



## Task Force on Fair Justice for All

### Meeting Agenda

November 27, 2017 - 10:00 a.m. to 2:00 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 May 2, 2017 <input type="checkbox"/> <b>Formal action or request</b>	
10:05 a.m.	Update on recommendations in progress	<i>Don Jacobson</i>
10:45 a.m.	Report on the Scottsdale Municipal Court initiatives based on Fair Justice for all Task Force recommendations	<i>Julie Dybas, Scottsdale Municipal Court Administrator</i>
11:10 a.m.	Update from the Mental Health and the Criminal Justice System Subcommittee <ul style="list-style-type: none"> <li>• Rule 11 Workgroup progress <ul style="list-style-type: none"> <li>○ Proposed Administrative Order template</li> <li>○ Policy and Procedures Manual template</li> <li><input type="checkbox"/> <b>Formal action or request</b></li> <li>○ Proposed Rule 11.5 amendments</li> <li><input type="checkbox"/> <b>Formal action or request</b></li> </ul> </li> <li>• Discuss recommendation that the Sequential Intercept Model be considered a best practice</li> <li>• Discuss recommendation that the FJTF create a workgroup for central repository of Rule 11 records</li> <li>• Discuss recommendation that the AOC develop a method for LJ courts to report outcomes of competency hearings</li> </ul>	<i>Don Jacobson on behalf of Chair, Kent Batty</i>
12:15 p.m.	☞ ☞ Working Lunch Break - \$5.00 ☞ ☞	

(Agenda continued on next page)

- 12:30 p.m. Update from the Post-Conviction Action Subcommittee *Jerry Landau*
- Discuss legislative proposals
    - Formal action or request**
  - Rules and forms
    - Formal action or request**
  - Juvenile adjudication set-aside
- 1:30 p.m. Legislative Update *Jerry Landau*
- 1:55 p.m. Call to the public *Dave Byers*
- 2:00 p.m. Adjourn

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of:	)	
	)	
EXTENSION OF THE TASK FORCE ON	)	Administrative Order
FAIR JUSTICE FOR ALL:	)	No. 2017 - <u>120</u>
COURT-ORDERED FINES, PENALTIES	)	(Amending Administrative
FEES, AND PRETRIAL RELEASE	)	Order Nos. 2016-16 and 2016-128)
POLICIES AND APPOINTMENT OF	)	
A MEMBER	)	
_____	)	

Administrative Order No. 2016-128 was entered on November 29, 2016. The Order extended the term of the Task Force on Fair Justice for All (Task Force) to study and make recommendations regarding court-ordered fines, penalties, fees, and pretrial release policies.

The Task Force continues to examine issues that may result in proposed legislation and anticipates filing a rule petition by January 10, 2018. The Task Force would thereafter review and respond to comments during the 2018 rule cycle.

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

IT IS ORDERED that Administrative Order No. 2016-128 be amended to extend the term of the Fair Justice for All Task Force to June 30, 2018.

IT IS FURTHER ORDERED that the Honorable Lisa Royal is appointed to the Task Force for a term beginning upon signature of this Order, and ending June 30, 2018.

Dated this 1st day of November, 2017.

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SCOTT BALES  
Chief Justice





## Task Force on Fair Justice for All

### Draft Minutes

May 2, 2017

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

**Present:** Dave Byers, Tom O’Connell, Kent Batty, Judge Maria Elena Cruz, India Davis, Jeff Fine, Kirstin Flores, Ryan Glover, Judge John Hudson, Robert James, Paul Julien, Doug Kooi, Jeremy Mussman, Dianne Post, Judge Antonio Riojas, Judge Lisa Roberts, Leonard Ruiz, Alessandra Soler (Will Gaona), Judge Don Taylor, Kathy Waters

**Telephonic:** Judge Michael Bluff, Judge Dorothy Little, Rebecca Steele

**Absent:** Michael Kurtenbach, Tony Penn, Judge Thomas Robinson

**Presenters/Guests:** Jerry Landau, David Withey, Jennifer Greene, Colleen Clase, Joel Edman, Donald Jacobson, Martin Lynch, Judge Steven McMurry, Sam Myers

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

**CALL TO ORDER** – Dave Byers, Chair, called the meeting of the Task Force on Fair Justice for All to order at 10:04 a.m. with a quorum of the members present.

**WELCOME AND OPENING REMARKS** – Since the last Task Force meeting, *The Report and Recommendations of the Task Force on Fair Justice for All* has been presented to the following organizations:

- Harvard School of Law
- Morrison Institute at ASU, Public Forum
- Coconino County limited jurisdiction judges meeting
- Training Coordinators Annual Conference
- Pima County Annual Conference
- Arizona Courts Association
- Problem Solving Court Conference
- American Probation and Parole Association
- Mid-Atlantic States
- Arizona Magistrates Conference

### APPROVAL OF MINUTES FROM DECEMBER 13, 2016

**MOTION:** To approve the minutes from December 13, 2016, as presented. Motion seconded. **VOTE:** Passed unanimously.

**UPDATE ON RECOMMENDATIONS IN PROGRESS** – Don Jacobson provided an update on the sentencing and bail reform efforts that are underway or being considered. He highlighted the following:

- Arizona Traffic Ticket and Complaint – modifications approved;
- Statewide text notification system – vendor selected, contract signed;
- Centralized ticket processing web site – built into the AJACS case management system currently being rolled out, research underway regarding the addition of submission of proof functionality;
- Compliance Assistance Programs (CAP) – implemented in four courts, differs by court;
- Fine Reduction Programs (FRP) – Yuma County pilot complete, implemented on a countywide basis;
- Plea by Mail reinstated effective October 2017
- Bench Card for Order to Show Cause hearings in relation to judges determining willfulness of non-payment, includes a tiered approach to monetary obligation reduction based on federal poverty levels the routine tasks of which could be delegated to staff – in draft form - seeking approval of concept of tiered approach

**MOTION:** to recommend that the Arizona Judicial Council adopt the Bench Card with the tie to the Federal Poverty Level and presumptive percentage amounts of reduction. **VOTE:** Passed 22-1-0

Suggested improvements to the bench card include:

1. Note that this process does not include victim restitution
2. Highlight that this process cannot be used in cases with plea agreements
3. Add the statutory citations for which this process applies
4. Make clear that the defendant’s probation cannot be revoked in a contempt hearing, but must be addressed in a probation revocation hearing.

- Direct sentencing to community restitution or probation education and treatment programs;
- Timeframe for notification processes prior to issuing FTA or FTP license suspension;
- Collaboration with Motor Vehicle Department to better utilize the directors ability to restrict rather than suspend a license for insurance violations;
- Appointment of counsel at Initial Appearance if a person will be held for inability to pay bond;
- Unsecured bond default process with the bond becoming the warrant amount and the judge’s determination about what to do with the funds;
- Elimination of criminal bail schedules – administrative order being drafted to address changes;
- Automation of Public Safety Assessments to make feasible for limited jurisdiction courts;
- Education programs; and
- Municipal Court Governance Roles and Responsibilities (formerly the Q&A) updated.

Kent Batty announced the Pima County Mental Health Summit sponsored by Pima County Behavioral Health scheduled for May 16 and 17, 2017. He invited those who are interested in supporting the development of a robust and response system for mental illness treatment alternatives to incarceration to attend.

**ACTION ITEM:** The Task Force agreed that a subcommittee should be established to address Mental Health.

Mr. Batty also provided an update regarding the Pima County MacArthur Grant noting the following:

- Pretrial services staff are conducting mental health pre-screenings (SAMSA and drug screening tools) and a follow up referral to mental health services for qualified defendants.

- Research into identifying how to conduct mental health pre-screenings before the person is booked into jail is underway.
- Justice of the Peace Court Weekend Warrant Resolution Court participation is declining and is specifically linked to issue resolution. The Warrant Resolution Court has added text messaging in English and Spanish as well as remote video appearance to achieve additional appearances.
- The municipal court is just starting its Warrant Resolution Court and anticipates using text messaging and facetime, and continued license restoration through iCAP.
- The participation in home detention and electronic monitoring, instead of work release for those with appropriate risk factors, has slowed under new Sheriff's Office leadership.

#### **UPDATE ON LEGISLATIVE PACKET MODIFICATIONS**

Jerry Landau announced that absent the competency examination; jurisdiction bill (2017-04) and the court security bill, the other three bills sentencing; fines; fees; probation (2017-01), driving; violations; restricted license; penalties (2017-02) and bailable offenses; hearing; schedule (2017-03) did not get scheduled for a hearing in the House Judiciary Committee. A strike everything amendment containing the three stalled bills has been sponsored by Senator Burges.

Arizona Department of Transportation (ADOT) omnibus bill changes the definition of suspension, and will allow license auto reinstatement at the end of the suspension.

**UPDATE ON RULE CHANGE PETITION (R-17-0015)** – David Withey discussed two court opinions that were recently issued; *Simpson v Miller* (CR-16-0227-PR) and *Chantry v Astrosky* (1 CA-SA 17-0081). These actions require the harmonization of the rule change petition with that case law. It was noted that *State v Goodman* issued this week, should also be considered with the rule. David also discussed the timing of the bail eligibility hearing and the APAAC comment on the bail eligibility hearing timing.

**MOTION:** To stay the course with reference to bail eligibility hearing timing. Motion seconded.

**VOTE:** Passed unanimously.

**CALL TO THE PUBLIC** – Martin Lynch addressed the Task Force.

Dave Byers noted the new Subcommittee on Post-conviction Set-aside that will be meeting in five minutes, and the agreement by the Task Force to establish a mental health subcommittee.

**ADJOURNMENT** – Mr. Byers adjourned the meeting at 12:55 p.m.



# FAIR JUSTICE FOR ALL



## Recommendations by Task Force

Create a foundation from which to initiate change.



## Approval by AJC, communication to the Judiciary

Buy-in from critical stakeholders.



## Initial Legal Changes, Administrative Orders and educational efforts

Modify the baseline.



## Ongoing Efforts

Continuing changes to practice and policy.



1

# FOCUS AREAS



## Setting Conditions of Release

Risk based release decisions



## Financial Sanctions

Accountability with attainability.



## Address Defendants Treatment Needs

Recognizing the therapeutic needs of individuals.



## Education

Developing new ways to look at decision making.



2



## SETTING RELEASE CONDITIONS

### Bonds and Release Conditions

Changes to Rule 6 and Rule 7 and Form 6 and Form 7 (4-3-17).

AO 2017-79 “bond schedules” now “fine and deposit schedules.”

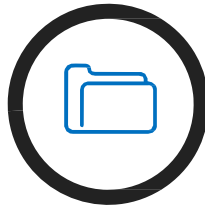


### Petition R-17-0015

modify Rules 4.2, 5.1, 5.4, 7.2, 7.4, 26.12, and 27.8, Rules of Criminal Procedure, changes to Preventative Detention in Felony Cases (4-2-18).

### Post Conviction Actions

Subcommittee working toward rule and statute changes for set aside and expungement.



### Public Safety Assessments in all Courts

Pilot – Court info on JWI (Jan. 2018). Reduce dependency on human intervention.



3



## FINANCIAL SANCTIONS

### Statements on ATTC, Web Sites and Correspondence

New Citation language (1-1-18). Model language for web sites and correspondence sent to all courts in English and Spanish.

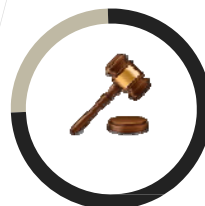
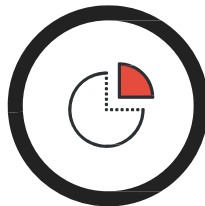


### Payment Options and Time Payment Plans

AO 2017-80 requiring payment plans and types of payment to be accepted by courts.

### Scripts and Tools for Reduction of Fines

Bench Card (AO 2017-81). Updated guidelines for reducing legal financial obligations. Use of CAP and FRP programs.



### Order to Show Cause

Bench Card (AO 2017-81) and R-17-0015 will require courts to only use a warrant when other options fail (4-2-18).



4



# EDUCATION

## Training for All I/A Judges

AO 2017-101 making mandatory.  
Sessions in Phoenix and Tucson  
Next Session Dec. 15 in Phoenix.  
Video sessions available next year.

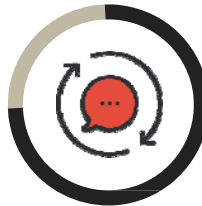


## Educational Sessions

Using every available opportunity to educate the judiciary and the public. (MCJC, Jud Conf., CLC, bar meetings, JP Conf.)

## Sentencing and determining Ability to Pay

Training on reducing of fines and surcharges, training on determining ability to pay. Tools for staff to participate.



## Additional Tools

Bench cards, spreadsheets and charts. Incorporation of Clean Election Commission agreement.



5



# ADDRESS DEFENDANTS TREATMENT NEEDS

## Mental Health in the Criminal Justice System Subcommittee

Rule 11 in LJ court implementation, Legislative and Rule changes

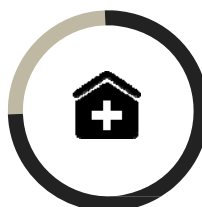
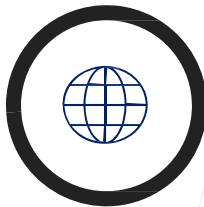


## Rule 11 Workgroup

Created a template AO for LJ courts and additional Rule 11 clarifications.

## Mental Health Protocols, a Guide for PJs

Applied for an SJI grant to work with NCSC to develop.



## Mental Health Courts

Standards and reporting established.



6



## ADDITIONAL EFFORTS

**Text Notification System**  
Pilot complete and rolling out in all AJACs Courts



**Post Conviction Actions**  
Subcommittee working toward rule and statute changes for set aside and expungement.

**Online Dispute Resolution**  
Pilots moving forward under AZ Commission on Access to Justice



**Legislative Proposals**  
Legislature to take up proposals similar to last year.



7



## ADDITIONAL EFFORTS

**Clean Election Agreement**  
Modification to process of reducing surcharges.



**Correctable Violations**  
Looking at tying into Online Dispute Resolution process.

**Modifications to automated systems and additional tools**  
Ongoing changes require additional updates.



**Suspension of Drivers License**  
Finding alternative to immediate suspension of Civil Traffic FTA



8

## BENCH CARD FOR ABILITY TO PAY AT TIME OF SENTENCING IN CRIMINAL CASES AND CIVIL TRAFFIC CASES

*Court-ordered legal financial obligations (LFOs) include all local or state, discretionary or mandatory fines, penalties, costs, fees, surcharges, assessments, restitution and other court-ordered financial sanctions. These sanctions may be ordered in criminal cases and civil traffic cases.*

*Assessment of a defendant’s ability to pay may be conducted by court personnel, performing verification through appropriate tools or by the judicial officer posing questions to the defendant.*

*In criminal cases, a court must impose “the full amount of the economic loss to the victim as determined by the court and in the manner as determined by the court or the court’s designee,” as required by ARS §§13-603(C), and 13-804(C)&(E). Restitution is exempt from any payment alternatives imposed for other types of financial obligations, but may be the subject of a time payment plan.*

### Step 1 – Application of Credits

- A. Apply Credit for Time Served if applicable. (§31-145).
- B. Apply Credit for Community Restitution if applicable and when allowed. (§13-824)

### Step 2 – Defendant Self-Declaration

- A. “Can you pay this in full today?”
- B. “How much can you pay today?”

### Step 3 – Determination of Eligibility for Fine Reduction

- A. Affidavit by defendant to claim a hardship.
- B. Confirmation of hardship by:
  1. Proof that defendant receives income-based public assistance
  2. DES eligibility check
  3. Automated income check
  4. Defendant’s affidavit or response to questions under oath

#### 2017 Federal Poverty Level (FPL) Income Based on Family Size

Family Size	130% of FPL	200% of FPL
Individual	\$15,678	\$24,120
Household of 2	\$21,112	\$32,480
Household of 3	\$26,546	\$40,840
Household of 4	\$31,980	\$49,200
Household of 5	\$37,414	\$57,560
Household of 6	\$42,848	\$65,920

### Step 4 – Granting a Hardship Mitigation<sup>1</sup>

At sentencing, the judge may impose a fine amount that is less than the court’s presumptive fine amount, when the judge deems it to be appropriate and as allowed by law. Consider income as a percentage of the Federal Poverty Level (FPL) based on household size. Consider:

- A. At least 25% mitigation if the household income is between 200% and 130% of FPL;
- B. At least 50% mitigation if the household income is less than 130% of FPL, or receipt of income-based public assistance.

### Step 5 – Payment

- A. Initial payment (what can be paid today)
- B. Establishment of payment plan for the balance owed
- C. Community restitution in lieu of monetary payment, if permitted by ARS §13-824

<sup>1</sup> The fine and surcharges should be reduced proportionately unless a mandatory fine or sanction is included, then the amount may not be reduced to an amount less than the mandatory fine or sanction. Additional restrictions on surcharges may apply, see the *Penalty Assessment and Surcharge Guide*.  
<http://www.azcourts.gov/Portals/27/SurchrgGuide012015.pdf>

The Operating Under the Influence statutes of A.R.S. §§ 5-395.01, 28-1389 and 28-8292 **prohibit** the waiving of a fine or assessment pursuant to those articles or a surcharge imposed pursuant to section 12-116.01 or 12-116.02.

