Fair Justice Subcommittee on Mental Health and the Criminal Justice System

Tuesday, September 12, 2017; 10:00 a.m. – 2:00 p.m.
Conference Room 101
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007
Subcommittee on Mental Health Home Page

Time*	Agenda Items	Presenter
10:00 a.m.	I. **Welcome, introductions and opening remarks**	***Kent Batty**, Chair*
	A. Introduction of Subcommittee members	
	B. Review Charge to the Subcommittee	
	C. Review Subcommittee Rules for Conducting Business	
	D. Role of Workgroup on SB1157 issues	
10:30 a.m.	II. **Overview of the Fair Justice for All Task Force recommendations and implementation efforts**	
	A. Brief History	***Kent Batty***
	B. Implementation of Task Force recommendations	***Don Jacobson**, AOC Sr. Special Consultant*
11:00 a.m.	III. **Overview of mental health competency processes**	
	A. Rule 11 process	***Cassandra Urias**, PCSC Dep. Ct. Administrator*
	i. Overview of the Mesa & Glendale Court Pilot Projects	**Paul Thomas**, *Mesa* **Judge Elizabeth Finn,** *Glendale*
	B. Review Recent Efforts to Amend Rule 11	***AOC Staff***
	i. R-17-0042 Order Amending Rule 11 on an Emergency Basis	
	ii. R-17-002 Petition to Amend the Rules of Arizona Criminal Procedure	
	iii. Definition of "Competency"	
	C. Court Ordered Evaluations and Treatment	***Judge Barbara Spencer**, MCSC &*
	i. Review criteria for ordering evaluations and treatment	***Dr. Carol Olson***, DVH ***Josephine Jones***, Maricopa Public Advocate
	D. Operation of mental health courts	
	i. Superior Courts	***Kent Batty***
	ii. City and Justice Courts	***Don Jacobson***
12:00 p.m.	**Lunch ($5.00)**	

**All times are approximate and subject to change. The committee chair reserves the right to set the order of the agenda. For any item on the agenda, the committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration § 1-202. Please contact Jodi Jerich, staff, at (602) 452-3255 with any questions concerning this agenda. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Sabrina Nash at (602) 452-3849. Requests should be made as early as possible to allow time to arrange the accommodation.*

12:30 p.m. IV. Detailed discussion regarding specific charges to the Subcommittee ***Kent Batty***

A. Recommend rules and procedures needed to implement new provisions of SB1157 relating to competency hearings

B. Determine if the current standard for ordering court-ordered treatment should be altered to allow earlier intervention

C. Recommend if any current court rule or statute should be modified to enable the courts to more effectively handle individuals in the justice system that have mental health issues

D. Develop a Model Protocol Guide for presiding judges to use to implement the task force's recommendations

1:15 p.m. V. Discuss other concerns ***Kent Batty***
A. Advanced Directives regarding competency

1:45 p.m. VI. Our process moving forward ***Kent Batty***
A. Timeline
B. Member Assignments

1:55 p.m. VII. Good of the Order/Call to the Public ***Kent Batty***
A. Adjournment

Next Meeting
October 24, 2017
Conference Room 101
Arizona State Courts Building

Remaining 2017 Meeting Dates
November 13, 2017
December 12, 2017

**All times are approximate and subject to change. The committee chair reserves the right to set the order of the agenda. For any item on the agenda, the committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration § 1-202. Please contact Jodi Jerich, staff, at (602) 452-3255 with any questions concerning this agenda. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Sabrina Nash at (602) 452-3849. Requests should be made as early as possible to allow time to arrange the accommodation.*

Fair Justice Task Force
Subcommittee on Mental Health and the Criminal Justice System

CHAIR

Mr. Kent Batty
Court Administrator
Superior Court in Pima County

MEMBERS

Ms. Susan Alameda
Treatment Specialist, Probation
Administrative Office of the Courts

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Clinical Assistant Professor
U of A, College of Medicine

Ms. Mary Lou Brncik
Director and Founder
David's Hope Services

Ms. Kelsey Commisso
Detective
Phoenix Police Department

Ms. India Davis
Program Manager
Pima County Behavioral Health

Mr. Jim Dunn
Executive Director/CEO
Natl. Alliance on Mental Illness

Ms. Vicki Hill
City Prosecutor
City of Phoenix

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Ms. Kathleen Mayer
Deputy County Attorney
Pima County Attorney's Office

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Superior Court in Maricopa County

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Maricopa County Correctional Health Serv.

