Justice for All

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

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TASK FORCE ON FAIR JUSTICE FOR ALL: Court-Ordered Fines, Fees, and Pretrial Release Policies

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Justice for All

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

This report describes the work and recommendations of the members of the Task Force on Fair Justice for All and does not necessarily reflect the views or opinions of the members of the Arizona Supreme Court.

Executive Summary

Task Force Purpose

On March 3, 2016, Chief Justice Scott Bales issued Administrative Order No. 2016-16, which established the Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies. The administrative order outlined the purpose of the task force as to study and make recommendations as follows:

a) Recommend statutory changes, if needed, court rules, written policies, and processes and procedures for setting, collecting, and reducing or waiving court-imposed payments.

b) Recommend options for people who cannot pay the full amount of a sanction at the time of sentencing to make reasonable time payments or perform community service in lieu of some or all of the fine or sanction.

c) Recommend best practices for making release decisions that protect the public, but do not keep people in jail solely for the inability to pay bail.

d) Review the practice of suspending driver's licenses and consider alternatives to license suspension.

e) Recommend educational programs for judicial officers, including pro tem judges and court staff who are part of the pretrial decision-making process.

f) Identify technological solutions and other best practices that provide defendant notifications of court dates and other court-ordered deadlines using mobile applications to reduce the number of defendants who fail to appear for court and to encourage people who receive citations to come to court.

The Chief Justice asked the task force to file a report and make recommendations to the Arizona Judicial Council (AJC) by October 31, 2016. The report that follows consists of 53 recommendations, *plus* additional educational and training recommendations for the AJC's review and consideration.

Task Force Abbreviated Recommendations

The annotated recommendations are set forth in more detail in the body of the report. Below is an abbreviated list with links to the full recommendations.

1. Authorize judges to mitigate mandatory minimum fines, fees, surcharges, and penalties if the amount otherwise imposes an unfair economic hardship. ***A.R.S. § 13-827**
2. Use automated tools to determine a defendant's ability to pay.
3. Create a Simplified Payment Ability Form when evaluating a defendant's ability to pay.
4. Use means-tested assistance program qualification as evidence of a defendant's limited ability to pay.
5. Seek legislation to reclassify certain criminal charges to civil violations for first-time offenses. ***A.R.S. § 28-3473**
6. Implement the Phoenix Municipal Court's Compliance Assistance Program statewide.
7. Conduct a pilot program that combines the Phoenix Municipal Court's Compliance Assistance Program with a fine reduction program and reinstatement of the defendant's driver's license.
8. Test techniques to make it easier for defendants to make time payments on court-imposed financial sanctions.
9. Authorize courts to close cases and write off fines and fees for traffic and misdemeanor after 20 years if collection efforts have not been effective.

10. Allow probationers to receive earned time credit without consideration of financial assessments, other than restitution to victims. ***A.R.S. § 13-924**

11. Eliminate or reduce the imposition of the 10 percent annual interest rate on any Criminal Restitution Order. ***A.R.S. §§ 13-805**

12. Authorize judges to sentence a defendant directly to community restitution (service), treatment program, curfew, or travel restrictions as available sentencing options for misdemeanor offenses. ***A.R.S. §§ 13-603, 13-824, and 13-825**

13. Expand community restitution (service) to be applied to surcharges as well as fines and fees, and expand this option to sentences imposed by superior courts. ***A.R.S. § 13-824**

14. Modify court website information, bond cards, reminder letters, FARE letters and instructions for online citation payment to explain 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.

15. Implement English and Spanish Interactive Voice Response (IVR), email, or a text messaging system to remind defendants of court dates, missed payments, and other actions to reduce failures to appear.

16. Modify forms to collect cell phone numbers, secondary phone numbers, and email addresses.

17. Train staff to verify and update contact information for defendants at every opportunity.

18. Provide information to law enforcement agencies regarding the importance of gathering current contact information on the citation form.

19. After a defendant fails to appear, notify the defendant that a warrant will be issued unless the defendant comes to court within five days.

20. For courts operating pretrial service programs, allow pretrial services five days to re-engage defendants who have missed scheduled court dates and delay the issuance of a failure to appear warrant for those defendants who appear on the rescheduled dates.

21. Authorize the court to quash a warrant for failure to appear and reschedule a new court date for a defendant who voluntarily appears in court after a warrant has been issued.

22. Consider increasing access to the court (e.g., offering hours at night, on weekends, or extending regular hours, taking the court to people in remote areas, and allowing remote video and telephonic appearances).

23. Develop and pilot a system that communicates in English and Spanish (such as video avatars) to provide explanations of options available to defendants who receive tickets or citations.

24. Clarify on court informational websites and bond cards that defendants may come to court before the designated court date to resolve a civil traffic case and explain how to reschedule the hearing for those defendants who cannot appear on the scheduled dates.

25. Implement the ability to email proof of compliance with a law — such as proof of insurance — to the court to avoid having to appear in person.

26. Suspend a driver's license as a last resort, not a first step.

27. Make a first offense of driving on a suspended license a civil violation rather than a criminal offense. ***A.R.S. § 28-3473**

28. Provide courts with the ability to collect and use updated contact information, such as a database service, before issuing a warrant or reminder in aging cases.

29. Authorize courts to impose restrictions on driving—such as "to and from work only"—as an alternative to suspending a driver's license altogether. ***A.R.S. §§ 28-662, 28-695, 28-708, 28-857, and 28-4135**

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

31. Support renewing efforts to encourage the Conference of Chief Justices and the Conference of State Court Administrators to approach Congress about extending the federal tax intercept program to include intercepting federal tax refunds to pay victim restitution awards with an exception for those who are eligible for the earned income tax credit.

32. Promote the use of restitution courts, status conferences, and probation review hearings to ensure due process and consider the wishes of the victim.

33. Coordinate where possible with the local regional behavioral health authority to assist the court or pretrial services in identifying defendants who have previously been diagnosed as mentally ill.

34. Revise mental health competency statutes for expediting mental competency proceedings for misdemeanor cases.

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

36. Consider a defendant's treatment and service needs, as well as risk to the community, when making decisions about the resources and case processes (such as specialty courts) needed to reduce recidivism. ***A.R.S. §§ 13-826, 13-4503**

37. Modify Form 6–*Release Order* and Form 7–*Appearance Bond* to simplify language and clarify defendants' rights in an easy to understand format. ***Form 6, Form 7**

38. Eliminate the use of non-traffic criminal bond schedules.

39. Amend Rule 7.4, Rules of Criminal Procedure to require the appointment of counsel if a person remains in jail after the initial appearance. ***Rule 7.4**

40. Clarify by rule 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.

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.

42. Expedite the bond process to facilitate timely release to treatment programs.

43. Request amendment of A.R.S. § 13-3961(D) and (E) *(Offenses not bailable; purpose; preconviction; exceptions)* to authorize the court, on its own motion, to set a hearing to determine whether a defendant should be held without bail. ***A.R.S. § 13-3961**

44. Encourage the presence of court-appointed counsel and prosecutors at the initial appearance hearing to assist the court in determining appropriate release conditions and often resolving misdemeanor cases.

45. Request the legislature to refer to the people an amendment to the Arizona Constitution to expand preventive detention to allow courts to detain defendants when the court determines that the release will not reasonably assure the appearance of the person as required, in addition to when the defendant's release will not reasonably assure the safety of other persons or the community. ***Arizona Constitution, Art. 2, Section 22**

46. Eliminate the requirement for cash surety to the greatest extent possible and instead impose reasonable conditions based on the individual's risk.

47. Eliminate the use of a cash bond to secure appearance of defendants.

48. Expand the use of the public safety risk assessment to limited jurisdiction courts.
49. Encourage collaboration between limited jurisdiction courts and pretrial service agencies in superior courts for assistance in preparing pretrial risk assessments for limited jurisdiction cases.
50. Establish information sharing between a superior court that has conducted a pretrial risk assessment and a limited jurisdiction court when the defendant is arrested for charges in multiple courts and a release decision must be made in multiple jurisdictions.
51. Request the Arnold Foundation to conduct research to determine whether foreign-born defendants have a greater likelihood of not returning to court if released.
52. Encourage the Arnold Foundation to conduct periodic reviews to revalidate the PSA tool as to its effect on minority populations.
53. Provide data to judicial officers to show the effectiveness of the risk assessment tool in actual operation.

***Indicates proposed constitutional, legislative, or rule changes.**

Innovations Already Under Way

Arizona courts have a history of innovation. As pretrial release issues have arisen, local courts have already begun experimenting with initiatives that support fair justice to all in Arizona. Below are a few projects that highlight promising practices that can be considered for expansion to other jurisdictions.[1]

Compliance Assistance Program

The Phoenix Municipal Court has recently implemented a Compliance Assistance Program (CAP) that notifies defendants who have had their drivers' licenses suspended that they can come in to court, arrange a new and affordable time payment program, and make a down payment on their outstanding fine. Over 5,000 people have taken advantage of the program in the first six months.

Interactive Voice Response System

The Pima County Consolidated Justice, Glendale City and Mesa Municipal courts have each implemented an Interactive Voice Response (IVR) system to notify defendants of upcoming court dates, missed payments, or the issuance of warrants.

[1] See Appendix B for detailed project descriptions of Innovations Already Under Way.

Each jurisdiction has experienced a reduction in the number of people failing to appear—up to 24 percent.[2]

Limited Jurisdiction Mental Competency Proceedings Pilot

A pilot project coordinated through the Superior Court in Maricopa County authorized Mesa and Glendale municipal courts to conduct Rule 11 mental health competency proceedings originating in their courts on behalf of the Superior Court in Maricopa County. The program has reduced the time to process these matters from six months to 60 days.

Justice Court Video Appearance Center

The Maricopa County Justice Court Video Appearance Center represents the first phase of an initiative to significantly reduce the amount of time defendants are held in custody on misdemeanor charges pending appearance in the justice courts.

Pima County – MacArthur Safety & Justice Challenge

In May 2015, Pima County was selected as one of 11 jurisdictions awarded $150,000 from the John D. and Catherine T. MacArthur Foundation for Phase I of an initiative to reduce over-incarceration by changing how America thinks about and uses jails. The initiative is a competition to help jurisdictions create fairer, more effective local justice systems through bold innovation. Pima County was later awarded an additional $1.5 million to move forward with Phase 2, which involves creating an implementation plan for broad system change.

[2] See Appendix C for summary of statistics for Pima County Justice Courts using an IVR system.

Introduction

Every year in Arizona, thousands of people are arrested and sit in jail awaiting trial simply because they cannot afford to post bail. While people arrested are protected by a presumption of innocence, if they lack the access to money, they often remain in jail. The Arizona Constitution makes it clear that except in limited situations, a person must be bailable. That is, defendants are generally entitled to be released (bailable) from jail on their own recognizance or other conditions, while awaiting the disposition of their offenses. Defendants should not have to remain in custody simply because they are poor. Research has now shown that imposing money bail does not improve the chances that a defendant will return to court, nor does it protect the public because many high-risk defendants have access to money and can post bond. Instead, it serves only to treat differently those who can and cannot get money.

There shall be no imprisonment for debt.
Arizona Constitution, Article 2, Section 18

Arizona has the fourth highest poverty rate in the United States; more than 21 percent fall below the federal poverty line. That means that more than 1.2 million Arizonans struggle economically every day. Most of Arizona's poor are not the panhandlers on the highway off-ramps, but the "working poor"—that is, people whose household incomes are less than 150 percent of the federal poverty level.[3] Arizona's unemployment rates exceed the national average as well. People of all income levels on occasion may commit an infraction of the law. If justice in Arizona is to be administered fairly, the justice system must take account of the challenges that court-ordered sanctions pose for those living in poverty or otherwise struggling economically.

Recently national attention, following the shooting of an 18-year-old black man, exposed criminal justice system deficiencies in the city of Ferguson, Missouri. Ferguson has sparked a national dialogue causing jurisdictions to examine their practices of imposing and enforcing financial sanctions and the severe impact they can have on the poor and minority groups.

The Department of Justice investigated the Ferguson Police Department and reported that Ferguson's municipal court allowed its focus on revenue generation to fundamentally

[3] For example, the gross monthly income for a household of four living at 150 percent of the federal poverty level is $3,037.50.

compromise the role of the court. The court used its judicial authority as the means to compel payment of fines and fees that advanced the city's financial interests. These practices imposed unnecessary harm, overwhelmingly on African-American individuals.[4] Courts are not primarily revenue-generating centers. While courts do collect monies in the form of restitution, fines, and fees, the purpose of courts is to administer justice—not produce revenue for governmental use.

Those examining the "Ferguson"-type issues note that often they occur in local limited jurisdiction courts not under the supervision of a state supreme court. Not so in Arizona. The Arizona Supreme Court has administrative oversight over all state courts—appellate, superior, justice, and municipal courts. Oversight includes ensuring that courts perform their appropriate function, which includes educating, training, and setting standards for when and on what conditions pretrial detainees are released from court. Furthermore, the Administrative Office of the Courts (AOC) sets forth specifications for minimum accounting standards, operational reviews, and training, and it provides the structure for a proper relationship between municipal courts, municipal city councils, and city managers.

Interference that impedes the court from carrying out the impartial administration of justice violates the distribution-of-powers provision of the Arizona Constitution and the fundamental principles of our constitutional form of government. The limited jurisdiction courts must continue to maintain independence from the executive and legislative branches so they can fairly act as a neutral when hearing cases. In severe cases, if a court fails to operate properly, administrative control of the court can be removed from the local judge and placed under the control of the county presiding judge until the problems are remedied. For example, in 2014 the City of Maricopa combined justice and municipal court in Pinal County was placed under the control of the local county presiding judge.[5] In this case, the municipal court judge was eventually removed from office.[6]

Arizona already has in place many statutes, rules, and practices that provide flexibility for judges, in making pretrial release determinations, to take into account economic hardship. Unfortunately, this flexibility is not available in all types of cases, particularly with some of the more common offenses such as driving without insurance. As such, there is still work to do to achieve justice for all in Arizona.

In order to support the study and recommendations of the Fair Justice for All Task Force, the AOC built a database of 800,000 cases to analyze what is occurring with misdemeanor, criminal traffic, and civil traffic defendants in Arizona. A summary analysis of that data can

[4] Department of Justice Investigation of Ferguson Police Department Report, March 4, 2015, page 3.
[5] Administrative Order No. 2014-10
[6] http://www.azcourts.gov/portals/137/reports/2014/14-114.pdf

be found on the task force's website at http://www.azcourts.gov/cscommittees/Task-Force-on-Fair-Justice-for-All/TF-FAIR-Resources.[7]

Arizona's courts are now bringing evidence-based practices to pretrial services. The Arizona Judicial Branch's strategic agenda, Advancing Justice Together, calls for examining pretrial release policies and procedures; release conditions for eligible defendants; and research-based practices to promote defendant accountability, crime reduction, and community protection.

To promote these goals, Arizona's courts should reflect these principles in practice:[8]

1. People should not be jailed pending the disposition of charges merely because they are poor. Release decisions and conditions should protect public safety and ensure the defendant's appearance at future proceedings.

2. Consistent with the Arizona Constitution, people should not be jailed for failing to pay fines or other court-assessed financial sanctions for reasons beyond their control.

3. Court practices should help people comply with their court-imposed obligations.

4. Sanctions such as fees and fines should be imposed in a manner that promotes, rather than impedes, compliance with the law, economic opportunity, and family stability.

Since Ferguson, many people talk about restoring faith in our criminal justice system. Many minorities and many of those who are poor have never had the degree of faith in the system that the majority does. For those, it cannot be restored but must be created. The recommendations of this task force, if fully enacted and implemented, will move Arizona closer to fair justice for all because justice for all is not just aspirational—it is an essential mandate of the Arizona justice system. The task force believes these recommendations are necessary to effectuate statewide changes and requests that the AJC support and adopt its recommendations.

[7] Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) *Violation Review Data Driven Results* http://www.azcourts.gov/cscommittees/Task-Force-on-Fair-Justice-for-All/TF-FAIR-Resources

[8] Administrative Order No. 2016-16.

PART 1

JUSTICE FOR ALL.

