



## Task Force on Fair Justice for All

### Meeting Agenda

December 13, 2016 - 10:00 a.m. to 1:00 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</i> <i>Tom O’Connell, Vice-chair</i>
	Approval of minutes from November 3, 2016 <input type="checkbox"/> <b>Formal action or request</b>	
10:05 a.m.	Update on recommendations in progress	<i>Dave Byers</i> <i>Tom O’Connell</i> <i>Don Jacobson</i>
10:15 a.m.	Update on legislative packet modifications <input type="checkbox"/> <b>Formal action or request</b>	<i>Jerry Landau,</i> <i>Government Affairs Director, AOC</i>
10:45 a.m.	Update on the rule change petition ( <a href="#">R-16-0041</a> )	<i>Dave Byers</i>
11:00 a.m.	Presentation on software that allows courts to handle many high-volume infractions, disputes and outstanding warrants online	<i>MJ Cartwright, CEO, Court Innovations</i>
11:40 a.m.	☞ ☞ Lunch Break ☞ ☞	
12:05 p.m.	Report from ARS § 13-810/OSC sub-workgroup <ul style="list-style-type: none"> <li>• ARCrP Rule 26.12</li> <li>• ARCrP Rule 27.8</li> </ul> <input type="checkbox"/> <b>Formal action or request</b>	<i>Jeff Fine</i> <i>Jeremy Mussman</i> <i>Judge Don Taylor</i> <i>Jennifer Greene</i>
12:25 a.m.	Report from Rules 4.2 and 7.2 sub-workgroup <input type="checkbox"/> <b>Formal action or request</b>	<i>David Withey, Chief Counsel,</i> <i>AOC</i>
12:55 p.m.	Call to the public	
1:00 p.m.	Adjourn	



## Task Force on Fair Justice for All

### Draft Minutes

November 3, 2016

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

**Present:** Dave Byers, Chair, Tom O'Connell, Vice Chair, Kent Batty, Judge Michael Bluff, India Davis, Jeffrey Fine, Judge John Hudson, Bob James, Paul Julien, Doug Kooi, Judge Dorothy Little, Jeremy Mussman, Dianne Post, Judge Antonio Riojas, Judge Lisa Roberts, Judge Thomas Robinson, Leonard Ruiz, MaryEllen Sheppard, Alessandra Soler, Rebecca Steele, Judge Don Taylor, Kathy Waters

**Absent:** Judge Maria Elena Cruz, Ryan Glover, Officer Michael Kurtenbach, Tony Penn

**Presenters/Guests:** Marc A. Adair, Tasha Aikens, Cathy Clarich, Tom Collins, Colleen Clase, Samantha DuMond, Kirstin Flores, Jennifer Greene, Donald Jacobson, Jerry Landau, Heather Murphy, Levi Reed, Rebecca Reiben, Judge Ron Reinstein, Trey Williams, David Withey

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

**CALL TO ORDER** - Dave Byers called the meeting of the Task Force on Fair Justice for All to order at 10:00 a.m.

**WELCOME AND OPENING REMARKS** - Mr. Byers welcomed the members back.

### APPROVAL OF MINUTES FROM AUGUST 5, 2016

**MOTION:** To approved the August 5, 2016, minutes as amended. Motion seconded.

**VOTE:** Passed unanimously

**REPORT ON PRESENTATIONS MADE TO OCTOBER LEADERSHIP CONFERENCE, SUPREME COURT STANDING COMMITTEES AND OTHER ENTITIES** - Mr. Byers thanked the members for taking the time from their busy schedules to present the task force's recommendations to the following organizations:

