



## Task Force on Fair Justice for All

### Minutes

August 5, 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 Maria Elena Cruz, India Davis, Jeffrey Fine, Ryan Glover, Judge John Hudson, Robert James, Paul Julien, Doug Kooi, Michael Kurtenbach, Judge Dorothy Little, Jeremy Mussman, Tony Penn, Dianne Post, Judge Antonio Riojas, Judge Lisa Roberts, Judge Thomas Robinson, Leonard Ruiz, MaryEllen Sheppard, Will Ganaugh (proxy for Alessandra Soler), Rebecca Steele, Judge Don Taylor, Kathy Waters

**Absent:** Judge Michael Bluff

**Presenters/Guests:** Mike Baumstark, Michael Breeze, Scott Davis, Ben Giles (Capitol Times), Jerry Landau, Heather Murphy, Judge Ron Reinstein, Karen Roush, David Withey, Jennifer Greene

**Staff:** Theresa Barrett, Kathy Sekardi, Susan Pickard, Sabrina Nash, 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.

Jeff Fine introduced two new members of Maricopa County Justice Courts: Scott Davis, Communications Officer and Karen Roush, Management Assistant, who is spearheading reform and best practices in areas of enforcement.

Will Ganaugh announced his attendance as proxy for Alessandra Soler.

### Approval of Minutes from June 9-10, 2016

**Motion:** To approved the June 9-10, 2016, minutes as amended. Motion seconded.

**Vote:** Passed unanimously.

### Review of draft Task Force Report and Recommendations

Mr. Byers announced that the goal for this meeting is to adopt the recommendations and draft report so that the task force’s work can be routed through the AJC Standing Committees and can then be considered on the Court’s December Rules Agenda. The release of this report is timely as the Conference of State Courts Administrators is scheduled to release a white paper on this topic in September and the state Chief Justices’ are looking forward to reviewing specific and detailed recommendations.

The members discussed and developed language for amendments as follows:

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- Courts are not ~~primarily~~ revenue-generating centers.
- ~~Not so~~ But in Arizona. ~~The Arizona~~, the Supreme Court has administrative oversight over all state courts—appellate, superior, justice, and municipal courts.
- Such administrative authority has been exercised periodically in Arizona history. For example, in 2014 ~~the City of Maricopa~~ a combined justice and municipal court in ~~Pinal County~~ was placed under the control of the local county presiding judge. In this case, the municipal court judge was eventually removed from office.

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- While everyone should face consequences for violating the law, criminal fines and civil penalties should not themselves ~~cultivate~~ contribute to or further ~~a cycle of poverty~~ an individual's impoverishment by imposing excessive amounts or unduly restricting a person's ability to be gainfully employed.
- The task force also concludes that "justice for all" means just that—regardless of race, income, gender, culture, ~~and ethnicity~~, or other factors, fair justice should apply to everyone.
- The purpose of a sanction is to ~~incentivize~~ hold a person ~~to comply~~ accountable and encourage future compliance with the law. Imposing a financial sanction on a low-income individual that is so high that it would be almost impossible for the person to pay ~~only may~~ promote hopelessness ~~frustration, despair~~ and disrespect for the justice system. Suspending the person's ~~driver's license~~ driving privilege as a result of an inability to pay the sanction further exacerbates the problem, fosters a cycle of poverty, and fills costly jail cells. Sanctions such as fees and fines should be imposed in a manner that is sustainable and promotes, rather than impedes, compliance with the law, economic opportunity, and family stability.

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- ~~Reclassifying~~ Additionally, reclassifying first-time offenses of some misdemeanors, such as littering, speeding, and expired out-of-state vehicle registrations, to civil charges will make it easier to process certain minor crimes. ~~Additionally, it would~~ It could also reduce the stigma associated with a criminal record and eliminates the potential for incarceration for these minor offenses.

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- 5. Seek legislation to reclassify certain criminal charges to civil violations for first-time offenses such as:
  - Driving on a suspended license
  - Driver license restriction violations (for example, corrective lens)
  - Littering
  - ~~Criminal speeding~~
  - Expired out-of-state registration
- Principle Two: Reasonable, convenient, time payment plans should be provided and based on a defendant's ability to pay.

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- ~~Currently in Arizona, more than \$686 million is owed in restitution from felony cases.~~ (Moved to Page 17.)