Our ideal of "justice for all" embraces the notion that all people should be treated fairly in the justice system. Those without means should not be disparately punished because they are poor. While everyone should face consequences for violating the law, criminal fines and civil penalties should not themselves cultivate or further a cycle of poverty by imposing excessive amounts or unduly restricting people'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, fair justice should apply to everyone. In an effort to address this issue, the task force heard from advocacy groups representing diverse communities who shared concerns and recommendations regarding racial and income disparities.

Fines (or civil penalties) are the most common sanction imposed by courts for violations of law. However, the impact of fines varies greatly among people because of their different income levels. A typical speeding fine of $270 has many times more significant an impact on a person making $2,000 per month as on a person making $10,000 per month. In some cases, such as driving without insurance, the legislature has required a mandatory minimum fine and surcharge amount of $1,040. For low-income individuals, a fine that high can have catastrophic consequences. If one assumes that a typical fine for an offense is meant to deter the average-income person from breaking the law, then judges should be able to adjust the amount for low-income people to achieve a similar deterrent effect.

Principle One: Judges need discretion to set reasonable penalties.

The legislature is charged with setting public policy for defining unlawful activity—for example, "driving without insurance is against the law." The legislature also determines whether a fine will be mandatory. Furthermore, the legislature determines whether a certain activity is a criminal offense or a civil violation and at what level an unlawful activity is charged—as a misdemeanor or a felony.

When a fine is mandatory, a judge should be required to impose a fine, but authorized to mitigate the amount due based on a person's inability to pay or financial hardship. Without such authority, mandatory minimum fines affect the poor more severely than they do those with higher incomes, creating a cycle that can send a poor person (and perhaps his or her family as well) into a downward spiral, leading to additional fines and costs and even resulting in arrest and jail.

To assist judges in determining a person's ability to pay, vendors offer software programs that can quickly provide a predictive score to assist the court in determining whether a person qualifies for indigent status or otherwise has the ability to pay all or a reduced amount of a fine. Making such a tool available could assist judges in determining the appropriate amount of fine to impose in a fair manner by taking into account the individual's financial circumstances. These programs use public database information and aggregate tools to evaluate the individual and do not constitute a formal credit inquiry. While not perfect, combining this information with other documentation, such as proof of participation in a means-tested assistance program like the Supplemental Nutritional Assistance Program (SNAP), can help judges and court personnel determine more accurately a person's ability to pay. Using this type of software in Arizona courts would promote fairness. Further, this type of software could be used:

- By probation officers:
  - When making recommendations for financial assessments in presentence reports.
  - When reevaluating a probationer's ability to pay if the probationer's circumstances change.

- By courts:
  - When determining whether a modification of monthly payments is warranted.
  - When establishing reasonable time payment plans.

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 also reduce the stigma associated with a criminal record and eliminates the potential for incarceration for these minor offenses.

Recommendations:

1. *Request legislative changes to authorize judges to mitigate mandatory minimum fines, fees, surcharges, and penalties for those defendants for whom imposing mandatory fine and full fees and surcharges would cause unfair economic hardship.*
2. *Provide courts with automated tools to assist with determining a defendant's ability to pay assessments.*
3. *Create a Simplified Payment Ability Form to be used statewide for judges, probation officers, pretrial officers, or other court staff when evaluating a defendant's ability to pay.*
4. *Use a person's qualification in a means-tested assistance program (such as SNAP) as evidence of limited ability to pay sanctions, much like the fee waiver and deferral guidelines now in place.*

> 5. *Seek legislation to reclassify certain criminal charges to civil violations for first-time offenses:*
>   - *Littering*
>   - *Criminal speeding*
>   - *Expired out-of-state registration*

Principle Two: Reasonable time payment plans should be based on a defendant's ability to pay.

Arizona law already gives judges the discretion to mitigate fines in many types of cases when the fine amount would impose economic hardship. Although the majority (59 percent) of people who are issued citations pay their fines in full, many are unable to pay the full amount at sentencing and for that reason enter into a time payment plan contract.[9] The higher the fine and surcharge amount, the greater the number of people who choose to pay over time. It is important for courts to have reasonable time payment plans that realistically allow low-income individuals to make affordable payments. Setting a time payment plan amount that is beyond the low-income person's ability to pay may result in setting up the person up to fail.

People increasing use means other than checks to pay their bills. Many want to use a debit or credit card for payment. Courts need to provide online payment systems that allow customers to use these common bill-paying mechanisms.

Not all people who are ordered to pay a fine have a debit or credit card or even a bank account. Some operate on a cash basis, which can make it more difficult to make monthly payments to the court. Courts need to allow for other creative methods to pay, including providing defendants who do not have credit cards or debit cards, with "postage-will-be-paid," pre-addressed envelopes for mailing money order payments. Courts can also explore allowing people to pay at nontraditional locations—such as a grocery store service desk—as is now offered for paying utility and other bills.

A.R.S. § 28-1601 *(Failure to pay civil penalty; suspension of privilege to drive; collection procedure)* provides for a fine reduction program to encourage offenders who are delinquent to return to court and resolve their cases. Suspending driver's licenses, like imposing too-steep fines, can adversely affect defendants. In some cases, it may cause them not to be able to take children to school or go to work. To avoid such harsh results, A.R.S. § 28-1601 permits some defendants, for whom payment would cause an economic hardship,

[9] Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) *Violation Review Data Driven Results* http://www.azcourts.gov/cscommittees/Task-Force-on-Fair-Justice-for-All/TF-FAIR-Resources

to extend the time for payment or make installments. Combining the elements of the Phoenix Compliance Assistance Program (see Appendix B for details) with an incentive reduction authorized in statute may provide a pragmatic approach to resolving a large number of civil traffic cases in which driver's licenses have been suspended and then allowed to be reinstated. The presiding judge in Yuma County has agreed to conduct a pilot, working with the AOC. Depending on the results, such a program could be extended to other jurisdictions.

Currently in Arizona, more than $686 million is owed in restitution from felony cases. Defendants who are placed on felony probation are routinely ordered to pay monthly financial assessments as a condition of probation. The legislature implemented A.R.S. § 13-924 *(Probation; earned time credit; applicability),* which authorizes "earned time credit" (ETC). ETC allows the probationer to earn a reduction in the length of the probation term if certain criteria are met, including being current on payments for court-ordered restitution and other obligations, exhibiting positive progress toward the goals and treatment of the probationer's case plan, and completing community restitution (service). Many defendants who are exhibiting progress and have completed community restitution (service) may fall delinquent on financial payments because of high monthly payment amounts and an inability to pay. This makes them ineligible for ETC, even though the primary goals of probation have been accomplished. Defendants with financial means are able to earn the time credit by paying the financial assessments in full; those who lack the ability to pay become ineligible for this benefit. Removing the requirement for the probationer to be current on financial obligations will create fairness and will act as an incentive to complete probation. Modification of this statute should not diminish the importance of restitution payments to victims.[10] 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 balances of financial obligations to the state are converted to a "Criminal Restitution Order" 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.

Recommendations:

> 6. *Implement the Phoenix Municipal Court's Compliance Assistance Program or similar program statewide to help ensure compliance with defendants' court-imposed financial obligations.*

[10] A.R.S. § 13-805 requires a judgment for restitution to be paid in full.

7. *Conduct a pilot program that combines the features of the Phoenix Municipal Court's Compliance Assistance Program with a fine reduction program, coupled with reinstatement of defendants' drivers' licenses.*
8. *To make it easier for defendants to make time payments on court-imposed financial sanctions, test techniques that may include:*
   a. *Providing "postage-will-be-paid," pre-addressed envelopes to defendants who do not have credit cards or checking accounts for use in making time payments.*
   b. *Discussing with employers the possibility of allowing, at an employee's request, payroll deductions to pay court-imposed fines.*
   c. *Discussing with businesses, like grocery stores, the logistics and cost to allow individuals to make court payments on court-imposed fines in their places of business.*
   d. *Creating a statewide web portal on which defendants can provide updated financial information and view outstanding balances.*
   e. *Offering a statewide online payment system.*
9. *Request legislation similar to Arizona Revised Statutes (A.R.S.) § 12-288 (Removal of debts from accounting system) that would authorize courts to close cases and write off fines and fees after a 20-year period if collection efforts have not been effective.*
10. *Request amendments to A.R.S. § 13-924 (Probation; earned time credit; applicability) to allow probationers to receive earned time credit without consideration of financial assessments, other than restitution to victims.*
11. *Request amendments to A.R.S. § 13-805(E) (Jurisdiction) to eliminate or reduce the 10 percent annual interest rate on any Criminal Restitution Order.*

Principle Three: There should be alternatives to paying a fine.

Judges now have the authority to allow defendants to "work off" fines by doing community service. *See* A.R.S. § 13-824 (*Community restitution in lieu of fines, fees, assessments, or incarceration costs*) (allowing defendants to pay off fines through community restitution (service) at a rate of $10 per hour). Unfortunately, however, A.R.S. § 13-824 does not currently allow for surcharges, which often exceed the amount of the fine itself, to be worked off through community restitution (service). Further, the beneficial effects of this statute is limited to sanctions from municipal or justice courts and should be expanded to also include superior court sanctions. We should seek to expand the reach of the statute, both in terms of the types of sanctions and fees it covers and the courts to which it applies.

While community restitution (service) is appropriate in many cases, in many instances it would be more productive to require participation in a treatment program and give credit against the monetary obligation for successful completion. For example, a person addicted to alcohol or drugs would benefit — as would the community — if the person successfully completed a treatment program that might lead to a reduction in future offenses and potential gainful employment. Such a sentence would produce better results than simply picking up trash or performing some other community service that does not address the defendant's underlying treatment needs. Judges should also be provided additional sentencing options that address the defendant's underlying behavior. Currently, judges may impose only incarceration, fines, probation, and, in limited circumstances, community service.

Those charged with certain traffic offenses may have the option to attend defensive driving school as a way to resolve their cases. Recent changes in law now allow a person to attend defensive driving online or in-person classes, once per year. Twenty–two percent (22%) of those individuals who pleaded guilty or responsible resolved their cases by completing defensive driving courses in FY2014.[11] Although the legislature has added additional fees that raise the cost of attending defensive driving school, the benefit of lowered auto insurance premiums remains for those attending a class.

Recommendations:

12. *Request amendment of A.R.S. § 13-603 (Authorized disposition of offenders) to authorize judges to sentence a defendant directly to community restitution (service), treatment programs, curfew, or travel restrictions as available sentencing options for misdemeanor offenses.*
13. *Request amendment of A.R.S. § 13-824 (Community restitution in lieu of fines, fees, assessments, or incarceration costs) to expand community restitution (service) to be applied to surcharges as well as fines and fees imposed, and to include sentences imposed by superior courts.*

Principle Four: Payment options should be clearly explained and convenient for the defendant.

Payment options help ease the burden of paying fines. All courts should accept payments by mail and provide a method for making online payments. But not everyone who receives a citation has a credit card or a bank account. Because such individuals may have difficulty using traditional payment means, courts should provide such individuals with postage-paid, pre-addressed envelopes for mailing money orders to the court.

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.

[11] Id.

Recommendation:

> *14. Modify court website information, bond cards, reminder letters, FARE letters, and instructions for online citation payment to explain 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.*

Principle Five: Defendants should appear in court.

Defendants who fail to appear in court pose a significant challenge. In FY2014, eleven percent of those charged or ticketed—103,000 people—failed to appear in court or attend defensive driving school after receiving a civil traffic citation.[12] When people willfully fail to appear in court, serious consequences will follow, including additional costs, loss of driving privileges and charges for driving on a suspended license, a criminal offense. What started as a civil traffic matter quickly escalates into a criminal matter.

Fifty-three percent (54,400) of the defendants who were initially cited for a civil traffic violation lost their license, because they failed to appear for the court hearing, and were subsequently cited for the criminal offense of driving on a suspended license. Notably, 28 percent (15,200) of the 54,400 cited for driving on a suspended license also failed to appear for the court hearing on the second criminal citation, too. In FY2014, 41 percent of all criminal traffic offenses were for driving on a suspended license.

In most cases, people need to drive to work. Compounded sanctions can devastate lives. A person stopped by law enforcement while driving on a suspended license faces arrest, detention in jail, and vehicle impoundment. Defendants who are sentenced to jail may lose their jobs because they cannot show up to work. In turn, this can lead to additional consequences, such as eviction because of the inability to make rent or home payments. Arizona data shows that people who fail to appear in court live in all income zip codes, not just low-income areas.

Regardless of how many options and reminders the court may provide, eventually 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.

Some Arizona courts have instituted automated phone call systems to remind people of upcoming court dates. Pima County Consolidated Justice Courts achieved a 23 percent reduction in failures to appear after installing a phone reminder system.[13] Mesa Municipal

[12] Id.

[13] See Appendix C: Pima County Consolidated Justice Court's IVR Summary.

Court reports similar results. Court practices should encourage people to comply with their court-imposed obligations. Alerting people to appearance dates, sending reminders to make a payment, or sending notifications when a time payment is missed promotes and encourages compliance.

Nearly 27 percent of Arizona's population speak a language other than English at home—predominately Spanish. However, 9.5 percent speak English "less than very well." [14] Providing forms, instructions, webpage avatars, notifications, and critical court procedures and processes in Spanish will help remove barriers to understanding the judicial system for many Arizonans.

Failure to have current proof of insurance in the vehicle is a frequent citation. Requiring a defendant to come to court to show proof of insurance in order to dismiss the citation causes a person to take time from work or other responsibilities to travel to the courthouse. Today's technology allows for scanning or photographing the "proof of insurance" document and emailing it to the court. Pima County Consolidated Justice Court now allows persons to do just that, avoiding the inconvenience and potential loss of income for time away from work.

Recommendations:

15. *Implement English and Spanish Interactive Voice Response (IVR), email, or a text messaging system to remind defendants of court dates, missed payments, and other actions to reduce failures to appear and encourage compliance with obligations.*
16. *Modify forms to collect cell phone numbers, secondary phone numbers, and email addresses. Forms should include a reminder to the defendant to keep contact information current with the court.*
17. *Train staff to verify and update contact information for the defendant at every opportunity.*
18. *Provide information to law enforcement agencies regarding the importance of gathering current contact information on the citation form.*
19. *After a defendant fails to appear, notify the defendant that a warrant will be issued unless the defendant comes to court within five days.*
20. *For courts operating pretrial service programs, allow pretrial services five days to re-engage defendants who have missed scheduled court dates and delay the issuance of a failure to appear warrant for those defendants who appear on the rescheduled dates.*
21. *Authorize the court to quash a warrant for failure to appear and reschedule a new court date for a defendant who voluntarily appears in court after a warrant has been issued, allowing the defendant to remain out of custody upon a promise to appear for the new court date.*

[14] 2009-2013-acs-lang-tables-state.pdf

22. *Consider increasing access to the court (e.g., offering hours at night, on weekends, or extending regular hours, taking the court to people in remote areas, and allowing remote video and telephonic appearances through applications such as FaceTime or Skype).*
23. *Develop and pilot a system that communicates in English and Spanish (such as video avatars) to provide explanations of options available to defendants who receive tickets or citations.*
24. *Clarify on court informational websites and bond cards that defendants may come to court before the designated court date to resolve a civil traffic case and explain how to reschedule hearings for those defendants who cannot appear on the scheduled dates.*
25. *Implement the ability to email proof of compliance with a law — such as proof of insurance — to the court to avoid having to appear in person.*

Principle Six: Suspension of a driver's license should be a last resort.

In both the urban and rural areas of Arizona, it is difficult to work or manage a family without driving. Yet courts must issue a complaint and notify the Motor Vehicle Department (MVD) to suspend a person's driver's license if a civil penalty is not paid or an installment payment is not made when due. *See* A.R.S. § 28-1601 (*Failure to pay civil penalty; suspension of privilege to drive; collection procedure*). Courts therefore must notify those defendants that their licenses will be suspended unless they come to court to resolve the matter. Because suspension of a driver's license can so greatly impact a person's life, it should be a sanction of last resort imposed only after other enforcement options have been considered.

People move often, and it is not uncommon for court notices to be returned because they are addressed to the wrong address. Although people are required to update their address with the courts and the MVD, many do not. Those who have moved without alerting the MVD or court may fail to appear for court appearances because they are unaware of them. Because driving on a suspended license is a criminal offense, the courts should use search tools and other readily available methods to locate better addresses to effect notice, such as subscribing to a database service that can provide updated phone numbers and addresses to the court. The court would then use the updated contact information to populate email systems (IVR) for notifying the defendant. Court staff should interact with court customers at every opportunity to update and verify addresses, similar to queries when one has a dental or medical appointment. Law enforcement can also partner by requesting current address and phone numbers at the time of arrest or citation. 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. A.R.S.§ 28-3316 *(Operation of vehicle under a foreign license prohibited during suspension or revocation*).