- Department of Justice
- National Association of Presiding Judges
- Arizona Criminal Justice Commission
- Arizona Prosecuting Attorneys' Advisory Council
- Chief of Police Association
- Probation Chief's Association
- NAACP chapters in Tucson, Maricopa County, and Pinal County
- Maricopa County Bar
- Lorna Lockwood Inn of Court at the University Club
- Arizona Judicial Council
- County Presiding Judges
- Arizona Court Leadership Conference
- Arizona Commission on Access to Justice
- Commission on Minorities in the Judiciary
- Commission on Victims in the Court
- Committee on Limited Jurisdiction Courts
- Committee on Superior Court
- Court Interpreter Advisory Committee
- Adult Management Meeting (AMM)
- Committee on Probation

Mr. Byers noted that overall the report's reception has been positive with one exception. The Commission on Victims in the Court (COVIC) submitted their comments in writing. Mr. Byers stated that those concerns will be addressed during the task force's legislative packet discussion.

**RESULTS FROM THE ARIZONA JUDICIAL COUNCIL (AJC) AND PRESIDING JUDGES MEETINGS** - Mr. Byers reported that the presiding judges endorsed the task force's recommendations and recommended AJC approval. The next day, the AJC approved the recommendations in concept with the exception of decriminalizing littering due to the legislative drafting complexity. The AJC also noted that the comments of the COVIC should be kept in mind during the development of the legislative package.

**UPDATE ON RECOMMENDATIONS IN PROGRESS** – Mr. Byers introduced Don Jacobson. Mr. Jacobson will be managing the implementation of the task force's recommendations. Mr. Byers continued with a report on the efforts that have taken place to-date:

- The Q&A document – AOC staff worked with a committee of judges and court administrators to reformat and reorganize the Q&A to produce the current Municipal Court Governance Roles and Responsibilities document. Members were asked to contact Kathy Sekardi or David Withey with additional changes.
- Funding – Review ongoing.
- Income verification software – One software package has been tested in-house and at Phoenix and Scottsdale Municipal Courts. It did not prove to be sufficiently accurate.
- Notification technology – A Request for Proposal (RFP) will be posted. The request will be made for a statewide contract that any court can use.
- 2017 Judicial Conference – The work of the task force will be presented as a plenary with breakout sessions. Planning is underway to broadcast the plenary session, allowing all court personnel to participate.
- ASU-CLE – Planning for a full day *Fair Justice for All* is underway.

Judge Little and Paul Julien indicated that they are already sensing subtle changes in the judiciary. As the members surmised, and as is being experienced in Mohave County, the more a judge works with the Public Safety Assessment (PSA) tool, the more comfortable the judge becomes with making risk assessment decisions.

**PRESENTATION FROM BAIL BOND REPRESENTATIVES** - Attorneys, Marc Adair and Samantha DuMond, who in combination represent a majority of the state's bond companies, discussed the bail bond industry, and its benefits to the criminal justice system and defendants. They noted that for small bond issuance to be feasible, legislative amendments regarding forfeiture are needed. Additionally, they requested that rule amendments be considered to standardize the amount of time that is allowed to find a defendant and the number of continuances that are allowed prior to bond forfeiture (Pima County - 3 weeks/0 continuances versus Maricopa County – up to 6 months with continuances).

**CALL TO THE PUBLIC:** (10:55 a.m.) - Tom Collins, Arizona Citizens Clean Elections Commission (Clean Elections), spoke.

**DISCUSS RULE CHANGE PETITION COMMENTS (R-15-0041) AND RESPONSE TO FILE** - With four comments filed, the comment period for Rule Change Petition R-16-0041 closed October 21. The draft Petitioner's Reply was presented for review and comments.

