distinction from the fact scenario presented by *Bearden*. Nevertheless, the Task Force felt that incarceration should be a last resort even in the case of a willful contemnor, and that a statewide standard to that effect should be established by rule.

The proposed revision to Rule 27.8(b)(4) is intended to promote candor by the defendant at the § 13-810 contempt proceeding, by ensuring that statements made at the hearing by a defendant on active probation cannot be used in a subsequent probation revocation hearing, if the defendant appears without an attorney. Additionally, the Task Force agreed that, even though a proceeding under A.R.S. § 13-810 is considered a civil contempt proceeding, the court needs to ensure any active probationer hauled into court for one of these hearings is afforded due process as specified by Rule 27, including representation by counsel, if the court wants to revoke a defendant's probation for willful failure to pay a fine.

### III. The Bail Eligibility Rule Proposal

The proposed changes to Rules 4.2, 5.1, 5.4, 7.2 and 7.4 in Appendix B are designed to implement the Task Force's pretrial detention recommendations.

**Principle 9** calls for reform in bail determination for dangerous felony defendants as follows:

*Principle Nine: Only defendants who present a high risk to the community or individuals who repeatedly fail to appear in court should be held in custody.*

Although most defendants pose risks that are manageable at reasonable levels outside of the jail, some defendants pose such risks that no bond or conditions of release can reasonably assure public safety or court appearance. There is no question that people should not remain in jail solely because they cannot afford bail. But there are those for whom pretrial detention is appropriate: those whose release would jeopardize the public and those with a very high likelihood of not appearing for future court hearings. Arizona statutes list several circumstances in which bail may or must be denied. *See* A.R.S. § 13-3961 (*Offenses not bailable; purpose; preconviction; exceptions*).

In Arizona, a court must detain a defendant after a hearing when there is "clear and convincing evidence that the person charged poses a substantial danger to another person or the community or engaged in conduct constituting a violent offense" if no condition or combination of conditions of release will reasonably assure the safety of the other person or the community. *See* A.R.S. § 13-3961 (*Offenses not bailable; purpose; preconviction; exceptions*). Currently, the referenced hearing may be initiated only by the state, and in many initial appearance courts throughout the state, a prosecutor is not present. Therefore, the court should be able to order this hearing based on the circumstances of the offense, the information contained in a pretrial risk assessment, and other information available to the court at the time a bail determination is being made. Revisions to A.R.S. § 13-3961(D) and (E) are recommended to allow for the hearing to be set by the court and not only on the state's motion.

The proposed amendments to Rule 4.2 and 7.2 of the Arizona Rules of Criminal Procedure track Article 2, Section 22(A)(3) of the Arizona Constitution and the substantive provisions of A.R.S. § 13-3961. These amendments contain procedural differences from the current statutory language in that determination of whether the defendant is not bailable is required to be initiated by the magistrate rather than solely by the prosecutor, and a bail hearing is required to be set within seven days rather than 24 hours after the Initial Appearance. The Arizona Judicial Council approved the introduction of legislation to conform the statutes to these proposals. The proposed amendments also provide factors for the judge to consider in determining whether a defendant is dangerous. These changes are designed to replace the current practice of setting high bond amounts for defendants determined dangerous with a requirement that the court determine whether these offenders are not bailable. Because imposition of high bond amounts still allows for those dangerous defendant with access to money to be released, the Task Force report indicates this change will result in more effective detention of dangerous offenders. This change is not expected to result in a significant increase in defendants detained.

In formulating its proposal, the Task Force considered the Preventive Detention section (pp 24-29) of a recent report entitled “[Moving Beyond Money: A Primer on Bail Reform](#)” from the Harvard Law School Criminal Justice Policy Program, particularly the discussion of the importance of limited points of entry to

preventive pretrial detention and the regard expressed by the U.S. Supreme Court in *U.S. v. Salerno*, 481 U.S. 739, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987), for the federal Bail Reform Act of 1984 (18 U.S.C. § 3142) limitation of pretrial detention to the most serious federal offenses. These offenses are described in subsection 3142(f) of the Act.<sup>3</sup>

However, temporary detention at the federal equivalent of the Initial Appearance may be imposed under subsection (d) of the Act, “If the judicial officer determines that . . . (2) such person may flee or pose a danger to any other person or the community,” without limitation as to the offense charged. Additionally, a “crime of violence” is defined at 18 U.S.C.A. § 16 as:

- (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) any other offense that is a felony and that, by its nature, involves a

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<sup>3</sup> **(f) Detention hearing.**--The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community--

(1) upon motion of the attorney for the Government, in a case that involves--

- (A) a crime of violence, a violation of [section 1591](#) (*Sex trafficking of children or by force, fraud, or coercion*), or an offense listed in [section 2332b\(g\)\(5\)\(B\)](#) (*Acts of terrorism transcending national boundaries*) for which a maximum term of imprisonment of 10 years or more is prescribed;
- (B) an offense for which the maximum sentence is life imprisonment or death;
- (C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act ([21 U.S.C. 801 et seq.](#)), the Controlled Substances Import and Export Act ([21 U.S.C. 951 et seq.](#)), or chapter 705 of title 46;
- (D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or
- (E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in [section 921](#)), or any other dangerous weapon, or involves a failure to register (*as a sex offender*) under [section 2250 of title 18, United States Code](#);... (Italics added).

substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

While the Bail Reform Act limits the use of pretrial detention to particular offenses, it does not limit pretrial detention to offenses ordinarily considered the most serious, violent, or dangerous offenses. Similarly, the offenses described in 18 U.S.C. § 3142(f)(1)(C) and (D)<sup>4</sup> do not necessarily include any violence as an element of the offense. This may be explained by the federal law’s authorization of pretrial detention to prevent flight risk in addition to danger to persons and the community.<sup>5</sup>

By contrast, the Arizona Constitution (Article 2, Section 22), A.R.S. § 13-3961, and the proposed rules focus on the dangerousness of the defendant and permit denial of bail solely for protection of persons and the community. Nevertheless, the offense charged is relevant to the decision as to whether a defendant is not bailable under Arizona law, because the defendant “poses a substantial danger to any other person or the community.” In considering this factor, Arizona judges can look to the definition of “dangerous offense” in A.R.S. § 13-105:

13. “Dangerous offense” means an offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person.