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Director
Desert Vista Hospital

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Maricopa Office of the Public Defender

Ms. Nancy Rodriguez
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Maricopa County Clerk of Superior Court

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ASU Center for Applied Behavioral Health

Ms. MaryEllen Sheppard
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Sr. Special Projects Consultant
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Ms. Jodi Jerich
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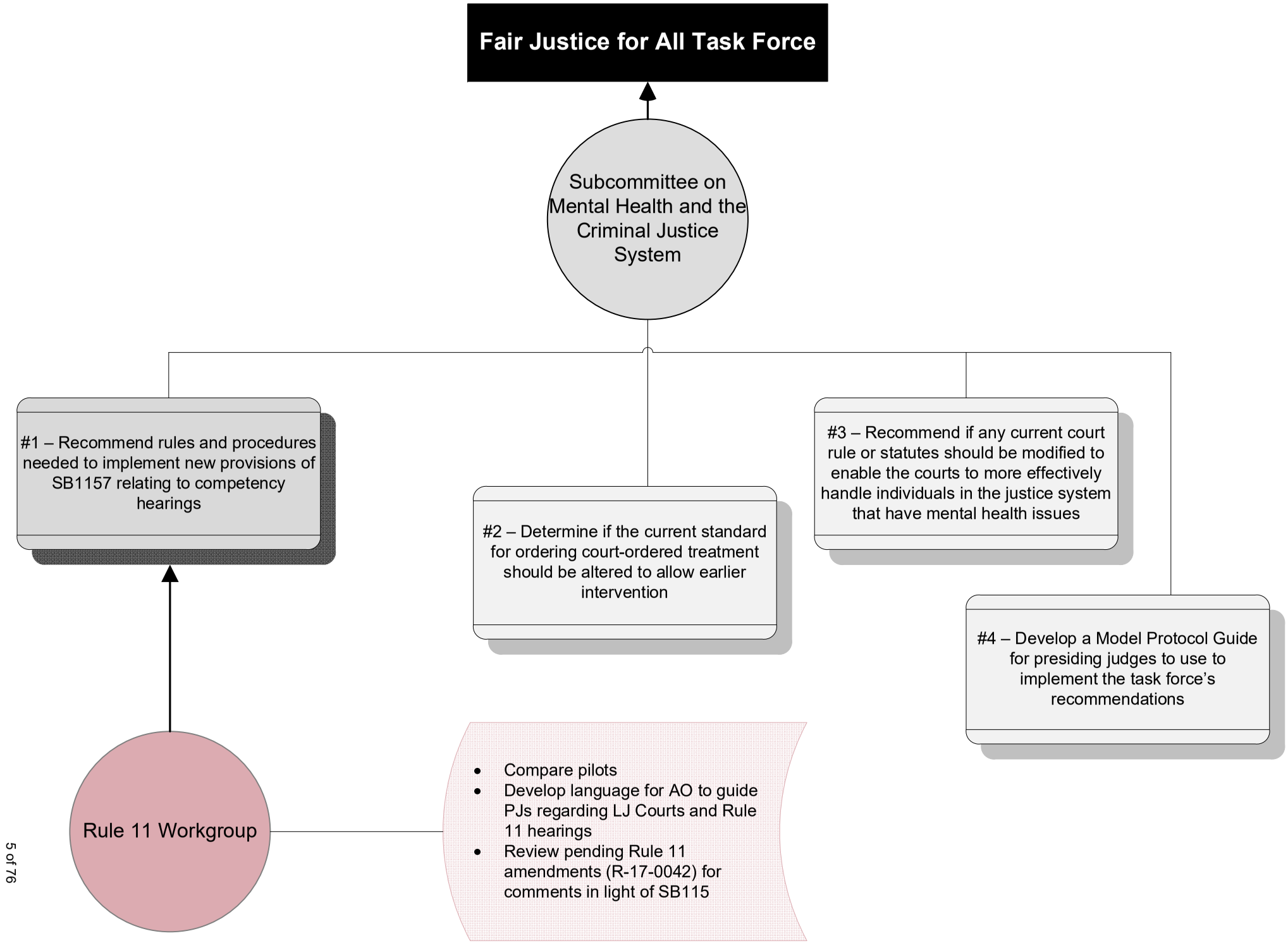
AOC


Fair Justice for All Task Force
Subcommittee on Mental Health and the Criminal Justice System
#1 – Recommend rules and procedures needed to implement new provisions of SB1157 relating to competency hearings
#2 – Determine if the current standard for ordering court-ordered treatment should be altered to allow earlier intervention
#3 – Recommend if any current court rule or statutes should be modified to enable the courts to more effectively handle individuals in the justice system that have mental health issues
#4 – Develop a Model Protocol Guide for presiding judges to use to implement the task force's recommendations
Rule 11 Workgroup
Compare pilots
Develop language for AO to guide PJs regarding LJ Courts and Rule 11 hearings
Review pending Rule 11 amendments (R-17-0042) for comments in light of SB115

Fair Justice Subcommittee on Mental Health and the Criminal Justice System
Rules for Conducting Subcommittee Business and Proxy

1. Quorum Policy

The minimum number for a quorum of members to conduct the business of this Subcommittee is fifty percent plus one. In-person attendance is preferred, but a member, if necessary and if electronic conferencing devices are available, may attend a meeting by telephone or by video.