Page 17

- Currently in Arizona, more than \$686 million is owed in restitution from felony cases. (Moved from Page 16.) Reasonable adjustments to fines and fees will enable defendants with limited financial means to devote more of their resources to victim restitution.
- Therefore, revising the requirement to read "has paid at least the minimum ordered restitution payment for the month" would help maintain the requirement to ~~pay~~ make restitution payments.
- ~~Upon completion of probation, unpaid~~ Unpaid balances on financial obligations to the state are converted to criminal restitution orders pursuant to A.R.S. § 13-805(E) (Jurisdiction), which sets an annual interest rate of ten percent. This high interest rate is unrealistic in today's economy and should be reduced to a more appropriate amount, perhaps tied to market rates or eliminated altogether.
- 9. Request legislation similar to Arizona Revised Statutes (A.R.S.) § 12-288 (Removal of debts from accounting system) that would ~~authorize grant~~ courts discretion to close cases and write off fines and fees after a 20-year period if reasonable collection efforts have not been effective.
- Remaining narrative from principal four (Moved from Page 20.)  
Currently, most court informational websites do not indicate that time payments are an option. Courts should modify online citation information to indicate clearly that if a person is unable to pay the full amount due at that time, the person can come to court to arrange for a time payment or community restitution (service) plan.

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- 12. Modify court website information, bond cards, reminder letters, FARE letters, and instructions for online citation payment to explain in language appropriate to the defendant that if the defendant intends to plead guilty or responsible but cannot afford to pay the full amount of the court sanctions at the time of the hearing, the defendant may request a time payment plan. (Moved from Page 20)

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- Twenty-two percent (22%) of ~~those individuals who pleaded guilty or responsible~~ charged with certain traffic offenses resolved their cases by completing defensive driving courses in FY2014.9F[1]
- 13. Request amendment of A.R.S. § 13-603 (Authorized disposition of offenders) to authorize judges to impose a direct sentence a defendant directly to which may include community restitution (service), and education and treatment programs, ~~curfew, or travel restrictions~~ as available sentencing options for misdemeanor offenses.

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- Principle Four: ~~Defendants~~ Courts should appear ~~employ~~ practices that promote a defendant's voluntary appearance in court.
- Regardless of how many options and reminders the court may provide, a person must take personal responsibility to avoid consequences that could escalate and include incarceration. Those who appear in court when first cited might have the case dismissed (15 percent) if there is a defense, have the fine reduced, be allowed to make time payments, or perform community service as an alternative to paying fines. Failure to appear, on the other hand, puts into motion consequences that can be devastating to an individual. (Moved from lower on the page.)

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- It would also be desirable to change the current classification of driving on a suspended license for the first time from a criminal offense to a civil offense-violation.

- 30. ~~Notify defendants about the opportunity to return to the court to establish a payment plan before issuing a warrant for failure to pay.~~

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- 30. Prior to or in lieu of issuing a warrant to bring a person to court for failure to pay, courts should employ proactive practices that promote voluntary compliance and appearance such as: notifying defendants of non-payment, consequences and resolution options; scheduling of an order to show cause hearing, or sentence review.

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- 32. ~~Promote the use of restitution courts, status conferences, and probation review hearings to ensure in a manner that ensures due process and consider considers the wishes of the victim. Establish criteria for referring defendants to restitution court. Provide judicial training on the appropriate use of Orders to Show Cause in lieu of warrants and set standards for processes regarding willful contempt appointment of counsel at hearings involving a defendant's loss of liberty.~~

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- 35. Bring together criminal, justice, and mental health stakeholders in larger jurisdictions to adopt protocols for addressing people with mental health issues who have been brought to court.

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- ~~Some of the highest-risk individuals, such as members of gangs or drug cartels, are likely to have access to money to post a cash surety.~~

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- 40. Clarify by rule or statute that small bonds (\$5 - \$100) are not required to ensure that the defendant gets credit for time served when defendant is also being held ~~on a second, more serious charge in another case.~~
- 41. Authorize the court to ~~temporarily~~ release a "hold" from a limited jurisdiction court and order placement directly into a substance abuse treatment program upon recommendation of the probation department.

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- Principle Ten: ~~Cash-Money~~ bond is not required to secure appearance of defendants.

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- When using risk assessment to make pretrial release decisions, generally judges should release low risk defendants with minimal or no conditions, release moderate risk defendants with interventions and services targeted to mitigate the risk and should detain the highest risk defendants in custody. In jurisdictions where evidence-based risk assessments are utilized, such as Washington, D.C., three primary release types are used:
  - low-risk defendants are released on their own recognizance or with a unsecured appearance bond,
  - moderate-risk defendants are released to Pretrial Services with specific release conditions imposed to mitigate the risks presented,
  - high-risk defendants are held in custody as preventive detention when no condition or combination of conditions of release can reasonably assure the appearance of the person or will endanger the safety of any person or the community.