Recommendations:

26. *Suspend a driver's license as a last resort, not a first step.*
27. *Request amendment of A.R.S. § 28-3316 to make a first offense of driving on a suspended license a civil violation rather than a criminal offense.*
28. *Provide courts with the ability to collect and use updated contact information, such as a database service, to find current location information before issuing a warrant in aging cases.*
29. *Authorize courts to impose restrictions on driving — such as "to and from work only" — as an alternative to suspending a driver's license altogether.*

Principle Seven: Non-jail enforcement alternatives should be available.

Some jurisdictions have benefitted from establishing restitution courts. Like other problem-solving courts, restitution courts require defendants to return to court frequently to monitor restitution payments, and they assist in eliminating barriers to making those payments.

Arizona also operates a non-jail-based court order enforcement program called FARE, which uses a variety of techniques to locate offenders, send reminder notices, encourage people to establish time payment plans, place "holds" on license plate renewals, and intercept state income tax refunds and lottery winnings. As a final resort, FARE uses private collections companies to enforce court orders. FARE is a self-sustaining operation and, as such, imposes fees for those who continue farther into the system. However, FARE fees are much lower than booking and jail fees or car impound costs. Only 29 percent of all defendants whose cases are not dismissed are processed through FARE. A person making time payments is not referred to FARE. Persons participating in a compliance assistance type program will have their cases removed from collections. Only after failing to appear or failing to make payments and not returning to court to request a modification of a time payment plan is a person referred to FARE. FARE serves as a better alternative to enforcing court orders than arrest and jail. While some might argue that additional fees should not be required for those who fail to appear or who fail to participate in a reasonable time payment plan, they are cheaper than jail and they provide an incentive to pay.[15]

Recommendations:

30. *Notify defendants about the opportunity to return to the court to establish a payment plan before issuing a warrant for failure to pay.*
31. *Support renewing efforts to encourage the Conference of Chief Justices and the Conference of State Court Administrators to approach Congress about extending the*

[15] While FARE used to report failure to pay court ordered fines to the credit bureaus, a determination was made to no longer do so and 1.027 million cases have been withdrawn.

federal tax intercept program to include intercepting federal tax refunds to pay victim restitution awards, with an exception for those who are eligible for the earned income tax credit.

32. Promote the use of restitution courts, status conferences, and probation review hearings to ensure due process and consider the wishes of the victim. Establish criteria for referring defendants to restitution court and set standards for processes regarding willful contempt.

Principle Eight: Special needs offenders should be addressed appropriately.

Statewide estimates show that 272,250 defendants were charged with criminal traffic or non-criminal traffic misdemeanor complaints as a primary charge in FY2014.[16] The largest number of these complaints included offenses such as liquor violations, failure to comply with a court order, shoplifting and trespassing (related to shoplifting), drug offenses, and driving under the influence (DUI). For defendants charged with a criminal traffic misdemeanor, 68 percent received a sentence of a fine, community service, or diversion. Nineteen percent were sentenced to jail; 80 percent of those sentenced to jail were defendants with a DUI.

Within criminal misdemeanors, those charged with shoplifting (56 percent), property (58 percent), or drug offenses (52 percent), have a high rate of committing a subsequent offense or offenses. For example, a person convicted of shoplifting has a 47 percent chance of being convicted of additional shoplifting crimes (up to 10 or more) within 12 months. The same is true for drug offenders. These are the repeat offenders who are frequently in and out of jail. Those experienced in dealing with these offenders note out many are addicts suffering from substance abuse issues. These offenders are unlikely to pay their fines, and having them perform community restitution (service) is not always practical or in the interest of public safety.

A second specialized group that is brought to court are those individuals exhibiting mental health issues. A number of individuals appearing in limited jurisdiction courts have been arrested for "quality of life" issues (i.e., shoplifting, urinating in public, trespassing, and loitering) and appear to have mental health concerns. Under the current law, the process to determine the competency of a person charged with a misdemeanor or a felony is the same. *See* A.R.S. §§ 13-4501 *et seq.* The process is cumbersome and expensive. Mesa and Glendale municipal courts have been piloting a streamlined process to handle these cases that shows promise; however, the process will not work for handling all municipal cases, as it requires

[16] Cisneros, Humberto and Huff, Carrin. Administrative Office of the Courts, (April 7, 2016) *Violation Review Data Driven Results* http://www.azcourts.gov/cscommittees/Task-Force-on-Fair-Justice-for-All/TF-FAIR-Resources

the superior court to appoint the limited jurisdiction court judges as superior court pro tempore judges as well as designating the city courthouses as satellite facilities of the superior court.[17] While this process is an improvement, a better solution is to modify the current mental health competency proceeding statutes for handling misdemeanor cases.

The handling of cases involving individuals with mental health issues is a challenge for all parts of the criminal justice system. Protocols for best handling those brought to court with mental health issues need to be adopted locally since resources will vary from jurisdiction to jurisdiction. The presiding judge of each county and of each large municipal court should bring the criminal justice stakeholders in their jurisdiction together to develop protocols that will be used to better handle these cases. Such an effort is currently under way in Yavapai County.

Many of the defendants brought to jail who exhibit mental health issues have previously received services from the local regional behavioral health authority (RBHA). In Maricopa County, the RBHA works with the pretrial services agency to inform them of defendants who have previously received mental health services. This can assist in identifying those defendants diagnosed as seriously mentally ill and allow for the coordination of necessary services while the defendant is in custody or upon release. Implementation of procedures like this in jurisdictions throughout Arizona is recommended.

Recommendations:

33. *Coordinate where possible with the local regional behavioral health authority (RBHA) to assist the court or pretrial services in identifying defendants who have previously been diagnosed as mentally ill to allow for the coordination of necessary services.*
34. *Revise mental health competency statutes for expediting mental competency proceedings for misdemeanor cases.*
35. *Bring together criminal justice stakeholders in larger jurisdictions to adopt protocols for addressing people with mental health issues who have been brought to court.*
36. *Consider a defendant's treatment and service needs, as well as risk to the community, when making decisions about the resources and case processes (such as specialty courts) needed to reduce recidivism.*

[17] Maricopa Superior Court Administrative Order No 2015-125.

PART 2

ELIMINATE MONEY FOR FREEDOM.

The task force was charged with making best practices recommendations for making release decisions that protect the public but do not keep people in jail solely for the inability to pay a cash surety (bail).

Courts, the Department of Justice[18], and many criminal justice stakeholder groups and foundations throughout the United States are joining in pretrial justice reform efforts with the goal of eliminating a "money for freedom" system, often based on the individual charge — not on the risk the defendant poses—and replacing it with a risk-based release decision system. The goal is to keep the high-risk people in jail and release low- and medium-risk individuals, regardless of their access to money.

Even short pretrial stays of 72 hours in jail have been shown in national and a local Arizona study to increase the likelihood of recidivism.[19] Pretrial incarceration can cause real harm, such as loss of employment, economic hardship, interruption of education or training, and impairment of health or injury because of neglected medical issues.

Requiring a defendant to post money to get out of jail does not ensure that the person will be more likely to return to court, nor does it protect public safety. Indeed, in analyzing more than 750,000 cases, a study financed by the Laura and John Arnold Foundation found that in two large jurisdictions, "nearly half of the highest-risk defendants were released pending trial." 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. Communities are better served by assessing the risk defendants pose and their likelihood of appearing for their future court hearings.

Principle Nine: Detaining low- and moderate-risk defendants causes harm and higher rates of new criminal activity.

> "In our society, liberty is the norm and detention prior to trial or without trial is the carefully limited exception."
>
> *—Chief Justice William Rehnquist*

Many of these defendants remain in custody only because they cannot afford the bond, and so they are held in jail until their case is heard.

[18] Department of Justice, *"Dear Colleague Letter."* (March 14, 2016)
[19] Cotter, Ryan and Justice System Planning and Information (May 2016). *The Hidden Cost of Pretrial Detention*

"Many of those incarcerated pretrial do not present a substantial risk of failure to appear or a threat to public safety, but lack the financial means to be released."[20] *"Conversely, some with financial means are released despite a risk of flight or threat to public safety, as when a bond schedule permits release upon payment of a pre-set amount without any individual determination by a judge of a defendant's flight risk or danger to the community."*[21]

The American Bar Association Criminal Justice Standards Committee published a pamphlet entitled "ABA Standards for Criminal Justice - Pretrial Release" that defines the purpose of the pretrial release decision as follows:

> "The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference. ... The law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support."

Detaining low-risk defendants pretrial causes harm and correlates to higher rates of new criminal activity. Research shows that "detaining low-risk and moderate-risk defendants, even for a few days strongly correlates with higher rates of new criminal activity both during the pretrial period and years after case disposition; as length of pretrial detention increases up to 30 days, recidivism rates for low-risk and moderate-risk defendants also increases significantly."[22]

Moreover, for low-risk and moderate-risk pretrial detainees—all of whom are presumed to be innocent—the collateral consequences of even short periods of incarceration can be severe. Incarceration can disrupt the positive factors in the defendant's life and lead to

[20]VanNostrand, M. and Crime and Justice Institute (2007). *Legal and Evidence-Based Practices: Application of Legal Principles, Laws, and Research to the Field of Pretrial Services*. Washington, DC: US Department of Justice, National Institute of Corrections.
[21]Pepin, Arthur W., *2012-2013 Policy Paper Evidence-Based Pretrial Release.* Conference of State Court Administrators
[22]Lowenkamp, C. T., VanNostrand, M., and Holsinger, A. (2013). *The Hidden Costs of Pretrial Detention*, Laura and John Arnold Foundation

negative collateral consequences, including job loss, loss of place of residence, inability to care for children, and disintegration of other positive social relationships.

In misdemeanor matters, a prosecutor may charge a person and specify that jail time will not be requested as part of the sentence. Such a declaration makes the defendant ineligible for a court-appointed lawyer. If such a person is required to post a financial bond but cannot pay it, the unconvicted defendant likely will remain incarcerated for a longer period than if he or she were found guilty of the offense. This certainly constitutes incarceration and should make the person eligible for the appointment of an attorney.

There are times when a defendant who has been placed on supervised probation for a felony case remains in custody while awaiting release to a treatment program. While the release to the treatment program is being facilitated, it may be discovered that the defendant is the subject of an unresolved misdemeanor complaint. In such a case, the defendant may be required to post a bond in a limited jurisdiction case before the release on the felony matter can be resolved. Because of the processing time to transport the defendant to the limited jurisdiction court or post a secured bond, the treatment opportunity may be lost. A revision to the Arizona Rules of Criminal Procedure is recommended to authorize the superior court judge or the probation officer to work with the limited jurisdiction court to remove the "hold" or modify the release conditions, allow for an unsecured bond, or set the court date following the defendant's release from treatment or otherwise expedite the processing of the limited jurisdiction case so it does not impeded the defendant's release to a treatment program.

Current practices in Arizona and in many jurisdictions throughout the United States rely on the use of a secured financial bond to secure the release of defendants arrested for crime. National data indicate that approximately 60 percent of jail inmates are pretrial offenders who have not been convicted of any crime. Some remain in jail awaiting trial for periods longer than the period for which they could have been sentenced had they been convicted.

Numerous justice system improvement organizations have called for this reform, including the Bureau of Justice Assistance, the National Institute of Corrections Association of Prosecuting Attorneys, the National Center for State Courts, the Conference of State Court Administrators, the Conference of Chief Justices, and the National Association of Counties.

Recommendations:

> 37. *Modify Form 6–Release Order and Form 7–Appearance Bond in the following ways: Change the order of headings in Form 6:*
>   a. *First: "Other Conditions of Release"*
>   b. *Second: "Financial Conditions of Release"*
>   c. *Third: Include "Unsecured Bond" header and narrative.*

Add "Unsecured Appearance Bond" as a heading in Form 7. (See examples in Appendices G and H.)

38. *Eliminate the use of non-traffic criminal bond schedules.*
39. *Amend Rule 7.4, Rules of Criminal Procedure, which currently provides for a 10-day bail review hearing to require the appointment of counsel if a person remains in jail after the initial appearance hearing.*
40. *Clarify by rule 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.*
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.*
42. *Expedite the bond process to facilitate timely release to treatment programs.*
43. *Request amendment of A.R.S. § 13-3961(D) and (E) (Offenses not bailable; purpose; preconviction; exceptions) to authorize the court, on its own motion, to set a hearing to determine whether a defendant should be held without bail.*
44. *Encourage the presence of court-appointed counsel and prosecutors at initial appearance hearing to assist the court in determining appropriate release conditions and often resolving misdemeanor cases.*

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

Although most defendants pose risks that are manageable to reasonable levels outside of the jail,[23] some defendants pose such risks that no bond or conditions of release can reasonably assure public safety or court appearance.

There is no question that people should not remain in jail solely because they cannot afford bail. But there are those for whom pretrial detention is appropriate: those whose release would jeopardize the public and those with a very high likelihood of not appearing for future court hearings. Arizona statutes list several circumstances in which bail may or must be denied. *See* A.R.S. § 13-3961 *(Offenses not bailable; purpose; preconviction; exceptions).*

In Arizona, a court must detain a defendant after a hearing when there is "clear and convincing evidence that the person charged poses a substantial danger to another person or the community or engaged in conduct constituting a violent offense" if no condition or combination of conditions of release will reasonably assure the safety of the other person

[23] Schnacke, T.R., *Money as a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain a Defendant Pretrial*. U.S. Department of Justice, National Institute of Corrections (2014).

or the community. *See* A.R.S. § 13-3961 *(Offenses not bailable; purpose; preconviction; exceptions).* Currently, the referenced hearing may be initiated only by the state, and in many initial appearance courts throughout the state, a prosecutor is not present. Therefore, the court should be able to order this hearing based on the circumstances of the offense, the information contained in a pretrial risk assessment, and other information available to the court at the time a bail determination is being made. Revisions to A.R.S. § 13-3961(D) and (E) are recommended to allow for the hearing to be set by the court and not only on the state's motion.

For those defendants who present a high risk to public safety, and for whom there is "clear and convincing evidence that no condition or combination of conditions of release . . . will ensure the defendant's appearance in court or to protect the safety of the community or any person, the judicial officer should order the detention of the defendant before trial."[24] The use of a pretrial risk assessment at the initial appearance can assist the court in making this determination.

Currently, the Arizona Constitution does not permit a defendant to be held in custody for repeated failures to appear or for serious misdemeanor cases when a defendant is a danger to the community or any member of the community. The task force concludes that a constitutional change should be referred by the legislature to the people to determine whether money surety can be eliminated from our system altogether and high-risk individuals can be kept in jail without the use of high money bonds. Such a proposal will come before the voters in New Mexico in November 2016.

Recommendation:

45. *Request the legislature to refer to the people an amendment to the Arizona Constitution to expand preventive detention to allow courts to detain defendants when the court determines that the release will not reasonably assure the appearance of the person as required, in addition to when the defendant's release will not reasonably assure the safety of other persons or the community.*

Principle Eleven: Cash bond is not required to secure appearance of defendants.

The use of secured bonds or surety bonds requires that the defendant pay a fee, usually 10 percent of the face value of the bond, and provide collateral if required, to a commercial bail agent who assumes responsibility for the full bail amount should the defendant fail to appear in court. If the defendant does appear in court, the 10 percent fee is retained by the commercial bail agent, even if the defendant is later found not guilty or the charges are dismissed. Further, the bail agent will decide to whom bail will be extended without

[24] American Bar Association *Standards for Criminal Justice: Pretrial Release* Standard 10-5.8 (3d ed. 2007).

consideration of the defendant's assessed risk level. "The traditional money bail system has little to do with actual risk, and expecting money to effectively mitigate risk, especially risk to public safety, is historically unfounded."[25] "From a public policy perspective, this flies in the face of good government, because the result is that public officials have little control over the use of one of the most expensive and limited resources in any community—a jail bed."[26]

The ABA Standards for Pretrial Release (Standard 10-5.3) recommend the use of "unsecured" bonds or release on conditions that will help assure court appearance. *See* Standard 10-5.3.