39. “Serious physical injury” includes physical injury that creates a reasonable risk of death, or that causes serious and permanent disfigurement,

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<sup>4</sup> See footnote 3.

<sup>5</sup> 18 U.S.C. § 3142(f)(2)(A).

serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

Arizona judges could also look to A.R.S. § 13-706, which identifies specific offenses considered violent and serious. This requirement of Arizona law - that only defendants who pose a substantial danger be detained pretrial appears to impose pretrial detention “only on individuals who have been arrested for a specific category of extremely serious offenses<sup>6</sup>” more narrowly and effectively than the federal law.

Due to the valid concerns about the need to limit points of entry to pretrial detention expressed in the Harvard report, the proposed rules include factors to be considered in determining a defendant nonbailable due to dangerousness. The language provided in the proposed subsection 7.2(b)(3) is modeled after 18 U.S.C. 3142(g) of the Bail Reform Act, and refers judges to the definition of “dangerous offense” in A.R.S. § 13-105. The Task Force workgroup that drafted the bail eligibility rules debated whether Rule 7.2 should refer to A.R.S. § 13-706 or § 13-105, and ultimately decided on § 13-105. The option of not including any statutory reference was also considered. The lists of offenses in § 13-706 provided for sentencing of repetitive offenders were recognized as overinclusive and underinclusive for use to identify dangerous defendants who are not bailable. The definition of “dangerous offense” in § 13-105 was considered descriptive of the kind of alleged conduct that judges consider currently when they set high bond intended

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<sup>6</sup> *U.S. v. Salerno, supra*, 481 U.S. 739, 750.

to prevent the release of the defendant on bail. The research performed for the Task Force has not revealed the laws or rules of any other state that provide a better model for identifying felony defendants who pose a danger to the community.

Finally, amendments to Rule 5.1, 5.4, 7.2 and 7.4 are proposed to address a procedural redundancy with the preliminary hearing provided under Rule 5.1 when a bail eligibility hearing is held under proposed Rule 7.2(b)(4). If a bail eligibility hearing is held within seven days at which the state has the burden of showing proof evident or presumption great that the defendant committed the offense, it is unnecessary for the state to prove probable cause that the defendant committed the offense at a separate preliminary hearing under Rule 5. Instead, a finding of proof evident or presumption great or of probable cause will be made at the bail eligibility hearing.

The *Simpson*<sup>7</sup> case requires the bail hearing to be a full evidentiary hearing. Consequently, this hearing should be procedurally comparable to the preliminary hearing. In order to make this clear, procedural provisions drawn from Rule 5 are incorporated into Rule 7.4. The last sentence of Rule 7.4(b) is narrowed to permit only the state to seek reexamination of eligibility and conditions of release without new material facts where the defendant is determined bailable at the initial appearance. If the defendant is determined not bailable at the initial appearance the

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<sup>7</sup> *Simpson v. Miller*, 2016 WL 3264151 (Az Ct. App. Div. 1, June 14, 2016).

bail eligibility (*Simpson*) hearing will be held under Rule 7.2 (b)(4) without the need for a defense motion. Once a bail eligibility hearing is held either party may move for reexamination of bail eligibility or conditions of release based upon new material facts.

This petition is the best effort of the Task Force composed of criminal justice system professionals from multiple perspectives (See Appendix C) to address the need for preventive detention by denial of bail rather than by setting a high bond as explained above. This petition is the product of their input and received the support of the large majority but not all participants.

Wherefore, petitioner respectfully requests that the Court amend the Rules of Criminal Procedure as proposed in the Appendices attached to this Petition.

RESPECTFULLY SUBMITTED this 9th day of January, 2017.

By /S/  
David K. Byers, Administrative Director  
Administrative Office of the Courts  
1501 W. Washington Street, Suite 411  
Phoenix, AZ 85007  
(602) 452- 3301  
Projects2@courts.az.gov

## APPENDIX A

(language to be removed is shown in ~~strike through~~, new language is underlined)

### **RULES OF CRIMINAL PROCEDURE**

#### **Rule 26.12. Compliance with sentence**

**a. and b. [no changes]**

#### **c. Action upon Failure to Pay a Fine, Restitution, Other Monetary Obligation, or to Comply with Court Orders.**

(1) *For Defendants Not on Supervised Probation.* If a defendant fails to pay a fine, restitution, or other monetary obligation, or is known by the court to have failed to comply with a term or condition of sentence within the prescribed time, the court shall, within 5 days, notify the prosecutor.

(2) *For Defendants on Supervised Probation.* If a defendant on supervised probation fails to pay a fine, restitution, or other monetary obligation, or is known by the court to have failed to comply with any other term or condition of probation within the prescribed time, the court shall give notice of such failure to the defendant's probation officer within the time limits set under sections (c)(1) and (3).