2. Decision-Making

Subcommittee decisions will be considered upon a motion that is properly seconded and following discussion on the motion. Subcommittee decisions will be made by majority vote of the members attending the meeting. A numerical vote will be recorded unless the decision is unanimous. The chair will vote only to break a tie.

3. Responsibility of Members and Proxy Policy

Members are encouraged to actively participate in Subcommittee meetings, as members are selected for their expertise. However, Subcommittee members may send a proxy to attend meetings on their behalf when necessary. A member should give twenty-four hours' notice to Subcommittee staff concerning the attendance of a proxy.

- A proxy has all the responsibilities of a member, including voting power. A proxy must review the agenda issues, be prepared for a meeting, and brief the member on the meeting within a reasonable time thereafter.

- Another Subcommittee member may not serve as a proxy.

- A proxy is included in the count of members present to determine a quorum.

- A member may not use a proxy for more than three meetings without approval of the Subcommittee chair.

A proxy form and instructions are on the next page.

4. Call to the Public

Every meeting agenda will include a "Call to the Public" before the meeting is adjourned. The chair will announce the opportunity for public comment regardless of whether a member of the public is attending the meeting or has expressed any desire to comment. The chair may impose reasonable time, place, and manner limitations upon members of the public who respond to the call, including setting time limits, banning repetition, and prohibiting profanity and disruptive behavior.

Fair Justice Subcommittee on Mental Health and the Criminal Justice System
Proxy Designation Form and Instructions

- Appointed members of the Subcommittee are responsible for briefing their proxy regarding a pending Subcommittee meeting so that the proxy is prepared to conduct Subcommittee business.

- A proxy must similarly communicate with the member after a meeting to inform the member of substantive events that occurred at the meeting.

- A member wishing to appoint a proxy should complete this form and transmit it to Subcommittee staff indicated below at least one day prior to the scheduled Subcommittee meeting. A member who sends a proxy to more than one meeting must use a separate proxy form for each meeting.

Proxy designations should be sent to:

Jodi Jerich, Senior Court Policy Analyst, Administrative Office of the Courts
Phone number: (602) 452-3255
E-mail: jjerich@courts.az.gov

I (please print your name), _____,
will be absent from the meeting of the Fair Justice Subcommittee on Mental Health and the Criminal Justice System scheduled for the _____ day of _____, 2017.
Accordingly, I designate the following individual to act as my proxy for this meeting:

Name of proxy: _____

Title of proxy: _____

Proxy's e-mail address: _____

Proxy's phone number: _____

_____ _____
Date Signature of Task Force Member

SUBCOMMITTEE ON MENTAL HEALTH AND THE CRIMINAL JUSTICE SYSTEM

EXAMINING

Rule 11

Title 13

Title 36

Standard to Determine Competence

Rule 11.1 & ARS §13-4501(2); ARS §13-4502

A person shall not be tried, convicted, sentenced or punished for an offense if:

- While as a result of a mental illness, defect or disability is:
  - Unable to understand the proceeding against him; or
  - Unable to assist in his or her own defense.

♦ ♦ ♦ ♦ ♦ ♦ ♦

Standard for Title 36 court ordered treatment

ARS §36-540 Court Options

The court shall order a patient to undergo treatment if:

1. By clear and convincing evidence;
2. As a result of a mental disorder is;
   - A danger to self or
   - A danger to others or
   - Has a persistent/acute disability or
   - Has a grave disability
3. Is in need of treatment; and
4. Is unwilling/unable to accept voluntary treatment

Definitions found in §36-501(6),(7),(14), & (31)

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

CHAPTER 14

SENATE BILL 1157

AN ACT

AMENDING SECTION 13-4503, ARIZONA REVISED STATUTES; RELATING TO COMPETENCY HEARINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-4503, Arizona Revised Statutes, is amended to read:

13-4503. Request for competency examination; jurisdiction over competency hearings; referral

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.

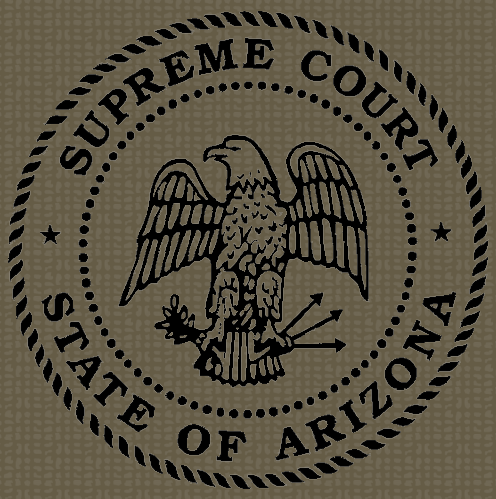
D. ~~Once~~ EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION, AFTER any court determines that reasonable grounds exist for further competency proceedings, the superior court shall have exclusive jurisdiction over all competency hearings.