The task force believes that Arizona should strive to eliminate money for freedom and shift to a risk based system. Fully achieving this goal will require a constitutional amendment, rule changes, and a change in the current culture to substitute preventative detention for the current practice of imposing high dollar bonds. A high dollar bond may keep some individuals in

jail, the Arnold Foundation research showed in the jurisdictions they researched that 50% of individuals with high dollar bonds could post the bond and be released. The task force recognizes these changes will take some time to fully implement.

Court of Appeals case, Simpson v. Miller and Steinle, State of Arizona, Real Party in Interest. Nos. 1 CA-SA 15-0292, 1 CA-SA 15-0295 (Consolidated) now under appeal at the supreme court may have some impact on this subject.

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- While no issues have been found with the PSA instrument to date, some other assessments have been found to be problematic indicating that this is an area that requires careful and constant examination.
- Additionally, the task force discussed concerns that the PSA does not take into consideration ~~those defendants who are foreign-born~~ the immigration status of and recommend that additional research be conducted for this population. Finally the task force understands that no instrument can eliminate all bias that may creep into the justice system and therefore recommends that judges continue to receive training regarding avoiding implicit bias.
- 47. Eliminate the requirement for use of cash surety bond to the greatest extent possible and instead impose reasonable conditions based on the individual's risk. When it must be used, the preference should be for the surety bond to be in actual cash deposited with the clerk of the court with the amount paid returned to the defendant if charges are not filed, the person is found innocent, or if no violations of the release conditions occur. to secure a defendant's appearance.

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- 51. Request the Arnold Foundation to conduct research ~~to determine whether foreign-born defendants have a greater~~ on the impact of immigration status on the likelihood of not returning to court if released. to ascertain whether it is good public policy to hold these defendants on cash bond.
- 58. Train judicial officers on the risk principle and methodology behind the risk assessment tool ~~tools.~~

**Motion:** Move to adopt the report as amended. **Seconded.**

**Vote:** 22-1-0

The finalized report is attached to these minutes as Appendix A.

### **Discuss Proposed Changes to Rules**

Working within the parameters of current law, Jerry Landau and David Withey discussed the recommended rule changes listed below. Once any proposed legislation is signed into law or constitutional amendment is ratified, the rules will be reviewed for any additional changes needed to further the task force's recommendations.

After spending some time discussing the details related to processes and procedures, the members agreed that the main impetus of the report is to eliminate money bonds. Understanding that rule, legislative, and constitutional changes have associated timelines, which inherently requires an incremented approach, there will be time to further examine the resources, processes, and procedures needed to implement the task force's recommendations fully.

**Motion:** Move to authorize AOC Legal Counsel to draft rules as discussed.

**Second. Vote:** Passed unanimously.

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Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies

### **Discuss Proposed Statutory Amendments**

Mr. Landau discussed his process, the draft proposals and the changes needed after listening to today's discussion. Members agreed to leave the statutes out of the adopted report to allow for additional changes. As the drafting process continues, members will be kept abreast of changes and are asked to send input to Mr. Landau via email. The final draft proposals will be presented to the task force on November 3<sup>rd</sup> for adoption. Mr. Landau noted that a delayed effective date of January 1, 2018 will be requested for the legislative changes.

### **Discuss Constitutional Amendment**

Mr. Landau discussed the timeline for constitutional amendments. The Legislature traditionally considers constitutional amendments in the even number years of the second year of the term. If all goes as planned the amendment will not appear as a ballot referendum until 2018. Members re-emphasized the reasons for a person to be held non-bondable reasonably assuring: the safety of a person or the community, the appearance of the person at all court proceedings, and the propensity for new criminal behavior.

### **Next steps**

Mr. Byers detailed the timeline for the rule change petition. Highlights included:

1. File when ready, requesting a 60-day comment period.
2. Present at the Court Leadership Conference on Wednesday, October 26.
3. Task force to reconvene on Thursday, November 3, 2016 to review and discuss comments to rule change petition and prepare a reply.
4. Submit reply to staff attorneys.
5. Request adoption of rules at December Rules Agenda.

### **Court Leadership Conference**

Mr. Byers invited all task force members to attend the Court Leadership Conference on October 26. There will be a presentation from a national expert and a task force panel discussion.

The AJC will meeting the following day to consider among other items, the report as presented by Mr. Byers and select task force members.

Call to the Public – None.

Meeting adjourned at 3:46 p.m.

**Next meeting:** November 3, 2016