(3) *Time limits--Restitution and Non-Monetary Obligations.* If the payment or performance of an obligation does not involve the court, delinquency times shall run from the date on which the court or the probation officer becomes aware of failure to pay or comply.

(4) *Court Action upon Failure of Defendant to Pay Fine, Restitution, or Other Monetary Obligation or to Comply with Court Orders.* Upon the defendant's failure to pay a fine, restitution, or other monetary obligation, or failure to comply with court orders, and failure to respond to a court notice of the consequences and resolution options, the court may require the defendant to show cause why said defendant should not be held in contempt of court ~~and may issue a summons or warrant for the defendant's arrest.~~ The court must issue a summons unless there is reason to believe a warrant is required to secure the defendant's appearance. A prosecutor who requests a warrant or a judge who orders a warrant shall state the reasons for the issuance of the warrant rather than a summons.

(5) Purge Review Hearing and Incarceration. If the court finds the defendant in contempt for failure to pay a monetary obligation, the court may not order the defendant incarcerated unless no reasonable measures other than incarceration are adequate to meet the state's interests. Before taking the defendant into custody, the court must first set a purge review hearing and give the defendant a reasonable period of time prior to the hearing to pay the obligation in full or make other payment arrangements.

## **Rule 27.8. Revocation of probation**

### **a. [no changes]**

### **b. Violation Hearing.**

(1) A hearing to determine whether a probationer has violated a written condition or regulation of probation shall be held before the court no less than 7 and no more than 20 days after the revocation arraignment, unless the court, upon the request of the probationer made in writing or in open court on the record, sets the hearing for another date.

(2) The probationer shall be present at the hearing.

(3) A violation must be established by a preponderance of the evidence. Each party may present evidence and shall have the right to cross examine witnesses who testify. The court may receive any reliable evidence not legally privileged, including hearsay.

(4) An admission made by the probationer at any hearing in the same cause of action relating to the probationer's failure to pay a monetary obligation imposed in the case is inadmissible in the probation violation hearing, unless the probationer was represented by counsel at the hearing on defendant's failure to pay.

~~(4)~~(5) If the court finds that a violation of a condition or regulation of probation occurred, it shall make specific findings of the facts which establish the violation and shall set a disposition hearing.

### **c. through f. [no changes]**

## APPENDIX B

(language to be removed is shown in ~~strike through~~, new language is underlined)

### **RULES OF CRIMINAL PROCEDURE**

#### **Rule 4.2. Initial appearance**

**a. In General.** At the suspect's initial appearance, the magistrate ~~shall~~ must:

- (1) Ascertain the suspect's true name and address and, if necessary, amend the formal charges to reflect it, and instruct the suspect to notify the court promptly of any change of address;
- (2) Inform the defendant of the charges;
- (3) Inform the defendant of the right to counsel and the right to remain silent;
- (4) Determine whether probable cause exists for the purpose of release from custody. If no probable cause is found, the defendant shall immediately be released from custody;
- (5) Appoint counsel if the suspect is eligible for and requests appointed counsel under Rule 6;
- (6) Consider comments offered by the victim concerning the conditions of release. The magistrate shall permit the victim to comment orally or in writing on the issue of the suspect's release;
- (7) ~~Determine the conditions of release in accordance with Rule 7.2 including whether the defendant is non-bailable pursuant to A.R.S. Const. Art. 2 § 22 and A.R.S. 13-3964~~ whether probable cause exists to believe:
  - (A) The defendant committed an offense for which release on bail is prohibited by Ariz. Const. Art. 2, Sec. 22(A)(1) or (2);
  - (B) The defendant committed a felony for which release on bail is prohibited by Ariz. Const. Art. 2, Sec. 22(A)(3) because the defendant poses a substantial danger and no conditions of release will reasonably assure the safety of another person or the community; or
  - (C) The defendant must be released on bail pursuant to Rule 7.2(a).
- (8) Schedule a bail eligibility hearing in superior court as required by Rule 7.2(b)(4) for a defendant held not bailable as required by (a)(7)(A) or (B).

~~(8)~~(9) For summoned defendants charged with a felony offense, a violation of Title 13, Chapter 14, or Title 28, Chapter 4<sup>1</sup>, or a domestic violence offense as defined in § 13-3601, if the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number, the court shall order that within twenty calendar days, the defendant be ten-print fingerprinted at a designated time and place by the appropriate law enforcement agency; and

~~(9)~~(10) For an in-custody defendant who was arrested for an offense listed in A.R.S. Section 13-610(O)(3), if the court has not received proof of compliance with A.R.S. Section 13-610(K), ~~the court shall order the arresting agency to secure a sample of buccal cells or other bodily substances for DNA testing.~~

**b. and c. [no changes]**

**Rule 5.1. Right to preliminary hearing; waiver; postponement**

**a. Right to Preliminary Hearing.** When a complaint is filed charging the defendant with the commission of a felony, a preliminary hearing shall commence before a magistrate not later than 10 days following defendant's initial appearance if the defendant is in custody and not later than 20 days following defendant's initial appearance if the defendant is not in custody unless:

- (1) The complaint has been dismissed;
- (2) The hearing is waived; or
- (3) The defendant has been transferred from the juvenile court for criminal prosecution on specified charges;
- (4) The defendant received a bail eligibility hearing pursuant to Rule 7.2(b); or
- ~~(4)~~(5) The magistrate orders the hearing postponed as provided in Section (c).

**b. through d. [no changes]**

**Rule 5.4. Determination of probable cause**

**a. Holding a Defendant to Answer.** If it appears from the evidence that there is probable cause to believe that an offense has been committed and that the defendant

committed it, the magistrate shall enter a written order holding the defendant to answer before the Superior Court and, upon request, reconsider the conditions of release. A probable cause finding made at a bail eligibility hearing held pursuant to Rule 7.2(b)(4) satisfies the requirements of this rule.