E. THE PRESIDING JUDGE OF THE SUPERIOR COURT IN EACH COUNTY, WITH THE AGREEMENT OF THE JUSTICE OF THE PEACE OR MUNICIPAL COURT JUDGE, MAY AUTHORIZE A JUSTICE COURT OR MUNICIPAL COURT TO EXERCISE JURISDICTION OVER A COMPETENCY HEARING IN A MISDEMEANOR CASE THAT ARISES OUT OF THE JUSTICE COURT OR MUNICIPAL COURT.

F. A JUSTICE OF THE PEACE OR MUNICIPAL COURT JUDGE, WITH THE APPROVAL OF THE PRESIDING JUDGE OF THE SUPERIOR COURT AND THE JUSTICE OR JUDGE OF THE RECEIVING COURT, MAY REFER A COMPETENCY HEARING TO ANOTHER JUSTICE COURT OR MUNICIPAL COURT THAT IS LOCATED IN THE COUNTY.

APPROVED BY THE GOVERNOR MARCH 14, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 14, 2017.



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

Chair – **Mr. Dave Byers**, Administrative Director, AOC
Vice-Chair – **Mr. Tom O'Connell**, Pretrial Manager, AOC

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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

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[1] and consider alternatives to license suspension.

[1] Throughout this report, the terminology for a driver's license is used to reflect driving privileges or a driver license as defined in the Arizona Revised Statutes.

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.

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.
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.
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 defendants' drivers' licenses.
8. Test techniques to make it easier for defendants to make time payments on court-imposed financial sanctions.
9. Seek legislation that would grant courts discretion to close cases and write off fines and fees for traffic and misdemeanor after a 20-year period if reasonable collection efforts have not been effective.

10. Allow probationers to receive earned time credit without consideration of financial assessments, other than restitution to victims.
11. Eliminate or reduce the imposition of the 10 percent annual interest rate on any Criminal Restitution Order.
12. Modify court website information, bond cards, reminder letters, FARE (Fines/Fees and Restitution Enforcement) 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.
13. Authorize judges to impose a direct sentence that may include community restitution (service) and education and treatment programs as available sentencing options for misdemeanor offenses.
14. 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.
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.

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

30. Prior to or in lieu of issuing a warrant to bring a person to court for failure to pay, courts should employ proactive practices that promote voluntary compliance and appearance.

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

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 and mental health stakeholders in larger jurisdictions to adopt protocols for addressing people with mental health issues who have been brought to court.

36. Consider the use of specialty courts and other available resources to address a defendant's treatment and service needs, as well as risk to the community, when processing cases involving persons with mental health needs or other specialized groups.

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

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.

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 in another case.

41. Authorize the court to temporarily release a "hold" from a limited jurisdiction court and order placement directly into a substance abuse treatment program upon recommendation of the probation department.

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 hearings to assist the court in determining appropriate release conditions and to resolve 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.

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 a defendant's appearance.
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 in preparing or providing 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 on the impact of immigration status on the likelihood of not returning to court if released to ascertain whether it is good public policy to hold these defendants on cash bond.
52. Encourage the Arnold Foundation to conduct periodic reviews to revalidate the Public Safety Assessment [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.
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, and presiding judges) to educate and inform about recommendations of the task force and provide direction for leadership to initiate the shift to a risk-based system rather than a cash-based release system.
58. Train judicial officers on the risk principle and 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 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 Rules 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.

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. Following are a few projects that highlight promising practices that can be considered for expansion to other jurisdictions.[2]

Compliance Assistance Program

The Phoenix Municipal Court has recently implemented a Compliance Assistance Program (CAP) that notifies defendants who have had their driver's licenses suspended that they can come in to court, arrange a new and affordable time

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

payment program, and make a down payment on their outstanding fine. More than 5,000 people have taken advantage of the program in the first six months.

Interactive Voice Response System

The Pima County Consolidated Justice Courts 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 warrants. Each jurisdiction has experienced a reduction in the number of people failing to appear—up to 24 percent.[3]

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.

[3] 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.[4] 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 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

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

practices imposed unnecessary harm, overwhelmingly on African-American individuals.[5] Courts are not 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. But in Arizona, the Supreme Court has administrative oversight over all state courts—appellate, superior, justice, and municipal courts. Oversight includes ensuring that courts perform their appropriate functions, which include 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. While the vast majority of Arizona's limited jurisdiction courts operate in a high-quality manner, if a court severely 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. Such administrative authority has been exercised periodically in Arizona history. For example, in 2014 a combined justice and municipal court was placed under the control of the local county presiding judge.[6] In this case, the judge was eventually removed from office.[7]

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.