**MOTION:** To adopt and file the Petitioner's Reply as amended. Motion seconded.

**VOTE:** Passed unanimously.

**DISCUSSION:**

- Court processes and procedures regarding a superior court judge releasing another court's "hold" to directly place a defendant into a substance abuse treatment program has been removed from the petition for further examination.
- The petition does not address the presence of court-appointed counsel and prosecutor at Initial Appearance. This recommendation (#44) also requires additional examination and can be addressed in a later rule change petition.
- Court processes and procedures regarding unsecured bonds can be addressed by training and perhaps an administrative order.
- ARCrP Rule 3.2
  - A proposed change to the current language - "warrant shall state the amount of secured appearance bond," changing "shall" to "may" was offered. The discussion that followed included:
    - Training should include the ability of a judge to reconsider the bond amount set on the warrant by another court at Initial Appearance and after a risk assessment.
    - Setting a bond amount on a warrant establishes a "get out of booking" process usable by law enforcement. This process directly impacts those who can afford the bond, which likens to the unconstitutionality of bond schedules.

**MOTION:** To establish a workgroup to develop language for inclusion in the Petitioner's Reply consistent with probation department comments. Motion seconded.

**VOTE:** Passed. 16 - 5 - 0

**DISCUSSION:**

- Stakeholder consultation is needed.
- The process of closing the warrant because the bond was paid and the defendant was released could have the unintended consequence of establishing a cycle of issued and closed warrants.
- Not all courts are using the risk-based assessment and there are differing processes in each county.

**DISCUSS LEGISLATIVE PACKET MODIFICATIONS** - Jerry Landau discussed the changes that have been made to the legislative packet since the August 5<sup>th</sup> meeting. The comments from the members included:

2017-01: Sentencing; fines; fees; probation

- Section 6. § 13-805. Jurisdiction – the proposed amendment now clarifies that the interest rate on a criminal restitution order issued in favor of a victim remains at 10% (no change) while the interest rate on a criminal restitution order issued in favor of the state is reduced to 4%, consistent with civil judgments. Additionally, the proposed amendment would allow the court to waive all or part of the interest upon agreement of the state, victim, and defendant. Judge Ron Reinstein was present and agreed that this would resolve some of the COVIC issues.
- Section 12. § 13-924. Probation; earned time credit; applicability - the proposed amendment removes the requirement that a probationer be current on the payment of monetary obligations (however, must be current on restitution) in order to receive earned time credit.

2017-02: Driving; violations; restricted license; penalties

- Section 1. § 28-603. Driver license or permit; restrictions – consolidates all sections of Title 28 regarding license restriction into one section.
- Section 13. § 28-3473 and Section 14. 28-3473.01 – address driving on a suspended, canceled, revoked or refused license; classification; restricted privilege to drive is criminal unless it is suspended for failure to appear or failure to pay and then it is civil.
- Delayed effective date was a compromise between the Motor Vehicle Department (MVD) and Mr. Landau.

**ACTION ITEM:** A member requested further examination of underage drinking and driving in relation to this proposed bill.

2017-03: Bailable offenses; hearing; schedule

Mr. Landau requested the task force's guidance in the drafting of the legislation in this bill. He requested a formal action regarding 1.) changing the bond schedule to a deposit schedule; and 2.) whether to split serious/dangerous criminal traffic from criminal traffic where there was not a victim, making the former non-bondable and the later bondable with a deposit schedule.

**MOTION:** To postpone any action on this discussion until the December meeting and establish a workgroup to develop recommended language. Motion seconded.

**VOTE:** Passed unanimously.

A member questioned the removal of the 24-hour hearing from § 13-3961. Mr. Landau noted that the process is fully included in the rule to be discussed later in the meeting.

2017-04: Competency examination; jurisdiction

Provides for increased jurisdiction for limited jurisdiction courts with respect to competency hearings.

**DISCUSS CLARIFICATION OF SENDING NOTIFICATIONS PRIOR TO INCARCERATION FOR FAILURE TO PAY FINES.**

This agenda item was taken out of order. Jeff Fine began the discussion about A.R.S. § 28-1525 and § 13-810.

At issue in § 28-1525 are the \$125 warrant fee for failure to pay warrants and existing local ordinances to recover costs associated with warrants. Mr. Fine identified the following options:

1. The \$125 fee becomes the warrant recovery fee for all warrants, making it equitable across the board with the proceeds being disbursed for more than constable funding.
2. Proposed that the \$125 fee be stricken as it unfairly impacts defendants who have failed to pay, whether willfully or not.
3. Determine if ordinances trump statute or vice versus.