**b. through d. [no changes]**

## **Rule 7.2. Right to release**

**a. [no change]**

**b. Before Conviction; Persons Charged With an Offense Not Bailable as a Matter of Right.**

(1) *Specific Felonies Not Bailable.* A person shall ~~must~~ not be released on bail if the court finds the proof is evident or the presumption great that the person is not bailable pursuant to law committed an offense described in Ariz. Const. Art. 2, Sec. 22(A)(1) or (2).

(2) *Other Felonies Not Bailable.* A person charged with any other felony offense must not be released on bail if the court finds all of the following:

(A) Proof is evident or the presumption great that the person committed a felony offense with which the person is charged;

(B) Clear and convincing evidence that the person poses a substantial danger to another person or the community; and

(C) Clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any person or the community.

(3) *Not Bailable Considerations.* In making the determinations required by subsections (2)(B) and (2)(C), the court must consider:

(A) the nature and circumstances of the offense charged, including whether the offense is a “dangerous offense” as defined in A.R.S. § 13-105;

(B) the weight of the evidence against the person;

(C) the history and characteristics of the person, including the person’s character, physical and mental condition, past conduct, history relating to drug or alcohol abuse, and criminal history;

(D) the nature and seriousness of the danger to any person or the community that

- would be posed by releasing the person on bail, including any threat to a victim or other participants in the judicial process;
- (E) the recommendation of the pretrial services program based upon an appropriate risk assessment instrument;
- (F) any victim statement about the offense and release conditions; and
- (G) any other factor relevant to the determinations required by subsections (2)(B) and (2)(C).

(4) *Bail Eligibility Hearing.* For a person held not bailable pursuant to (b)(2), the superior court must hold a hearing to determine whether the person is not bailable under subsection (b)(1) or (b)(2). The person may waive this hearing. The hearing must be held as soon as practicable but not later than seven days after the initial appearance unless the person detained moves for a continuance. If the court does not find the proof evident or the presumption great under (b)(2)(A), the court must determine probable cause on each charge as provided in Rule 5.4(a) unless the defendant has been indicted for the offenses charged. The court's findings must be made on the record.

**c. and d. [no changes]**

#### **Rule 7.4. Procedure**

**a. Initial Decision.** At the initial appearance before a magistrate, a determination of the conditions of release shall be made. The court shall issue an order containing the conditions of release and shall inform the accused of the conditions, the possible consequences of their violation, and that a warrant for his or her arrest may be issued immediately upon report of a violation.

**b. Bail Eligibility Hearing.** All parties shall have the right to cross-examine the witnesses testifying personally against them, and to review their previous written statements prior to such cross-examination. At the bail eligibility hearing, only evidence material to whether probable cause exists to hold the defendant for trial on each charge and whether and under what conditions to release the defendant on bail is admissible. Rules or objections calling for the exclusion of evidence on the ground that it was obtained unlawfully are inapplicable. Determinations under this rule may be based on

evidence not admissible under the rules of evidence, including hearsay in whole or in part in the following forms:

(1) Written reports of expert witnesses;

(2) Documentary evidence without foundation, provided there is a substantial basis for believing such foundation will be available at trial and the document is otherwise admissible;

(3) The testimony of a witness concerning the declarations of another or others where such evidence is cumulative or there is reasonable ground to believe that the declarants will be personally available for trial.

~~**c. Evidence.** Release determinations under this rule may be based on evidence not admissible under the rules of evidence.~~

**c. Amendment of complaint.** The complaint may be amended at any time to conform to the evidence, but the defendant must not be held to answer for a crime different from that charged in the original complaint.

**d. Discharge of the defendant.** Unless the defendant has been indicted for the offenses charged, if it appears that that the proof is not evident or the presumption is not great under 7.2(b)(2)(A) or there is not substantial evidence of probable cause to believe that an offense has been committed and that the defendant committed it, the court shall dismiss the complaint and discharge the defendant.

**be. Subsequent review of conditions.** Any party may move for reexamination of bail eligibility or the conditions of release whenever the case is transferred to a different court or the motion alleges the existence of material facts not previously presented to the court. The court may, on motion of any party, or on its own initiative, modify the conditions of release after giving the parties an opportunity to respond to the proposed modification. The motion shall comply with the requirements of this rule, Rule 35 and Rule 39. ~~If the a-motion by the state involves whether the a person previously held~~ bailable at the initial appearance, ~~shall be held without bail,~~ the motion need not allege new material facts and a hearing on the motion shall be held on the record as soon as practicable but not later than seven days after filing of the motion.

**df. Review of bond.** The court before which a misdemeanor is pending shall, no more than 10 days after arraignment, review the case file concerning the conditions of release

of any defendant held in custody on bond for the purpose of determining the propriety of amending the conditions of release.





 Task Force on Fair Justice for All

**Committee on Post-conviction Set-aside**  
Chair – Jerry Landau

May 2, 2017 – 1:00 p.m. to 3:00 p.m.  
Lunch at 12:15 p.m.