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

For years now, Arizona's legislative bodies, like in many other states, have added on to the amount of a fine a variety of surcharges and fees in order to fund numerous meritorious programs (e.g., DNA testing, domestic violence shelters, and head injury fund). These programs depend on the stream of funding coming from those paying the costs of their citations. However, for a variety of reasons, the number of citations are plummeting. For example, civil traffic citations have dropped from 1.816 million at their peak in FY 2008 (34%) to 1.2 million in FY 2015. There are future expectations that new safety-equipped cars and eventually driverless cars, plus new law enforcement methods that use techniques to control traffic other than writing citations, will combine to continue this downward trend. Seeing the drop in citations, the Arizona Criminal Justice Commission in July agreed to establish a task force to explore this issue further and to make recommendations for alternative funding sources. It is likely that the legislature and city councils will need to re-examine the current dependency on revenue from citations to keep current programs funded. While the adoption of the recommendations in this report may result in some decreases in revenue, it is just as likely that there will be an increase in revenue. If people who are now not paying their sanctions at all are given sanctions based on ability to pay and more reasonable time payment plans, they may begin to pay. This exact result is being seen in the Phoenix Municipal Court pilot program, explained in the "Innovations Under Way" section of this report.

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 be found on the task force's website.[8]

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:[9]

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.

[8] Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) *Violation Review Data Driven Results*
[9] Administrative Order No. 2016-16.

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 Arizona Judicial Council support and adopt its recommendations.

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 contribute to or further an individual's impoverishment by imposing excessive amounts or unduly restricting a person's ability to be gainfully employed. The task force also concludes that "justice for all" means just that—regardless of race, income, gender, culture, ethnicity, or other factors, 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 than 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 with surcharges, the sanction totals $1,040. For low-income individuals, a sanction that high can have catastrophic consequences. If one assumes that a typical sanction 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.

The purpose of a sanction is to hold a person accountable and encourage future compliance with the law. Imposing a financial sanction on a low-income individual that is so high that it would be almost impossible for the person to pay may promote frustration, despair, and disrespect for the justice system. Suspending the person's driving privilege as a result of an inability to pay the sanction further exacerbates the problem, fosters a cycle of poverty, and fills costly jail cells. Sanctions such as fees and fines should be imposed in a manner that is sustainable and promotes, rather than impedes, compliance with the law, economic opportunity, and family stability.

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, private vendors indicate that they can 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—if the tool is able to provide accurate enough information—could assist judges in determining, in a fair manner, the appropriate amount of fine to impose by taking into account the individual's financial circumstances. These programs use public database information and aggregating 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.

Additionally, reclassifying first-time offenses of some misdemeanors, such as littering, speeding, and expired out-of-state vehicle registrations, to civil charges will make it easier

to process certain minor crimes. It could 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 fines 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 by 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 such as:*
    - *Driving on a suspended license*
    - *Driver license restriction violations (for example, corrective lens)*
    - *Littering*
    - *Expired out-of-state registration*

Principle Two: Convenient payment options and reasonable time payment plans should be provided and 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.[10] 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 to fail.

[10] Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) *Violation Review Data Driven Results*

People increasingly 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, 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.

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.[11] Currently in Arizona, more than $686 million is owed in restitution from felony cases. Reasonable adjustments to fines and fees will enable defendants with limited financial means to devote more of their resources to victim restitution. Therefore, revising the requirement to read "has paid at least the minimum ordered restitution payment for the month" would help maintain the requirement to make restitution payments.

Unpaid balances on financial obligations to the state are converted to criminal restitution orders pursuant to A.R.S. § 13-805 (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.

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.

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.*
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' driver's 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 A.R.S. § 12-288 (Removal of debts from accounting system) that would grant courts discretion to close cases and write off fines and fees after a 20-year period if reasonable collection efforts have not been effective.*

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

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

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

The United States Supreme Court has held that states may not impose incarceration as an alternative sanction or as punishment for nonpayment of a financial obligation imposed in a criminal case solely because an offender is unable to pay the obligation. In *Williams v. Illinois,* 399 U.S. 235, 90 S.Ct. 2018, 26 L.Ed.2d 586 (1970) the court overturned a sentence that required additional incarceration beyond the maximum imprisonment for the committing offense for nonpayment of a $505 criminal fine at the rate of $5.00 per day as "…impermissible discrimination that rests on the ability to pay…" 399 U.S. at 241. In *Tate v. Short*, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971) the court overturned a sentence of incarceration for nonpayment of a $425 traffic fine for an offense for which only a fine could be imposed. In doing so the court held "the Constitution prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full." 401 U.S. at 398, 91 S.Ct. at 671. In *Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983) the court overturned a probation revocation for failure to pay restitution and held: "Only if alternate measures are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay." 461 U.S. 672, 103 S.Ct. 2072. *Tate* and *Bearden* have been cited in many Arizona appellate opinions for the proposition that the trial court cannot incarcerate a defendant because he cannot pay a fine immediately after sentencing or revoke probation because the defendant is too poor to pay a court-ordered monetary obligation. *See*, *e.g., State v. Davis*, 159, Ariz. 562, 769 P.2d 1008 (Sup.Ct. 1989); *In re Application of Collins*, 108 Ariz. 310, 497 P.2d 523 (Sup.Ct. 1972); *State v. Wilson*, 150 Ariz. 602, 724 P.2d 1271 (Ct. App. Div. 1, 1986).