## The court may examine the following factors to help determine ability to pay:

- a. Whether the defendant receives income-based 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) (current guidelines available at <https://aspe.hhs.gov/poverty-guidelines>);
- c. Financial resources, assets, financial obligations, and number of dependents;
- d. Whether the defendant 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 defendant'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 an LFO payment would result in hardship to the defendant or his/her dependents; and
- i. Any other special circumstances that may bear on the defendant's ability to pay.

## BENCH CARD FOR ARS §13-810 ORDER TO SHOW CAUSE HEARINGS (OSC), LAWFUL COLLECTION OF LEGAL FINANCIAL OBLIGATIONS

*Court-ordered legal financial obligations (LFOs) include all local or state, discretionary and mandatory fines, costs, fees, surcharges, assessments, restitution and other court ordered financial sanctions in criminal cases. Willful failure to comply with court-ordered LFOs may result incarceration, except in civil traffic cases.<sup>1</sup>*

*A court may not incarcerate a defendant 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 willful and not due to an inability to pay; or*
2. *The failure to pay was due to an intentional failure to make bona fide efforts to pay.*

### **To make the determination of willfulness, the court should:**

#### **Step 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 defendant's ability to pay at the hearing;
- d. That the defendant should bring any documentation or information the court should consider in determining ability to pay;
- e. That incarceration may result if the court finds that the defendant had the ability to pay and willfully refused; and
- f. That a defendant unable to pay can request payment alternatives, including, but not limited to, community restitution or a time payment plan.

#### **Step 2—Provide meaningful opportunity to explain at the hearing.**

*The defendant must have an opportunity to explain:*

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

#### **Step 3—The following are factors the court should consider to determine willfulness:**

- a. Whether defendant is receiving income-based 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% of the Federal Poverty Level (FPL)<sup>2</sup>;
- c. Financial resources, assets, financial obligations, and dependents;
- d. Whether the defendant 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 defendant'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 hardship to the defendant or his/her dependents; and
- i. Any other special circumstances that may bear on the defendant's ability to pay.

<sup>1</sup> Order to Show Cause hearings under ARS §13-810 are not used in civil traffic cases.

<sup>2</sup> U.S. Dep't of Health & Human Servs., Poverty Guidelines, Jan. 26, 2017, <https://aspe.hhs.gov/poverty-guidelines>

**Step 4—At the hearing, the court should find on the record:**

- a. A determination of willfulness or intentional failure to make bona fide efforts to pay.
- b. Any fine payment alternatives imposed in 5 below.

**Step 5—Consider alternative sanctions for both those who have been found willful and not willful of nonpayment pursuant to ARS §13-810(D) & (E).**

The options for those defendants who willfully failed to pay, or intentionally failed to make a good faith effort to pay, after a finding of contempt include:

- a. Order the defendant to perform community restitution;
- b. Enter a criminal restitution order pursuant to ARS §13-805;
- c. Enter a writ of criminal garnishment pursuant to ARS §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;
- d. Order defendant incarcerated in the county jail until the LFO or a specified portion of it is paid.
- e. Refer for probation revocation conducted under Rule 27 of the Rules of Criminal Procedure. Probation revocation cannot be determined at a §13-810 OSC hearing.

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

- a. Re-establish any original agreement regarding the payment of the LFO;
- b. 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 time payment plan, ordering community restitution or allowing credit for community restitution when permitted by ARS §13-824;
- c. Enter a criminal restitution order pursuant to ARS §13-805;

Enter a writ of criminal garnishment pursuant to ARS §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.

**2017 Federal Poverty Level (FPL) Income Based on Family Size**

<i>Family Size</i>	<i>130% of FPL</i>	<i>200% of FPL</i>
<i>Individual</i>	<i>\$15,678</i>	<i>\$24,120</i>
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<i>Household of 6</i>	<i>\$42,848</i>	<i>\$65,920</i>

**Courts must impose “the full amount of the economic loss to the victim as determined by the court and in the manner as determined by the court or the court’s designee,” as required by ARS §§13-603(C) and 13-804(C) & (E). Restitution is exempt from any payment alternatives imposed for other types of financial obligations, but may be the subject of a time payment plan.**

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of: )  
)  
BENCH CARDS FOR: ) Administrative Order  
) No. 2017 - 81  
ABILITY TO PAY AT SENTENCING IN )  
CRIMINAL AND CIVIL TRAFFIC CASES) )  
)  
AND )  
)  
A.R.S. § 13-810 ORDER TO SHOW )  
CAUSE HEARING (OSC), LAWFUL )  
COLLECTION OF LEGAL FINANCIAL )  
OBLIGATIONS )  
\_\_\_\_\_ )

The Fair Justice for All Task Force was established by Administrative Order No. 2016-16. On October 17, 2016, the Arizona Judicial Council supported all of the recommendations of the Fair Justice for All Task Force, including the publication of a Bench Card for Ability to Pay at Time of Sentencing in Criminal and Civil Traffic Cases and a Bench Card for ARS § 13-810 Order to Show Cause Hearings (OSC), Lawful Collection of Legal Financial Obligations.

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

IT IS ORDERED that the attached Bench Card for Ability to Pay at Time of Sentencing in Criminal Cases and Civil Traffic Cases and a Bench Card for ARS § 13-810 Order to Show Cause Hearings (OSC), Lawful Collection of Legal Financial Obligations are approved for use in Arizona courts.

IT IS FURTHER ORDERED that the Administrative Director of the Administrative Office of the Courts shall have the authority to issue Administrative Directives as necessary to amend the attached bench cards.

Dated this 5th day of July, 2017.

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SCOTT BALES  
Chief Justice



## **BENCH CARD FOR ABILITY TO PAY AT TIME OF SENTENCING IN CRIMINAL CASES AND CIVIL TRAFFIC CASES**

**The court may examine the following factors to help determine ability to pay:**

- a. Whether the defendant receives income-based 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) (current guidelines available at <https://aspe.hhs.gov/poverty-guidelines>);
- c. Financial resources, assets, financial obligations, and number of dependents;
- d. Whether the defendant 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 defendant'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 a LFO payment would result in hardship to the defendant or his/her dependents; and
- i. Any other special circumstances that may bear on the defendant's ability to pay.

# BENCH CARD FOR ARS §13-810 ORDER TO SHOW CAUSE HEARINGS (OSC), LAWFUL COLLECTION OF LEGAL FINANCIAL OBLIGATIONS

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- e. That incarceration may result if the court finds that the defendant had the ability to pay and willfully refused; and
- f. That a defendant unable to pay can request payment alternatives, including, but not limited to, community restitution or a time payment plan.

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

*The defendant must have an opportunity to explain:*

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

**3. The following are factors the court should consider to determine willfulness:**

- a. Whether defendant is receiving income-based 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% of the Federal Poverty Level (FPL)<sup>2</sup>;
- c. Financial resources, assets, financial obligations, and dependents;
- d. Whether the defendant 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 defendant'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 hardship to the defendant or his/her dependents; and
- i. Any other special circumstances that may bear on the defendant's ability to pay.

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### 2017 FPL Income Based on Family Size

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<i>Family Size</i>	<i>130% of FPL</i>	<i>Family Size</i>	<i>130% of FPL</i>
<i>Individual</i>	<i>\$15,678</i>	<i>Household of 4</i>	<i>\$31,980</i>
<i>Household of 2</i>	<i>\$21,112</i>	<i>Household of 5</i>	<i>\$37,414</i>
<i>Household of 3</i>	<i>\$26,546</i>	<i>Household of 6</i>	<i>\$42,848</i>

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<sup>1</sup> Order to Show Cause hearings under ARS §13-810 are not used in civil traffic cases.

<sup>2</sup> U.S. Dep't of Health & Human Servs., Poverty Guidelines, Jan. 26, 2017, <https://aspe.hhs.gov/poverty-guidelines>

## **BENCH CARD FOR ARS §13-810 ORDER TO SHOW CAUSE HEARINGS (OSC), LAWFUL COLLECTION OF LEGAL FINANCIAL OBLIGATIONS**

### **4. At the hearing, the court should find on the record:**

- a. A determination of willfulness or intentional failure to make bona fide efforts to pay.
- b. 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 pursuant to ARS §13-810(D)&(E).**

The options for those defendants who willfully failed to pay, or intentionally failed to make a good faith effort to pay, after a finding of contempt include:

- a. Order the defendant to perform community restitution;
- b. Enter a criminal restitution order pursuant to ARS §13-805;
- c. Enter a writ of criminal garnishment pursuant to ARS §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;
- d. Order defendant incarcerated in the county jail until the LFO or a specified portion of it is paid.
- e. Refer for probation revocation conducted under Rule 27 of the Rules of Criminal Procedure. Probation revocation cannot be determined at a §13-810 OSC hearing.

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

- a. Re-establish any original agreement regarding the payment of the LFO;
- b. 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 time payment plan, ordering community restitution or allowing credit for community restitution when permitted by ARS §13-824;
- c. Enter a criminal restitution order pursuant to ARS §13-805;
- d. Enter a writ of criminal garnishment pursuant to ARS §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.

**Courts must impose “the full amount of the economic loss to the victim as determined by the court and in the manner as determined by the court or the court’s designee,” as required by ARS §§13-603(C) and 13-804(C)&(E). Restitution is exempt from any payment alternatives imposed for other types of financial obligations, but may be the subject of a time payment plan.**



IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of: )  
 )  
PRESIDING JUDGES AUTHORITY ) Administrative Order  
 ) No. 2017 - 79  
 ) (Replacing Administrative Order  
 ) No. 2005-32 and Repealing  
 ) Administrative Order No. 91-40)  
 )  
\_\_\_\_\_ )

On May 16, 2005, by Administrative Order No. 2005-32, this Court repealed and replaced Administrative Rule V-A concerning the presiding judges of the superior court and Administrative Rule VII-A, Section 2 concerning presiding municipal court judges.

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

IT IS ORDERED that Administrative Rule V-A is repealed and replaced by the attached provision of this Order entitled “Presiding Judge of the County” that contains amendments based on the August 12, 2016, Fair Justice for All Task Force’s recommendations and other amendments and updates of a technical nature.

IT IS FURTHER ORDERED that Administrative Rule VII-A is repealed and replaced by the attached provision of this Order entitled “Presiding Judge - Municipal Court” that also contains amendments based on the Fair Justice for All Task Force’s recommendations and other amendments and updates of a technical nature.

IT IS FURTHER ORDERED repealing Administrative Order No. 91-40.

Dated this 5th day of July, 2017.

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SCOTT BALES  
Chief Justice



## PRESIDING JUDGE OF THE COUNTY

**A. Appointment.** In each county with two or more superior court judges, the Supreme Court shall appoint one of such judges presiding judge. The presiding judge shall serve as the presiding judge of the county. Presiding judges may be reappointed.

**B. Term of Office.** The presiding judge of the superior court in each county shall serve a term as determined by the Supreme Court.

### **C. Duties.**

1. Presiding judges shall be the Chief Judicial Executive Officers of their respective counties and shall exercise administrative supervision over the superior court including all of its divisions and judges thereof in their counties. As a division of the superior court, the juvenile court is subject to this authority. Presiding judges shall also exercise administrative supervision over the clerk of the superior court; give direction to the court administrator; exercise administrative supervision over the justice of the peace courts in their counties; and exercise administrative supervision over the municipal courts in their counties. In counties with an associate presiding judge, and when so designated by the presiding judge, the associate presiding judge shall perform the duties of presiding judge of the superior court.
2. Administrative supervision of the superior court shall include authority to:
  - a. Determine the administrative structure of the superior court and all of its divisions and make regular and special assignments of all superior court judges and, unless otherwise directed by the Chief Justice and in cooperation with other presiding judges, assign judges with the county to other counties.
  - b. Exercise general supervision over the personnel of all divisions of the superior court.
  - c. Prescribe the powers and duties of the clerk of the court, in addition to those prescribed by law and the Supreme Court.
  - d. Appoint with the approval of the Supreme Court an associate presiding judge to act during the absence or unavailability of the presiding judge or as defined above. The presiding judges may delegate any and all of their powers to the associate presiding judge. The associate presiding judge shall serve at the pleasure of the presiding judge and shall exercise and discharge all powers and duties of the presiding judge, except appointing court commissioners or appointing judges permanently to special assignments. In order to facilitate the business of the court, the presiding judges or associate presiding judge may delegate their duties to other judges.

- e. Appoint a presiding judge of the juvenile court to perform under the administrative supervision of the presiding judge administrative duties as provided by statutes, rules, and administrative code provisions.
  - f. Promulgate such local rules as a majority of the judges of the county may approve or as the Supreme Court shall direct.
  - g. Identify and develop programs that provide alternative methods for the resolution of civil disputes to which actions may be referred pursuant to the authority conferred by Rule 16(g) of the Arizona Rules of Civil Procedure, and promulgate such local rules as a majority of judges of the county may approve establishing and governing such alternative-dispute resolution programs.
  - h. Appoint a chief adult probation officer and provide advice and consent to the presiding judge of the juvenile court concerning the appointment of the juvenile court director.
  - i. Appoint a law library director.
  - j. Establish court security policies and procedures to provide a safe work environment for judicial employees, litigants, and users of the court. Court security may include procedures, technology, security personnel, or architectural features needed to provide a safe work environment. The presiding judge may also prohibit or regulate the possession of weapons or potential weapons in an area assigned to or controlled by the court.
3. Presiding judges may develop and implement judicial branch personnel systems for the courts in their counties.
4. Presiding judges shall determine the need for, and approve, the allocation of space and furnishings in the court building; the construction of new court buildings, courtrooms and related physical facilities; and the modification of existing court buildings, courtrooms and related physical facilities. This authority extends, but is not limited to, superior court and all of its divisions, clerk of the superior court, adult probation, justice courts, and municipal courts.
5. Presiding judges shall meet on a regular basis with the presiding justices of the peace, presiding judges in the municipal courts, and justice court and municipal court administrators to discuss separation of powers, resources, use of technology; and legal, administrative, and other relevant issues to ensure proper functions and independence of the courts in the county.

6. In any county in which two or more justice courts are located, the justices of the peace of the county shall select a presiding justice of the peace. If the vote of the justices of the peace is tied, the presiding judge of the county shall cast the deciding vote.
7. Presiding judges shall appoint a superior court administrator and establish and maintain an administrative structure for the superior court and all of its divisions that provides administrative support, as the presiding judge deems necessary, in the areas of human resources, finance, technology, training, and whatever other services are required for the administration of justice.
8. Presiding judges shall submit to the Board of Supervisors a coordinated budget for the superior court, clerk of the superior court, adult probation, juvenile court, juvenile probation, and justice of the peace courts in their counties.
9. Presiding judges shall assist the presiding justice of the peace and presiding municipal court judges in coordinating fine and deposit schedules.
10. Presiding judges shall obtain compliance with statistical reporting requirements from superior court, adult probation, juvenile court, justice courts, and magistrate courts.
11. Presiding judges shall coordinate and implement compatible information systems and technology at the local level for all jurisdictions within the county, improve information sharing, and encourage projects which utilize technology to increase accessibility and improve efficiency and court management within their jurisdictions.
12. Presiding judges shall approve and coordinate applications for grant funds from all courts in their respective counties.
13. Presiding judges shall, yearly, certify compliance, non-compliance, and exemptions with Educational Policies and Standards.
14. Presiding judges shall approve procedures for implementing sexual harassment policies in the courts in their counties.
15. Presiding judges shall approve plans to implement the policy on access to court services by persons with disabilities for the courts in their respective counties pursuant to A.R.S. § 41-1492.01.
16. Presiding judges may delegate any part of this order, as appropriate, to the presiding justice of the peace and presiding municipal court judges.

## PRESIDING JUDGE – MUNICIPAL COURT

- A. Appointment.** Presiding municipal court judges shall be selected in a manner provided by the charter or ordinances of the city or town, except in cities and towns which transfer that responsibility to the presiding judge of the county.
- B. Term of Office.** The presiding municipal court shall serve a term as established by the appointing authority.
- C. Duties.**
1. Presiding municipal court judges shall perform administrative duties delegated to them by the presiding judge of the county. Such duties as are appropriate, may be delegated to a municipal court administrator.
  2. Presiding municipal court judges may appoint a court administrator according to local charter or ordinance provisions.
  3. Presiding municipal court judges shall supervise the administration of the judicial and internal administrative functions of the municipal court including:
    - a. Determining judicial assignment for each judge and, within guidelines established by city or town council, establishing and maintaining standard working hours and times to effectively discharge those assignments;
    - b. Being responsible for the supervision of judges and judicial and non-judicial staff who directly affect the operation of the court; and
    - c. Delegating duties and responsibilities to judges and judicial and non-judicial personnel as necessary.
  4. Presiding municipal court judges shall work with the presiding judge of the county to assure selection of judges pro tempore in the municipal court is consistent with ACJA § 1-305: Selection of Special Judicial Officers.
  5. In cities without a court administrator or where the duty is not delegated to one:
    - a. Presiding judges of the municipal court shall prepare the annual budget request for the court.
    - b. Presiding municipal court judges shall supervise the administration of the judicial and internal administrative functions of the municipal courts in a professional manner, using appropriate management techniques to organize and direct the efficient operation of the court in the following areas:

- (1) Personnel
- (2) Training
- (3) Facilities
- (4) Procurement
- (5) Finance

That supervision includes supervision of the judges and judicial staff, and non-judicial staff, while they are performing work for the court.