**ACTION ITEMS:** Jerry Landau was asked to speak with the Arizona Association of Counties (AAOC), and MaryEllen Sheppard was asked to speak with Maricopa County to gather information.

David Withey was asked to review the Attorney General's opinion regarding which fee should be charged - the state or local fee.

This discussion will be an item on the December agenda to determine if correcting this issue is within the task force's charge.

At issue in § 13-810 are 1.) the authority of a court to issue a summons or warrant for non-payment without undertaking some type of effort to compel voluntary appearance, 2.) formal contempt hearings, 3.) due process during a court's determination of willful non-payment, and 4.) the use of contempt procedures for restitution when a defendant is on active probation and the requirement of representation.

**ACTION ITEM:** Mr. Byers established a workgroup to examine § 13-810 and associated civil rules for potential amendments, and identified volunteers for the three new workgroups.

Mr. Fine introduced Tasha Aikens, U.S. Department of Justice, Phoenix Office.

#### **DISCUSS RULES CONCERNING NOT-BAILABLE DETERMINATIONS (SIMPSON HEARINGS)**

This agenda item was taken out of order. David Withey reviewed Rule 4.2 and the associated Arizona constitutional provisions using a flowchart that was part of the meeting materials. Member comments included:

- Timing of hearings for bondable versus non-bondable defendants
- When does appointment of counsel occur?
- The amount of time needed for notice of defendant's attorney
- The amount of time needed for disclosure

**MOTION:** To establish a workgroup for further examination. Motion seconded.

**VOTE:** Passed unanimously.

**CALL TO THE PUBLIC:** Colleen Clase, Senior Attorney, Arizona Voice for Crime Victims spoke.

Meeting adjourned at 2:22 p.m.

**NEXT MEETING:** December 13, 2016



# RESOLUTION ON CRIMINAL JUSTICE FINES AND FEES

ALEC - American Legislative Exchange Council

Date Finalized: September 12, 2016

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## *Summary*

This Resolution supports ensuring that fines and fees imposed by the criminal justice system are reasonable, transparent, and proportionate, and not in conflict with the goals of improving public safety, reducing recidivism, ensuring victims receive restitution, and enabling offenders and ex-offenders to meet obligations to their families, especially children.

## *Model Resolution*

**Whereas**, the American Legislative Exchange Council (ALEC) is committed to developing effective criminal justice policies that hold offenders accountable while maximizing results for public safety, victims, and taxpayers; and

**WHEREAS**, reasonable and proportionate fines are often appropriate to penalize conduct that is appropriately criminal and reasonable and proportionate fees can be appropriate mechanisms for offsetting taxpayers' costs for such functions as probation and drug court provided those who are simply unable to pay are not excluded on that basis; and

**WHEREAS**, excessive criminal justice financial obligations can contribute to unnecessary incarceration as some studies have found 20 percent of those in local jails are incarcerated because of failure to pay a fine or fee, which can make it even harder for the person to obtain employment and add to the burden on taxpayers; and

**WHEREAS**, excessive reliance on overly punitive fines and fees can encourage law enforcement and corrections decisions to be made on grounds other than

public safety while undermining public confidence in the integrity of the criminal justice system; and

**WHEREAS**, people are sometimes arrested for failure to pay fine-only misdemeanors;

**Therefore Be It Resolved** that the first funds collected from an offender should go to victim restitution so that it is prioritized over money for government entities;

**Therefore Be It Resolved** that fees collected from offenders should be used to cover court costs, supervision, and treatment;

**Therefore Be It Resolved** that when imposing fines and fees the offender's ability to pay should be taken into account as one factor and arrangements such as discharging financial obligations through payment plans and community service should be offered;