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, once combined with other court fees and mandatory assessments, often exceed the amount of the fine itself, to be worked off through community restitution (service). Further, the beneficial effects of this statute are 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 of individuals charged with eligible traffic offenses resolved their cases by completing defensive driving courses in FY2014.[12] 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:

13. *Request amendment of A.R.S. § 13-603 (Authorized disposition of offenders) to authorize judges to impose a direct sentence that may include community restitution (service) and education and treatment programs as available sentencing options for misdemeanor offenses.*
14. *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.*

[12] Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) *Violation Review Data Driven Results*

Principle Four: Courts should employ practices that promote a defendant's voluntary appearance in court

Regardless of how many options and reminders the court may provide, a person must take personal responsibility to avoid consequences that could escalate and include incarceration. Those who appear in court when first cited might have the case dismissed (15 percent) if there is a defense, have the fine reduced, be allowed to make time payments, or perform community service as an alternative to paying fines. Failure to appear, on the other hand, puts into motion consequences that can be devastating to an individual.

Defendants who fail to appear in court pose a significant challenge. In FY2014, 11 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.[13] Arizona data shows that people who fail to appear in court live in all income zip codes. When people willfully fail to appear in court, serious consequences 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 civil traffic violations and lost their licenses because they failed to appear for the court hearing 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.

Compounded sanctions can devastate lives. In most cases, people—including those with suspended driver's licenses—need to drive to work. 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.

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.[14] Mesa Municipal 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.

[13] Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) *Violation Review Data Driven Results*

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

Nearly 27 percent of Arizona's population speak a language other than English at home—predominately Spanish. 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.*
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 Five: 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 sent to an old address. Although people are required to update their addresses 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 addresses 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 violation. 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 or a 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.*

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

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

The Administrative Office of the Courts also operates a non-jail-based court order enforcement program called FARE [Fines/Fees and Restitution Enforcement], 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 self-sustaining and so imposes fees for those who continue further into the system. However, FARE fees are much lower than booking and jail fees or car impound costs. Only 29 percent of defendants whose cases are not dismissed proceed into FARE. A person making time payments is not referred to FARE. Persons participating in a compliance assistance-type program have their cases removed from collections. Only after failing to appear or failing to make payments and not returning to court to request modification of a time payment plan is a person referred to FARE. FARE serves as a better enforcement alternative than arrest and jail. While some might argue that additional fees should not be required for those who fail to appear or participate in a reasonable time payment plan, they are cheaper than jail and provide an incentive to pay.[15]

Recommendations:

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

[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.

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

Principle Seven: 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 that 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 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

[16] Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) *Violation Review Data Driven Results*

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 and mental health stakeholders in their jurisdictions 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 Division of the Adult Probation Department to inform them of defendants who have previously received mental health services. This assists in identifying those defendants diagnosed as seriously mentally ill and allows 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 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 and mental health stakeholders in larger jurisdictions to adopt protocols for addressing people with mental health issues who have been brought to court.*
36. *Consider the use of specialty courts and other available resources to address a defendant's treatment and service needs, as well as risk to the community, when processing cases involving persons with mental health needs or other specialized groups.*

[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 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.

Arizona courts already use a risk-based release system for juveniles. A juvenile may be held in detention if "the juvenile will not be present at any hearing, or the juvenile is likely to commit an offense injurious to self or others…"[20] There is no money for freedom system in the juvenile court.

[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*
[20] Rule 23, Rules of Procedure for the Juvenile Court

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

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

> *"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."*[21] *"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."*[22]

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."

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

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

[21]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.
[22]Pepin, Arthur W., *2012-2013 Policy Paper Evidence-Based Pretrial Release.* Conference of State Court Administrators

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."[23]

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 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 impede 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

[23]Lowenkamp, C. T., VanNostrand, M., and Holsinger, A. (2013). *The Hidden Costs of Pretrial Detention*, Laura and John Arnold Foundation

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 D and E.)
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 or statute that small bonds ($5 - $100) are not required to ensure that the defendant gets credit for time served when defendant is also being held in another case.*
41. *Authorize the court to 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 hearings to assist the court in determining appropriate release conditions and to resolve misdemeanor cases.*

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

Although most defendants pose risks that are manageable at reasonable levels outside of the jail,[24] 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

[24] 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).

would jeopardize the public and those with a very high likelihood of not appearing for future court hearings. Arizona statutes list several circumstances in which bail may or must be denied. *See* A.R.S. § 13-3961 *(Offenses not bailable; purpose; preconviction; exceptions).*

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

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."[25] 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.