Standard 10-5.3 states in part:

"(a) Financial conditions other than unsecured bond should be imposed only when no other less restrictive condition of release will reasonably ensure the defendant's appearance in court. The judicial officer should not impose a financial condition that results in the pretrial detention of the defendant solely due to an inability to pay. (b) Financial conditions of release should not be set to prevent future criminal conduct during the pretrial period or to protect the safety of the community or any person. (c) Financial conditions should not be set to punish or frighten the defendant or to placate public opinion."

Recommendation:

> 46. *Eliminate the requirement for cash surety 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 to be in actual cash 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.*

Principle Twelve: Release decisions must be individualized and based on a defendant's level of risk.

The bail process must be individualized, "taking into account the special circumstances of each defendant, the defendant's ability to meet the financial conditions and the defendant's flight risk, and should never be set by reference to a predetermined schedule of amounts fixed according to "the nature of the charge."[27] The Supreme Court agrees[28]:

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[25] Schnacke, T.R., (2014*) Money as a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain a Defendant Pretrial*. U.S. Department of Justice, National Institute of Corrections.

[26] John Clark, *Solving the Riddle of the Indigent Defendant in the Bail System,* Trial Briefs (Oct. 2007); Schnacke, T.R., (2014*) Money as a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain a Defendant Pretrial*. U.S. Department of Justice, National Institute of Corrections.

[27] American Bar Association *Standards for Criminal Justice: Pretrial Release,* Standard 10-5.3 (3d ed. 2007).

[28] *Stack v. Boyle,* 342 U.S. 1,5 (1951)

> Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant. The traditional standards, as expressed in the Federal Rules of Criminal Procedure [at the time, the nature and circumstances of the offense, the weight of the evidence against the defendant, and the defendant's financial situation and character] are to be applied in each case to each defendant. … To the extent that states do not use these factors, such as when over-relying on monetary bail bond schedules that merely assign amounts of money to charges for all or average defendants, the non-individualized bail settings are vulnerable to constitutional challenge.[29]

The Public Safety Assessment (PSA), a validated pretrial risk assessment tool, helps provide such an individualized assessment. The Arizona Code of Judicial Administration requires the use of the PSA in initial appearance courts for most felony arrests in order to provide courts with a separate risk score for risk of failure to appear for future pretrial hearings and a risk score for risk of engaging in new criminal activity during the pretrial period. It also provides a "violence flag" in cases where the defendant poses a high risk of engaging in new violent criminal activity during the pretrial period. This evidence-based assessment, combined with additional information, can be used by the judicial officer to assist in making individualized release and detention decisions. Thus, by using the PSA, judicial officers are able to individually assess which defendants are appropriate for a release on their own recognizance and which should be released only with certain conditions, which may include monitoring by a court pretrial services agency.

The judicial officer establishing the release terms and conditions should order the least restrictive conditions that will still reasonably assure court appearance and public safety.

Pretrial service programs in all superior courts in Arizona use the Public Safety Assessment (PSA) as the approved pretrial risk assessment tool.

Pretrial supervision consists of various levels of monitoring based on the defendant's assessed risk level. This may consist solely of court date reminders by phone, text messages, or email for low-risk offenders; the preceding plus check-ins with the pretrial office by phone or face-to-face for moderate-risk offenders; and all of the foregoing coupled with home visits and electronic monitoring for those defendants determined to be high-risk. The Task Force recommends expanding the use of the PSA to limited jurisdiction courts (municipal and justice courts) for appropriate defendants.

[29] Schnacke, T.R., (2014*) Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*. U.S. Department of Justice, National Institute of Corrections.

Recognizing that expansion of pretrial risk assessments to limited jurisdiction courts may require additional resources, courts may explore the feasibility of collaborating with the pretrial services agency in the superior court. This concept is currently being explored by the Mesa Municipal Court in collaboration with Maricopa County Superior Court Pretrial Services Division.

It is not uncommon for a defendant to have charges pending in both a limited jurisdiction court and a general jurisdiction court that are being addressed at the same initial appearance. On many occasions, the judicial officer may grant release on a felony case; however, the defendant remains in custody on a bond imposed by a limited jurisdiction court. The initial appearance court judge cannot modify the release conditions in that matter, and the defendant then remains in custody on the limited court matter even though he or she is entitled to release on the more serious matter. In these situations, superior courts may consider sharing with the limited jurisdiction court the results of a pretrial risk assessment that was conducted for the general jurisdiction case that provided the basis for the defendant's release without bail.

One condition that is often ordered is pretrial supervision. A study conducted by the Arnold Foundation in 2013 found that moderate- and high-risk defendants who received pretrial supervision were more likely to appear in court, and all defendants who were supervised pretrial for 180 days or more were less likely to be arrested for new criminal activity.[30]

> *"Therefore, judges should be guided by recent research demonstrating that a decision to release that is immediately effectuated (and not delayed through the use of secured financial conditions) can increase release rates while not increasing the risk of failure to appear or the danger to the community to intolerable levels. Second, the use of pretrial risk assessment instruments can help judges determine which defendants should be kept in or let out of jail. Those instruments, coupled with research illustrating that using unsecured rather than secured bonds can facilitate the release of bailable defendants without increasing either the risk of failure to appear or the danger to the public, can be crucial in giving judges who still insist on using money at bail the comfort of knowing that their in-or-out decisions will cause the least possible harm."* [31]

[30] Christopher T. Lowenkamp, Ph.D. Marie VanNostrand, *Exploring the Impact of Supervision on Pretrial Outcomes* (Laura and John Arnold Foundation 2013).
[31] Schnacke, T.R., (2014*) Money as a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain a Defendant Pretrial*. U.S. Department of Justice, National Institute of Corrections.

The American Bar Association's (2007:4) Standards for Pretrial Release state that an agency should "monitor, supervise, and assist defendants released prior to trial, and to review the status and release eligibility of detained defendants for the court on an ongoing basis." The National Association of Pretrial Services Agencies (2004:4) has adopted a similar standard, indicating that "every jurisdiction should have the services of a pretrial services agency or program…" and the agency or program should "provide monitoring and supervisory services in cases involving released defendants…"

The task force discussed concerns of potential bias with the PSA tool when addressing minority populations. This same matter was addressed by the Arnold Foundation when the risk assessment was developed, however, and "researchers found that defendants in each category failed at similar rates, regardless of their race or gender. The results confirmed that the assessment does not over-classify non-whites' risk levels, which has been a concern in some other areas of risk assessment.[32]

To ensure these concerns are addressed over time, the task force considered requesting that PSA data be periodically reviewed by the Arnold Foundation and, if appropriate, incorporate adjustments to the tool as necessary to remediate any bias found. Additionally, the task force discussed concerns that the PSA does not take into consideration those defendants who are foreign-born 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.

Recommendations:

47. *Eliminate the use of a cash bond to secure appearance of defendants.*
48. *Expand the use of the public safety assessment to limited jurisdiction courts for use in felony and high-level or select misdemeanor cases, i.e., those involving defendants entitled to counsel or those with a potential for a jail sentence.*
49. *Encourage collaboration between limited jurisdiction courts and pretrial service agencies in superior courts in preparing or providing pretrial risk assessments for use in limited jurisdiction cases.*
50. *Establish information sharing between a superior court that has conducted a pretrial risk assessment and a limited jurisdiction court when the defendant is arrested for charges in multiple courts and a release decision must be made in multiple jurisdictions.*
51. *Request the Arnold Foundation to conduct research to determine whether foreign-born defendants have a greater likelihood of not returning to court if released.*

[32] Laura and John Arnold Foundation, (2013), *Research Summary: Developing a National Model for Pretrial Risk Assessment*

52. *Encourage the Arnold Foundation to conduct periodic reviews to revalidate the PSA tool as to its effect on minority populations.*
53. *Provide data to judicial officers to show the effectiveness of the PSA risk assessment tool in actual operation. The outcome measurements should include information regarding failure to appear data, and the impact that release has on public safety.*

Educational Recommendations:

In late 2015, the AOC conducted an informal survey of Arizona courts regarding initial appearance and bond review hearing processes. The results indicated:

- Judges use a variety of methods to conduct these hearings.
- Most courts do not have additional release options.
- These type of hearings are heard by full- and part-time judges, judges pro tempore, and commissioners.
- To determine bond amounts, judges use presumptive sanction charts, bond schedules, face-to-face interaction with the defendant, or the judges' inherent discretion.
- Initial appearance hearings are conducted in person at the court or in a specialized initial appearance court, by video-conferencing, over the telephone and through first class mail.

The need for educational efforts and engaging leadership within the judiciary were constant themes throughout the task force discussions. The AOC's Education Services Division should develop a comprehensive educational plan and proposed timeline based on the recommendations proposed by the task force.

54. *Develop an educational plan and conduct mandatory training for all judicial officers.*
55. *Create multi-layer training (court personnel and judicial staff) to include a practical operational curriculum.*
56. *Develop online training modules for future judicial officers.*
57. *Host a one-day kick-off summit inviting all stakeholders (law enforcement, prosecutors, county attorneys, public defenders, city council and county board members, the League of Towns and Cities, criminal justice commissions, legislature, presiding judges) to educate and inform about recommendations of the task force and provide direction for leadership to initiate culture change.*
58. *Train judicial officers on the methodology behind the risk assessment tool.*
59. *Educate judges about the continuum of sentencing options.*
60. *Educate judges about available community restitution (service) programs and the types of services each offers so that courts may order services that "fit the crime."*
61. *Launch a public education campaign to support the adopted recommendations of the task force.*

62. *Provide a comprehensive and targeted educational program for all stakeholders (funding authorities, legislators, criminal justice agencies, media, and members of the public) that addresses this culture change that addresses the shift to a risk-based system rather than a cash-based release system.*
63. *Request that the Chief Justice issue an administrative order directing the education of all full and part-time judicial officers about alternatives to financial release conditions. Training and educational components should:*
    a. *Inform judges that cash bonds are not favored. Judges should consider the least onerous terms of release of pretrial detainees that will ensure public safety and the defendant's return to court for hearings.*
    b. *Train limited jurisdiction court judges to more aggressively allow payment of fines through community service, as permitted by A.R.S. §13-810.*
64. *Provide focused judicial education on A.R.S. § 11-584(D) and Arizona Rule of Criminal Procedure 6.7(D) about how to determine the amount and method of payment, specifically taking into account the financial resources and the nature of the burden that the payment will impose on the defendant, and making specific findings on the record about the defendant's ability to pay.*
65. *Update bench books and other judicial aides to be consistent with court-adopted recommendations.*

APPENDIX A

Key Findings from the Violation Review Data Driven Results
Misdemeanor, Criminal Traffic and Civil Traffic by Defendant
FY2014 Filings

CRIMINAL

- 63% conviction rate, while DUI conviction rate is 76%.
- 19% of criminal traffic and 28% of defendants convicted of misdemeanors are sentenced to jail.
- Average assessment in misdemeanor cases (excluding DUI) is $766; average DUI assessment is $2,015.
- Overall, 44% of criminal defendants return with subsequent violations, 35% from criminal traffic and 51% of misdemeanors.

CIVIL TRAFFIC

- 83% conviction rate; 22% attended defensive driving.
- Average assessment is $342; average "no insurance" assessment is $1,040.
- Estimated 11% or 103,000 defendants statewide fail to appear or fail to pay and driver license is suspended.
- 28% of civil traffic defendants are cited for a subsequent violation.

APPENDIX B

Innovations Already Under Way
Detailed Project Descriptions

Compliance Assistance Program

The Phoenix Municipal Court has recently implemented a Compliance Assistance Program (CAP) that notifies defendants who have had their drivers' licenses suspended that they can come in to court, arrange a new and affordable time payment program, and make down payments on their outstanding fines. In exchange, the court will provide a clearance letter for the Motor Vehicle Department so the individual's driver's license may be reinstated. In the first four months of this new operation, more than 5,200 citizens have taken advantage of this program. The program has also resulted in the payment of $2.3 million to the City of Phoenix for outstanding fines, with a low non-compliance rate.

Interactive Voice Response System

The Pima County Consolidated Justice Court and the Glendale and Mesa municipal courts have each implemented an Interactive Voice Response (IVR) system to notify defendants of upcoming court dates, missed payments, or the issuance of a warrant. Each has experienced a reduction in the number of people failing to appear—up to 24 percent.[33]

Limited Jurisdiction Mental Competency Proceedings Pilot

Through a pilot project, the Mesa and Glendale municipal courts have been conducting Supreme Court Criminal Rule 11 (mental health competency) proceedings originating in their courts on behalf of the Superior Court in Maricopa County. This pilot authorizes these limited jurisdiction courts to act as satellites of the superior court. To date, 44 cases have proceeded through this pilot program, reducing warrants for non-appearances at doctor appointments and at superior court hearings. Conducting the Rule 11 proceedings at the Mesa Municipal Court has reduced the "no show" rate to less than five percent. Previously, these proceedings were taking between nine to twelve months; Mesa Municipal Court reports resolving these cases in less than 60 days. Additional cost savings have been realized by resolving the proceedings with one doctor appointment instead of requiring and paying for two appointments.

[33] See Appendix C. Summary of statistics for Pima County Justice Courts using an IVR system.

Justice Court Video Appearance Center

The Maricopa County Justice Court Video Appearance Center (Center) represents the first phase of an initiative to reduce significantly the amount of time defendants are held in custody on misdemeanor charges pending appearance in the justice courts. The Center is expected to reduce pretrial confinement time in such cases by 50 percent, with an additional 30 percent to be realized in Phase Two when the Intake and Release Facility becomes operational. The Center will also virtually eliminate the need to transport any prisoners to and from the 26 justice courts geographically distributed across the county. Development and operation of the Center is a collaborative effort of multiple Maricopa County agencies, including the justice courts, the County Attorney's Office, the Office of the Public Defender, the Maricopa County Sheriff's Office, and the superior court. The Center complements the Arizona Supreme Court's Fair Justice initiative as well as the county's Smart Justice program.

Pima County – MacArthur Safety & Justice Challenge

In May 2015, Pima County was awarded $150,000 from the John D. and Catherine T. MacArthur Foundation for an initiative to reduce over-incarceration by changing how America thinks about and uses jails. The initiative is a competition to help jurisdictions create fairer, more effective local justice systems through bold innovation. During Phase 1, Pima County developed a plan for system change to reduce the jail population by fifteen to nineteen percent (15-19 percent) and to reduce racial and ethnic disparities. Pima County was awarded an additional $1.5 million to move forward with Phase 2, which involves creating an implementation plan for broad system change. Some of the innovations developed by planning and policy teams included decision-makers from the county administration, jail, superior court, limited jurisdiction courts, law enforcement, prosecution, defense, and community organizations.

Proposed court system innovations and treatment alternatives include extending evidence-based risk screening to all defendants; adding a behavioral health screen prior to initial appearance and expanding pretrial supervision capacity; training criminal justice system partners (including the judiciary) on implicit bias and the use of money bail; reducing the incidence of failure to appear by implementing reminder systems and offering more accessibility to courts through periodic weekend warrant resolution courts; and expanding the use of home detention and electronic monitoring, including for those sentenced to jail on felonies but who are on work release. If successful, the innovations are expected to reduce the jail population by twenty percent (20%), which would potentially allow the closure of six 64-person pods at the jail, resulting in an estimated cost savings of $2.7 million per year and improvement of pretrial justice in Arizona.

APPENDIX C

Pima County Consolidated Justice Court's IVR Summary

Phase	Description	Time period	IVR calls	Successful IVR Calls	Percentage Successful	Criminal hearings	FTA warrants issued	FTA rate	Reduction
1	No IVR Reminders	02/2014 - 08/2014	0	-	-	29,983	4,216	14.06%	--
2	IVR Reminders Enabled	09/2014- 11/2015	46,980	36,671	78%	70,650	8,113	11.78	16.20%
3	IVR Reminders with Sanction warning	12/2015- 03/2016	17,705	12,700	72%	17,930	1,926	10.74%	23.6%*
4	IVR Warrant Notifications	01/01/2016 - 6/21/2016	4,739*	2,564*	54%*	Call is placed after the warrant is issued, no significant effect on the FTA rate; however, this step encourages defendants to appear after the warrant is issued and may decrease total number of active warrants.			
5	Warrant Resolution Court Reminders	12/2015- 03/2016	3,808**	2,342**	62%**	Calls were placed from Monday, June 6, to Friday, June 7, at a rate of 762 calls per day for Warrant Resolution Court, held Saturday, June 11, 2016. 75 of 2,342 who received a call appeared (3%), and 75 of 75 who appeared had their warrant quashed (100%).			