**Therefore Be It Resolved** that individuals who have demonstrated exemplary conduct, met all obligations of community supervision and otherwise would be discharged should not be kept on supervision solely because they owe funds that they are not able to pay and instead these obligations should be converted into a civil debt;

**Therefore Be It Resolved** that all jurisdictions should be fully transparent when it comes to the types and amounts of fines and fees they impose, the mechanisms used and costs involved in collections, and how the money collected is spent and percentage of the municipal budget;

**Therefore Be It Resolved** that failure to pay a financial obligation should not be grounds for revoking a person's probation or parole if the person lacks sufficient earnings and assets to make such payments.

**Therefore Be It Resolved** that incarceration should only be used as a last resort for failure to pay a fine for a fine-only misdemeanor offense such as a traffic violation and only after the person has failed to respond to repeated efforts to contact them and make arrangements such as a payment plan for discharging the debt.

**Therefore Be It Resolved** that jurisdictions should review misdemeanors to identify those that involve conduct which should not be regulated by government or should only be subject to civil penalties, and therefore would no longer trigger arrest and incarceration upon failure to promptly pay the obligation.



**Workgroup's Proposed Changes to  
Criminal Rules 26.12 and 27.8**

**Rule 26.12. Compliance with sentence**

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

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

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

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

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

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

(5) *Purge Review Hearing and Incarceration.* If the court finds the defendant in contempt for failure to pay a monetary obligation, before taking the defendant into custody, the court must first set a purge review hearing and give the defendant a reasonable period of time prior to the hearing to pay the obligation in full or make other payment arrangements.

**Commented [GJ1]:** The workgroup also discussed adding the following to this rule and/or in a revision to §13-810:  
The court may not order the defendant incarcerated unless the evidence supports a finding that no reasonable measures other than incarceration are adequate to meet the state's interests.

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

### **a. Revocation Arraignment.**

(1) The revocation arraignment shall be held no more than 7 days after service of the summons or the probationer's initial appearance under Rule 27.7 before the issuing or assigned judge.

(2) The court shall inform the probationer of each alleged violation of probation and the probationer shall admit or deny each such allegation.

(3) If no admission is made or if an admission is not accepted, the court will set a violation hearing, unless both parties agree that a violation hearing may proceed forthwith.

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

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

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

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

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

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

### **c. Disposition Hearing.**

(1) A disposition hearing shall be held no less than 7 nor more than 20 days after a determination that a probationer has violated a condition or regulation of probation.

(2) Upon a determination that a violation of a condition or regulation of probation occurred, the court may revoke, modify or continue probation. If probation is revoked, the court shall pronounce sentence in accordance with the procedures set forth in Rules 26.10 through 26.16. Probation shall not be revoked for violation of a condition or regulation of which the probationer has not received a written copy.

d. Waiver of Disposition Hearing. At the time of an admission by probationer or a finding by the court that a violation of a condition or regulation of probation has occurred, the probationer may waive a disposition hearing. If the waiver is accepted, the court may proceed forthwith to dispose of the proceeding under Rule 27.8(c).

e. Disposition Upon Determination of Guilt of Subsequent Offense. If there is a determination of guilt, as defined by Rule 26.1(c), of a criminal offense by a probationer in the court having jurisdiction over the probation matter, no violation hearing shall be required and the court shall set the matter down for a disposition hearing at the time set for entry of judgment on the criminal offense.

f. Record. A record of the revocation arraignment, violation hearing and disposition hearing shall be made.