The task force believes that Arizona should strive to eliminate money for freedom and shift to a risk-based system. Fully achieving this goal will require a constitutional amendment, rule changes, and a change in the current culture to substitute preventive detention for the current practice of imposing high-dollar bonds. A high-dollar bond may keep some individuals in jail. In two of the large jurisdictions the Arnold Foundation researched nearly 50 percent of high-risk individuals with high-dollar bonds had the ability to post the bond and be released. The task force recognizes these changes will take some time to fully

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

implement. In the meantime Arizona should move ahead to implement a risk-based release decision system and eliminate money for freedom to the greatest extent possible, including expanded use of the provisions of Article 2; Section 22(3) of the Arizona Constitution, instead of the more common practice of setting a high-dollar bond as a substitute for trying to keep a high-risk individual in jail.

The taskforce also noted that a recent Court of Appeals case, *Simpson v. Miller*, __ P.3d __, 2016 W.L. 3264151 (Ct. App. Div. 1 June 14, 2016) now under appeal at the Supreme Court, may have some impact on this subject.

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 Ten: Money[26] 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 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."[27] "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."[28]

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.

[26] Money bond means either cash or commercial surety.
[27] 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.
[28] 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.

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 bond to be in actual cash deposited with the clerk of the court with the amount paid returned to the defendant if charges are not filed, the person is found innocent, or if no violations of the release conditions occur.*

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

The judicial officer establishing a defendant's release terms and conditions should order the least restrictive conditions that will still reasonably assure the defendant's appearance at court and protect public safety. Therefore, 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.'"[29] The Supreme Court agrees:[30]

> "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

[29] American Bar Association *Standards for Criminal Justice: Pretrial Release,* Standard 10-5.3 (3d ed. 2007).
[30] *Stack v. Boyle,* 342 U.S. 1,5 (1951)

defendants, the non-individualized bail settings are vulnerable to constitutional challenge."[31]

The Public Safety Assessment (PSA), a validated pretrial risk assessment tool, helps provide such an individualized assessment. Pretrial service programs in all superior courts in Arizona use the PSA as the approved pretrial risk assessment tool. 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.

When using the risk assessment to make pretrial release decisions, generally judges should release low-risk defendants with minimal or no conditions, release moderate-risk defendants with interventions and services targeted to mitigate the risk, and should detain the highest-risk defendants in custody. In jurisdictions where evidence-based risk assessments are employed, such as Washington, D.C., three primary release types are used:

- Low-risk defendants are released on their own recognizance or with unsecured appearance bonds,
- Moderate-risk defendants are released to Pretrial Services with specific release conditions imposed to mitigate the risks presented,
- High-risk defendants are held in custody as preventive detention when no condition or combination of conditions of release can reasonably assure the appearance of the person or will endanger the safety of any person or the community.

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-

[31] 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.

risk. The task force recommends expanding the use of the PSA to limited jurisdiction courts (municipal and justice courts) for appropriate defendants.

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 Pretrial Services Division of the Maricopa County Adult Probation Department.

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 jurisdiction 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.[32]

> *"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."*[33]

[32] Christopher T. Lowenkamp, Ph.D. Marie VanNostrand, *Exploring the Impact of Supervision on Pretrial Outcomes* (Laura and John Arnold Foundation 2013).
[33] 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.[34] While no issues have been found with the PSA instrument to date, some other assessments have been found to be problematic, indicating that this is an area that requires careful and constant examination.

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 the immigration status of defendants 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 ways to recognize and avoid implicit bias.

Recommendations:

47. *Eliminate the use of a cash bond to secure a defendant's appearance.*
48. *Expand the use of the public safety risk 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.*

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

51. *Request the Arnold Foundation to conduct research on the impact of immigration status on the likelihood of not returning to court if released to ascertain whether it is good public policy to hold these defendants on cash bond.*
52. *Encourage the Arnold Foundation to conduct periodic reviews to revalidate the Public Safety Assessment (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, and 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 risk principle and the methodology behind risk assessment tools.*
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 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 Rules 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 aids 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 driver's 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 Courts 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.[35]

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.

[35] 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

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 on: _____ at _____ a.m. / p.m., Courtroom: _____
(Court name and address) (Date) (Time)
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 E

Proposed Form 7—Appearance Bond Form

FORM 7

_____ **COURT** _____ **County, Arizona**

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

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.

[ ] **DEPOSIT BOND:** [ ] The defendant will deposit with the Clerk of the Court [ ] ___ % of the total sum of $_____, with the remainder of $_____ as an unsecured appearance bond. The deposited amount of the case appearance bond will be returned to the defendant, if defendant appears at _____ at ____ a.m./p.m. on _____, 20___ and at any other hearing 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.