- c. Presiding municipal court judges shall establish docketing, calendaring, and case management policies and procedures.
- d. Presiding municipal court judges shall establish automation systems with the assistance and concurrence of the presiding judge of the county.
- e. With the assistance of the presiding judge of the county, presiding municipal court judges shall establish fine and deposit schedules in coordination with the justices of the peace in the county.
- f. Presiding municipal court judges shall comply with statistical reporting, jury management, and records management policies and procedures established by the Supreme Court.
- g. Presiding municipal court judges may establish court security policies and procedures to provide a safe work environment for judicial employees, litigants, and users of the court. Court security may include procedures, technology, security personnel, or architectural features needed to provide a safe work environment. The presiding judge may also prohibit or regulate the possession of weapons or potential weapons in an area assigned to or controlled by the court.



IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of: )  
)  
FACILITATING THE IMPOSITION AND ) Administrative Order  
COLLECTION OF COURT-ORDERED ) No. 2017 - 80  
FINANCIAL OBLIGATIONS )  
)  
\_\_\_\_\_ )

The Fair Justice for All Task Force was established by Administrative Order No. 2016-16. On October 17, 2016, the Arizona Judicial Council supported all the recommendations of the Task Force and approved the filing of a rule change petition, supporting legislative proposals, and adopting court policies and procedures as necessary to implement the recommendations set forth by the Task Force.

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

IT IS ORDERED that all courts in the State of Arizona implement court procedures to assist people in complying with court-imposed obligations in criminal and civil traffic cases.

Court procedures shall include:

1. Offering an installment payment process for those who are financially unable to pay their court-ordered financial obligations at the time they are imposed.
2. Accepting the following forms of payment for a court-ordered financial obligation:
  - a. Cash;
  - b. Credit and debit card;
  - c. Cashier's check, certified check, or other financial institution generated fund transfer instrument; and
  - d. Money order.

In individual cases, forms of payment may be subject to reasonable restrictions and hold periods for clearance of funds.

If a court determines that an exception to the Minimum Accounting Standards of the Arizona Code of Judicial Administration (ACJA) is needed to comply with this section, a request for exception may be submitted pursuant to the requirements of ACJA, Section 1-401(E)(1)(c).

3. Accepting, at the discretion of the court, as a form of payment:
  - a. Personal check;

- b. Electronic Fund Transfer (EFT) or electronic payment such as electronic check and direct deposit; and
  - c. Online transaction or electronic transaction conducted by telephone or internet.
4. Determining an individual's ability to pay applicable at the original imposition of a financial obligation at any Order to Show Cause hearing that includes a financial obligation, and at any other appropriate time.
5. Mitigating, at the discretion of the judge, the financial penalty imposed at sentencing for those who have been determined unable to pay the full obligation amount normally imposed by providing:
  - a. Credit for time served in a detention facility;
  - b. Credit for the performance of community restitution; or
  - c. Reduction or waiver of the presumptive fine amount or other non-mandatory fees and assessments for a financial hardship as permitted by law.

IT IS FURTHER ORDERED that, in the interest of the efficient administration of justice and good public service, the presiding judge of each court may provide by administrative order for court staff to implement a mitigation schedule adopted by the court. The order shall include a financial mitigation policy and a financial sanctions schedule for staff to follow based on the individual's federal poverty level or other applicable ability to pay factors.

Dated this 5th day of July, 2017.

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SCOTT BALES  
Chief Justice

SUPREME COURT OF ARIZONA

In the Matter of ) Arizona Supreme Court  
 ) No. R-17-0015  
RULES 4.2, 5.1, 5.4, 7.2, 7.4, )  
26.12 and 27.8, RULES OF )  
CRIMINAL PROCEDURE ) **FILED 09/28/2017**  
 )  
\_\_\_\_\_ )

**ORDER  
AMENDING RULES 4.2, 5.1, 5.4, 7.2, AND 7.4, ARIZONA RULES OF  
CRIMINAL PROCEDURE**

A petition having been filed proposing to amend Rules 4.2, 5.1, 5.4, 7.2, 7.4, 26.12, and 27.8, Rules of Criminal Procedure, and comments having been received; and Rules 26.12 and 27.8, Arizona Rules of Criminal Procedure, having been amended by the Court on August 31, 2017, effective January 1, 2018; and amendments to Rules 4.2, 5.1, 5.4, 7.2, and 7.4 having been circulated on August 31, 2017 for additional comment by September 25, 2017; and one comment having been received, upon consideration,

**IT IS ORDERED** that Rules 4.2, 5.1, 5.4, 7.2, and 7.4, Rules of Criminal Procedure, as restyled in R-17-0002, effective January 1, 2018, be amended in accordance with the attachment hereto, effective April 2, 2018.

DATED this 28th day of September, 2017.

\_\_\_\_\_  
/s/  
SCOTT BALES  
Chief Justice

TO:  
Rule 28 Distribution  
David K Byers  
Elizabeth B Ortiz  
David J Euchner  
William G Montgomery  
Kathleen E Brody  
Andrea Woods  
Michael A Breeze  
Mark C Faull

## ATTACHMENT\*

(\*additions to the rules as amended in R-17-0002 are indicated by underscoring;  
deletions by ~~strikeouts~~)

### Rule 4.2. Initial Appearance

(a) **Generally.** At an initial appearance, the magistrate must:

- (1) determine the defendant's true name and address and, if necessary, amend the formal charges to correct the name and instruct the person to promptly notify the court of any change of address;
- (2) inform the defendant of the charges and, if available, provide the person with a copy of the complaint, information, or indictment;
- (3) inform the defendant of the right to counsel and the right to remain silent;
- (4) determine whether there is probable cause for purposes of release from custody, and, if no probable cause is found, immediately release the person from custody;
- (5) appoint counsel if the defendant requests and is eligible for appointed counsel under Rule 6;
- (6) permit and consider any victim's oral or written comments concerning the defendant's possible release and conditions of release;
- (7) unless the magistrate determines under (a)(8) that release on bail is prohibited, determine the conditions of release under Rule 7.2(a) including whether the defendant is non bailable under article 2, section 22 of the Arizona Constitution and A.R.S. § 13-3961;
- (8) determine whether probable cause exists to believe:
  - (A) the defendant committed a capital offense, a sexual assault, or any felony offense committed while the person was on pretrial release for a separate felony charge; or
  - (B) the defendant committed a felony for which release on bail is prohibited because the defendant poses a substantial danger and no conditions of release will reasonably assure the safety of the victim, any other person, or the community based on the considerations provided in Rule 7.2(b)(3);
- (9) if the court determines that the defendant is not eligible for bail based on a determination under (a)(8)(A) or (B), schedule a bail eligibility hearing in superior court as required under Rule 7.2(b)(4);

**(810)** order a summoned defendant to be 10-print fingerprinted no later than 20 calendar days by the appropriate law enforcement agency at a designated time and place if:

(A) the defendant is charged with a felony offense, a violation of A.R.S. §§ 13-1401 et seq. or A.R.S. §§ 28-1301 et seq., or a domestic violence offense as defined in A.R.S. § 13-3601; and

(B) 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; and

**(911)** order the arresting agency to secure a sample of buccal cells or other bodily substances for DNA testing if:

(A) the defendant is in-custody and was arrested for an offense listed in A.R.S. § 13-610(O)(3); and

(B) the court has not received proof of compliance with A.R.S. § 13-610(K).

**(b) and (c) [No change]**

### **Rule 5.1. Right to a Preliminary Hearing; Waiver; Continuance**

**(a) Right to a Preliminary Hearing.** A defendant has a right to a preliminary hearing if charged in a complaint with a felony. A preliminary hearing must commence before a magistrate no later than 10 days after the defendant's initial appearance if the defendant is in custody, or no later than 20 days after the defendant's initial appearance if the defendant is not in custody, unless:

(1) the complaint is dismissed;

(2) the hearing is waived;

(3) the defendant has been transferred from the juvenile court for criminal prosecution on specified charges; ~~or~~

(4) the magistrate orders the hearing continued under (c) ~~;~~ or

(5) the court made a probable cause finding at a bail eligibility hearing under Rule 7.2(b)(4).

**(b) – (d) [No change]**

#### **Rule 5.4. Determining Probable Cause**

(a) **Holding a Defendant to Answer.** If a magistrate finds that there is probable cause to believe that an offense has been committed and that the defendant committed it, the magistrate must file a written order holding the defendant to answer for the offense before the superior court. Upon request, the magistrate may reconsider the conditions of release. This rule's requirements are satisfied if a probable cause finding was made at a bail eligibility hearing under Rule 7.2(b)(4).

(b) - (d) [No change]

#### **Rule 7.2. Right to Release**

(a) [No change]

(b) **Before Conviction: Defendants Charged with an Offense Not Eligible for Bail/Non-Bailable Offenses.** ~~The court must not release a defendant on bail if it finds the defendant is not bailable under applicable law.~~

**(1) Not Eligible Based on Commission of a Specified Felony or Any Felony While on Pretrial Release.** A defendant must not be released if the court finds the proof is evident or the presumption great that the defendant committed:

(A) a capital offense or a sexual assault; or

(B) any felony offense while the defendant was on pretrial release for a separate felony charge.

**(2) Not Eligible Based on Commission of any Felony and Other Factors.** Under article 2, section 22(A)(3) of the Arizona Constitution, the court may not release any defendant charged with a felony if the court finds all of the following:

(A) the proof is evident or the presumption great that the defendant committed one or more of the charged felony offenses;

(B) clear and convincing evidence that the defendant poses a substantial danger to the victim, any other person, or the community or, on certification by motion of the state, the defendant engaged in conduct constituting a dangerous crime against children or terrorism; and

(C) no condition or combination of conditions of release will reasonably assure the safety of the victim, any other person, or the community.

**(3) Bail Eligibility Considerations.** In making the determinations required by (b)(2)(B) and (b)(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 defendant;
- (C) the history and characteristics of the defendant, including the defendant’s character, physical and mental condition, past conduct including membership in a criminal street gang, history relating to drug or alcohol abuse, and criminal history;
- (D) the nature and seriousness of the danger to the victim, any other person, or the community that would be posed by releasing the defendant on bail, including any threat to a victim or other participants in the judicial process;
- (E) the recommendation of the pretrial services program based on an appropriate risk assessment instrument;
- (F) any victim statement about the offense and release on bail; and
- (G) any other factor relevant to the determination required under (b)(2)(B) and (b)(2)(C).

**(4) Bail Eligibility Hearing.**

- (A) *Generally.* The superior court must hold a hearing to determine whether a defendant held in custody under Rule 4.2(a)(8) is not eligible for bail as required under (b)(1) or (b)(2), unless the defendant waives this hearing.
- (B) *Timing.* If the State makes an oral motion under A.R.S. § 13-3961(E), the court must hold this hearing within 24 hours of the initial appearance, subject to continuances as provided in A.R.S. § 13-3961. If this motion is not made, the hearing must be held as soon as practicable, but no later than 7 days after the initial appearance unless the detained defendant moves for a continuance.
- (C) *Determination of Probable Cause and Release Conditions.* If the court does not find the proof evident or the presumption great under (b)(1) or (b)(2)(A), the court must determine whether there is probable cause to believe that an offense was committed and that the defendant committed it. If the court finds probable cause, the court must determine release conditions under (a). If the court does not find probable cause, the defendant must be released from custody. The parties may stipulate before the bail eligibility hearing that the probable cause determination at the hearing satisfies the requirements of Rule 5. If the parties so stipulate and the court does not find probable cause, the court must dismiss the complaint and discharge the defendant. If the parties have not so stipulated, the court must schedule a preliminary hearing as provided in Rule 5.1(a).

(D) Findings on the Record. The court's findings must be on the record.

(c) – (d) [No change]

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

(a) **Initial Appearance.** At an initial appearance, the court must determine bail eligibility and the conditions for release. If the court decides that the defendant is eligible for release, the court must issue an order containing the conditions of release. The order must inform the defendant of the conditions and possible consequences for violating a condition, and that the court may immediately issue a warrant for the defendant's arrest if there is a violation.

#### **(b) Bail Eligibility Hearing.**

(1) Right to Secure Witnesses, Cross-Examine, and Review Witness Statements. At a bail eligibility hearing, each party has the right to secure the attendance of witnesses, cross-examine any witness who testifies, and to review any previous written statement by the witness before cross-examination.

(2) Victims. Notwithstanding the time limits of Rule 39(g)(1), a victim must be afforded the rights provided in Rule 39(g).

(3) Admissibility. Evidence is admissible at the hearing only if it is material to whether, and under what conditions, to release the defendant on bail and, subject to the parties' stipulation under Rule 7.2(b)(4)(C), whether probable cause exists to hold the defendant for trial on each charge. Rules or objections calling for the exclusion of evidence are inapplicable at a bail eligibility hearing.

#### **(bc) Later Review of Conditions.**

(1) **Generally.** On motion or on its own, a court may reexamine bail eligibility or the conditions of release if the case is transferred to a different court or a motion alleges the existence of material facts not previously presented to the court.

(2) **Motion Requirements and Hearing.** The court may modify the conditions of release only after giving the parties an opportunity to respond to the proposed modification. A motion to reexamine the conditions of release must comply with victims' rights requirements provided in Rule 39.

(3) **~~Non-Bailable Offenses~~ Eligibility for Bail.** If the motion is by the State and involves whether the defendant should be held without bail a defendant previously held eligible for bail at the initial appearance, it need not allege new material facts. The court must hold a hearing on the record as soon as practicable, but no later than 7 days after the motion's filing.

**(ed) Evidence.** A court may base a release determination under this rule on evidence that is not admissible under the Arizona Rules of Evidence.

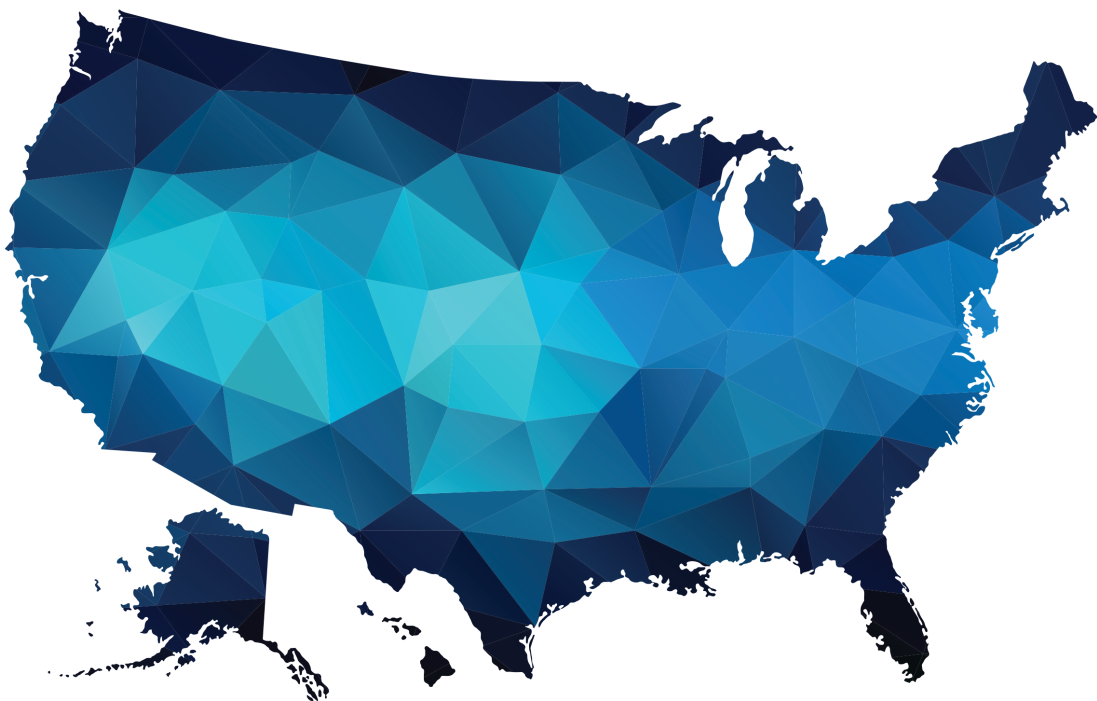
**(e) Defendant's Bail Status.** If the court makes the findings required under Rule 7.2(b)(1) or (b)(2) to deny bail, the court must order the defendant held without bail until further order. If not, the court must order the defendant released on bail under Rule 7.2(a).

**(df) Review of Conditions of Release for Misdemeanors.** No later than 10 days after arraignment, the court must determine whether to amend the conditions of release for any defendant held in custody on bond for a misdemeanor.

**(eg) Appointment of Counsel.** The court must appoint counsel in any case in which the defendant is eligible for the appointment of counsel under Rule 6.1(b).