State Courts Building ♦ 1501 West Washington ♦ Conference Room 101 ♦ Phoenix, Arizona  
Fair Justice for All Task Force [Webpage](#)



## **Arizona**

### **Set Aside, Expungement etc.**

- 13-905. Restoration of civil rights; persons completing probation.
- 13-906. Applications by persons discharged from prison.
- 13-907. Setting asides judgment of convicted person on discharge; application; release from disabilities; firearm possession; exceptions.
- 13-907.01. Vacating the conviction of a sex trafficking victim; requirements.
- 13-908. Restoration of civil rights in the discretion of the superior court judge.
- 13-909. Restoration of civil rights; persons completing probation for federal offense.
- 13-910. Applications by persons discharged from federal prison.
- 13-911. Restoration of civil rights in the discretion of the presiding judge of the superior court.
- 13-912. Restoration of civil rights for first offenders; exception.
- 13-912.01. Restoration of civil rights; persons adjudicated delinquent.
- 12-921. Probation for defendants under eighteen years of age; dual adult juvenile probation.
- 13-925. Restoration of right to possess a firearm; mentally ill persons; petition.



## **Set Aside, Expungements Throughout the United States**

- Alabama
  - o Ala.Code 1975 § 15-27-1. Petition to expunge records—Misdemeanor criminal offense, traffic violation, municipal ordinance violation.
  - o Ala.Code 1975 § 15-27-2. Petition to expunge records—Felony offense.
  - o Ala.Code 1975 § 15-27-3. Submission of sworn statement and records; service.
  - o Ala.Code 1975 § 15-27-4. Administrative filing fee; indigency.
  - o Ala.Code 1975 § 15-27-5. Objections; hearing; ruling.
  - o Ala.Code 1975 § 15-27-6. Order of expungement; certification; inspection of expunged records.
  - o Ala.Code 1975 § 15-27-7. Archive of records; withdrawal of records from national criminal records repository.
  - o Ala.Code 1975 § 15-27-8. Records forwarded to and retained by Alabama Criminal Justice Information Center.
  - o Ala.Code 1975 § 15-27-9. Records (definition).
  - o Ala.Code 1975 § 15-27-10. Maintenance of files, reports, etc., by law enforcement agencies, officials, etc.
  - o Ala.Code 1975 § 15-27-11. Personal information subject to expungement.
  - o Ala.Code 1975 § 15-27-12. Prerequisites to expungement.
  - o Ala.Code 1975 § 15-27-13. Annual Report.
  - o Ala.Code 1975 § 15-27-14. Applicability—Alabama Securities Commission
  - o Ala.Code 1975 § 15-27-15 Applicability—Right to ship, transport, possess, or receive firearm.
  - o Ala.Code 1975 § 15-27-16. Disclosure of information from expunged file without a court order; liability.
  - o Ala.Code 1975 § 15-27-17. Filing under false pretenses.
  - o Ala.Code 1975 § 15-27-18. Applicants for position in law enforcement, etc.
  - o Ala.Code 1975 § 15-27-19. Adoption of Rules.
  - o Ala.Code 1975 § 36-18-26. Expungement of DNA records.
- Alaska
  - o AS § 12.55.085. Suspending imposition of sentence (set-aside).
- Arizona
  - o 13-905. Restoration of civil rights; persons completing probation.
  - o 13-906. Applications by persons discharged from prison.
  - o 13-907. Setting asides judgment of convicted person on discharge; application; release from disabilities; firearm possession; exceptions.
  - o 13-907.01. vacating the conviction of a sex trafficking victim; requirements.
  - o 13-908. Restoration of civil rights in the discretion of the superior court judge.
  - o 13-909. Restoration of civil rights; persons completing probation for federal offense.

- 13-910. Applications by persons discharged from federal prison.
- 13-911. Restoration of civil rights in the discretion of the presiding judge of the superior court.
- 13-912. Restoration of civil rights for first offenders; exception.
- 13-912.01. Restoration of civil rights; persons adjudicated delinquent.
- 12-921. Probation for defendants under eighteen years of age; dual adult juvenile probation.
- 13-925. Restoration of right to possess a firearm; mentally ill persons; petition.
- Arkansas
  - A.C.A. § 16-90-1401. Title (Comprehensive Criminal Record Sealing Act of 2013).
  - A.C.A. § 16-90-1402. Intent.
  - A.C.A. § 16-90-1403. Scope.
  - A.C.A. § 16-90-1404. Definitions (includes definition of seal/expunge).
  - A.C.A. § 16-90-1405. Eligibility to file a uniform petition to seal a misdemeanor offense or violation.
  - A.C.A. § 16-90-1406. Felony convictions eligible for sealing.
  - A.C.A. § 16-90-1407. Special procedures for sealing a controlled substance possession conviction.
  - A.C.A. § 16-90-1408. Felony convictions ineligible for sealing.
  - A.C.A. § 16-90-1409. Sealing records of arrests.
  - A.C.A. § 16-90-1410. Sealing records in nolle prosequi, dismissed cases, or cases where the disposition is an acquittal.
  - A.C.A. § 16-90-1411. Sealing of records for a pardoned person—pardons for youthful felony offenders.
  - A.C.A. § 16-90-1412. Sealing certain convictions for victims of human trafficking.
  - A.C.A. § 16-90-1413. Procedure for sealing of records.
  - A.C.A. § 16-90-1414. Uniform petition and uniform order to seal records.
  - A.C.A. § 16-90-1415. Burden of proof—standard of review.
  - A.C.A. § 16-90-1416. Release of sealed records.
  - A.C.A. § 16-90-1417. Effect of sealing.
  - A.C.A. § 16-90-1418. Uniform petition and uniform order—creation.
  - A.C.A. § 16-90-1419. Filing fee.
  - A.C.A. § 16-93-1207. Order of the court (order of commitment; sealing of records).
- California
  - CPC § 236.14. Arrest for or conviction of nonviolent offense committed while victim of human trafficking; petition for vacatur relief; hearing; order.
  - CPC § 299. Reversal, dismissal or acquittal; request for expungement of information; procedure; specimens from persons no longer considered suspects.
  - CPC § 1203.4. Fulfillment of conditions of probation or discharge prior to termination; change of plea or vacation of verdict; dismissal and release from penalties and disabilities; exceptions; pardon
  - CPC § 1203.4a. Misdemeanor or infraction sentence served; dismissal of charge; release from penalties and disabilities; discretion of the court; exceptions.