**Rules 4.2 & 7.2**  
**(Determination of Defendants Not Eligible for Bail)**

**Rule 4.2. Initial appearance.**

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

- (1) Ascertain the suspect's true name and address and, if necessary, amend the formal charges to reflect it, and instruct the suspect to notify the court promptly of any change of address;
- (2) Inform the defendant of the charges;
- (3) Inform the defendant of the right to counsel and the right to remain silent;
- (4) Determine whether probable cause exists for the purpose of release from custody. If no probable cause is found, the defendant shall immediately be released from custody;
- (5) Appoint counsel if the suspect is eligible for and requests appointed counsel under Rule 6;
- (6) Consider comments offered by the victim concerning the conditions of release. The magistrate shall permit the victim to comment orally or in writing, on the issue of the suspect's release;

(7) Determine whether probable cause exists to believe:

(A) The defendant committed an offense for which bail is prohibited by Ariz. Const. Art. 2, Sec. 22 (1) or (2);

(B) The defendant committed a felony for which bail is prohibited by Ariz. Const. Art. 2, Sec. 22 (3) because the defendant poses a substantial danger and no conditions of release will reasonably assure the safety of another person or the community; or

(C) The defendant must be *admitted to bail* with or without conditions pursuant to Rule 7.2(a).

(8) *Schedule a bail hearing as required by Rule 7.2(b)(4) for a defendant held not bailable as required by (a)(7)(A) or (B) and inform the defendant of the right to this hearing.*

~~(8)~~(9) For summoned defendants charged with a felony offense, a violation of Title 13, Chapter 14, or Title 28, Chapter 4<sup>1</sup>, or a domestic violence offense as defined in §

**Commented [WD1]:** Is probable cause the correct standard to determine not bailable at the IA? Yes

**Commented [WD2]:** Should substantial danger and no sufficient conditions be found to hold defendant nonbailable? Yes

**Commented [WD3]:** Should the magistrate inform the defendant of the right to a bail hearing under Rule 7.2? Yes

**Commented [WD4]:** Should the bail hearing be set at the IA? Yes.

13-3601, if the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number, the court shall order that within twenty calendar days, the defendant be ten-print fingerprinted at a designated time and place by the appropriate law enforcement agency; and

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

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

**Rule 7.2. Right to release.**

**a. [no change]**

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

(1) A person must not be *admitted to bail* if the court finds the proof is evident or the presumption great that the person is committed an offense not bailable pursuant to law Ariz. Const. Art. 2, Sec 22 (1) or (2).

(2) A person charged with any other felony offense must not be *admitted to bail* if the court finds all of the following:

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

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

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

(3) In making the determinations required by subsections (2)(B) and (2)(C), the court must consider:

(A) the nature and circumstances of the offense charged, including whether the offense is a "serious offense" or a "violent or aggravated felony" as defined in A.R.S. § 13-706;

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

Commented [WD5]: Should magistrates make this determination in every case? Yes

Commented [WD6]: Is clear and convincing evidence the correct standard? Yes

Commented [WD7]: Should the rules provide considerations for determining a person charged with a felony poses a substantial danger?

Commented [WD8]: What offenses should be identified for consideration in determining whether a felony defendant is dangerous and must be held not bailable? Should 13-105 be included?

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

(D) the nature and seriousness of the danger to any person or the community that would be posed by admitting the person to bail, including any threat to a victim or other participants in the judicial process;

(E) the recommendation of the pretrial services program based upon an appropriate risk assessment instrument.

(F) any other factor relevant to the determinations required by subsections (2)(B) and (2)(C)

(4) For a person held not bailable pursuant to Rule 4.2 (a)(7)(A) or (B), the court must hold a hearing to determine whether the person is not bailable under subsection (b)(1) or (b)(2). The person may waive this hearing. The hearing must be held as soon as practicable but not later than seven days after the initial appearance, unless the person detained moves for a continuance. The court's determination must be on the record and include the court's reason.