# THE STATE OF PRETRIAL JUSTICE IN AMERICA

NOVEMBER 2017



# A Message from Cherise Fanno Burdeen



**I** have been working to advance pretrial justice for ten years—a few decades shy of what many, like my Pretrial Justice Institute colleagues John Clark and Tim Murray, have put in. However, even readers who are relatively new to this work know that we are at a special moment.

Half a century after the Manhattan Bail project first showed that money bail is unnecessary to assure court appearance, there is unprecedented, growing demand for change; far-reaching litigation is compelling jurisdictions to abruptly alter their practices; and local, state, and national lawmakers are honing plans for comprehensive reform.

Before we all begin counting our proverbial chickens, however, it would be prudent to step back and ground our expectations in some facts. *The State of Pretrial Justice in America* is our attempt to capture, using basic indicators, current pretrial practice in all fifty states, as well as in the aggregate. It is a baseline against which we can gauge progress.

Like you, I am eager to see a new national standard of pretrial justice that does not discriminate based on wealth or race; or undermine individual and community safety; or squander public resources; or contribute to the problem of mass incarceration, but actively contributes to its elimination instead. But getting there, even from where we are now, won't be easy. Even if the money bond culture in every state were to change tomorrow, there would still be the vexing challenges of implementing legal and evidence-based practices, ensuring process and outcome transparency, and sustaining advancements when political winds change.

*The State of Pretrial Justice in America* is offered as a reflection of both how far we've come and also how far we still have to go. My hope is that everyone—the public, the media, and stakeholders alike—will be able to use it to help move us closer to a system that is fairer and safer for us all.

*Cherise Fanno Burdeen*

—Cherise Fanno Burdeen  
CEO, Pretrial Justice Institute

## Table of Contents

<b>The State of Pretrial Justice .....</b>	<b>3</b>
<b>Background .....</b>	<b>4</b>
<b>Methodology .....</b>	<b>6</b>
<b>An Update on 3DaysCount Sites.....</b>	<b>9</b>
<b>Scores and Grading.....</b>	<b>11</b>
<b>Summary of Findings .....</b>	<b>13</b>
<b>How to Use These Results.....</b>	<b>15</b>
<b>Appendix.....</b>	<b>16</b>

## The State of Pretrial Justice

The past five years have witnessed a remarkable growth in support for reforming our nation’s pretrial justice system (the portion of criminal justice practice that begins with a person’s first contact with law enforcement and ends once any resulting charges are resolved, usually through a plea, a trial, or dismissal). This

unprecedented interest emerges from a growing awareness that existing pretrial operations lead to unnecessary detention of poor and working class people—disproportionately people of color—while those with money are able to go free with little or no supervision, regardless of any danger they may present.<sup>1</sup> Current pretrial justice practice is, in short, unfair, unsafe, a waste of public resources, and a significant contributor to the nation’s widely recognized problem of mass incarceration.<sup>2</sup>

### Washington, DC

In Washington, DC, 92% of people who are arrested are released pretrial and no one is detained because of an inability to pay. These results are largely due to the District of Columbia Pretrial Services Agency (PSA), one of the pioneering institutions of its kind in the field. Begun as the D.C. Bail Project in 1963 with a grant from the Ford Foundation, this agency operates 24 hours a day, promoting court appearance and public safety through the use of public safety assessments and graduated supervision levels. Eighty-nine percent (89%) of arrested people released before trial were not arrested for new charges while their cases were being adjudicated; ninety-eight percent (98%) were not rearrested on a crime of violence while in the community pending trial.

Many who have looked at PSA have noticed that the program has a significant budget and questioned whether such a program can be replicated elsewhere. However, PSA operates under conditions that would not necessarily apply to most jurisdictions. As an independent federal agency, PSA has certain fixed and stand-alone costs, such administrative support functions, finance, and information technology, that could, in a state, be housed within another agency. PSA’s budget also includes a robust drug specimen collection program and drug testing laboratory, which also are not a part of a typical pretrial services agency’s budget. States will find that many of these features are already operational within their state.

There is, of course, no single pretrial justice system in the United States. The structure of criminal justice in this country allows for significant variation from state to state, and even from county to county. This decentralization has its benefits. But it presents challenges to those who would seek systemic improvements.

The Pretrial Justice Institute (PJI) developed this report card to minimize those challenges. Its foundational premise is that American pretrial practice—in any state or jurisdiction—should be able to maximize liberty among people who are entitled to the presumption of innocence, while also protecting public safety and ensuring effective court operations.<sup>3</sup> This is, after all, an aspiration traced to our founding fathers and beyond, which former Chief Justice of the United States William Rehnquist eloquently summarized when he wrote, “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”<sup>4</sup>

**“Too many people in the pretrial phase are locked up for days, weeks, and even months, when, according to both law and research, they should be released”**

The analysis presented here finds, however, that the state of pretrial justice in America falls far short of Chief Justice Rehnquist’s vision. Too many people in the pretrial phase are locked up for days, weeks, and even months, when, according to both law and research, they should be released.

New Jersey, which implemented comprehensive reforms earlier this year that have already led to improved outcomes, is the only state to have received an A grade in our analysis. The remaining grade distribution, as illustrated in the table on page 11, includes eight Bs, ten Cs, 13 Ds, and 17 Fs. One state, Delaware, received an Incomplete (I) grade because one of the three indicators—rate of pretrial detention—was unavailable.

The silver lining is that these results would have been far worse had this report card been produced in 2007 rather than 2017. Viewed this way, the current grade distribution may be seen as encouraging. We are in the midst of what has been called the “third generation” of bail reform, spurred by a demand for practices that are shown to be effective and fair.<sup>5</sup> At PJI, we are hopeful that the public, the media, elected officials, and system stakeholders in every state across the nation will use this report to educate, advocate, litigate, and legislate a new national standard of pretrial justice.

## Background

The first wave of bail reform came about in the 1950s and 60s, when the U.S. Supreme Court held that conditions of release must be individualized,<sup>6</sup> and the Vera Foundation demonstrated that individuals released on recognizance—that is, without money bond—achieve high rates of appearance in court. This spurred the use of release on recognizance, nonfinancial conditions, and pretrial supervision. The second generation focused on the idea of public safety, when the Supreme Court upheld the use of preventive detention with due process protections in 1987.<sup>7</sup> As a result, the court acknowledged that there is not a right to bail in all cases, and the original purpose of setting bail—court appearance—was expanded to include considerations of public safety. These two goals are the only purposes that conditions of release may address, under the Constitution.

Despite these changes, the use of financial bond has been the dominant condition of release from

## New Jersey

In 2014, under the urging of Governor Chris Christie, New Jersey passed legislation that dramatically changed pretrial justice in the state. First, it mandated the creation of pretrial services agencies statewide to conduct pretrial assessments and make release recommendations to the court. The new system requires courts to use money bail only as a last resort, when they can articulate why other release conditions are insufficient to assure court appearance and public safety. Second, voters approved a constitutional amendment allowing for pretrial detention of individuals the court chooses to not release before trial. Before the amendment, almost everyone who was arrested in the state was afforded an opportunity for release.



The state spent two years following adoption of the new laws preparing for implementation, which occurred in January 2017. The new system has, so far, been phenomenal. The number of people held in New Jersey jails awaiting trial dropped by 15% in the first six months. Courts had begun detaining fewer individuals prior to the new laws coming into effect and the number of unconvicted people held in jail dropped by more than a third (34.1%) between mid-2015 and mid-2017. At the same time, public safety was improved. Both violent crime and overall crime rates dropped statewide in the first nine months of 2017, compared to the same period in 2016.<sup>1</sup>

One hundred percent of New Jersey’s population now resides in a county that employs validated evidence-based pretrial assessment, and secured money bail has been functionally eliminated. Since the law went into effect, fewer than thirty individuals have been required to pay money prior to release.

For an insider’s perspective on New Jersey’s recent changes, see *Improving Pretrial Justice in New Jersey*.


1. *New Jersey State Police, Uniform Crime Report, January-September 2017, generated October 13, 2017.* [http://www.njsp.org/ucr/pdf/current/20171013\\_crimetrend.pdf](http://www.njsp.org/ucr/pdf/current/20171013_crimetrend.pdf)

the late 1990s until today. During that period, 95% of the growth in jail populations has been due to the increase in the unconvicted population.<sup>8</sup> The third generation of change has come about due to the continued pervasive practice of detaining individuals before trial who should be released. Today, nearly two-thirds of people in jails have a pretrial status; many are charged with low-level, nonviolent offenses and are detained because of their inability to pay the set bail amount.

This most recent wave of reform emphasizes legal and evidence-based practices. In place of “gut instinct” and incomplete information, system stakeholders are finding ways to make better and more-informed decisions using evidence-based pretrial assessment. Properly designed and validated, evidence-based pretrial assessment provides statistical proof that the vast majority of arrested people can be released on recognizance. It also reveals which men and women might benefit from limited conditions and support to increase their likelihood of pretrial success, as well as the small number who may not be suitable for pretrial release (legal standards require a number of procedural steps to determine who may be detained before trial, including early defense representation and opportunity for immediate appeal). In some jurisdictions, lawsuits are also forcing change by challenging practices that fail to look at individual circumstances and base detention on access to money. In several states, state chief justices have led the way in changing pretrial release practices, usually through the form of commissions, judicial training, and court rule changes.

Today it is the rare state that is not considering or has not recently implemented some adjustment to its pretrial justice system. The challenge is that these activities must result in real change, whether spurred by legislation

**STATE TO WATCH**




## Alaska

After 10 years of dramatic growth in the jail and prison populations, including an 81% increase in the number of people held pretrial, Governor Bill Walker signed SB 91, introducing a series of criminal justice improvements, including evidence-based pretrial practices, that are designed to improve public safety and reduce incarceration. Law enforcement officers now have expanded discretion to issue citations in lieu of arrest, and a newly created pretrial services program will conduct evidenced-based assessments and make recommendations to the court. Part of the challenge for Alaska will be implementing effective pretrial services in its many remote rural areas.

Although the state law contained a presumption in favor of release on recognizance, studies found that courts departed from this presumption in the vast majority of cases, and that secured money bond was a significant contributor to the length of pretrial stays. The new law seeks to correct this with mandatory release on recognizance requirements for certain cases.

**STATE TO WATCH**



## Arizona

The Arizona Supreme Court took the lead in changing pretrial practices when it established a task force to examine fines, fees, and pretrial release practices in 2016. The work of the task force has resulted in, among other changes, new court rules that prohibit pretrial incarceration based solely on an individual's inability to pay, require that when money bond is deemed a necessary condition of release that it is “the least onerous” type of money bond, and also permit the use of preventive detention. The legislature is introducing bills to address other recommendations from the task force, including: allowing community restitution in lieu of payment; reclassifying certain misdemeanor offenses as civil offenses; and establishing a statewide pretrial services program. The efforts in Arizona are bolstered by Pima County’s work as a Safety and Justice Challenge site to reduce the average daily jail population, and the statewide rollout of a pretrial assessment tool through the Laura and John Arnold Foundation.

**“Establishing this baseline will enable each state to set goals and demonstrate progress.”**

or lawsuits. Experience has shown that it is not enough to have a good law on the books; a successful transformation of a pretrial system requires information gathering, education, and stakeholder buy-in. The ability to track and modify practices is also critical, as the overuse of detention and excessive conditioning of release can confound the best efforts of any system.

This report provides a snapshot in time from which we can begin to measure change. Establishing this baseline will enable each state to set goals and demonstrate progress.

**Methodology**

There are any number of ways to gauge pretrial justice in America. This report focuses on the biggest flaws affecting most of the nation’s pretrial systems and the areas where improvement can have the greatest positive impact. An explanation of each of the measures appears below, along with information on how the measure was sourced. These are followed by a brief discussion of the measures’ limitations and an explanation of how the collected information was converted into grades.

**The Measures**

Local pretrial practice can vary from jurisdiction to jurisdiction. Yet every local pretrial system operates within a structure—based on elements that include a state’s constitution, statutes, case law, and tradition—that is unique to the state where it is located. For this reason, this analysis focuses on states as the basic unit and collected three fundamental measures for each:


1. Rate of unconvicted people in local jails,
2. Percentage of people living in a jurisdiction that uses evidence-based pretrial assessment to inform pretrial decisions, and
3. Percent of a state’s population living in a jurisdiction that has functionally eliminated secured money bail.

**Rate of unconvicted people in local jails.** Nearly two-thirds (63%) of the people in U.S. jails are unconvicted individuals. In 1990, that figure was just slightly more than half (51%).<sup>9</sup>

This indicator focuses, however, on the pretrial detention rate within the overall population. The rate used is the number of unconvicted people in jails per 10,000 adult residents.

**STATE TO WATCH**

**California**



The three major branches of the nation’s most populous state are moving forward on modernizing pretrial practices. State Senator Bob Hertzberg and Assemblyman Rob Bonta introduced companion bills to establish the use of pretrial assessments and pretrial services, and a work group studying the impact of the bail system on people unable to afford bond. In October 2017 the Pretrial Detention Reform Workgroup, appointed by Chief Justice Tani Cantil-Sakauye, recommended replacing the current monetary bail system with a robust system of pretrial assessment and supervision. In the meantime, several localities have moved forward with initiatives of their own, including the implementation of assessment tools, the increased presence of defense attorneys, and the diversion of people with behavioral health issues out of the criminal justice system. In 2016, the Santa Clara Board of Supervisors voted to implement evidence-based pretrial practices, citing studies that the money bail system was keeping low-income people unnecessarily locked up.

Data for this measure was collected primarily through the Bureau of Justice Statistics (BJS) Census of Jails series—using the most recent year available, 2013.<sup>10</sup> A handful of states did not submit data to BJS, but we were able to locate similar numbers from other sources.<sup>11</sup> The only exception is the state of Delaware. Because we could not find comparable data for this state, it received an “Incomplete” (I) rather than a letter grade.

***Percent of state’s population living in a jurisdiction using evidence-based pretrial assessment.*** In most of America, only two considerations may legally influence the pretrial release decision: whether the accused person, if released, is likely to appear in court as expected, and whether he or she would present an unmanageable threat to public safety during the pretrial period if released. An evidence-based pretrial assessment measures these two considerations for each person who comes before the court using a “tool” (usually a questionnaire, form, or database) that collects relevant information and generates an objective score based on a statistical analysis of the performance of previously arrested people with similar profiles.

The use of evidence-based pretrial assessment is an important advance over systems that allow irrelevant, or even biased factors to influence court decisions. Ideally, evidence-based pretrial assessment should be locally validated—meaning that the tool has been tested to confirm that it has predictive ability within the jurisdiction where it is being used.

Data for this measure were compiled using a combination of institutional knowledge and contacts with national pretrial

## STATE TO WATCH



## Indiana

Progress in Indiana is supported in part by the state’s participation in the National Institute of Corrections’ (NIC) Evidence-Based Decision Making Initiative (EBDM). In 2016, the Indiana Supreme Court adopted Indiana Criminal Rule 26 encouraging the use of pretrial risk assessments and the non-financial release of arrestees who do not present a substantial risk of flight or danger to themselves or others. NIC is working with 11 Indiana counties that are piloting evidence-based pretrial practices in accordance with CR 26. The pilot counties are using the Indiana Risk Assessment System Pretrial Assessment Tool (IRAS-PAT) to inform release and supervision conditions and provide—or are working to provide—defense counsel at initial hearings. The EBDM state policy team is overseeing a process and outcome evaluation of the pretrial pilot project that will include a validation study of the IRAS-PAT.

## STATE TO WATCH



## Maryland

In the fall of 2016, two documents helped shape the dialogue around pretrial detention and release in Maryland. The first was an advisory letter from state Attorney General Brian Frosh indicating that the practice of locking up individuals as a consequence of their inability to pay was likely to be found unconstitutional. The second, a report from the Maryland Office of the Public Defender, quantified concerns around the money-based bail system, showing that tens of thousands of Marylanders were improperly incarcerated because of money bail and that for-profit bail bonds drained millions of dollars from the state’s poorest communities.

As a result, Maryland changed its court rules to create a presumption in favor of release on recognizance, require the “least onerous” conditions of release, and require an individualized inquiry into a person’s specific circumstances, including ability to meet financial conditions of release. The challenge now is to provide support for a new release model, in the form of evidence-based pretrial assessments that provide better information on which people can be released under what conditions, and pretrial services.

assessment leaders and local stakeholders. Only those states and counties using validated evidence-based pretrial assessment tools were given credit on this measurement.

For more information about pretrial assessment tools, see *Questions About Pretrial Assessment*.

**Percent of state’s population living in a jurisdiction that has functionally eliminated secured money bail.** In many ways, the final measure—functional elimination of secured money bail—is the simplest and also the most crucial to achieving truly safe, fair, and effective pretrial justice. It is the simplest because, to date, only one state, New Jersey, has achieved this goal. (Washington, DC, which has operated a model pretrial system without money bail for more than twenty years, was not included in this analysis.<sup>12</sup>)

As long as pretrial systems use money as a condition of pretrial release, poor and working class people will remain behind bars while those who are wealthy go home, regardless of their likelihood of pretrial success. This is a fundamental injustice.