**Includes Warrant Notification calls only; does not include regular IVR court date reminder calls*

***Includes Warrant Resolution Court reminder calls only; does not include regular IVR court date reminder calls*

APPENDIX D

Educational Recommendations

54. Develop an educational plan and conduct mandatory training for all judicial officers.
55. Create multi-layer training (court personnel and judicial staff) to include a practical operational curriculum.
56. Develop online training modules for future judicial officers.
57. Host a one-day kick-off summit inviting all stakeholders (law enforcement, prosecutors, county attorneys, public defenders, city council and county board members, the League of Towns and Cities, criminal justice commissions, legislature, presiding judges) to educate and inform about recommendations of the task force and provide direction for leadership to initiate culture change.
58. Train judicial officers on the methodology behind the risk assessment tool.
59. Educate judges about the continuum of sentencing options.
60. Educate judges about available community restitution (service) programs and the types of services each offers so that courts may order services that "fit the crime."
61. Launch a public education campaign to support the adopted recommendations of the task force.
62. Provide a comprehensive and targeted educational program for all stakeholders (funding authorities, legislators, criminal justice agencies, media and members of the public) that addresses this culture change.
63. Request that the Chief Justice issue an administrative order directing the education of all full and part-time judicial officers about alternatives to financial release conditions. Training and educational components should:
    a. Inform judges that cash bonds are not favored. Courts should start consideration of release of pretrial detainees with the least onerous terms that will ensure public safety and the defendant's return to court for hearings.

   b. Train limited jurisdiction court judges to more aggressively allow payment of fines through community service, as permitted by A.R.S. §13-810.

64. Provide focused judicial education on A.R.S. § 11-584(D) and Arizona Rule of Criminal Procedure 6.7(D) about how to determine the amount and method of payment, specifically taking into account the financial resources and the nature of the burden that the payment will impose on the defendant, and making specific findings on the record about the defendant's ability to pay.

65. Update bench books and other judicial aides to be consistent with court-adopted recommendations.

APPENDIX E

Draft Constitutional Amendment

Section 1. Amend Article 2, Section 22.

22. Bailable offenses

Section 22. A. All persons charged with crime shall be bailable by sufficient sureties, except:

1. For capital offenses, sexual assault, sexual conduct with a minor under fifteen years of age or molestation of a child under fifteen years of age when the proof is evident or the presumption great.

2. For felony offenses committed when the person charged is already admitted to bail on a separate felony charge and where the proof is evident or the presumption great as to the present charge.

3. For felony offenses if the person charged poses a substantial danger to any other person or the community, if no conditions of release which may be imposed will reasonably assure the safety of the other person or the community OR THE APPEARANCE OF THE PERSON AT ALL COURT PROCEEDINGS AS REQUIRED and if the proof is evident or the presumption great as to the present charge.

4. For serious felony offenses as prescribed by the legislature if the person charged has entered or remained in the United States illegally and if the proof is evident or the presumption great as to the present charge.

B. The purposes of bail and any conditions of release that are set by a judicial officer include:

1. Assuring the appearance of the accused.

2. Protecting against the intimidation of witnesses.

3. Protecting the safety of the victim, any other person or the community.

7/18/16

APPENDIX F

Proposed Legislative Changes

Section 1. Amend §12-116.01

12-116.01. Surcharges; fund deposits

A. In addition to any penalty provided by law, a surcharge shall be levied in an amount of forty-seven per cent on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and any civil penalty imposed and collected for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor vehicle statutes, for any local ordinance relating to the stopping, standing or operation of a vehicle or for a violation of the game and fish statutes in title 17.

B. In addition to any penalty provided by law, a surcharge shall be levied in an amount of seven per cent on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and any civil penalty imposed and collected for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor vehicle statutes, for any local ordinance relating to the stopping, standing or operation of a vehicle or for a violation of the game and fish statutes in title 17.

C. In addition to any penalty provided by law, a surcharge shall be levied through December 31, 2011 in an amount of seven per cent, and beginning January 1, 2012 in an amount of six per cent, on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and any civil penalty imposed and collected for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor vehicle statutes, for any local ordinance relating to the stopping, standing or operation of a vehicle or for a violation of the game and fish statutes in title 17.

D. If any deposit of bail or bond or deposit for an alleged civil traffic violation is to be made for a violation, the court shall require a sufficient amount to include the surcharge prescribed in this section for forfeited bail, bond or deposit. If bail, bond or deposit is forfeited, the court shall transmit the amount of the surcharge pursuant to subsection H of this section. If bail, bond or deposit is returned, the surcharge made pursuant to this article shall also be returned.

E. After addition of the surcharge, the courts may round the total amount due to the nearest one-quarter dollar.

~~**F. The judge may waive all or part of the civil penalty, fine, forfeiture and surcharge, except for mandatory civil penalties and fines, the payment of which would work a hardship on the persons convicted or adjudicated or on their immediate families. If a fine or civil penalty**~~

Justice for All

~~is mandatory, the judge may waive only all or part of the surcharges prescribed by subsections A, B and C of this section and section 12-116.02. If a fine or civil penalty is not mandatory and if a portion of the civil penalty, fine, forfeiture and surcharge is waived or suspended, the amount assessed must be divided according to the proportion that the civil penalty, fine, bail or bond and the surcharge represent of the total amount due.~~

~~G~~ F. The surcharge imposed by this section shall be applied to the base fine, civil penalty or forfeiture and not to any other surcharge imposed.

~~H~~ G. After a determination by the court of the amount due, the court shall transmit, on the last day of each month, the surcharges collected pursuant to subsections A, B, C and D of this section and a remittance report of the fines, civil penalties, assessments and surcharges collected pursuant to subsections A, B, C and D of this section to the county treasurer, except that municipal courts shall transmit the surcharges and the remittance report of the fines, civil penalties, assessments and surcharges to the city treasurer.

~~I~~ H. The appropriate authorities specified in subsection H of this section shall transmit the forty-seven per cent surcharge prescribed in subsection A of this section and the remittance report as required in subsection H of this section to the state treasurer on or before the fifteenth day of each month for deposit in the criminal justice enhancement fund established by section 41-2401.

~~J~~ I. The appropriate authorities specified in subsection H of this section shall transmit the seven per cent surcharge prescribed in subsection B of this section and the remittance report as required in subsection H of this section to the state treasurer on or before the fifteenth day of each month for allocation pursuant to section 41-2421, subsection J.

~~K~~ J. The appropriate authorities specified in subsection H of this section shall transmit the surcharge prescribed in subsection C of this section and the remittance report as required in subsection H of this section to the state treasurer on or before the fifteenth day of each month for deposit in the Arizona deoxyribonucleic acid identification system fund established by section 41-2419.

~~L~~ K. Partial payments of the amount due shall be transmitted as prescribed in subsections H, I, J and K of this section and shall be divided according to the proportion that the civil penalty, fine, bail or bond and the surcharge represent of the total amount due.

Section 2. Amend §12-116.02

12-116.02. Additional surcharges; fund deposits

A. In addition to any penalty provided by law, there shall be levied a surcharge in an amount of thirteen per cent on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and civil penalties imposed and collected for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor vehicle statutes, for a violation of any local ordinance relating to the stopping, standing or operation of a vehicle or for a violation of the game and fish statutes in title 17.

B. If any deposit of bail or bond or deposit for an alleged civil traffic violation is to be made for a violation, the court shall require a sufficient amount to include the surcharge prescribed in this section for forfeited bail, bond or deposit. If bail, bond or deposit is forfeited, the amount of such surcharge shall be transmitted by the court pursuant to subsection F of this section. If bail, bond or deposit is returned, the surcharge made pursuant to this article shall also be returned.

C. After addition of the surcharge, the courts may round the total amount due to the nearest one-quarter dollar.

~~**D. The judge may waive all or part of the civil penalty, fine, forfeiture and surcharge, except for civil penalties and fines that are mandatory, the payment of which would work a hardship on the persons convicted or adjudicated or on their immediate families. If a fine or civil penalty is mandatory, the judge may waive only all or part of the surcharge prescribed by subsection A of this section and section 12-116.01. If a fine or civil penalty is not mandatory and if a portion of the civil penalty, fine, forfeiture and surcharge is waived or suspended, the amount assessed must be divided according to the proportion that the civil penalty, fine, bail or bond and the surcharge represent of the total amount due.**~~

~~E~~ D. The surcharge imposed by this section shall be applied to the base fine, civil penalty or forfeiture and not to any other surcharge imposed.

~~F~~ E. After a determination by the court of the amount due, the court shall transmit, on the last day of each month, the surcharges collected pursuant to subsections A and B of this section and a remittance report of the fines, civil penalties, assessments and surcharges collected pursuant to subsections A and B of this section to the county treasurer, except that municipal courts shall transmit the surcharges and the

remittance report of the fines, civil penalties, assessments and surcharges to the city treasurer.

~~G~~ F. The thirteen per cent surcharge as required in subsection A of this section shall be transmitted by the appropriate authorities prescribed in subsection F of this section to the state treasurer on or before the fifteenth day of each month for deposit in the medical services enhancement fund established by section 36-2219.01.

~~H~~ G. Partial payments of the amount due shall be transmitted as required in subsections F and G of this section and shall be divided according to the proportion that the civil penalty, fine, bail or bond and the surcharge represent of the total amount due.

Section 3. Amend §13-603

13-603. Authorized disposition of offenders

A. Every person convicted of any offense defined in this title or defined outside this title shall be sentenced in accordance with this chapter and chapters 7, 8 and 9 of this title unless otherwise provided by law.

B. If a person is convicted of an offense, the court, if authorized by chapter 9 of this title, may suspend the imposition or execution of sentence and grant such person a period of probation except as otherwise provided by law. The sentence is tentative to the extent that it may be altered or revoked in accordance with chapter 9 of this title, but for all other purposes it is a final judgment of conviction.

C. If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime or to the immediate family of the victim if the victim has died, in the full amount of the economic loss as determined by the court and in the manner as determined by the court or the court's designee pursuant to chapter 8 of this title. Restitution ordered pursuant to this subsection shall be paid to the clerk of the court for disbursement to the victim and is a criminal penalty for the purposes of a federal bankruptcy involving the person convicted of an offense.

D. If the court imposes probation it may also impose a fine as authorized by chapter 8 of this title.

E. If a person is convicted of an offense and not granted a period of probation, or when probation is revoked, any of the following sentences may be imposed:

1. A term of imprisonment authorized by this chapter or chapter 7 of this title.

2. A fine authorized by chapter 8 of this title. The sentence is tentative to the extent it may be modified or revoked in accordance with chapter 8 of this title, but for all other purposes it is a final judgment of

conviction. If the conviction is of a class 2, 3 or 4 felony, the sentence cannot consist solely of a fine.

3. Both imprisonment and a fine.

4. Intensive probation, subject to the provisions of chapter 9 of this title.

5. Intensive probation, subject to the provisions of chapter 9 of this title, and a fine.

6. A new term of probation or intensive probation.

7. A TERM OF COMMUNITY RESTITUTION FOR A MISDEMEANOR PURSUANT TO SECTION 13-825.

8. A TERM OF COURT ORDERED TREATMENT FOR A MISDEMEANOR PURSUANT TO SECTION 13-826.

F. If an enterprise is convicted of any offense, a fine may be imposed as authorized by chapter 8 of this title.

G. If a person or an enterprise is convicted of any felony, the court may, in addition to any other sentence authorized by law, order the forfeiture, suspension or revocation of any charter, license, permit or prior approval granted to the person or enterprise by any department or agency of the state or of any political subdivision.

H. A court authorized to pass sentence upon a person convicted of any offense defined within or without this title shall have a duty to determine and impose the punishment prescribed for such offense.

I. If a person is convicted of a felony offense and the court sentences the person to a term of imprisonment, the court at the time of sentencing shall impose on the convicted person a term of community supervision. The term of community supervision shall be served consecutively to the actual period of imprisonment if the person signs and agrees to abide by conditions of supervision established by the state department of corrections. Except pursuant to subsection J, the term of community supervision imposed by the court shall be for a period equal to one day for every seven days of the sentence or sentences imposed.

J. In calculating the term of community supervision, all fractions shall be decreased to the nearest month, except for a class 5 or 6 felony which shall not be less than one month.

K. Notwithstanding subsection I, if the court sentences a person to serve a consecutive term of probation immediately after the person serves a term of imprisonment, the court may waive community supervision and order that the person begin serving the term of probation upon the person's release from confinement. The court may retroactively waive the term of community supervision or that part remaining to be served if the community supervision was imposed before July 21, 1997. If the court waives community supervision, the term of probation imposed shall be equal to or greater than the term of community supervision that would have been imposed. If the court does not waive community supervision, the person shall begin serving the term of probation after the person serves the term of community supervision. The state department of corrections shall provide reasonable notice to the probation department of the scheduled release of the inmate from confinement by the department.

L. If at the time of sentencing the court is of the opinion that a sentence that the law requires the court to impose is clearly excessive, the court may enter a special order allowing the person sentenced to petition the board of executive clemency for a commutation of sentence within ninety days after the person is committed to the custody of the state department of corrections. If the court enters a special order regarding commutation, the court shall set forth in writing its specific reasons for concluding that the sentence is clearly excessive. The court shall allow both the state and the victim to submit a written statement on the matter. The court's order, and reasons for its order, and the statements of the state and the victim shall be sent to the board of executive clemency.

Section 4. Amend §13-805

13-805. Jurisdiction

A. The trial court shall retain jurisdiction of the case for purposes of ordering, modifying and enforcing the manner in which court-ordered payments are made until paid in full or until the defendant's sentence expires.

B. At the time the defendant is ordered to pay restitution by the court, the court may enter a criminal restitution order in favor of each person who is entitled to restitution for the unpaid balance of any restitution order. A criminal restitution order does not affect any other monetary obligation imposed on the defendant pursuant to law.

C. At the time the defendant completes the defendant's period of probation or the defendant's sentence or the defendant absconds from probation or the defendant's sentence, the court shall enter both:

1. A criminal restitution order in favor of the state for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed.

2. A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered, if a

criminal restitution order is not issued pursuant to subsection B of this section.

D. The clerk of the court shall notify each person who is entitled to restitution of the criminal restitution order.

E. A criminal restitution order may be recorded and is enforceable as any civil judgment, except that a criminal restitution order does not require renewal pursuant to section 12-1611 or 12-1612. Enforcement of a criminal restitution order by any person who is entitled to restitution ~~or by the state~~ includes the collection of interest that accrues at a rate of ~~ten~~ FOUR percent per annum. A criminal restitution order does not expire until paid in full.

F. All monies paid pursuant to a criminal restitution order entered by the superior court shall be paid to the clerk of the superior court.

G. Monies received as a result of a criminal restitution order entered pursuant to this section shall be distributed in the following order of priority:

1. Restitution ordered that is reduced to a criminal restitution order.
2. Associated interest.

H. The interest accrued pursuant to subsection E of this section does not apply to fees imposed for collection of the court ordered payments.

I. A criminal restitution order is a criminal penalty for the purposes of a federal bankruptcy involving the defendant.

Section 5. Amend §13-824

13-824. Community restitution in lieu of fines, fees, surcharges, assessments or incarceration costs

Notwithstanding any other law, ~~in a municipal or justice court,~~ if a defendant is sentenced to pay a fine, ~~a~~ CIVIL PENALTY, SURCHARGE, fee, assessment or incarceration costs and the court finds the defendant is unable to pay all or part of the fine, CIVIL PENALTY, SURCHARGE, fee, assessment or incarceration costs, the court may order the defendant to perform community restitution in lieu of the payment for all or part of the fine, CIVIL PENALTY, SURCHARGE, fee assessment or incarceration costs. The amount of community restitution shall be equivalent to the amount of the fine, CIVIL PENALTY, SURCHARGE, fee, ASSESSMENT or incarceration costs by crediting any service performed at a rate of ten dollars per hour.