- CPC § 1203.41. Defendants sentenced to jail for felonies; withdrawal of guilty pleas or pleas of nolo contendere following completion of sentences; conditions; reimbursement for court costs; notice to prosecuting attorney.
- CPC § 1203.45 Certain misdemeanor convictions; sealing of records.
- CPC § 1203.47. Disorderly conduct or loitering offenses committed as minor; petition to seal record; application of section; scope of authority to seal record.
- CPC § 1203.49. Defendants convicted of solicitation or prostitution; petition for relief due to status as victim of human trafficking.
- Colorado
  - C.R.S.A. § 16-23-105. Expungement (biological samples)
  - C.R.S.A. § 19-1-306. Expungement of juvenile delinquent records.
  - C.R.S.A. § 24-72-701.5. Expungement of arrest record in case of mistaken identity—definitions.
  - C.R.S.A. § 24-72-703. Sealing criminal conviction records—advisements—discovery—order applicability—general provisions.
  - C.R.S.A. § 24-72-704. Sealing of criminal conviction records information for offenses involving controlled substances for convictions entered on or after July 1, 2008, and prior to July 1, 2011.
  - C.R.S.A. § 24-72-705. Sealing of criminal conviction records information for offenses involving controlled substances for convictions entered on or after July 1, 2011.
  - C.R.S.A. § 24-72-706. Sealing of criminal conviction records information for offenses committed by victims of human trafficking.
  - C.R.S.A. § 24-72-707. Sealing of criminal conviction records information for offenses involving theft of public transportation services.
  - C.R.S.A. § 24-72-708. Sealing of criminal conviction records information for petty offenses and municipal offenses for convictions.
  - C.R.S.A. § 24-72-709. Sealing of criminal conviction records information for posting an intimate photograph of a person on the internet.
  - C.R.S.A. § 42-4-1715. Convictions, judgments, and charges recorded—public inspection.
- Connecticut
  - C.G.S.A. § 54-102l. Expungement of DNA data bank records and destruction of samples.
  - C.G.S.A. § 54-142a. Erasure of criminal records.
  - C.G.S.A. § 54-142b. Erasure of record of girl found guilty of being in manifest danger.
  - C.G.S.A. § 54-142c. Disclosure of erased records.
  - C.G.S.A. § 54-142d. Destruction of record of decriminalized offense.
- Delaware
  - Del.C. 4373, Mandatory Expungement
  - Del.C. 4374, Discretionary Expungement
  - Del.C. 4375, Discretionary Expungement Following a Pardon
- D.C.
  - 2017 District of Columbia Court Order 1401, effective May 1, 2017, amending SCR Rule 32, Sentencing and Judgment
- Florida
  - FSA 943.0585, Court-Ordered Expunction of Criminal History Records

- FSA 943.0581, Administrative Expunction
  - FSA 958.13, Sealing, Expunction, and Dissemination of Records
  - FSA 943.059, Court-Ordered Sealing of Criminal History Records
  - Fla.R.Crim.P. 3.692, Petition to Seal or Expunge
- Georgia
  - GA. Code Ann. 35-3-37, Criminal History Record Information
  - GA. Code Ann. 20-2-982.1, Definitions
- Hawaii
  - HRS 706-622.8, First-time Drug Offender Prior to 2004; Probation; Expungement
  - HRS 831-3.2, Expungement Orders
- Idaho
  - IC 19-5513, Expungement of Information
- Illinois
  - ILCS 2630/5.2, Expungement and Sealing
  - ILCS 2630/12, Entry of Order; Effect of Expungement or Sealing Records
  - ILCS 105/10.6, Expungement Program
- Indiana
  - IC 35-38-9-9, Actions Taken on Petition
  - IC 35-38-9-4, Persons Convicted of a Felony; Expungement of Conviction Records; Conditions
  - IC 35-38-9-1, Application to Persons whose Arrest did not Result in Conviction or Juvenile Adjudication or whose Conviction was Vacated; Sealing of Records
  - IC 35-38-9-11, Waiver of Right to Expungement
  - IC 35-38-9-3, Persons Convicted of a Class D Felony; Expungement of Conviction Records; Conditions
  - IC 31-33-27-1, "Expunge" or "Expungement" defined
- Iowa
  - ICA 907.9, Discharge from Probation – Procedure – Expungement of Deferred Judgments
  - ICA 901C.1, Definition
  - ICA 901C.2, Not-Guilty Verdicts and Criminal-Charge Dismissals – Expungement
- Kansas
  - KSA 22-2410, Expungement of Arrest Records; Docket Fee; Disclosure Limited upon Filing of Petition
- Kentucky
  - KRS 431.076, Expungement of Criminal Records for those found not Guilty of Crimes, for whom Charges have been Dismissed with Prejudice, or against whom Charges have not resulted in an Indictment.
  - KRS 431.079, Petition or Application Seeking Expungement to Include Certification of Eligibility for Expungement from Department of Kentucky State Police and Administrative Office of the Courts; Administrative Regulations
  - KRS 431.073, Certain Felony Convictions may be Vacated and the Records Expunged; Application; Hearing; Vacating Conviction without a Hearing; Order to Vacate and Expunge; Application Form and Fee; Retroactivity