Data for this measure were compiled using a combination of institutional knowledge and contacts with national pretrial assessment leaders and local stakeholders.

**Data Limitations**

The measures presented here reflect work that has been completed, not work in progress. This is an important distinction, since many states are actively engaged in improvement efforts whose results have yet to be reflected in the measures used in this report. New

**“As long as pretrial systems use money as a condition of pretrial release, poor and working class people will remain behind bars while those who are wealthy go home...”**

**STATE TO WATCH**



**New Mexico**

In 2016, voters in New Mexico overwhelmingly approved a constitutional amendment to prevent the pretrial detention of people based on an inability to pay, while also allowing preventive detention of people charged with certain serious crimes. The measure had bipartisan support, and backing from Chief Justice Charles Daniels. Before the measure took effect, New Mexico had one of the highest pretrial detention rates in the nation— 341 per 100,000 residents.

To guide criminal courts on this measure, the New Mexico Supreme Court issued new court rules, developed with the input of judges, prosecutors, defense attorneys, bail bondsmen, legislators, and detention officials, which took effect July 1 of this year. A group of bail bond agents and state legislators have brought suit against the rules; in August, a federal judge denied a request to stop judges from using the new court rules.

Mexico, for example, is on a path to implement validated pretrial assessment tools in every court in the state, but that has yet to happen and so is not reflected in New Mexico’s grade. An important accompaniment to this report are the profiled States to Watch, which discuss several of these cases in more detail.

Also, data in this report represent our best effort to collect information that is current and accurate. Readers are invited to provide more recent or comprehensive data that may have been overlooked and to submit corrections that can help make future analysis more accurate and meaningful by contacting us at [stateofpretrial@pretrial.org](mailto:stateofpretrial@pretrial.org).

# 3DAYS COUNT™

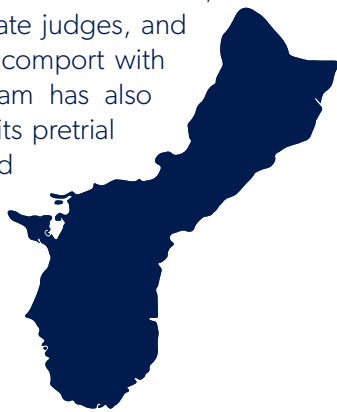
## Commonsense Pretrial

# AN UPDATE ON 3DAYS COUNT SITES

*Our nation's justice system allows for significant variation in policy and practice at the local level. Yet every county's pretrial system operates within a structure established by the state. 3DaysCount™ was created to support state-level changes that facilitate safer, fairer, and more effective local pretrial practice. This overview highlights steps our partners in 3DaysCount have been pursuing within this framework, helping to set a new national standard of pretrial justice.*

### Guam

In June 2016, the U.S. territory of Guam became the inaugural 3DaysCount site. Led by the Chief Justice of the Supreme Court—with system-wide participation that included the attorney general, the public defender, and legislators—Guam's 3DaysCount team developed three specific goals: ensure defense counsel at the earliest hearing that could result in pretrial detention, provide universal evidence-based pretrial assessment, and match pretrial conditions to each individual's assessment results. One year in, defense counsel is now present at first appearance and a pretrial assessment is conducted for every arrested person. Recognizing a pattern of over-supervision, the territory is currently refining its pretrial supervision services and conditions, continuing to educate judges, and revising policies to comport with best practices. Guam has also set out to improve its pretrial data collection and to use the data to understand and shape pretrial policies.



### Illinois

Illinois joined 3DaysCount with support from the state Supreme Court, the Administrative Office of the Illinois Courts (AOIC), and state representative Carol Ammons. Together, the team identified three overall 3DaysCount goals: restrict pretrial detention, after due process, to people who pose an unmanageable risk to public safety or of failing to appear in court; provide judges with additional safe, fair, and cost-effective options as alternatives to pretrial detention; and increase public safety.



In April 2017, the Illinois supreme court issued a Statewide Policy Statement for Pretrial Services. As Chief Justice Lloyd A. Karmeier noted, the statement is a guide for all trial courts and emphasizes that "Illinois pretrial principles and practices are founded upon the presumed innocence of the accused." In July, the court approved the creation of the Illinois State Commission on Pretrial Practices; participants will include representatives from all three branches of government, law enforcement, public defenders, and representatives of victims, among others.

These developments occurred within a larger context that included passage of statewide legislation that, among other things, establishes a clear presumption for release on the least restrictive non-financial conditions needed to provide reasonable assurance of public safety and court appearance and allows the Supreme Court to implement a pretrial assessment in judicial districts throughout the state. Also, in Cook County (Chicago), the site of ongoing litigation surrounding bail practices, the chief judge promulgated changes to the court rules that would limit bond amounts to each individual's ability to pay, replacing all bond judges and renaming the Central Bond Court as the Pre-Trial Division in the process.

## Connecticut



Governor Dannel Malloy's office signed on to the 3DaysCount campaign in February 2017. Within just a few months, the Connecticut legislature passed, and the governor signed, a bill establishing a clear presumption for non-financial release in most misdemeanor cases. Moreover, people who are in jail on financial bonds they cannot post for 14 days must be brought before the court for a bond review and the court "shall remove the financial conditions of release unless the court makes specific findings for why the financial conditions are needed."

This law promises to be a first step for pretrial reform in the state. In October, the Connecticut Sentencing Commission sent a delegation to New Jersey to study its transformation of the bail system. It also sponsored a day-long summit of about 150 judges, prosecutors, defenders, law enforcement, pretrial services, and other key justice system stakeholders to hear from other states that have been active in bail reform.

## Washington

Washington state committed to 3DaysCount in June 2017 through its Pretrial Reform Task Force. The Task Force, which has the support of judges from all levels of the state court system, has created professionally staffed subcommittees with broad stakeholder representation to study and make recommendations on three major areas: pretrial services, pretrial assessment, and data collection.



The 3DaysCount-related work in Washington builds upon local efforts in King, Spokane, and Yakima counties. Yakima County is a Smart Pretrial Demonstration site, Spokane recently developed its own pretrial assessment tool, and King County (Seattle) is home to Law Enforcement Assisted Diversion (LEAD), a program that helps prevent unnecessary arrests. All of these counties are represented on the Task Force.

*For more information about 3DaysCount, visit [pretrial.org/3DaysCount](http://pretrial.org/3DaysCount).*

### Overall Scores and Grading

The measures described above were converted into a point system that has been translated into a standard A-to-F grading system for clarity and ease of use. States were awarded points for each of the measures described in the first three columns below. A bonus point was added for any state that had both 100% of its jurisdictions using evidence-based

Pretrial Detention Rate		Use of Validated Pretrial Assessment		Functional Elimination of Money Bail		Bonus Point (for combination 100% pretrial assessment and elimination of money bail)		Overall Score & Grade
<10% = 2 pts	●	76% to 100% = 4 pts	●	100% = 1 pt	●	Yes = 1	●	7 pts = A
10% to 20% = 1 pt	◐	51% to 75% = 3 pts	◐	0% = 0 pts	○	No = 0	○	5-6 pts = B
21% & up = 0 pts	○	26% to 50% = 2 pts	◑					3-4 pts = C
		1% to 25% = 1 pt	◒					2 pts = D
		0% = 0 pts	○					0-1 pts = F

### Results By State

	Pretrial Detention Rate	Use of Validated Pretrial Assessment	Elimination of Money Bail	Bonus Point	Grade
Alabama	◐	○	○	○	F
Alaska	○	○	○	○	F
Arizona	◐	●	○	○	B
Arkansas	◐	○	○	○	F
California	◐	◑	○	○	D
Colorado	◐	●	○	○	B
Connecticut	◐	●	○	○	B
Delaware	-	○	○	○	I
Florida	◐	◑	○	○	D
Georgia	◐	○	○	○	F
Hawaii	●	○	○	○	D
Idaho	◐	○	○	○	F
Illinois	◐	◑	○	○	C
Indiana	◐	○	○	○	F
Iowa	●	○	○	○	D
Kansas	◐	◑	○	○	D
Kentucky	◐	●	○	○	B

	Pretrial Detention Rate	Use of Validated Pretrial Assessment	Elimination of Money Bail	Bonus Point	Grade
Louisiana	○	◐	○	○	F
Maine	●	○	○	○	D
Maryland	◐	◐	○	○	C
Massachusetts	●	○	○	○	D
Michigan	●	◐	○	○	C
Minnesota	●	◐	○	○	C
Mississippi	◐	○	○	○	F
Missouri	◐	○	○	○	F
Montana	◐	○	○	○	F
Nebraska	◐	○	○	○	F
Nevada	◐	●	○	○	B
New Hampshire	●	○	○	○	D
New Jersey	◐	●	●	●	A
New Mexico	○	◐	○	○	D
New York	●	◐	○	○	C
North Carolina	◐	◐	○	○	D
North Dakota	◐	○	○	○	F
Ohio	●	◐	○	○	C
Oklahoma	◐	○	○	○	F
Oregon	●	◐	○	○	C
Pennsylvania	◐	◐	○	○	D
Rhode Island	●	●	○	○	B
South Carolina	◐	○	○	○	F
South Dakota	◐	◐	○	○	C
Tennessee	◐	○	○	○	F
Texas	◐	◐	○	○	D
Utah	●	●	○	○	B
Vermont	●	○	○	○	D
Virginia	◐	●	○	○	B
Washington	●	◐	○	○	C
West Virginia	◐	○	○	○	F
Wisconsin	◐	◐	○	○	C
Wyoming	◐	○	○	○	F

Pretrial Detention Rate: < 10 = ● ; 10 to 20 = ◐ ; 21+ = ○  
 Pretrial Assessment: 76-100% = ● ; 51-75% = ◐ ; 26-50% = ◐ ; 1-25% = ○ ; 0% = ○  
 Eliminated Money Bail: 100% = ● ; 0% = ○  
 Bonus Point: Yes = ● ; No = ○

For detailed results, see Appendix.



pretrial assessment and had functionally eliminated the use of money bail (column 4). The points were then added to generate letter grades listed in the far right column.

### Summary of Findings

The good news is that this analysis shows 25% of people living in the United States now reside in a jurisdiction that uses a validated evidence-based pretrial assessment. Only four years ago, this figure was calculated as closer to 10 percent.<sup>13</sup> However, fewer than 3% of people living in this country live in a jurisdiction that has functionally eliminated money bail. Moreover, averaging the individual scores of all fifty states generates a national score of only 2.57—which earns the United States as a whole a D. This speaks volumes about the need for further improvement.

As noted earlier, only one state, New Jersey, received an A. This is because, in addition to having relatively low rates of detention and implementing validated pretrial assessments statewide, it has functionally eliminated money bond. New Jersey's efforts are discussed in more detail on page 4. Eight states (Arizona, Colorado, Connecticut, Kentucky, Nevada, Rhode Island, Utah, and Virginia) received Bs. Ten states earned Cs (Illinois, Maryland, Michigan, Minnesota, New York, Ohio, Oregon, South Dakota, Washington, and Wisconsin). In addition, there were 13 Ds and 17 Fs.

It is important to note that these scores are based upon current practice and do not reflect reforms initiated but not yet fully implemented. Several states have grades that do not reflect important



### New York

STATE TO WATCH

The momentum to change pretrial detention practices in New York could perhaps be best encapsulated in the recently announced long-term plan to close Riker's Island. The infamous facility holds 80% of the city's inmates, most of whom have a pretrial status. Former Chief Justice Jonathan Lippman chaired the commission that developed the plan, and it has the support of Gov. Andrew Cuomo and New York City Mayor Bill de Blasio. Cuomo has also made changes to pretrial practices part of his Criminal Justice Reform Act, which would include the use of assessment tools and alternatives to detention. New York City is also home to several innovative pretrial programs, including community bail funds and holistic defender programs, and a Justice Reinvestment Initiative from the Bureau of Justice Assistance seeks to improve pretrial systems through data and process analyses across the state. The challenge for the state will be in finding common ground between New York City and upstate jurisdictions.



### Ohio

STATE TO WATCH

In Ohio, one of the states hit hardest by the opioid epidemic, jail overcrowding has brought the need for changes to pretrial release practices to the forefront. The County Commissioners' Association of Ohio and the Buckeye State Sheriffs' Association have called for a move away from bail schedules, a practice that keeps people needlessly locked up due to finances. An ad hoc committee formed by the Ohio Criminal Sentencing Commission has also recommended, among other changes, a move toward evidence-based release practices, data collection and analysis of all facets of the bail and pretrial system, and the right to counsel at initial appearance.

County-based initiatives support these moves. In Lucas County, implementation of the Laura and John Arnold Foundation Public Safety Assessment tool has resulted in an 18% reduction in the number of people incarcerated. Cuyahoga County, with support from the George Gund Foundation, is conducting data analysis of its jail populations to see if people are spending unnecessary time in jail. Ohio is also participating in the Stepping Up initiative, which seeks to reduce the number of people with mental illnesses involved in the criminal justice system.

initiatives that PJI expects, in time, will yield significant improvements. These include states such as Alaska and New Mexico, both of which are profiled as States To Watch.

In five states besides New Jersey—Arizona, Connecticut, Kentucky, Rhode Island, and Utah—all residents live in a county that uses a validated, evidenced-based pretrial assessment to inform decisions about pretrial release and detention; all of these states received a B. In three other states—Colorado, Nevada, and Virginia—85-89% of residents live in a county using such a tool. Several other states are exploring or are in the planning stage of statewide implementation of pretrial assessments. Again, several of these states are profiled as States to Watch.

Additionally, several jurisdictions are taking active measures to deflect individuals, particularly those with behavioral health issues, away from the justice system and into programs that can more adequately meet their needs. LEAD (Law Enforcement-Assisted Diversion) is a pre-booking diversion program that moves individuals charged with low-level drug and prostitution offenses into a case management treatment model. Stepping Up is a national initiative to reduce the number of people with mental health issues in jails. While the results of this work should be reflected in the detention rate score, it is also worth explicitly acknowledging such efforts.

**Beyond The Measures**

High detention rates, limited implementation of evidence-based

**STATE TO WATCH**



**Texas**

Harris County (Houston) is at the center of one of the nation’s largest legal challenges to money bail. A federal judge has already granted a preliminary injunction to plaintiffs, who represent people charged with misdemeanors locked up because they could not post cash bail, and has ordered that all people charged with misdemeanors be released within 24 hours on personal bond if they have not already bonded out.

Despite its reputation for “lock’em up” criminal justice, Texas is home to bi-partisan efforts to emphasize prudent and legally-backed bail practices. Groups on both sides of the political spectrum—such as the conservative Right on Crime initiative and liberal Texas Criminal Justice Coalition—have found common ground on issues such as bail reform as a means to reducing jail populations and spending public resources prudently. While a bipartisan bill supported by the Texas Judicial Council to reform bail practices ultimately failed to pass this session, Texas has enjoyed success from its other smart-on-crime measures. Texas has its lowest crime rate since 1968, saved \$2 billion in new prison construction costs, and closed three prisons.

**STATE TO WATCH**



**Utah**

Following reports from the Utah Judicial Council and the Office of the Legislative Auditor General showing that judges lacked sufficient information to make fair pretrial decisions, the state is now rolling out the Laura and John Arnold Foundation’s Public Safety Assessment tool to make more information available to judges. The new program is expected to go live in November 2017, and will be followed by a Harvard University study to see how the program is working. After a 2015 study of Salt Lake County, the state’s most populous jurisdiction, there are also plans to improve the diversion of people with behavioral health issues from the criminal justice system through the Stepping Up initiative, and also improve data collection practices.

Chief Justice Matthew Durrant has been an advocate of recognizing the evolving abilities of the courts, stating, “One overarching change that we have made in our court system over the past twenty years is that rather than simply being guided by...tradition, anecdote, or ‘gut instinct,’ we are guided by research, data, and evidence about what works.”<sup>1</sup>

1. Chief Justice Matthew Durrant, 2017 State of the Judiciary (Utah), January 23, 2017.



pretrial assessments, and continued use of money bail are not just numbers. These figures represent hundreds of thousands of people across the country being detained even though they do not present a risk to court operations or public safety. Research has also shown that keeping such individuals locked up for as few as three days can have dangerously destabilizing effects.<sup>14</sup> They risk losing their homes, their jobs, and their families. Moreover, unnecessary pretrial detention raises questions of whether public resources are being used effectively.

These numbers also represent an erosion of the values of our legal system. Pretrial detention compromises the presumption of innocence, inhibits the ability of people to develop a legal defense, and coerces men and women to plead guilty so they can get out of jail faster, even when they may have a defensible case. It also exacerbates the problem of mass incarceration. For example, people who are detained receive longer jail and prison sentences than similarly-situated people who were released before trial.<sup>15</sup>

Holding such a large percentage of individuals on bonds they cannot post has become so commonplace that it is hard to appreciate that many are being detained in violation of the Constitution.<sup>16</sup> As noted earlier, detention is supposed to be the “carefully limited exception” to the custom of pretrial release, occurring only with due process protections. Conditions of release are to be tailored to the individual circumstances of each person, and designed to meet the goals of court appearance and public safety.<sup>17</sup> What these numbers show is that for far too many people in too many courts in this country, the promise and protections of the justice system have not yet materialized.