Section 6. Enact §13-825

13-825. Misdemeanors; community restitution

A SENTENCE TO PERFORM COMMUNITY RESTITUTION FOR A MISDEMEANOR SHALL BE FOR A DEFINITE PERIOD OF TIME TO BE FIXED BY THE COURT NOT TO EXCEED FORTY HOURS.

Section 7. Enact §13-826

13-826. Misdemeanors; court ordered treatment

A SENTENCE TO ORDER A PERIOD OF TREATMENT PURSUANT TO SECTION 13-603 SHALL NOT EXCEED THE PERIOD OF PROBATION PERMITTED PURSUANT TO SECTION 13-901, SUBSECTION A. THE COURT OR THE PROBATION OFFICER SHALL DETERMINE WHICH PROGRAM THE DEFENDANT ENTERS.

Section 8. Enact §13-827

13-827. Civil penalties or fines; community restitution; waiver

A. A JUDGE MAY WAIVE PART OF ANY CIVIL PENALTY, FINE, SURCHARGE, FEE, FORFEITURE, ASSESSMENT OR INCARCERATION COST IF THE PAYMENT WOULD WORK A HARDSHIP ON THE PERSON CONVICTED OR ADJUDICATED OR ON THE PERSON'S IMMEDIATE FAMILY.

B. A JUDGE MAY WAIVE ALL OR PART OF MANDATORY COMMUNITY RESTITUTION DUE TO THE MEDICAL CONDITION OF THE DEFENDANT.

C. IF A PORTION OF THE CIVIL PENALTY, FINE, FORFEITURE, SURCHARGE, FEE, ASSESSMENT OR INCARCERATION COST IS WAIVED OR SUSPENDED, THE AMOUNT ASSESSED MUST BE DIVIDED ACCORDING TO THE PROPORTION THAT THE CIVIL PENALTY, FINE, SURCHARGE, FEE, FORFEITURE, ASSESSMENT AND INCARCERATION COST REPRESENT TO THE TOTAL AMOUNT DUE.

Section 9. Amend §13-924

13-924. Probation; earned time credit; applicability

A. The court may adjust the period of a probationer's supervised probation on the recommendation of an adult probation officer for earned time credit.

B. Earned time credit equals twenty days for every thirty days that a probationer does all of the following:

1. Exhibits positive progression toward the goals and treatment of the probationer's case plan.

2. Is current on payments for court ordered restitution ~~and other obligations~~. THE COURT MAY AWARD EARNED TIME CREDIT FOR EACH MONTH THAT THE PROBATIONER IS CURRENT.

3. Is current in completing community restitution. THE COURT MAY AWARD EARNED TIME CREDIT FOR EACH MONTH THAT THE PROBATIONER IS CURRENT.

C. Any earned time credit awarded pursuant to this section shall be revoked if a probationer is found in violation of a condition of probation.

D. This section does not apply to a probationer who is currently:

1. On lifetime probation.

2. On probation for any class 2 or 3 felony.

3. On probation exclusively for a misdemeanor offense.

4. Required to register pursuant to section 13-3821.

E. This section has no effect on the ability of the court to terminate the period of probation or intensive probation pursuant to section 13-901, subsection E at a time earlier than originally imposed.

Section 10. Amend §13-1603

13-1603. Criminal littering or polluting; classification

A. A person commits criminal littering or polluting if the person without lawful authority does any of the following:

1. Throws, places, drops or permits to be dropped on public property or property of another that is not a lawful dump any litter, destructive or injurious material that the person does not immediately remove.

2. Discharges or permits to be discharged any sewage, oil products or other harmful substances into any waters or onto any shorelines within this state.

3. Dumps any earth, soil, stones, ores or minerals on any land.

B. Criminal littering or polluting is punishable as follows:

1. A class 6 felony if the act is a knowing violation of subsection A in which the amount of litter or other prohibited material or substance exceeds three hundred pounds in weight or one hundred cubic feet in volume or is done in any quantity for a commercial purpose.

2. A class 1 misdemeanor if the act is a knowing violation of subsection A, paragraph 1 in which the amount of litter or prohibited material or substance is more than one hundred pounds in weight but less than three hundred pounds in weight or more than thirty-five cubic feet in volume but less than one hundred cubic feet in volume and is not done for a commercial purpose.

3. A class 1 misdemeanor if the act is not punishable under paragraph 1 of this subsection and involves placing any destructive or injurious material on or within fifty feet of a highway, beach or shoreline of any body of water used by the public.

4. A class 2 misdemeanor if the act is IN VIOLATION OF SUBSECTION A, PARAGRAPH 2 OR 3 AND IS not punishable under paragraph 1, 2 or 3 of this subsection.

5. A PETTY OFFENSE IF THE ACT IS IN VIOLATION OF SUBSECTION A, PARAGRAPH 1 AND IS NOT PUNISHABLE UNDER PARAGRAPH 1, 2 OR 3 OF THIS SUBSECTION.

C. If a fine is assessed for a violation of subsection A, paragraph 1 or 2, one hundred per cent of any assessed fine shall be deposited in the general fund of the county in which the fine was assessed. At least fifty per cent of the fine shall be used by the county for the purposes of illegal dumping cleanup.

Section 11. Amend §13-3961

13-3961. Offenses not bailable; purpose; preconviction; exceptions

A. A person who is in custody shall not be admitted to bail if the proof is evident or the presumption great that the person is guilty of the offense charged and the offense charged is one of the following:

1. A capital offense.

2. Sexual assault.

3. Sexual conduct with a minor who is under fifteen years of age.

4. Molestation of a child who is under fifteen years of age.

5. A serious felony offense if there is probable cause to believe that the person has entered or remained in the United States illegally. For the purposes of this paragraph:

(a) The court shall consider all of the following in making a determination that a person has entered or remained in the United States illegally:

(i) Whether a hold has been placed on the arrested person by the United States immigration and customs enforcement.

(ii) Any indication by a law enforcement agency that the person is in the United States illegally.

(iii) Whether an admission by the arrested person has been obtained by the court or a law enforcement agency that the person has entered or remained in the United States illegally.

(iv) Any information received from a law enforcement agency pursuant to section 13-3906.

(v) Any evidence that the person has recently entered or remained in the United States illegally.

(vi) Any other relevant information that is obtained by the court or that is presented to the court by a party or any other person.

(b) "Serious felony offense" means any class 1, 2, 3 or 4 felony or any violation of section 28-1383.

B. The purposes of bail and any conditions of release that are set by a judicial officer include:

1. Assuring the appearance of the accused.

2. Protecting against the intimidation of witnesses.

3. Protecting the safety of the victim, any other person or the community.

C. The initial determination of whether an offense is bailable pursuant to subsection A of this section shall be made by the magistrate or judicial officer at the time of the person's initial appearance.

D. Except as provided in subsection A of this section, a person who is in custody shall not be admitted to bail if the person is charged with

a felony offense and ~~the state certifies by motion and~~ the court finds after a hearing ~~on the matter~~ HELD AS A RESULT OF A CERTIFIED MOTION FILED BY THE STATE OR ON THE COURT'S OWN MOTION that there is clear and convincing evidence that the person charged poses a substantial danger to another person or the community or THE PERSON engaged in conduct constituting a violent offense, that no condition or combination of conditions of release may be imposed that will reasonably assure the safety of the other person or the community and that the proof is evident or the presumption great that the person committed the offense for which the person is charged. For the purposes of this subsection, "violent offense" means either of the following:

1. A dangerous crime against children.
2. Terrorism.

E. ~~On oral motion of the state,~~ The court shall order the hearing required by subsection D of this section ~~at or within twenty-four hours of the initial appearance unless the person who is subject to detention or the state moves for a continuance~~. ~~A continuance that is granted on the motion of the person shall not exceed five calendar days unless there are extenuating circumstances. A continuance on the motion of the state shall be granted on good cause shown and shall not exceed twenty-four hours.~~ The prosecutor shall provide reasonable notice and an opportunity for victims and witnesses to be present and heard at any hearing. The person may be detained pending the hearing. The person is entitled to representation by counsel and is entitled to present information by proffer or otherwise, to testify and to present witnesses in the person's own behalf. Testimony of the person charged that is given during the hearing shall not be admissible on the issue of guilt in any subsequent judicial proceeding, except as it might relate to the compliance with or violation of any condition of release subsequently imposed or the imposition of appropriate sentence or in perjury proceedings, or for the purposes of impeachment. ~~The case of the person shall be placed on an expedited calendar and, consistent with the sound administration of justice, the person's trial shall be given priority.~~ The person may be admitted to bail in accordance with the Arizona rules of criminal procedure whenever a judicial officer finds that a subsequent event has eliminated the basis for detention.

F. The finding of an indictment or the filing of an information OR COMPLAINT does not add to the strength of the proof or the presumption to be drawn.

G. In a hearing pursuant to subsection D of this section, proof that the person is a criminal street gang member may give rise to the inference that the person poses a substantial danger to another person or the community and that no condition or combination of conditions of release may be imposed that will reasonably assure the safety of the other person or the community.

Section 12. Amend §13-4503

13-4503. Request for competency examination

A. At any time after the prosecutor charges a criminal offense by complaint, information or indictment, any party or the court on its own motion may request in writing that the defendant be examined to determine the defendant's competency to stand trial, to enter a plea or to assist the defendant's attorney. The motion shall state the facts on which the mental examination is sought.

B. Within three working days after a motion is filed pursuant to this section, the parties shall provide all available medical and criminal history records to the court.

C. The court may request that a mental health expert assist the court in determining if reasonable grounds exist for examining a defendant.

D. Once any court determines that reasonable grounds exist for further competency proceedings, EXCEPT PURSUANT TO SUBSECTION E OF THIS SECTION, the superior court shall have exclusive jurisdiction over all competency hearings.

E. THE PRESIDING JUDGE OF THE SUPERIOR COURT IN EACH COUNTY MAY, WITH AGREEMENT OF THE JUSTICE OF THE PEACE OR MUNICPAL COURT JUDGE AUTHORIZE A JUSTICE OF THE PEACE COURT OR A MUNICIPAL COURT TO EXERCISE JURISDICTION OVER COMPETENCY HEARINGS IN THAT COURT.

Section 13. Amend §22-314

22-314. ~~Bail;~~ Preparation of FINE schedule; collection; civil deposits

A. The defendant, at any time after arrest and before conviction, shall be eligible for bail, subject to section 13-3961 and any applicable rules adopted by the supreme court.

B. The justice of the peace shall:

1. Prepare or adopt for use a schedule of traffic violations not involving the death of a person, A VIOLATION OF TITLE 28, CHAPTER 4, ARTICLE 4 or any felony traffic offense, listing specific bail for each violation.

2. Permit the collection of bail, or acceptance of proper bond in lieu of bail, in accordance with the foregoing schedule and collect that bail, for and on behalf of the court.

C. The justice of the peace shall prepare or adopt for use a schedule of civil traffic violations, listing a specific deposit for each violation.

The justice of the peace shall ensure that proper deposits for civil traffic violations are accepted for and on behalf of the court.

Section 14. Amend section 22-424

22-424. ~~Bail;~~ Preparation of FINE schedule; collection; civil deposits

A. The defendant, at any time after arrest, and before conviction, shall be eligible for bail, subject to section 13-3961 and any applicable rules adopted by the supreme court.

B. The presiding magistrate shall:

1. Prepare a schedule of traffic violations not involving the death of a person, A VIOLATION OF TITLE 28, CHAPTER 4, ARTICLE 3 or any felony traffic offense, listing specific bail for each violation.

2. Permit the collection of bail, or acceptance of proper bond in lieu of bail, according to the foregoing schedule for and on behalf of the court.

C. The presiding magistrate shall prepare a schedule of civil traffic violations, listing a specific deposit for each violation. The presiding magistrate shall ensure that proper deposits for civil traffic violations are accepted for and on behalf of the court.

Section 15. Enact §28-603

28-603. Driver license or permit; restrictions

A RESTRICTION ORDERED ON A PERSON’S DRIVER LICENSE OR PERMIT TO DRIVE AS A RESULT OF CONVICTION FOR AN OFFENSE LISTED IN ARTICLE 4 OR 5 OF THIS CHAPTER MAY INCLUDE DRIVING FOR ANY OF THE FOLLOWING PURPOSES:

1. BETWEEN THE PERSON'S PLACE OF EMPLOYMENT AND RESIDENCE AND DURING SPECIFIED PERIODS OF TIME WHILE AT EMPLOYMENT.

2. BETWEEN THE PERSON'S PLACE OF RESIDENCE, THE PERSON'S PLACE OF EMPLOYMENT AND THE PERSON'S SECONDARY OR POSTSECONDARY SCHOOL ACCORDING TO THE PERSON'S EMPLOYMENT OR EDUCATIONAL SCHEDULE.

3. BETWEEN THE PERSON'S PLACE OF RESIDENCE AND THE OFFICE OF A PHYSICIAN OR OTHER HEALTH CARE PROFESSIONAL.

4. TRANSPORTATION OF A DEPENDENT LIVING WITH THE PERSON TO THE DEPENDANT’S EMPLOYMENT, SECONDARY OR POSTSECONDARY SCHOOL OR MEDICAL APPOINTMENT.

Section 16. Amend §28-662

28-662. Accidents involving damage to vehicle; failure to stop; classification; driver license suspension; alcohol or other drug screening

A. The driver of a vehicle involved in an accident resulting only in damage to a vehicle that is driven or attended by a person shall:

Justice for All

1. Immediately stop the vehicle at the scene of the accident or as close to the accident scene as possible but shall immediately return to the accident scene.

2. Remain at the scene of the accident until the driver has fulfilled the requirements of section 28-663.

3. Make the stop without obstructing traffic more than is necessary.

B. A person failing to stop or comply with this section is guilty of a class 2 misdemeanor.

C. A court may order the department to suspend OR RESTRICT the license or permit to drive and any nonresident operating privilege of a person convicted under this section for one year. If reasonable suspicion exists to believe that the person's use of intoxicating liquor, any drug listed in section 13-3401, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances was a contributing factor to the accident, the department may require the person to complete alcohol or other drug screening as a condition of license reinstatement.

Section 17. Amend §28-695

28-695. Aggressive driving; violation; classification; definition

A. A person commits aggressive driving if both of the following occur:

1. During a course of conduct the person commits a violation of either section 28-701, subsection A or section 28-701.02 and at least two of the following violations:

(a) Failure to obey traffic control devices as provided in section 28-644.

(b) Overtaking and passing another vehicle on the right by driving off the pavement or main traveled portion of the roadway as provided in section 28-724.

(c) Unsafe lane change as provided in section 28-729.

(d) Following a vehicle too closely as provided in section 28-730.

(e) Failure to yield the right-of-way as provided in article 9 of this chapter.

2. The person's driving is an immediate hazard to another person or vehicle.

B. A person convicted of aggressive driving is guilty of a class 1 misdemeanor.

C. In addition to any other penalty prescribed by law:

1. A person convicted of a violation of this section shall attend and successfully complete approved traffic survival school educational sessions that are designed to improve the safety and habits of drivers and that are approved by the department.

2. The court shall forward the abstract of conviction to the department and may order the department to suspend OR RESTRICT the person's driving privilege for thirty days.

D. If a person who is convicted of a violation of this section has been previously convicted of a violation of this section within a period of twenty-four months:

1. The person is guilty of a class 1 misdemeanor.

2. In addition to any other penalty prescribed by law, the court shall forward the abstract of conviction to the department. On receipt of the abstract of conviction, the department shall revoke the driving privilege of the person for one year.

E. The dates of the commission of the offense determine whether subsection D of this section applies. A second or subsequent violation for which a conviction occurs as provided in this section does not include a conviction for an offense arising out of the same series of acts.

F. For the purposes of this section "course of conduct" means a series of acts committed during a single, continuous period of driving.

Section 18. Amend §28-708

28-708. Racing on highways; classification; exception; definitions

A. A person shall not drive a vehicle or participate in any manner in a race, speed competition or contest, drag race or acceleration contest, test of physical endurance or exhibition of speed or acceleration or for the purpose of making a speed record on a street or highway.

B. A person who violates this section is guilty of a class 1 misdemeanor. If a person is convicted of a second or subsequent violation of this section within twenty-four months of a first conviction, the person is guilty of a class 6 felony and is not eligible for probation, pardon, suspension of sentence or release on any other basis until the person has served not less than ten days in jail or prison.