- Louisiana
  - o LSA-C.Cr.P. 972, Definitions
  - o LSA-C.Cr.P. 978, Motion to Expunge Record of Arrest and Conviction of a Felony Offense
  - o LSA-C.Cr.P. 919, Procedure for Expungement
  - o LSA-C.Cr.P. 977, Motion to Expunge a Record of Arrest and Conviction of a Misdemeanor Offense
  - o LSA-C.Cr.P. 975, Individuals Incarcerated; Ineligible to File Motion to Expunge Records
  - o LSA-C.Cr.P. 985, Expungement by Redaction of Records with References to Multiple Individuals
  - o LSA-C.Cr.P. 920, Order of Expungement; Court Records
  - o LSA-C.Cr.P. 981, Judgment Granting Motion to Expunge a Record of Arrest or Conviction; Execution
  - o LSA-C.Cr.P. 992, Order of Expungement to be Used
  - o LSA-C.Cr.P. 922, Expungement Order; Effect
  - o LSA C-C.Cr.P. 982, Service of Order and Judgment of Expungement
  - o LSA-C.Cr.P. 973, Effect of Expunged Record of Arrest or Conviction
- Maine
  - o MRSA 7, General Jurisdiction, Control of Records
- Maryland
  - o MD Code Crim Pro, 10-105, Expungement of Record after Charge is Filed
  - o MD Code Crim Pro, 4-512, Disposition of Expunged Records
  - o MD Code Crim Pro, 10-102, Documents Subject to Expungement
  - o MD Code Crim Pro, 10-103.1, Expungement Upon Release Without Charges
  - o MD Code Crim Pro, 10-103, Expungement of Police Record When no Charge is Filed
  - o MD Code Crim Pro, 10-108, Opening, Review, or Disclosure of Expunged Records
  - o MC Code Crim Pro, 10-101, Definitions
  - o MD Rules 4-504, Petition for Expungement when Charges Filed
  - o MD Rules 4-503, Application for Expungement of Record for an Arrest, Detention, or Confinement Occurring Before October 1, 2007 When no Charges Filed
  - o MD Rules 4-511, Expungement Procedures
  - o MD Rules 4-508, Court Order for Expungement of Records
  - o MD Rules 8-124, Appeals From Proceedings for Expungement – Confidentiality
- Massachusetts
  - o MGLA 100A, Requests to Seal Files; Conditions; Application of Section; Effect of Sealing of Records
  - o MGLA 100C, Sealing of Records or Files in Certain Criminal Cases; Effect upon Employment Reports; Enforcement
  - o MGLA 7, Expungement or Sealing of Records; Hearings
- Michigan
  - o MCLA 780.621, Application for Order Setting Aside Conviction; Eligibility; Filing; Time Limitations; Contents; Submission of Fingerprints; Report by Department of State Police; Fee; Copies; Contest of Application by Attorney General or Prosecuting Attorney; Notice to Victim; Affidavits and Proofs; Court Order

- MCLA 780.623, Order Setting Aside Conviction; Copies; Maintenance of Record; Exemption from Disclosure; Exceptions; Prohibition on Divulging, Using, or Publishing Information Concerning Set-Aside Conviction; Penalty
  - MCLA 780.624, Limitation on Number of Convictions Set Aside
- Minnesota
  - MSA 609A.01, Expungement of Criminal Records
  - MSA 609A.03, Petition to Expunge Criminal Records
- Mississippi
  - Miss. Code Ann. 99-19-71, Expungement of Conviction; Eligible Offenses; Notice; Procedure; Order; Effect; Expungement of Arrest Record
  - Miss. Code Ann. 99-15-57, Relief under Previous Law; Expunging of Record
  - Miss. Code Ann. 99-15-59, Expunging of Misdemeanor Charges
- Missouri
  - VAMS 610.122, Arrest Record Expunged, Requirements
  - VAMS 610.123, Procedure to Expunge, Supreme Court to Promulgate Rules – Similar to Small Claims
  - VAMS 610.140, Expungement of Certain Criminal Records; Petition; Contents; Procedure
  - Supreme Court Rule 155.01, Commencement of Expungement Action
  - Supreme Court Rule 155.04, Order Directing Expungement
- Montana
  - MCA 46-23-510, Expungement of Records on Reversal of Conviction
- Nebraska
  - Neb.Rev.St. 29-3523, Criminal History Record Information; Dissemination; Limitations; Removal; Certain Information not Part of Public Record; Court; Duties; Sealed Record; Effect; Expungement
  - Neb.Rev.St. 18-723, Subject to Report; Request to Amend, expunge, or remove information; Denied; Hearing; Decision; Appeal
  - Neb.Rev.St. 28-281, Amendment or Expungement of Records; Good Cause; Notice
  - Neb.Rev.St. 29-2264, Probation; Completion; Conviction may be Set Aside; Conditions; Retroactive Effect
- Nevada
  - NRS 179.245, Sealing Records after Conviction: Persons Eligible; Petition; Notice; Hearing; Order
  - NRS 179.255, Sealing of Records after Dismissal, Decline of Prosecution or Acquittal: Petition; Notice; Hearing; Order; Inspection of Records
  - NRS 179.285, Order Sealing Records: Effect; Proceedings Deemed Never to have Occurred; Restoration of Civil Rights
- New Hampshire
  - NH Rev. Stat. 651:5, Annulment of Criminal Records
- New Jersey
  - NJSA 2C:52-2, Indictable Offenses
  - NJSA 2C:52-2, Definition of Expungement
  - NJSA 2C:52-7, Petition for Expungement
  - NJSA 2C:52-27, Effect of Expungement