**“What these numbers show is that for far too many people in too many courts in this country, the promise and protections of the justice system have not yet materialized.”**

### How to Use These Results

The scoring and grades presented in this report are intended to be the start of a conversation, not the end. They are meant to encourage states to ask, “Given where we are, how can we do better?”

It is important to emphasize that neither states with high grades nor those with low grades should view these results as a reason to stop improving or to not even try. Even states that earned top grades have room to improve; those that earned a C, D, or F can find encouragement and guidance from states that have already begun these critical efforts.

States may wish to turn to PJI’s quarterly publication, *Where Pretrial Improvements are Happening*, for insights on how and where to begin (or continue) this work. This document provides up-to-date information on activities categorized by changes in practice, judiciary-led change, executive branch brand-led change, community and grassroots-led change, legislative change, and change through litigation. The work described runs the gamut from small counties seeking solutions to crowded jails to multi-state philanthropic initiatives aimed at creating lasting, systemic improvements.

State leaders are also encouraged to consider adding their state to 3DaysCount, a nationwide effort to set a new national standard for pretrial justice by working at the state level to reduce unnecessary arrests that destabilize families and communities; replace discriminatory money bail with practical, assessment-based decision-making; and restrict detention (after due process) to the small number of people who are not ordered released by the court. See *An Update on 3DaysCount Sites* on page 9 for highlights of steps currently being taken by states already associated with 3DaysCount.

## References

1. *Questions About Pretrial Assessment*. Report. Pretrial Justice Institute. October 3, 2017. [www.university.pretrial.org/viewdocument/questions-about-pretrial-assessment](http://www.university.pretrial.org/viewdocument/questions-about-pretrial-assessment).
2. See, for example, a curated list of pretrial detention research at [www.prisonpolicy.org/research/pretrial\\_detention/](http://www.prisonpolicy.org/research/pretrial_detention/).
3. Timothy Schnacke, *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*, National Institute of Corrections, 2014.
4. *U.S. v. Salerno*, 481 U.S. 739 (1987).
5. Timothy Schnacke, *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*, National Institute of Corrections, 2014. 18.
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8. Office of Justice Programs. Bureau of Justice Statistics. *Jail Inmates at Midyear 2014*. By Todd D. Minton and Zhen Zeng. NCJ 248629. 2015.
9. *Jail Inmates at Midyear 2014*. Minton and Zeng.
10. Office of Justice Programs. Bureau of Justice Statistics. *Census of Jails 2013*. Data set available at [www.bjs.gov/index.cfm?ty=dcdetail&iid=254](http://www.bjs.gov/index.cfm?ty=dcdetail&iid=254).
11. Non-BJS sources include—Alaska: 2015 Alaska Criminal Justice Commission Justice Reinvestment Report; Connecticut: June 2013 Criminal Justice Policy & Planning Division Monthly Indicators Report from the Connecticut Statistical Analysis Center; Hawaii: State of Hawaii Department of Public Safety 2013 Annual Report; Rhode Island: Rhode Island Department of Corrections Planning and Research 2013 Fiscal Year Annual Population Report; Vermont: Average Monthly Detained Counts for July 2013.
12. Washington, DC has characteristics similar to other major cities, not states that are more diverse in density and population. For that reason, including its data with that of states can be misleading.
13. *Developing a National Model for Pretrial Risk Assessment*. Report. The Laura and John Arnold Foundation. 2013. 2.
14. *Pretrial Criminal Justice Research*. Report. The Laura and John Arnold Foundation. 2013.
15. *Pretrial Criminal Justice Research*, 2013.
16. U.S. Department of Justice. Office of Public Affairs. “Department of Justice Files Statement of Interest in Clanton, Alabama, Bond Case.” News release, February 13, 2013. Accessed October 17, 2017. <https://www.justice.gov/opa/pr/departments-justice-files-statement-interest-clanton-alabama-bond-case>.
17. *Stack v. Boyle* (November 5, 1951).

### **PJI Publications referenced in this report:**

*Improving Pretrial Justice in New Jersey*

*Questions About Pretrial Assessment*

*Where Pretrial Improvements are Happening*

To access these and other useful resources, visit the University of Pretrial at [www.pretrial.org/up/](http://www.pretrial.org/up/)

# Appendix

	Pretrial Detention Rate		Use of Validated Pretrial Assessment		Elimination of Money Bail		Bonus Point		Overall	
	Rate per 10,000 residents	Score	% Living in county using assessment	Score	% Living in county that has eliminated money bail	Score	Assessment used, no money	Score	Score	Grade
Alabama	19.4	1	0	0	0	0	No	0	1	F
Alaska	20.1	0	0	0	0	0	No	0	0	F
Arizona	16.7	1	100	4	0	0	No	0	5	B
Arkansas	13.1	1	0	0	0	0	No	0	1	F
California	11.7	1	2.9	1	0	0	No	0	2	D
Colorado	10.5	1	87.4	4	0	0	No	0	5	B
Connecticut	10.2	1	100	4	0	0	No	0	5	B
Delaware	n/a	n/a	0	0	0	0	No	0	0	I
Florida	17.6	1	8.9	1	0	0	No	0	2	D
Georgia	19.5	1	0	0	0	0	No	0	1	F
Hawaii	6.8	2	0	0	0	0	No	0	2	D
Idaho	11.5	1	0	0	0	0	No	0	1	F
Illinois	10.8	1	46.2	2	0	0	No	0	3	C
Indiana	15.7	1	0	0	0	0	No	0	1	F
Iowa	9.9	2	0	0	0	0	No	0	2	D
Kansas	14.1	1	20.1	1	0	0	No	0	2	D
Kentucky	16.1	1	100	4	0	0	No	0	5	B
Louisiana	29.9	0	8.4	1	0	0	No	0	1	F
Maine	5.1	2	0	0	0	0	No	0	2	D
Maryland	12.8	1	27.6	2	0	0	No	0	3	C
Massachusetts	7.7	2	0	0	0	0	No	0	2	D
Michigan	6.8	2	27.2	2	0	0	No	0	4	C
Minnesota	7	2	22.3	1	0	0	No	0	3	C
Mississippi	17.7	1	0	0	0	0	No	0	1	F
Missouri	14.6	1	0	0	0	0	No	0	1	F
Montana	12.8	1	0	0	0	0	No	0	1	F
Nebraska	13.1	1	0	0	0	0	No	0	1	F
Nevada	17.9	1	89.1	4	0	0	No	0	5	B
New Hampshire	8.4	2	0	0	0	0	No	0	2	D
New Jersey	14	1	100	4	100	1	Yes	1	7	A
New Mexico	21.8	0	32.5	2	0	0	No	0	2	D
New York	9.1	2	43.2	2	0	0	No	0	4	C
North Carolina	15.5	1	10.4	1	0	0	No	0	2	D
North Dakota	11.5	1	0	0	0	0	No	0	1	F
Ohio	9.1	2	29.3	2	0	0	No	0	4	C
Oklahoma	13.4	1	0	0	0	0	No	0	1	F
Oregon	8	2	19.5	1	0	0	No	0	3	C
Pennsylvania	15.9	1	9.6	1	0	0	No	0	2	D
Rhode Island	7.4	2	100	4	0	0	No	0	6	B
South Carolina	17.5	1	0	0	0	0	No	0	1	F
South Dakota	13.2	1	34.3	2	0	0	No	0	3	C
Tennessee	16.4	1	0	0	0	0	No	0	1	F
Texas	18	1	16.5	1	0	0	No	0	2	D
Utah	9.3	2	100	4	0	0	No	0	6	B
Vermont	7	2	0	0	0	0	No	0	2	D
Virginia	13.8	1	85.3	4	0	0	No	0	5	B
Washington	9.1	2	3.4	1	0	0	No	0	3	C
West Virginia	11.7	1	0	0	0	0	No	0	1	F
Wisconsin	10.1	1	25.7	2	0	0	No	0	3	C
Wyoming	16.1	1	0	0	0	0	No	0	1	F



# Status Report of the Subcommittee on Mental Health and the Criminal Justice System

November 27, 2017

1. Draft Administrative Order for Presiding Judges with policies and procedures to implement Rule 11 proceedings.
2. Proposed changes to Arizona Rules of Criminal Procedure Rule 11.5 to give limited jurisdiction courts jurisdiction to order competency restoration treatment if the limited jurisdiction court finds the defendant to be incompetent but restorable.
3. Recommendation that the Sequential Intercept Model (SIM) be considered a best practice in local jurisdictions and that judge and staff be encouraged to receive training on the SIM and other tools to recognize behavioral health needs in person who come to court.
4. Recommendation that the Fair Justice Task Force create a workgroup to develop options and alternatives for the development of a centralized repository for courts holding Rule 11 proceedings under appropriate circumstances and with appropriate safeguards to be able to access prior Rule 11 and Title 36 records from other courts.
5. Recommendation that the Fair Justice Task Force direct the AOC to take steps to develop a method for limited jurisdiction courts to report the outcomes of competency hearings as required by A.[SR](#).S. §13-609.



SUPERIOR COURT OF ARIZONA  
[XXXXXXXX] COUNTY

IN THE MATTER OF )	
IMPLEMENTATION OF MENTAL )	
COMPETENCY PROCEEDINGS IN )	ADMINISTRATIVE ORDER
CRIMINAL MATTERS IN LIMITED )	No. [year] - ____
JURISDICTION COURTS )	
_____ )	

On August 9, 2017, legislation amending A.R.S. § 13-4503 became effective granting the Presiding Judge in each county the authority to authorize a municipal court or justice court to exercise jurisdiction over competency hearings in misdemeanor cases that arise out of the municipal court or justice court. It further provides that the limited jurisdiction court may refer a competency hearing to another limited jurisdiction court in that county with the approval of the Presiding Judge. Thereafter, the Supreme Court amended Rule 11 of the Arizona Rules of Criminal Procedure (hereinafter (“Rule 11”) to conform to the jurisdictional changes the legislature made to A.R.S. § 13-4503.

Having considered A.R.S. § 13-4503 and Rule 11, this Order addresses how *[insert name of court(s)]* may conduct Rule 11 competency proceedings in *[name of]* County.

**IT IS ORDERED** *[insert name of court(s)]* shall exercise jurisdiction over competency hearings in misdemeanor cases that arise out of its court in compliance with the policies and procedures set forth below.

**IT IS FURTHER ORDERED** that beginning on *[insert date]*, *[insert name of court(s)]* shall:

1. Conduct Rule 11 proceedings in compliance with the policies and procedures approved by the Presiding Judge and attached to this Order.
2. Ensure an accurate and complete recording of all Rule 11 courtroom proceedings is taken and maintained in accordance with applicable retention schedules. This

includes completion of all automation tasks to ensure the local case management system is properly configured for docketing and retaining case records.

3. Establish a process approved by the Presiding Judge for the issuance, filing, and distribution of minute entries and orders, and for the handling of evaluations and medical reports as required by law and court rule.
4. Appoint mental health experts who meet the requirements set by statute and rule, and who are appointed pursuant to statutory and local procurement requirements.
5. Transmit necessary findings to the Administrative Office of the Courts for the Department of Public Safety for firearm background checks as required by state and federal law.
6. Pay any costs associated with holding Rule 11 competency proceedings as dictated by applicable statute, rule, or local practice at their court.

**IT IS FURTHER ORDERED:**

7. In accordance with A.R.S. § 13-4508, and Arizona Supreme Court Rule 123, judges shall take all necessary steps to ensure the confidentiality of Rule 11 evaluations and ensure that those records are to be treated as confidential records by all who have access to them, including attorneys. Judges who conduct Rule 11 proceedings shall have the authority to order the unsealing of past Rule 11 evaluations for the limited purposes of the Rule 11 proceedings held in their court.
8. The Superior Court and the Clerk of the Superior Court shall ensure that when *[insert name of court(s)]* conducts Rule 11 competency proceedings, *[insert name of court(s)]* has access to any records necessary to conduct the proceeding, including past Rule 11 evaluations in the Superior Court.
9. *[Name of court(s)]* shall provide to a requesting court access to any records necessary to conduct Rule 11 proceedings in that court if the requesting court is authorized to conduct Rule 11 proceedings.

**IT IS FURTHER ORDERED** if [*insert name of court(s)*] wishes to refer competency hearings to another court authorized to conduct Rule 11 hearings pursuant to A.R.S. § 13-4503(F), [*insert name of court(s)*] shall submit to the Presiding Judge for approval its policies and procedures regarding referral of these matters.

**IT IS FURTHER ORDERED** the Presiding Judge may revoke the [*insert name of court(s)*] authorization to conduct or refer Rule 11 competency proceedings if the Presiding Judge determines that the court fails to comply with the conditions of this Order or any subsequent related order.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

[NAME]  
Presiding Judge



Document Name:	Rule 11 Proceedings
Effective Date:	Select effective date.
Document Status:	

## 1.0 Appointment of Counsel

*This section should contain language clarifying that counsel should be appointed for all defendants that enter into Rule 11 proceedings and should delineate how that appointment should take place.*

## 2.0 Assignment of Judicial Officer

*Courts should decide how they want to assign Rule 11 proceedings to judicial officers, they may wish to consolidate into a single division within the court, move through a rotation, or assign on whatever manner they currently assign criminal cases. Courts should consider expertise and training as part of the assignment matrix.*

## 3.0 Assignment of Judicial Staff

*Since limited jurisdiction courts have not managed Rule 11 proceedings in the same manner as this new jurisdiction permits, judicial staff likely will be unfamiliar with various requirements such as sealing or otherwise marking as confidential certain documents, new event codes, and other case management topics. Courts should assign appropriately trained or experienced staff to management of Rule 11 proceedings.*

## 4.0 Rule 11 Calendar and Proceedings

*Courts should consider the timing of events in relationship to availability of experts and information as well as judicial workload. Courts may consider discussing these topics with other limited jurisdiction courts that have already begun conducting Rule 11 proceedings for ideas and best practices.*

## 5.0 Access to Prior Rule 11 Mental Health Expert Reports

*Procedures for gaining access to previous Rule 11 reports will need to be negotiated with the Superior Court Clerk and other local courts who are authorized to conduct Rule 11 proceedings. A process to have access to reports from other counties should also be considered.*

## 6.0 Access to Rule 11 Reports

*The court should establish procedures by which other courts who may perform Rule 11 evaluations may access the expert reports that they have on record.*

## 7.0 Procurement Process of Mental Health Experts for Rule 11

*All contracts for services must be obtained through appropriate local, county or state procurement procedures. Should the court use a contract from other agencies it should be sure that procurement policies have been complied with in the process.*

## 8.0 Appointment of Mental Health Experts for Rule 11

*Depending on the availability of experts and the volume of Rule 11 cases, the court should establish a process by which Mental Health Experts are appointed to cases. Court should ensure they are familiar the requirements of Rule 11.3 as to who is qualified to be appointed as a mental health expert.*

## 9.0 Mental Health Experts Report Format and Filing

*For consistency, courts should provide a template or format for the filing of Rule 11 evaluations. The court should work with other courts within the county that are*

*performing Rule 11 evaluations and seek to use the same or similar formats to improve readability across jurisdictions.*

## **10.0 Record Keeping**

*Policies will need to be established regarding the making of the record of Rule 11 events and of the maintenance of those records within appropriate retention schedules. This should include recordings, transcripts, dockets, register of actions, the case record and all other related court records.*

## **11.0 Training**

*With Rule 11 events being unique within criminal case types, appropriate training and refreshers should be required of all assigned experts, judicial officers and court staff.*

## **12.0 Competing Rule 11 Matters**

*Should the court become aware that a Rule 11 evaluation is being ordered in another court there is to be a process where a single evaluation or a consolidation or transfer of the case(s) may take place in accordance with A.R.S. § 13-4503(F).*

## **13.0 Restoration**

*Procedures are to be developed that outline the process by which restoration to competency is to be accomplished. This should include the mechanism for funding of the restoration.*



**Proposed Recommendation for Amendments to Rule 11.5**  
**(amendments shown are to the re-styled rule in effect January 1, 2018)**

**Rule 11.5 Hearing and Orders**

**(a) Hearing.** No later than 30 days after the experts appointed under Rule 11.3 submit their reports to the court, the court must hold a hearing to determine the defendant's competence. The court may grant additional time for good cause. The defendant and the State may introduce other evidence about the defendant's mental condition. If the defendant and the State stipulate in writing or on the record, the court may determine competence based solely on the experts' reports.

**(b) Orders.**

**(1) *If Competent.*** If the court finds that the defendant is competent, the court must direct that proceedings continue without delay.

**(2) *If Incompetent but Restorable***

**(A) *Generally.*** ~~If a limited jurisdiction court determines that a defendant is incompetent, it must either dismiss the charges on the State's motion, or transfer the case to the superior court for further proceedings. Upon transfer from a limited jurisdiction court, or if a superior court determines that the defendant is incompetent, it must order competency restoration treatment, unless there is clear and convincing evidence that the defendant will not regain competence within 15 months.~~

(i) if a superior court determines that the defendant is incompetent, it must order competency restoration treatment, unless there is clear and convincing evidence that the defendant will not regain competence within the timeframes allowed by law.