C. A person who is convicted of a first violation of this section shall pay a fine of not less than two hundred fifty dollars and may be ordered by the court to perform community restitution.

D. A person who is convicted of a subsequent violation of this section shall pay a fine of not less than five hundred dollars and may be ordered by the court to perform community restitution.

E. On pronouncement of a jail sentence under this section and in cases of extreme hardship, the court may provide in the sentence that if the defendant is employed or attending school and can continue employment or school the defendant may continue the employment or school for not more than twelve hours per day nor more than five days per week, and the

defendant shall spend the remaining days or parts of days in jail until the sentence is served. The court may allow the defendant to be out of jail only long enough to complete the defendant's actual hours of employment or school.

F. If a person is convicted of violating this section, the judge may require the surrender to a police officer of any driver license of the person and immediately forward the abstract of conviction to the department. On a first conviction, the judge may order the ~~suspension of~~ DEPARTMENT TO SUSPEND OR RESTRICT the driving privileges of the person for a period of not more than ninety days. In the case of a first conviction and on receipt of the abstract of conviction and order of the court, the department shall suspend the driving privileges of the person for the period of time ordered by the judge. In the case of a second or subsequent conviction for an offense committed within a period of twenty-four months and on receipt of the abstract of conviction, the department shall revoke the driving privileges of the person.

G. The director may authorize in writing an organized and properly controlled event to utilize a highway or part of a highway even though it is prohibited by this section. The authorization shall specify the time of the event, the highway or part of a highway to be utilized and any special conditions the director may require for the particular event.

H. For the purposes of this section:

1. "Drag race" means either:

(a) The operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other.

(b) The operation of one or more vehicles over a common selected course and from the same point for the purpose of comparing the relative speeds or power of acceleration of the vehicle or vehicles within a certain distance or time limit.

2. "Racing" means the use of one or more vehicles in an attempt to outgain or outdistance another vehicle or prevent another vehicle from passing

Section 19. Amend §28-857

28-857. School bus signs; overtaking and passing school bus; violation; driver license suspension; civil penalty

A. On meeting or overtaking from either direction a school bus that has stopped on the highway, the driver of a vehicle on a highway shall:

1. Stop the vehicle before reaching the school bus, if the school bus is displaying the signal as provided in subsection D of this section and if alternately flashing lights are in use.

2. Not proceed until the school bus resumes motion or the signal and alternately flashing lights are no longer displayed.

B. A school bus shall have on the front and rear of the school bus a plainly visible sign containing the words "school bus" in letters not less than eight inches in height.

C. A school bus operated on a highway shall cover or conceal all markings indicating "school bus" unless the school bus is operated for the transportation of children to or from any of the following:

1. School.

2. School sponsored academic activities.

3. School sponsored vocational and technical education.

4. School sponsored athletic trips.

5. School sponsored extracurricular activities.

D. A school bus shall have a signal with the word "stop" printed on both sides in white letters not less than five inches high on a red background. The signal shall be an eighteen inch reflectorized octagon. When transporting school children to or from school or home, the operator of the school bus shall:

1. Manually operate the signal in a manner so that the signal is clearly visible from both front and rear when extended from the left of the body of the school bus.

2. Display the signal and alternately flashing lights if passengers are being received or discharged while the school bus is stopped on the roadway or a private road or driveway as defined in section 28-601.

E. The driver of a vehicle on a highway with separate roadways need not stop on meeting or passing a school bus that is:

1. On a different roadway.

2. On a controlled access highway and the school bus is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

F. For the purposes of subsection E of this section, a lane or group of lanes on either side of a two-way left turn lane is not considered a separate roadway.

G. A person who is responsible for a violation of subsection A of this section is subject to a civil penalty as follows:

1. The court shall impose a ~~minimum~~ civil penalty of NOT MORE THAN two hundred fifty dollars for the first violation.

2. If a person violates this section a second time within a period of thirty-six months, the court shall impose a ~~minimum~~ civil penalty of NOT MORE THAN seven hundred fifty dollars and shall direct the department to ~~suspend driver license of the person~~ RESTRICT THE DRIVING PRIVILEGES OF

THE PERSON ~~the~~ for AT LEAST THREE MONTHS BUT not more than six months TO TRAVEL:

a. BETWEEN THE PERSON'S PLACE OF EMPLOYMENT AND RESIDENCE AND DURING SPECIFIED PERIODS OF TIME WHILE AT EMPLOYMENT.

b. BETWEEN THE PERSON'S PLACE OF RESIDENCE, THE PERSON'S PLACE OF EMPLOYMENT AND THE PERSON'S SECONDARY OR POSTSECONDARY SCHOOL ACCORDING TO THE PERSON'S EMPLOYMENT OR EDUCATIONAL SCHEDULE.

c. BETWEEN THE PERSON'S PLACE OF RESIDENCE AND THE OFFICE OF A PHYSICIAN OR OTHER HEALTH CARE PROFESSIONAL.

3. THE COURT MAY ORDER THE RESTRICTION TO PERMIT TRANSPORTATION OF A DEPENDENT LIVING WITH THE PERSON TO THE DEPENDANT'S EMPLOYMENT, SECONDARY OR POSTSECONDARY SCHOOL OR MEDICAL APPOINTMENT.

~~3~~ 4. If a person violates this section three or more times within a period of thirty-six months, the court shall impose a ~~minimum~~ civil penalty of NOT MORE THAN one thousand dollars and shall direct the department to suspend the driver license of the person for at least six months but not more than one year.

Section 20. Repeal §28-1389

Section 28-1389 is repealed

Section 21. Amend §28-2322

28-2322. License plate requirement for nonresident's foreign vehicle

A person shall not operate a foreign vehicle owned by a nonresident on a highway and a nonresident owner shall not knowingly permit the foreign vehicle to be operated on a highway unless there is displayed on the vehicle the license plates assigned to the vehicle for the current registration year by the state or country of which the owner is a resident. A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO A CIVIL TRAFFIC VIOLATION.

Section 22. Amend §13-2328.

28-2328. Violation; classification

UNLESS OTHERWISE PROVIDED FOR, A person who violates this article is guilty of a class 2 misdemeanor.

Section 23. Amend §28-2532

28-2532. Registration; violation; civil penalties

A. Except as provided in subsection B of this section, a person who is the resident or nonresident owner or operator of a motor vehicle, trailer or semitrailer that is required by law to be registered in this state and that is not registered or does not display license plates assigned by the department for the current registration year and who operates or knowingly permits the vehicle to be operated on a highway is subject to

a civil penalty of three hundred dollars notwithstanding section 28-1598.

B. On proper presentation of evidence of current registration, a person who is charged with a violation of subsection A of this section is subject to a civil penalty of NOT MORE THAN fifty dollars.

C. A court shall not dismiss an action brought under this section merely because the defendant has obtained the appropriate license plates or registration after violating this section. A court may ~~decide not to impose a~~ WAIVE THE civil penalty against a defendant for a violation of this section if the defendant was an operator but was not the owner of the motor vehicle, trailer or semitrailer.

Section 24. Amend §28-3473

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

A. ~~Except as otherwise provided in this subsection,~~ A person ~~who drives~~ SHALL NOT DRIVE a motor vehicle on a public highway when the person's privilege to drive a motor vehicle is suspended, revoked, canceled or refused or when the person is disqualified from driving ~~is guilty of a class 1 misdemeanor. If the suspension is pursuant to section 28-1601 and the person presents to the court evidence that the person's privilege to drive has been reinstated, the court may dismiss the charge of driving under a suspended driver license~~.

B. Except for a suspension pursuant to section 28-1601 or 28-3308, on receipt of a record of the conviction of a person under this section, the department shall notify a person who is eligible for a restricted privilege to drive pursuant to this section that the person is eligible. The department shall issue a license that restricts the person's privilege to drive as follows:

1. Between the person's place of employment and residence AND during specified periods of time while at employment.

2. Between the person's place of residence, the person's place of employment and the person's secondary or postsecondary school according to the person's employment or educational schedule.

3. Between the person's place of residence and a screening, education or treatment facility for scheduled appointments.

4. Between the person's place of residence and the office of the person's probation officer for scheduled appointments.

5. Between the person's place of residence and the office of a physician or other health care professional.

6. Between the person's place of residence and a certified ignition interlock device service facility.

C. On application, the department shall issue a driver license that restricts a person's privilege to drive pursuant to subsection B of this section and that is valid for one year only if all of the following apply:

1. The person has completed all requirements of the sentence imposed by the court.

2. The person has satisfied all suspension periods imposed on the person's driver license as a result of the conviction of or a finding of responsibility for a violation of any provision of this title except this section.

3. The person pays the applicable reinstatement fee prescribed by section 28-3002.

D. IF THE SUSPENSION IS PURSUANT TO SECTION 28-1601 AND THE PERSON PRESENTS TO THE COURT EVIDENCE THAT THE PERSON'S PRIVILEGE TO DRIVE HAS BEEN REINSTATED, THE COURT MAY DISMISS THE COMPLAINT CHARGING A VIOLATION OF THIS SECTION.

E. UNLESS OTHERWISE PROVIDED, A PERSON WHO VIOLATES SUBSECTION A OF THIS SECTION IS SUBJECT TO A CIVIL PENALTY.

F. A PERSON WHO VIOLATES SUBSECTION A OF THIS SECTION IS GUILTY OF A CLASS 1 MISDEMEANOR IF EITHER:

1. THE PERSON’S PRIVILEGE TO DRIVE A MOTOR VEHICLE IS SUSPENDED, REVOKED, CANCELED OR REFUSED OR WHEN THE PERSON IS DISQUALIFIED FROM DRIVING AS A RESULT OF A VIOLATION OF AN OFFENSE LISTED IN CHAPTER THREE, ARTICLE FIVE OR CHAPTER FOUR OF THIS TITLE, OR

2. IF WITHIN A PERIOD OF THIRTY SIX MONTHS THE PERSON COMMITS A SECOND VIOLATION OF THIS SECTION.

Section 25. Amend §28-3511

28-3511. Removal and immobilization or impoundment of vehicle; Arizona crime information center database

A. A peace officer shall cause the removal and either immobilization or impoundment of a vehicle if the peace officer determines that:

1. A person is driving the vehicle while any of the following applies:

(a) Except as otherwise provided in this paragraph, the person's driving privilege is ~~suspended or~~ revoked for any reason. A peace officer shall not cause the removal and either immobilization or impoundment of a vehicle pursuant to this paragraph if the person's privilege to drive is valid in this state.

(b) The person has not ever been issued a valid driver license or permit by this state and the person does not produce evidence of ever having a valid driver license or permit issued by another jurisdiction. This paragraph does not apply to the operation of an implement of husbandry.

(c) The person is subject to an ignition interlock device requirement pursuant to chapter 4 of this title and the person is operating a vehicle without a functioning certified ignition interlock device. This paragraph does not apply to the operation of a vehicle due to a substantial emergency as defined in section 28-1464.

(d) In furtherance of the illegal presence of an alien in the United States and in violation of a criminal offense, the person is transporting or moving or attempting to transport or move an alien in this state in a vehicle if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of law.

(e) The person is concealing, harboring or shielding or attempting to conceal, harbor or shield from detection an alien in this state in a vehicle if the person knows or recklessly disregards the fact that the alien has come to, entered or remains in the United States in violation of law.

2. A vehicle is displayed for sale or for transfer of ownership with a vehicle identification number that has been destroyed, removed, covered, altered or defaced.

B. A peace officer shall cause the removal and impoundment of a vehicle if the peace officer determines that a person is driving the vehicle and if all of the following apply:

1. The person's driving privilege is canceled~~, suspended~~ or revoked for any reason or the person has not ever been issued a driver license or permit by this state and the person does not produce evidence of ever having a driver license or permit issued by another jurisdiction.

2. The person is not in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

3. The person is driving a vehicle that is involved in an accident that results in either property damage or injury to or death of another person.

C. Except as provided in subsection D of this section, while a peace officer has control of the vehicle the peace officer shall cause the removal and either immobilization or impoundment of the vehicle if the peace officer has probable cause to arrest the driver of the vehicle for a violation of section 4-244, paragraph 34 or section 28-1382 or 28-1383.

D. A peace officer shall not cause the removal and either the immobilization or impoundment of a vehicle pursuant to subsection C of this section if all of the following apply:

1. The peace officer determines that the vehicle is currently registered and that the driver or the vehicle is in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.
2. The spouse of the driver is with the driver at the time of the arrest.
3. The peace officer has reasonable grounds to believe that the spouse of the driver:
(a) Has a valid driver license.
(b) Is not impaired by intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances.
(c) Does not have any spirituous liquor in the spouse's body if the spouse is under twenty-one years of age.
4. The spouse notifies the peace officer that the spouse will drive the vehicle from the place of arrest to the driver's home or other place of safety.
5. The spouse drives the vehicle as prescribed by paragraph 4 of this subsection.
E. Except as otherwise provided in this article, a vehicle that is removed and either immobilized or impounded pursuant to subsection A, B or C of this section shall be immobilized or impounded for thirty days. An insurance company does not have a duty to pay any benefits for charges or fees for immobilization or impoundment.
F. The owner of a vehicle that is removed and either immobilized or impounded pursuant to subsection A, B or C of this section, the spouse of the owner and each person identified on the department's record with an interest in the vehicle immediately before the immobilization or impoundment shall be provided with an opportunity for an immobilization or poststorage hearing pursuant to section 28-3514.
G. A law enforcement agency that employs the peace officer who removes and either immobilizes or impounds a vehicle pursuant to this section shall enter information about the removal and either immobilization or impoundment of the vehicle in the Arizona crime information center database within three business days after the removal and either immobilization or impoundment.
Section 26. Amend §28-4135
28-4135. Motor vehicle financial responsibility requirement; civil penalties; evidence at hearing
A. A motor vehicle that is operated on a highway in this state shall be covered by one of the following:
1. A motor vehicle or automobile liability policy that provides limits not less than those prescribed in section 28-4009.

2. An alternate method of coverage as provided in section 28-4076.

3. A certificate of self-insurance as prescribed in section 28-4007.

4. A policy that satisfies the financial responsibility requirements prescribed in article 2 of this chapter.

B. A person operating a motor vehicle on a highway in this state shall have evidence within the motor vehicle of current financial responsibility applicable to the motor vehicle. The evidence may be displayed on a wireless communication device that is in the motor vehicle. If a person displays the evidence on a wireless communication device pursuant to this subsection, the person is not consenting for law enforcement to access other contents of the wireless communication device.

C. Failure to produce evidence of financial responsibility on the request of a law enforcement officer investigating a motor vehicle accident or an alleged violation of a motor vehicle law of this state or a traffic ordinance of a city or town is a civil traffic violation that is punishable as prescribed in this section.

D. A citation issued for violating subsection B or C of this section shall be dismissed if the person to whom the citation was issued produces evidence to the appropriate court officer on or before the date and time specified on the citation for court appearance and in a manner specified by the court, including the certification of evidence by mail, of either of the following:

1. The financial responsibility requirements prescribed in this section were met for the motor vehicle at the date and time the citation was issued.

2. A motor vehicle or automobile liability policy that meets the financial responsibility requirements of this state and that insured the person and the motor vehicle the person was operating at the time the person received the citation regardless of whether or not the motor vehicle was named in the policy.

E. Except as provided in section 28-4137, a person who violates this section is subject to a civil penalty as follows:

1. The court shall impose a ~~minimum~~ civil penalty of NOT MORE THAN five hundred dollars for the first violation. On receipt of the abstract of the record of judgment, the department shall ~~suspend the driver license~~ RESTRICT THE DRIVING PRIVILEGES of the person ~~and the registration and license plates of the motor vehicle involved~~ for three months TO TRAVEL:

a. BETWEEN THE PERSON'S PLACE OF EMPLOYMENT AND RESIDENCE AND DURING SPECIFIED PERIODS OF TIME WHILE AT EMPLOYMENT.

b. BETWEEN THE PERSON'S PLACE OF RESIDENCE, THE PERSON'S PLACE OF EMPLOYMENT AND THE PERSON'S SECONDARY OR POSTSECONDARY SCHOOL ACCORDING TO THE PERSON'S EMPLOYMENT OR EDUCATIONAL SCHEDULE.

c. BETWEEN THE PERSON'S PLACE OF RESIDENCE AND THE OFFICE OF A PHYSICIAN OR OTHER HEALTH CARE PROFESSIONAL.