- NJSA 2C:52-14, Grounds for Denial of Relief
- NJSA 2C:52-6, Arrest of Charge not Resulting in Conviction
- NJSA 2C:52-26, Vacating of Expungement Order; Time; Basis
- New Mexico
  - NMSA 29-3-8.1, Petition to Expunge Arrest Information
  - NMSA 32A-3B-21, Expungement of Records
  - NMSA 31-26-16, Expungement from Police and Court Records
- New York
  - McKinney Executive Law 995-c, State DNA Identification Index
  - McKinney Executive Law 160.50, Order upon Termination of Criminal Action in Favor of the Accused
- North Carolina
  - NCGSA 15A-146, Expunction of Records when Charges are Dismissed or there are Findings of not Guilty
  - NCGSA 15A-147, Expunction of Records when Charges are Dismissed or there are Findings of not Guilty as a Result of Identity Theft or Mistaken Identity
  - NCGSA 15A-148, Expunction of DNA Records when Charges are Dismissed on Appeal or Pardon of Innocence is Granted
  - NCGSA 15A-153, Effect of Expunction; Prohibited Practices by Employers, Educational Institutions, Agencies of State and Local Governments
  - NCGSA 15A-145, Expunction of Records for First Offenders under the age of 18 at the Time of Conviction of Misdemeanor; Expunction of Certain Other Misdemeanors
  - NCGSA 15A0145.6, Expunctions for Certain Defendants Convicted of Prostitution
  - NCGSA 15A-149, Expunction of Records when Pardon of Innocence is Granted
  - NCGSA 15A-145.2, Expunction of Records for First Offenders not over 21 Years of Age at the Time of the Offense of certain Drug Offenses
  - NCGSA 15A-145.5, Expunction of Certain Misdemeanors and Felonies; No Age Limitations
  - NCGSA 15A-145.4, Expunction of Records for First Offenders who are Under 18 Years of Age at the Time of the Commission of a Nonviolent Felony
  - NCGSA 15A-151, Confidential Agency Files; Exceptions to Expunction
  - NCGSA 15A-145.3, Expunction of Records for First Offenders not over 21 Years of Age at the Time of the Offense of Certain Toxic Vapors Offenses
  - NCGSA 14-50.30, Expunction of Records
  - NCGSA 15A-145.1, Expunction of Records for First Offenders Under the Age of 18 at the Time of Conviction of Certain Gang Offenses
- North Dakota
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  - NDCC 12.1-41-14, Motion to Vacate and Expunge Conviction
- Ohio
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  - RC 2953.32, Sealing of Record of Eligible Offender; Application; Hearing; Fee; Re-examination of Sealed Record
  - RC 2953.36, Convictions Precluding Sealing

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- Oklahoma
  - 22 Okl.St. Ann. 18, Expungement of Records – Persons Authorized
  - 22 Okl.St. Ann. 19, Sealing and Unsealing of Records – Procedure
  - OK ST. CR. A. CT Rule 14.1, Expungement of Records
  - OK ST. CR. A. CT Rule 14.2, Application for Expungement
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  - ORS 419A.262, Expunction Proceeding; Order of Expunction; Application; Objection; Hearing; Judgment; Destruction of Records; Confidentiality
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  - 18 Pa.CSA 9122, Expungement
  - Pa.R.Crim.P. 790, Procedure for Obtaining Expungement in Court Cases; Expungement Order
  - Pa.R.Crim.P. 490, Procedure for Obtaining Expungement in Summary Cases; Expungement Order
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  - Gen.Laws 1956 12-1.3-3, Motion for Expungement – Notice-Hearing-Criteria for Granting
  - Gen.Laws 1956 12-1.3-4, Effect of Expungement of Records – Access to Expunged Records- Wrongful Disclosure
  - Gen.Laws 1956 12-1-12, Destruction or Sealing of Records of Persons Acquitted or Otherwise Exonerated
  - Gen.Laws 1956 12-1-12.1, Motion for Sealing of Records of Persons Acquitted or Otherwise Exonerated
  - Gen.Laws 1956 12-1.301, Definitions
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  - Code 1976, 22-5-910, Expungement of Criminal Records
  - Code 1976, 23-3-660, Expungement of DNA Record; Grounds for Requesting
- South Dakota
  - SDCL 23A-3-26, Definition of Expungement
  - SDCL 23A-3-27, Motion for Expungement of Arrest Record
  - SDCL 23A-3-30, Order of Expungement
  - SDCL 23A-3-32, Effect of Order of Expungement
  - SDCL 23-5A-28, Request for Expungement—Grounds
  - SDCL 23-5A-29, Expungement of Record – Receipt of Court Order- Exception
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  - UT ST 77-40-103, Expungement Procedure Overview
  - UT ST 77-40-102, Definitions
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  - VT St. T. 13 7602, Expungement and Sealing of Record, Post-conviction; Procedure
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- Washington
  - RCWA 10.97.060, Deletion of Certain Information, Conditions
  - RCWA 9.95.240, Dismissal of Information or Indictment after Probation Completed – Vacation of Conviction
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  - W.Va. Code 61-11-26, Expungement of Certain Criminal Convictions; Procedures; Effect
  - W.Va. Code 15-2B-11, Expungement
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  - W.S.1977 7-13-1501, Petition for Expungement of Records of Conviction of Certain Felonies; Filing Fee; Objections; Hearings; Definitions; Restoration of Rights
  - W.S.1977 7-19-405, Expungement of Information
  - W.S. 7-13-307, Expungement of Criminal Record