(ii) if a limited jurisdiction court determines that the defendant is incompetent, it must either dismiss the charges on the State's motion, transfer the case to the superior court for further proceedings, or, if authorized by the presiding judge of the superior court, order competency restoration treatment, unless there is clear and convincing evidence that the defendant will not regain competence within 15 months.

**(B) *Extended Treatment.*** The court may extend treatment for 6 months beyond the 15-month limit if it finds that the defendant is progressing toward competence.

**(C) *Involuntary Treatment.*** The court must determine whether the defendant will be subject to treatment without consent.

**(D) *Treatment Order.*** A treatment order must specify:

(i) the place where treatment will occur;

- (ii) whether the treatment is inpatient or outpatient under A.R.S. § 13-4512(A);
- (iii) the means of transportation to the treatment site;
- (iv) the length of treatment;
- (v) the means of transporting the defendant after treatment; and
- (vi) that the court is to be notified if the defendant regains competence before the expiration of the treatment order.

**(3) *If Incompetent and Not Restorable.***

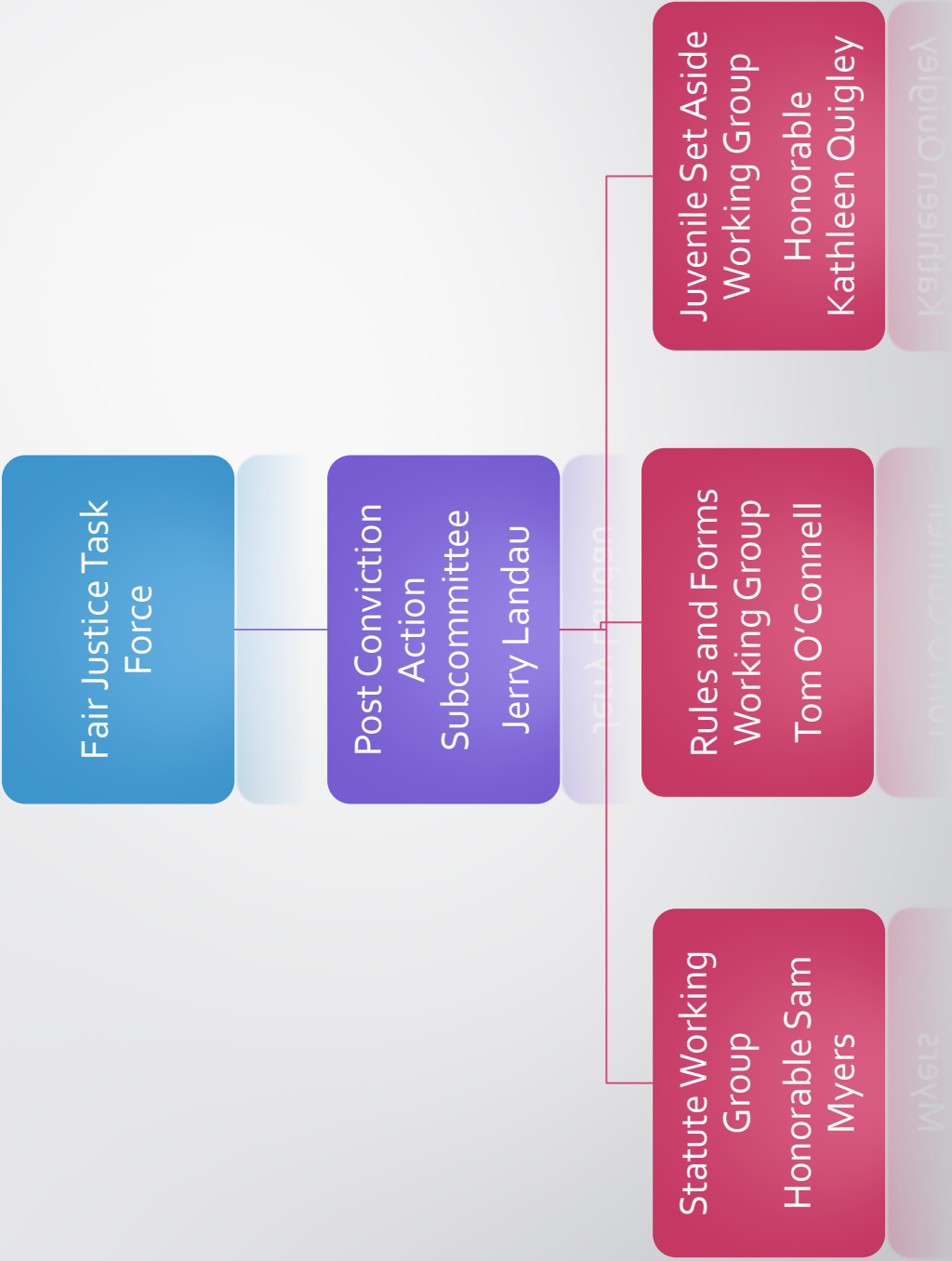
(A) If a limited jurisdiction court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent within the timeframes allowed by law, the limited jurisdiction court will refer the matter to the superior court for proceedings pursuant to A.R.S. §13-4517.

(B) If the superior court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent within 21 months, the court may on request of the examined defendant or the State do one or more of the following:

- (i) Remand the defendant to an evaluating agency approved and licensed under Title 36 to begin civil commitment proceedings under A.R.S. §§ 36-501 et seq.;
- (ii) Order appointment of a guardian under A.R.S. §§ 14-5301 et seq.; or
- (iii) Release the defendant from custody and dismiss the charges without prejudice.

**(4) *Additional Actions.*** If the court enters an order under ~~(b)(3)(A)~~ or ~~(b)(3)(B)~~ (b)(3)(B)(i) or (b)(3)(B)(ii), it may retain jurisdiction and enter further orders as specified in A.R.S. §§ 13-4517 and 13-4518.

**(c) Restoration to Competency: Reports About Treatment [no changes]**





## Ducey orders removal of question about criminal histories from state job applications

By: Rachel Leingang | November 6, 2017, 1:13 pm



Gov. Doug Ducey (Photo by Katie Campbell/Arizona Capitol Times)

The Ducey administration called on state agencies to get check box on job applications that asks about prospective employees' criminal histories.

Gov. Doug Ducey issued an **executive order** today directing Arizona Department of Administration to change its hiring procedures to handle criminal histories differently.

Dubbed the "second chance box" by the Ducey administration, the changes will eliminate questions about criminal histories on state job applications, and criminal histories will not disqualify someone from receiving an interview.

The Ducey administration was **mulling such a policy earlier this year**.

The order points out that 1.5 million Arizona adults have arrests or convictions on their records, and employment is one of the greatest factors in their potential success upon reentering society.

The effort joins several other initiatives spearheaded by Ducey to reduce recidivism and provide released prisoners with second chances. Other efforts include employment centers at prisons and medication designed to inhibit opioid usage and food stamps for drug felons.

The "ban the box" movement, also referred to as fair chance hiring, started more than a decade ago by advocating for eliminating questions about criminal records until later in the hiring process to help ex-offenders get jobs.

More than half of states have some form of policy that delays the process of asking about criminal records. Some states remove the box from governmental job applications, while others also encourage private employers to remove it.

But Arizona's new "second chance box" directive does not apply to the private sector, only to government jobs.

And Ducey's executive order recognizes there may be particular crimes that could preclude someone from advancing in the hiring process. There are also federal and state laws that could prevent someone convicted of crimes to get certain jobs, the order said.

Issue: [CRIMINAL HISTORY](#) [DEPARTMENT OF CORRECTIONS](#) [DOUG DUCEY](#) [FELONIES](#) [FOOD STAMPS](#) [MISDEMEANORS](#) [PRISON](#) [RECIDIVISM](#)  
[SECOND CHANCE BOX](#)

### YOU MIGHT ALSO LIKE



GOP lawmaker  
alleges Phoenix  
gouges Paradise



Cost to fix millions  
in misallocations to  
schools \$105,000 –  
so far

November 17, 2017,  
4:10 am  
ONE COMMENT

Judge throws out  
complaint against  
Somerton pastor



Ducey: 'There is  
truth there' when  
women allege  
sexual harassment

November 16, 2017,  
5:21 pm

Christina Corieri:  
Childhood musical  
sparks life of public  
policy

November 20, 2017,  
4:00 am

Arizona Supreme  
Court upholds  
Medicaid expansion

November 17, 2017,  
10:27 am



*middlegroundprisonreform*

November 7, 2017, 6:34 am at 6:34 am

Kudos to the Governor for taking this “ban the box” step, which will at least allow a person with a record to be interviewed on his or her merits for a job opening before having to reveal a prior felo record. Some private employers — Target, for example — have already taken this step to provide equal opportunities for job seekers, and hopefully the Governor’s order will be followed by all stat government agencies, including the Department of Corrections.



# STATE OF ARIZONA

# EXECUTIVE \* ORDER

---

**Executive Order 2017-07**  
**The establishment of Arizona as**  
**a**  
**Second Chance Employer**

**WHEREAS**, a strong Arizona is an Arizona that ensures "Opportunity For All";

and

**WHEREAS**, every Arizonan should have the opportunity to participate in the workforce, including those with a criminal background; and

**WHEREAS**, an estimated 1.5 million Arizona adults have arrests or convictions on their records; and

**WHEREAS**, Arizonans that have served their criminal sentence and are reentering society deserve a second chance; and

**WHEREAS**, research shows that a criminal conviction record reduces the likelihood of receiving a call back for a job interview by nearly 50%; and

**WHEREAS**, in the year after an incarcerated father is released, family income drops by approximately 15 percent from what it was before incarceration; and

**WHEREAS**, men with criminal records accounted for approximately 34% of healthy men aged 25-54 who are unemployed; and

**WHEREAS**, two years after release, nearly twice as many employed people with records had avoided another brush with the law than their unemployed counterparts; and

**WHEREAS**, employment is one of the most significant indicators of success in decreasing recidivism; and

**WHEREAS**, reducing recidivism will have a positive impact on the state budget with each percent reduction generating significant financial savings; and

**WHEREAS**, the State of Arizona is one of the largest employers in the State, employing individuals in various state government offices and a wide variety of positions; and

**WHEREAS**, the largest personnel system in Arizona state government is the State Personnel System, which is administered by the Arizona Department of Administration through statewide policies and procedures; and

**WHEREAS**, the Second Chance Box Policies set forth in this Order will allow those who have a criminal record the opportunity to explain their record, discuss any inaccuracies and enable State agencies to consider all relevant factors in hiring decisions.

**NOW, THEREFORE, I**, Douglas A. Ducey, by virtue of the authority vested in me by the Constitution and Laws of the State of Arizona, hereby declare the following:

COURT \_\_\_\_\_

County, Arizona

STATE OF ARIZONA Plaintiff

-VS-

Defendant (FIRST, MI, LAST)

Date of Birth

Applicant is:  Defendant  Attorney for Defendant

Probation Officer

[CASE/COMPLAINT NO.]

APPLICATION UPON DISCHARGE TO:

~~RESTORE CIVIL RIGHTS~~

~~WITHDRAW GUILTY PLEA/VACATE CONVICTION (SET ASIDE) CONVICTION~~

A.R.S. § 13-907

~~RESTORE GUN RIGHTS~~

REQUEST FOR RECONSIDERATION

~~Having received an absolute discharge from a sentence of imprisonment, or having completed a period of probation, on [date] \_\_\_\_\_, or having satisfied any other sanction or penalty, I apply for the following relief from conviction(s) of \_\_\_\_\_~~

~~entered in this court on [date] \_\_\_\_\_:~~

~~the restoration of my civil rights;~~

~~the vacation (set aside) of my conviction and dismissal of the information or indictment;~~

~~the withdrawal of my plea of guilty~~

~~the restoration of my gun / firearm rights.~~

**SECTION I. CONVICTION(S)**

A Judgment of Guilt was entered in this Arizona Court against me, the defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, on the conviction of:

1. Count I: \_\_\_\_\_  misdemeanor  felony

2. Count II: \_\_\_\_\_  misdemeanor  felony

3. Count III: \_\_\_\_\_  misdemeanor  felony

4. Count IV: \_\_\_\_\_  misdemeanor  felony

Additional counts continue on a separate page.

**SECTION II. SENTENCE COMPLIANCE**

1.  I completed the conditions of probation. The Probation Department's order discharging me from probation is in the court file or attached to this form.

~~Attached is my certificate of absolute discharge from the director of the department of corrections [applicable only to petitioners who have been imprisoned in the state prison].~~

2.  I received from the Arizona Department of Corrections a Certificate of Absolute Discharge from Imprisonment AND have attached a copy of Certificate to this petition.
3.  I have complied with all required terms of probation (including all employment, classes, community service, restitution, drug/alcohol testing, or other requirements.)
4.  I have not complied with all terms of probation. Explain:

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5. Have you paid restitution in full?  Yes  No

If not, a set-aside of judgment will be denied without a showing of extraordinary circumstances. If you believe you have extraordinary circumstances explain below. (Attach documentation you think is relevant for the court's consideration.)

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6. Have you paid all other Legal Financial Obligations in this case (criminal fines and fees) in full?  Yes  No

If not, please explain:

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If extraordinary circumstances exist, you may be eligible to apply with the court to mitigate the amount owed or convert monies owed to community restitution.

**SECTION III. PRIOR SET ASIDE(S)**

1. Have you previously applied to set aside a conviction?  Yes  No

If so, what was the date of your last application? \_\_\_\_\_

2. Have you been granted a set aside previously?  Yes  No

3. Have you been denied a set aside previously?  Yes  No

**SECTION IV. PENDING CASES AND ACTIVE WARRANTS**

1. Are there any pending cases open against you?  Yes  No

2. Do you have an active warrant?  Yes  No

If yes to either question above, please explain:

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**SECTION V. OTHER INFORMATION FOR THE COURT**

1. Is there anything you would like the court to take into account?

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~~Attached is my certificate of absolute discharge from the director of the federal bureau of prisons [applicable only to petitioners who have been imprisoned in a federal prison].~~

~~Attached is my affidavit of discharge from the judge who discharged me at the end of my term of federal probation.~~

2.  Attached is other pertinent documentation. List attached documents:

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I understand that this application may be denied if information in this application is found to be inaccurate.

I declare under penalty of perjury that the information provided in this application and any attachment is true and correct.

Petitioner's Defendant's Name Printed

Petitioner's Defendant's Signature

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Address

OR

To the best of my knowledge, the information provided in this application is true and correct.

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Attorney/Probation Officer's Name Printed

Attorney/Probation Officer's Signature

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Address

**AUTHORIZATION TO PROCEED ON BEHALF OF DEFENDANT**

I authorize \_\_\_\_\_ [ ] Attorney, or [ ] Probation Officer, ~~or DOG~~  
~~Representative~~ to petition the Superior Court in \_\_\_\_\_ County, to take the above-indicated  
action(s).

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Date

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~~Petitioner's~~ Defendant's Signature

COURT \_\_\_\_\_

County, Arizona

STATE OF ARIZONA Plaintiff

-VS-

Defendant (FIRST, MI, LAST)

Date of Birth

Applicant is:  Defendant  Attorney for Defendant

Probation Officer

[CASE/COMPLAINT NO.]

**APPLICATION UPON DISCHARGE TO:**

**SET ASIDE CONVICTION A.R.S. § 13-907**

**REQUEST FOR RECONSIDERATION**

**SECTION I. CONVICTION(S)**

A Judgment of Guilt was entered in this Arizona Court against me, the defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, on the conviction of:

- 1. Count I: \_\_\_\_\_  misdemeanor  felony
- 2. Count II: \_\_\_\_\_  misdemeanor  felony
- 3. Count III: \_\_\_\_\_  misdemeanor  felony
- 4. Count IV: \_\_\_\_\_  misdemeanor  felony

Additional counts continue on a separate page.

**SECTION II. SENTENCE COMPLIANCE**

- 1.  I completed the conditions of probation. The Probation Department's order discharging me from probation is in the court file or attached to this form.
- 2.  I received from the Arizona Department of Corrections a Certificate of Absolute Discharge from Imprisonment AND have attached a copy of that Certificate to this petition.
- 3.  I have complied with all required terms of probation (including all employment, classes, community service, restitution, drug/alcohol testing, or other requirements.)
- 4.  I have not complied with all terms of probation. Explain:

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- 5. Have you paid restitution in full?  Yes  No

If not, a set-aside of judgment will be denied without a showing of extraordinary circumstances. If you believe you have extraordinary circumstances explain below. *(Attach documentation you think is relevant for the court's consideration.)*

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6. Have you paid all other Legal Financial Obligations in this case (criminal fines and fees) in full?

Yes  No

If not, please explain:

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If extraordinary circumstances exist, you may be eligible to apply with the court to mitigate the amount owed or convert monies owed to community restitution.