2. If a person violates this section a second time within a period of thirty-six months, the court shall impose a ~~minimum~~ civil penalty of NOT MORE THAN seven hundred fifty dollars. On receipt of the abstract of the record of judgment, the department shall ~~suspend the driver license~~ RESTRICT THE DRIVING PRIVILEGES of the person ~~and the registration and license plates of the motor vehicle involved~~ for six months TO TRAVEL:

a. BETWEEN THE PERSON'S PLACE OF EMPLOYMENT AND RESIDENCE AND DURING SPECIFIED PERIODS OF TIME WHILE AT EMPLOYMENT.

b. BETWEEN THE PERSON'S PLACE OF RESIDENCE, THE PERSON'S PLACE OF EMPLOYMENT AND THE PERSON'S SECONDARY OR POSTSECONDARY SCHOOL ACCORDING TO THE PERSON'S EMPLOYMENT OR EDUCATIONAL SCHEDULE.

c. BETWEEN THE PERSON'S PLACE OF RESIDENCE AND THE OFFICE OF A PHYSICIAN OR OTHER HEALTH CARE PROFESSIONAL.

3. If a person violates this section three or more times within a period of thirty-six months, the court shall impose a ~~minimum~~ civil penalty of NOT MORE THAN one thousand dollars. On receipt of the abstract of the record of judgment, the department shall suspend the driver license of the person and the registration and license plates of the motor vehicle involved for one year. The department shall require on reinstatement of the driver license, the registration and the license plates that the person file with the department proof of financial responsibility in accordance with article 3 of this chapter.

F. THE COURT MAY ORDER THE RESTRICTION IMPOSED PURSUANT TO THIS SECTION TO PERMIT TRANSPORTATION OF A DEPENDENT LIVING WITH THE PERSON TO THE DEPENDENT’S EMPLOYMENT, SECONDARY OR POSTSECONDARY SCHOOL OR MEDICAL APPOINTMENT.

~~F~~ G. A court may require a person to produce an insurance identification card as evidence in a hearing for a violation of this section.

Section 27. Delayed effective date

This act is effective from and after December 31, 2017.

7/19/16
4:25pm

APPENDIX G

Proposed Rule Changes

Rule 4.2. Initial appearance

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

(1) Ascertain the suspect's true name and address and, if necessary, amend the formal charges to reflect it, and instruct the suspect to notify the court promptly of any change of address;

(2) Inform the defendant of the charges;

(3) Inform the defendant of the right to counsel and the right to remain silent;

(4) Determine whether probable cause exists for the purpose of release from custody. If no probable cause is found, the defendant shall immediately be released from custody;

(5) Appoint counsel if the suspect is eligible for and requests appointed counsel under Rule 6;

(6) Consider comments offered by the victim concerning the conditions of release. The magistrate shall permit the victim to comment orally or in writing, on the issue of the suspect's release;

(7) Determine the conditions of release in accordance with Rule 7.2 including whether ~~the defendant is non-bailable pursuant to A.R.S. Const. Art. 2 § 22 and A.R.S. 13-3961~~:

(i) the defendant is eligible for release pursuant to Rule 7.2(b)(1);

(ii) a hearing must be scheduled pursuant to Rule 7.2(b)(2) and (3); or

(iii) the defendant must be released with or without conditions pursuant to Rule 7.2(a), or the determination of release conditions should be continued for no more than twenty-four hours if more information is needed to determine whether or under what conditions to release the defendant.

(8) For summoned defendants charged with a felony offense, a violation of Title 13, Chapter 14, or Title 28, Chapter 4, or a domestic violence offense as defined in § 13-3601, if the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number, the court

shall order that within twenty calendar days, the defendant be ten-print fingerprinted at a designated time and place by the appropriate law enforcement agency; and

(9) 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 6.1. Rights to counsel; waiver of rights to counsel

a. [no changes]

b. *Right to Appointed Counsel*. An indigent defendant shall be entitled to have an attorney appointed to represent him or her in any criminal proceeding which may result in punishment by loss of liberty or pre-trial detention after a criminal charge is filed, and in any other criminal proceeding in which the court concludes that the interests of justice so require.

c. through e. [no changes]

Rule 7.2. Right to release

a. *Before Conviction; Persons Charged With an Offense Bailable as a Matter of Right.*

All persons charged with a crime but not yet convicted are presumed to be innocent. Any person charged with an offense bailable as a matter of right shall be released pending or during trial on the person's own recognizance, unless the court determines, in its discretion and with due consideration for the factors required by A.R.S. § 13-3967, that such a release will not reasonably assure the person's appearance as required. If such a determination is made, the court may impose the least onerous condition or conditions contained in Rule 7.3(b) which ~~will~~ are reasonably necessary to assure the person's appearance. If other conditions are insufficient, the court may impose a cash or secured bond in an amount that is based on the person's ability to pay the bond.

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

(1) At the initial appearance, ~~A~~ a person shall not be released on bail if the court finds the proof is evident or the presumption great that the person is guilty of an offense not bailable pursuant to ~~law~~ A.R.S. Const. Art. 2 § 22 and A.R.S. § 13-3961(A).

(2) Upon a certified motion by the state alleging that a person charged with a felony poses a substantial danger to another person or the community or engaged in conduct constituting a violent offense, and that no condition or combination of conditions of release may be imposed that will reasonably assure the safety of the other person or the community, the court shall hold a hearing to determine whether the person charged with the offense is non-bailable. If the court finds that proof is evident or presumption great that the person committed the offense charged, and that no condition or combination of conditions of release may be imposed that will reasonably assure the safety of the other person or the community, the court shall not release the person. For the purposes of this rule "violent offense" has the same meaning as in A.R.S. § 13-3961(D).

(3) The hearing required by (b)(2) must be held within twenty-four hours of the initial appearance unless the person who is subject to detention or the state moves for a continuance. A continuance that is granted on the motion of the person must not exceed five calendar days unless there are extenuating circumstances. A continuance on the motion of the state shall be granted on good cause shown and must not exceed twenty-four hours.

c. *After Conviction*

(1) *Superior Court.* After a person has been convicted of any offense for which the person will in all reasonable probability suffer a sentence of imprisonment, the person shall not be released on bail or on the person's own recognizance unless it is established that there are reasonable grounds to believe that the conviction may be set aside on a motion for new trial, reversed on appeal, or vacated in any post-conviction proceeding. The release of a person pending appeal shall be revoked if the person fails to prosecute the appeal diligently.

(2) *Limited Jurisdiction Courts.*

(A) Conditions of Release Upon Appeal. After a defendant has been convicted of any offense for which a sentence of incarceration has been imposed, upon filing of a timely notice of appeal, the defendant shall remain, pending appeal, under the same release conditions imposed at or subsequent to the time of the defendant's initial appearance or arraignment, except as provided in this subsection (c)(2). The release of the defendant pending appeal shall be revoked if the defendant fails to prosecute the appeal diligently. A defendant held in custody pending appeal shall be released in the event the defendant's sentence is completed before the appeal has been decided.

(B) Motion to Amend Conditions of Release. Upon the filing of a timely notice of appeal, the state, or the court on its own motion, may move to amend the conditions of release when it appears there is a substantial risk that:

(i) the defendant presents a danger to any person or the community; or

(ii) the defendant is unlikely to return to court if subsequently ordered to appear on the particular matter.

(C) Hearing. The court shall set a hearing on such an application within three days of the filing of the motion. Such hearing may be continued for good cause shown. The defendant may be detained pending the hearing. At the hearing, which shall be on the record, the defendant is entitled to representation by counsel. Any testimony of the defendant shall not be admissible in other proceedings except as it may relate to compliance with prior conditions of release, perjury, or impeachment.

(D) Findings. Based on findings stated on the record, the court may amend the conditions of release in accordance with Rule 7.3. In determining the ~~method~~ conditions of release or the amount of ~~bail~~ bond, the judicial officer shall, on the basis of available information, consider the nature and circumstances of the offense, family or local ties, employment, financial resources, character and mental condition, the length of residence in the community, the record of arrests, convictions, and appearances at court proceedings.

(E) Superior Court Review. If the trial court enters an order setting a bond or requiring incarceration while the appeal is taken, the defendant may petition the superior court, at any time after such order is entered, to stay the execution of sentence and to allow the defendant to be released without bond or to require a lower bond.

d. [no changes]

Rule 7.3. Conditions of release

a. [no changes]

b. *Additional Conditions.* An order of release may include the first one or more of the following conditions as reasonably necessary to secure a person's appearance and protect other persons and the community:

(1) Execution of an unsecured appearance bond in an amount specified by the court;

(2) Placing the person in the custody of a designated person or organization agreeing to supervise ~~him or her~~ the person;

(3) Restrictions on the person's travel, associations, or place of abode during the period of release;

(4) Prohibit the person from possessing any deadly weapon or engaging in certain described activities or indulging in intoxicating liquors or certain drugs;

(5) Require the person to report regularly to and remain under the supervision of an officer of the court.

(4 6) Any other condition not included in (~~5~~ 7) or (~~6~~ 8) which the court deems reasonably necessary;

(~~5~~ 7) Execution of a secured appearance bond upon a finding that imposition of other conditions is insufficient; or

(~~6~~ 8) Return to custody after specified hours.

Rule 7.4. Procedure

a. through d. [no changes]

e. *Appointment of Counsel.* The court must appoint counsel in any case in which the defendant is eligible for appointment of counsel under Rule 6 and is detained after the filing of a criminal charge.

7/20/16

APPENDIX H

Proposed Form 6—Release Order

FORM 6

_______________ **COURT** _______________ **County, Arizona**

STATE OF ARIZONA Plaintiff -vs- _______________ _______________ _______________ Defendant (FIRST, MI, LAST) Booking Number Date of Birth	**RELEASE ORDER**

LINE #	COMPLAINT	VIOLATION CODE	NF	ORR	PSR	3PR	Bond	BA	UB	CB	SB	NB
1							$					
2							$					
3							$					
4							$					
5							$					

(NF = Charge not filed; ORR = Own recognizance release; PSR = Pretrial supervision release; 3PR = Third party release bond; Bond=Amount of bond; BA=Bond applies; UB = Unsecured bond; CB = Cash ; SB = Secured bond; NB=Non-bondable)

MANDATORY AND STANDARD CONDITIONS OF YOUR RELEASE:

[X] 1. Appear at _______________ (Court name and address) court on: _______________ (Date) at _____ (Time) a.m. / p.m., Courtroom: ________ for _______________ and attend all future court hearings.
[X] 2. Violate no federal, state or local criminal laws.
[X] 3. Not leave the state of Arizona without written permission from the court.
[ ] Defendant may leave the state of Arizona provided defendant returns for court dates.
[X] 4. Diligently pursue any appeal if released from custody after judgment and sentence have been imposed.
[ ] 5. Maintain contact with your attorney.
[ ] 6. Provide a current address and phone number to the court and to your attorney and immediately notify both of any changes.
[ ] 7. Not threaten or initiate any type of contact with the alleged victim(s).
[ ] 8. Not drive a motor vehicle without a valid driver's license in your possession.
[ ] 9. Not threaten or initiate any type of contact with any person as specified here: _______________.
[ ] 10. Not possess weapons as specified here: _______________.
[ ] 11. Not consume any alcoholic beverages.
[ ] 12. Not go to scene of the alleged crime.
[ ] 13. Not go to locations as specified here: _______________.
[ ] 14. Comply with 3rd party custody release conditions as specified here: _______________.
(See 3rd party obligations in this document.)
[ ] 15. Contact probation or parole officer.
[ ] 16. Electronic monitoring, if available, (mandatory if charged with a felony offense under Chapters 14 or 35.1 of Title 13)
[ ] 17. Other: _______________.

ADDITIONAL CONDITIONS FOR YOUR PRETRIAL SUPERVISION RELEASE (PSR):

[ ] 18. Comply with the assigned pretrial supervision program as specified here: _______________.
[ ] 19. Provide a current address and phone number to Pretrial Services immediately and notify of any changes.

IF YOU VIOLATE THIS ORDER: You have the right to be present at your trial and at all other proceedings in your case. IF YOU FAIL TO APPEAR THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST AND/OR HOLD THE TRIAL OR PROCEEDING IN YOUR ABSENCE. IF CONVICTED, YOU WILL BE REQUIRED TO APPEAR FOR SENTENCING. IF YOU FAIL TO APPEAR, YOU MAY LOSE YOUR RIGHT TO A DIRECT APPEAL.

If you violate any condition of an appearance bond, the court may order the bond and any related security deposit forfeited to the State of Arizona. In addition, the court may issue a warrant for your arrest upon learning of any violation of the conditions of release. After a hearing, if the court finds that you have not complied with the release conditions, the court may modify the conditions or revoke the release altogether.

If you are released on a felony charge, and the court finds the proof evident or the presumption great that you committed a felony during the period of release, the court must revoke your release. You may also be subject to an additional criminal charge, and upon conviction you could be punished by imprisonment in addition to the punishment which would otherwise be imposable for the crime committed during the period of release. Upon finding that you violated conditions of release, the court may also find you in contempt of court and sentence you to a term of imprison-

ACKNOWLEDGEMENT: I fully understand and will comply with all release conditions indicated above and further understand the consequences should I violate any part of this order.

Current address where you live Apt. No. Address where you receive mail if different from current address

( ) Phone No. ( ) Phone No.

X Defendant Signature Date X Judicial Officer Date

DISTRIBUTION: WHITE – COURT YELLOW – SIMS OPERATOR PINK – DEFENDANT

APPENDIX I

Proposed Form 7—Appearance Bond Form

FORM 7

__________________________ **COURT** __________________________ **County, Arizona**

STATE OF ARIZONA Plaintiff -vs-			APPEARANCE BOND
Defendant (FIRST, MI, LAST)	Booking Number	Date of Birth	

TYPE OF APPEARANCE BOND YOU HAVE

[ ] **UNSECURED APPEARANCE BOND:** In accordance with the terms of a release order or warrant issued on ________, 20____, by Judicial Officer of the _______________court, of ___________, State of Arizona, the defendant _____________ and the defendant's surety ______________(If none, so state) hereby promise to pay the State of Arizona the sum of $__________ in the event the defendant fails to appear at ___________________ at a.m./p.m. on ______, 20___ and at any other hearing during the pendency of the case, unless excused by the judicial officer.

[ ] **CASH APPEARANCE BOND:** The defendant will deposit with the Clerk of the Court the total sum of $__________. The total amount of the cash appearance bond will be returned to defendant if defendant appears at _________________ at a.m./p.m. on ______, 20___ or during the pendency of the case to appear and answer the charges or submit to the orders and process of the court having jurisdiction of the case. In the event the defendant fails to appear at the hearing or during the pendency of the case, defendant will forfeit the cash appearance bond to the State of Arizona.

[ ] **SECURED APPEARANCE BOND—without a surety:** The defendant hereby deposits with the court cash or property of value in the full amount of this bond, the same to be forfeited in the event the defendant fails to comply with its conditions.

Depositor: ______________________________ **Email address:** ____________________
Address: ________________________________ **Phone number:** ____________________

[ ] **SECURED APPEARANCE BOND—with a surety:** _________________________. Surety for the defendant, hereby swears (or affirms) that the surety is not an attorney or person authorized to take bail, and that the surety owns property in this state (or is a resident of this state owning property) worth the amount of this bond, exclusive of property exempt from execution and above and over all liabilities, as detailed in Attachment A.

WARNING: IF YOU DO NOT APPEAR AS REQUIRED, THIS BOND MAY BE FORFEITED AND THE PROCEEDINGS BEGIN WITHOUT YOU. IF CONVICTED, YOU WILL BE REQUIRED TO APPEAR FOR SENTENCING. IF YOU FAIL TO APPEAR, YOU MAY LOSE YOUR RIGHT TO A DIRECT APPEAL.

ACKNOWLEDGEMENTS

______________________ Date	______________________ Defendant
State of Arizona))ss. County of ______________)	Subscribed and sworn to before me on ______________________
My Commission Expires ____________	______________________ Notary Public

Approved:

______________________ Date	______________________ Surety or Authorized Agent

Form 7 Attachment A

[No changes]