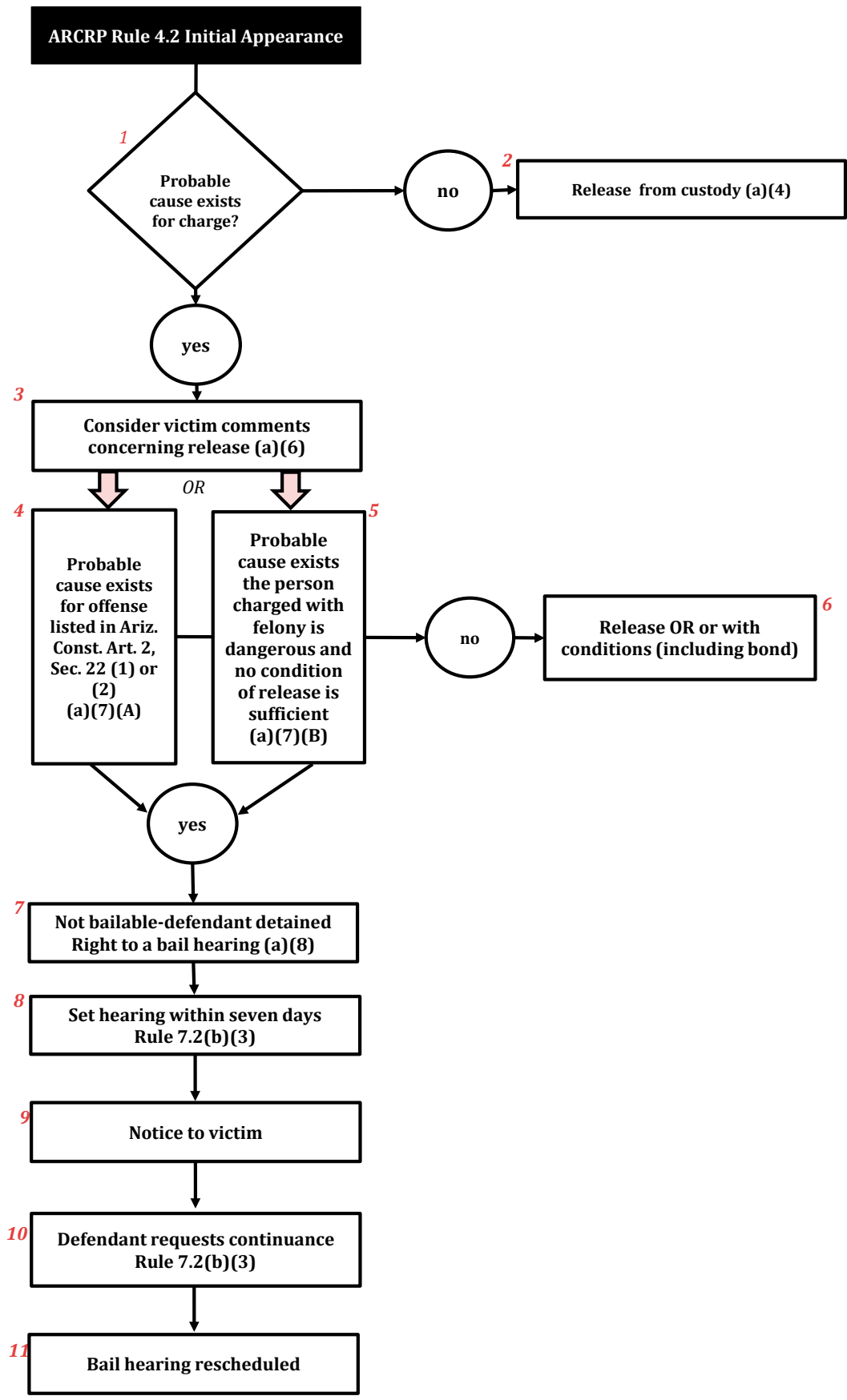
**c. and d. [no changes]**

**Commented [WD9]:** What should be the maximum number of days between the IA and the bail hearing? 7 days

**Commented [WD10]:** How will notice of the bail hearing be provided to the victim?

**Commented [WD11]:** Should continuance of the bail hearing be permitted? Yes, but only by the defendant.





**ARCRP Rule 7.2 Right to Release**