**SECTION III. PRIOR SET ASIDE(S)**

1. Have you previously applied to set aside a conviction?  Yes  No

If so, what was the date of your last application? \_\_\_\_\_

2. Have you been granted a set aside previously?  Yes  No

3. Have you been denied a set aside previously?  Yes  No

**SECTION IV. PENDING CASES AND ACTIVE WARRANTS**

1. Are there any pending cases open against you?  Yes  No

2. Do you have an active warrant?  Yes  No

If yes to either question above, please explain:

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**SECTION V. OTHER INFORMATION FOR THE COURT**

1. Is there anything you would like the court to take into account?

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2.  Attached is other pertinent documentation. List attached documents:

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**I understand that this application may be denied if information in this application is found to be inaccurate.**

**I declare under penalty of perjury that the information provided in this application and any attachments is true and correct.**

\_\_\_\_\_  
Defendant's Name Printed

\_\_\_\_\_  
Defendant's Signature

\_\_\_\_\_  
Address

**OR**

**To the best of my knowledge, the information provided in this application is true and correct.**

\_\_\_\_\_  
Attorney/Probation Officer's Name Printed

\_\_\_\_\_  
Attorney/Probation Officer's Signature

\_\_\_\_\_  
Address

**AUTHORIZATION TO PROCEED ON BEHALF OF DEFENDANT**

I authorize \_\_\_\_\_ [ ] Attorney, or [ ] Probation Officer to petition the Superior Court in \_\_\_\_\_ County, to take the above-indicated action.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant's Signature

COURT

County, Arizona

STATE OF ARIZONA Plaintiff

-VS-

Defendant (FIRST, MI, LAST)

Date of Birth

Applicant is:  Defendant  Attorney for Defendant

Probation Officer  Guardian

[CASE/COMPLAINT NO.]

APPLICATION UPON DISCHARGE TO:

RESTORE CIVIL RIGHTS

~~WITHDRAW GUILTY PLEA/VACATE  
CONVICTION (SET ASIDE)~~

RESTORE FIREARM RIGHTS

A.R.S. §§ 13-905, 13-906, 13-908, 13-909, 13-910, 13-911, 13-912  
and 13-925

REQUEST FOR RECONSIDERATION

Civil Rights  Firearm Rights

~~Having received an absolute discharge from a sentence of imprisonment, or having completed a period of probation, on [date] \_\_\_\_\_, or having satisfied any other sanction or penalty, I apply for the following relief from conviction(s) of \_\_\_\_\_~~

~~entered in this court on [date] \_\_\_\_\_:~~

~~the restoration of my civil rights;~~

~~the vacation (set aside) of my conviction and dismissal of the information or indictment;~~

~~the withdrawal of my plea of guilty~~

~~the restoration of my gun / firearm rights.~~

**SECTION I. CONVICTION(S)**

A Judgment of Guilt was entered against the me, the defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, on the conviction of:

1. Count I: \_\_\_\_\_  misdemeanor  felony

2. Count II: \_\_\_\_\_  misdemeanor  felony

3. Count III: \_\_\_\_\_  misdemeanor  felony

4. Count IV: \_\_\_\_\_  misdemeanor  felony

Additional counts continue on a separate page.

**SECTION II. STATE CONVICTION** (For federal convictions, see SECTION III.)

Entered in the Superior Court of Arizona in \_\_\_\_\_ County.

1.  The above stated judgment of guilt and conviction for a felony is my first felony conviction in this or any other state.  Yes  No
2.  I completed the conditions of probation. The Probation Department's order discharging me from probation is in the court file or attached to this form.  
 ~~Attached is my certificate of absolute discharge from the director of the department of corrections [applicable only to petitioners who have been imprisoned in the state prison].~~
3.  I received from the Arizona Department of Corrections a Certificate of Absolute Discharge from Imprisonment on a date two (2) or more years before today's date, AND have attached a copy of that Certificate to this petition.
4.  I am still on probation. My Probation Officer is \_\_\_\_\_, **AND**
5.  I have complied with all required terms of probation (including all employment, classes, community service, restitution, drug/alcohol testing, or other requirements.)
6.  I have not complied with all terms of probation. Explain:  
 \_\_\_\_\_  
 \_\_\_\_\_

**SECTION III. FEDERAL CONVICTION** (For state convictions, see SECTION II.)

- Entered in United States District Court for the District of \_\_\_\_\_.
- On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, I have:
- ~~Attached is my certificate of absolute discharge from the director of the federal bureau of prisons [applicable only to petitioners who have been imprisoned in a federal prison].~~
  - Been sentenced to and successfully served a term of federal probation, received an Affidavit of Discharge from the judge who discharged me from probation, **AND** have attached a copy to this petition.  
 ~~Attached is my affidavit of discharge from the judge who discharged me at the end of my term of federal probation.~~
  - Been sentenced to and successfully served a federal prison term, received from the Federal Bureau of Prisons a Certificate of Absolute Discharge, **AND** have attached a copy of the Certificate, or other official documentation that indicates successful discharge provided by the Bureau of Prisons, to this petition.

**SECTION IV. RESTITUTION AND LEGAL FINANCIAL OBLIGATION STATUS**

1. Have you paid restitution in full?  Yes  No  
 If not, are you current with restitution payments?  Yes  No

If not, a restoration of rights will be denied without a showing of extraordinary circumstances. If you believe you have extraordinary circumstances explain below. (Attach documentation you think is relevant for the court's consideration.)

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2. Have you paid all other legal financial obligations in this case (criminal fines and fees) in full?

Yes  No

If not, please explain:

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If extraordinary circumstances exist, you may be eligible to apply with the court to mitigate the amount owed or convert monies owed to community restitution (State offenses only, not for Federal convictions).

**SECTION V. PRIOR RESTORATION OF RIGHTS**

1. Have you previously applied to have your rights restored?  Yes  No

If so, what was the date of your last application? \_\_\_\_\_

2. Have you been granted the restoration of your rights previously?  Yes  No

3. Have you been denied the restoration of your rights previously?  Yes  No

**SECTION VI. PENDING CASES AND ACTIVE WARRANTS**

1. Are there any pending cases open against you?  Yes  No

2. Do you have an active warrant?  Yes  No

If yes to either question above, please explain:

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**SECTION VII. RESTORATION OF FIREARM RIGHTS**

**NOTE: Arizona Revised Statutes require:** If the person was convicted of an offense which would be a dangerous offense under section 13-704, the person may not file for the restoration of the right to possess or carry a gun or firearm. If the person was convicted of an offense that would be a serious offense as defined in section 13-706, the person may not file for the restoration of the right to possess or carry a gun or firearm for **ten years** from the date of the person's absolute discharge from imprisonment or discharge from probation. If the person was convicted of any other felony offense, the person may not file for the restoration of the right to possess or carry a gun or firearm for **two years** from the date of the person's absolute discharge from imprisonment or discharge from probation.

- 1.  I was convicted of \_\_\_\_\_ and it has been two years since absolute discharge from imprisonment/probation.
- 2.  I was convicted of \_\_\_\_\_ and it has been ten years since absolute discharge from imprisonment/probation.

If you are requesting that your civil right to possess a gun or firearm be restored, please write your reasons for the request below:

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I understand that if I was convicted of a federal crime, even if I am granted the right to possess a firearm under Arizona law, it will not give me the right to possess a firearm under federal law, and I could be federally prosecuted for doing so.

**SECTION VIII. OTHER INFORMATION FOR THE COURT**

Is there anything you would like the court to take into account?

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Attached is other pertinent documentation. List attached documents:

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I understand that this application may be denied if information in this application is found to be inaccurate.

I declare under penalty of perjury, that the information I have provided in this application and in any attachments is true and correct.

\_\_\_\_\_  
~~Petitioner's~~ Defendant's Name Printed

\_\_\_\_\_  
~~Petitioner's~~ Defendant's Signature

\_\_\_\_\_  
Address

OR

To the best of my knowledge, the information provided in this application is true and correct.

\_\_\_\_\_  
Attorney/Probation Officer's Name Printed

\_\_\_\_\_  
Attorney/Probation Officer's Signature

\_\_\_\_\_  
Address

**AUTHORIZATION TO PROCEED ON BEHALF OF DEFENDANT**

I authorize \_\_\_\_\_ [ ] Attorney, or [ ] Probation Officer, ~~or~~ [ ] DOG Representative to petition the Superior Court in \_\_\_\_\_ County, to take the above-indicated action(s).

\_\_\_\_\_  
Date

\_\_\_\_\_  
~~Petitioner's~~ Defendant's Signature



STATE OF ARIZONA Plaintiff  -vs-  _____  Defendant (FIRST, MI, LAST)  _____  Date of Birth _____  Applicant is: <input type="checkbox"/> Defendant <input type="checkbox"/> Attorney for Defendant <input type="checkbox"/> Probation Officer <input type="checkbox"/> Guardian	[CASE/COMPLAINT NO.]  _____  <b>APPLICATION UPON DISCHARGE TO:</b>  <input type="checkbox"/> RESTORE CIVIL RIGHTS  <input type="checkbox"/> RESTORE FIREARM RIGHTS  <small>A.R.S. §§ 13-905, 13-906, 13-908, 13-909, 13-910, 13-911, 13-912 and 13-925</small>  <input type="checkbox"/> REQUEST FOR RECONSIDERATION  <input type="checkbox"/> Civil Rights <input type="checkbox"/> Firearm Rights
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**SECTION I. CONVICTION(S)**

A Judgment of Guilt was entered against the me, the defendant, on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, on the conviction of:

1. Count I: \_\_\_\_\_  misdemeanor  felony

2. Count II: \_\_\_\_\_  misdemeanor  felony

3. Count III: \_\_\_\_\_  misdemeanor  felony

4. Count IV: \_\_\_\_\_  misdemeanor  felony

Additional counts continue on a separate page.

**SECTION II. STATE CONVICTION (For federal convictions, see SECTION III.)**

Entered in the Superior Court of Arizona in \_\_\_\_\_ County.

1.  The above stated judgment of guilt and conviction for a felony is my first felony conviction in this or any other state.  Yes  No

2.  I completed the conditions of probation. The Probation Department's order discharging me from probation is in the court file or attached to this form.

3.  I received from the Arizona Department of Corrections a Certificate of Absolute Discharge from Imprisonment on a date two (2) or more years before today's date, AND have attached a copy of that Certificate to this petition.

4.  I am still on probation. My Probation Officer is \_\_\_\_\_, **AND**

5.  I have complied with all required terms of probation (including all employment, classes, community service, restitution, drug/alcohol testing, or other requirements.)

6.  I have not complied with all terms of probation. Explain:

\_\_\_\_\_

\_\_\_\_\_

**SECTION III. FEDERAL CONVICTION** (For state convictions, see SECTION II.)

[ ] Entered in United States District Court for the District of \_\_\_\_\_.

On the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, I have:

[ ] Been sentenced to and successfully served a term of federal probation, received an Affidavit of Discharge from the judge who discharged me from probation, **AND** have attached a copy to this petition.

[ ] Been sentenced to and successfully served a federal prison term, received from the Federal Bureau of Prisons a Certificate of Absolute Discharge, **AND** have attached a copy of the Certificate, or other official documentation that indicates successful discharge provided by the Bureau of Prisons, to this petition.

**SECTION IV. RESTITUTION AND LEGAL FINANCIAL OBLIGATION STATUS**

1. Have you paid restitution in full? [ ] Yes [ ] No

If not, are you current with restitution payments? [ ] Yes [ ] No

If not, a restoration of rights will be denied without a showing of extraordinary circumstances. If you believe you have extraordinary circumstances explain below. *(Attach documentation you think is relevant for the court's consideration.)*

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2. Have you paid all other legal financial obligations in this case (criminal fines and fees) in full?

[ ] Yes [ ] No

If not, please explain:

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If extraordinary circumstances exist, you may be eligible to apply with the court to mitigate the amount owed or convert monies owed to community restitution (State offenses only, not for Federal convictions).

**SECTION V. PRIOR RESTORATION OF RIGHTS**

1. Have you previously applied to have your rights restored? [ ] Yes [ ] No

If so, what was the date of your last application? \_\_\_\_\_

2. Have you been granted the restoration of your rights previously? [ ] Yes [ ] No

3. Have you been denied the restoration of your rights previously?  Yes  No

**SECTION VI. PENDING CASES AND ACTIVE WARRANTS**

1. Are there any pending cases open against you?  Yes  No
2. Do you have an active warrant?  Yes  No

If yes to either question above, please explain:

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**SECTION VII. RESTORATION OF FIREARM RIGHTS**

**NOTE: Arizona Revised Statutes require:** If the person was convicted of an offense which would be a dangerous offense under section 13-704, the person may not file for the restoration of the right to possess or carry a gun or firearm. If the person was convicted of an offense that would be a serious offense as defined in section 13-706, the person may not file for the restoration of the right to possess or carry a gun or firearm for **ten years** from the date of the person's absolute discharge from imprisonment or discharge from probation. If the person was convicted of any other felony offense, the person may not file for the restoration of the right to possess or carry a gun or firearm for **two years** from the date of the person's absolute discharge from imprisonment or discharge from probation.

1.  I was convicted of \_\_\_\_\_ and it has been two years since absolute discharge from imprisonment/probation
2.  I was convicted of \_\_\_\_\_ and it has been ten years since absolute discharge from imprisonment/probation

If you are requesting that your civil right to possess a gun or firearm be restored, please write your reasons for the request below:

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---

I understand that if I was convicted of a federal crime, even if I am granted the right to possess a firearm under Arizona law, it will not give me the right to possess a firearm under federal law, and I could be federally prosecuted for doing so.

**SECTION VIII. OTHER INFORMATION FOR THE COURT**

Is there anything you would like the court to take into account?

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Attached is other pertinent documentation. List attached documents:

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**I understand that this application may be denied if information in this application is found to be inaccurate.**

**I declare under penalty of perjury, that the information I have provided in this application and in any attachments is true and correct.**

\_\_\_\_\_  
Defendant's Name Printed

\_\_\_\_\_  
Defendant's Signature

\_\_\_\_\_  
Address

**OR**

**To the best of my knowledge, the information provided in this application is true and correct.**

\_\_\_\_\_  
Attorney/Probation Officer's Name Printed

\_\_\_\_\_  
Attorney/Probation Officer's Signature

\_\_\_\_\_  
Address

**AUTHORIZATION TO PROCEED ON BEHALF OF DEFENDANT**

I authorize \_\_\_\_\_ [ ] Attorney, or [ ] Probation Officer to petition the Superior Court in \_\_\_\_\_ County, to take the above-indicated action.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant's Signature



STATE OF ARIZONA, Plaintiff  -VS-  _____ Defendant (FIRST, MI, LAST)  _____ Date of Birth	CASE NUMBER:  _____  <p style="text-align: center;"><b>DRAFT</b></p> <p style="text-align: center;"><b>ORDER REGARDING APPLICATION TO SET ASIDE CONVICTION</b></p>
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Based upon the information presented to the Court, **THE COURT FINDS THAT:** (only those items marked)

The County Attorney has received a copy of the Application to Set Aside Conviction.

- The applicant **has met** all statutory requirements for the application; OR
- The applicant **has not met** all statutory requirements for the application.

The defendant was convicted of a criminal offense not eligible for a conviction to be set aside:

- involving the infliction of a serious physical injury.
- involving the use or exhibition of a deadly weapon or dangerous instrument.
- for which the defendant is required or ordered by the Court to register pursuant to A.R.S. § 13-3821.
- for which there has been a finding of sexual motivation pursuant to A.R.S. § 13-118.
- in which the victim was a minor under fifteen years of age.
- in violation of A.R.S. § 28-3473, any local ordinance relating to stopping, standing or operation of a vehicle or a vehicle or Title 28, Chapter 3, except a violation of A.R.S. § 28-693 or any local ordinance relating to the same subject matter as § 28-693.
- in violation of A.R.S. §§41-1758.03 or 41-1758.07.
- The County Attorney **objects** to the application.

**IT IS ORDERED.**

- DENYING** the defendant's application to set aside conviction for the following reasons:
  - The applicant **has not met** all statutory requirements for the application.
  - The defendant was convicted of a criminal offense **not eligible** for a conviction to be set aside (as noted above):
  - The County Attorney **objects** to the application.
  - Other reasons:
  
\_\_\_\_\_.

[ ] **GRANTING** the defendant's application, setting aside the judgement of guilt, dismissing the accusations or information and order that the defendant be released from all penalties and disabilities resulting from the conviction **other than those imposed by:**

a. The **Department of Transportation** pursuant to A.R.S. § 28-3304, 28- 3306, 28-3307 or 28-3308, except that the conviction may be used as a conviction if such conviction would be admissible had it not been set aside and may be pleaded and proved in any subsequent prosecution of the defendant by the state or any of its subdivision for any offense or used by the department of transportation in enforcing the provisions of sections 28-3304, 28-3306, 28-3307or 28-3308 as if the judgment of guilt had not been set aside.

b. The **Department of Public Safety** pursuant to sections 41-1758.03 and 41-1858.07.

DATED this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Presiding Judge

Copies of the foregoing mailed/delivered this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, to:

- [ ] Defendant or Defendant's Representative
- [ ] Prosecuting Agency
- [ ] Probation Department
- [ ] Arizona Department of Public Safety, Criminal History Section

By: \_\_\_\_\_  
Deputy Clerk