[ ] **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___ and at any other hearing 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]

SUPREME COURT OF ARIZONA

In the Matter of	)	Arizona Supreme Court
	)	No. R-17-0041
RULES 11.2, 11.3, 11.5 AND 11.7, RULES OF CRIMINAL PROCEDUR	)	
	)	**FILED 07/28/2017**

ORDER
AMENDING RULES 11.2, 11.3, 11.5, AND 11.7,
ARIZONA RULES OF CRIMINAL PROCEDURE, ON AN EMERGENCY BASIS

A petition having been filed proposing to amend Rules 11.2, 11.3, 11.5, and 11.7, Arizona Rules of Criminal Procedure, on an emergency basis, upon consideration,

IT IS ORDERED that Rules 11.2, 11.3, 11.5, and 11.7, Arizona Rules of Criminal Procedure, be amended on an emergency basis pursuant to Rule 28(G), Rules of the Supreme Court of Arizona, in accordance with the attachment hereto, effective August 9, 2017.

IT IS FURTHER ORDERED that the matter shall be opened for comment, with comments due October 11, 2017, in accordance with Rule 28(G), Rules of the Supreme Court of Arizona.

DATED this 28th day of July, 2017.

/s/
SCOTT BALES
Chief Justice

TO:
Rule 28 Distribution
David K Byers

ATTACHMENT*

Arizona Rules of Criminal Procedure

Rule 11.2. Motion to have defendant's mental condition examined

a. **Motion for Rule 11 Examination.** At any time after an information or complaint is filed or indictment returned, any party may request in writing, or the court on its own motion may order, an examination to determine whether a defendant is competent to stand trial, or to investigate the defendant's mental condition at the time of the offense. The motion shall state the facts upon which the mental examination is sought. On the motion of or with the consent of the defendant, the court may order a screening examination for a guilty except insane plea pursuant to A.R.S. §§ 13-502 to be conducted by the mental health expert. In a capital case, the court shall order the defendant to undergo mental health examinations as required under A.R.S. § 13-703.02 and 13-703.03.

b. **Medical and Criminal History Records.** All available medical and criminal history records shall be provided to the court within three days of filing the motion for use by the examining mental health expert.

c. **Preliminary Examination.** The court may order that a preliminary examination be conducted pursuant to A.R.S. § 13-4503C to assist the court in determining if reasonable grounds exist to order further examination of the defendant.

d. **Jurisdiction.** ~~Should any court determine that reasonable grounds exist for further competency hearings, the matter shall immediately transfer to the superior court for appointment of mental health experts;~~ Except if a limited jurisdiction court exercises jurisdiction over a competency hearing in a misdemeanor case as authorized by an administrative order of the presiding judge of the superior court in the county, the superior court has exclusive jurisdiction over all competency hearings.

e. **If Defendant is Competent.** If any court determines that competence is not an issue, the matter shall be immediately set for trial.

Rule 11.3. Appointment of experts

a. **Grounds for Appointment.** If the court determines that reasonable grounds for an examination exist, it shall appoint at least two mental health experts to examine the defendant and to testify regarding the defendant's mental condition. The court on its own

* Additions are shown in underline, and deletions are shown in ~~strikethrough~~.

motion or upon motion of any party may order that one of the mental health experts be a physician specializing in psychiatry and licensed as provided in sub-section (b) of this rule.

b. Definition of Mental Health Expert. The term "mental health expert" shall mean:

(1) Any physician who is licensed pursuant to Title 32, Chapter 13 and 17; or

(2) Any psychologist who is licensed pursuant to Title 32, Chapter 19.1.

The mental health expert must be familiar with this state's competency standards and statutes and criminal and involuntary commitment statutes; familiar with the treatment, training and restoration programs that are available in this state; and approved by the court as meeting court developed guidelines. Guidelines shall include demonstration of experience in forensics matters, required attendance at a court-approved training program of not less than 16 hours and any continuing forensic education programs required by the court, and annual review criteria.

c. - g. [No changes in text.]

* * *

Rule 11.5. Hearing and orders

a. Hearing. Within 30 days after the expert reports have been submitted to the court, the court shall hold a hearing to determine the defendant's competency. The parties may introduce other evidence regarding the defendant's mental condition, or by written stipulation, submit the matter on the experts' reports.

b. Orders. After the hearing:

(1) If the court finds that the defendant is competent, proceedings shall continue without delay.

(2) If the court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent within 21 months of the date found incompetent, it may, upon request of any party,

(A) Release the defendant from custody and dismiss the charges without prejudice.

~~(i) Remand defendant to Department of Health Services to begin civil commitment proceedings pursuant to Title 36, Chapter 5;~~

~~(ii) Order appointment of a guardian pursuant to Title 14, Chapter 5;~~

~~(iii)Release the defendant from custody and dismiss the charges without prejudice.~~

(B) If the matter is heard in superior court, the court may:

(i) remand the defendant to an evaluating agency to begin civil commitment proceedings pursuant to Title 36, Chapter 5;

(ii) order the appointment of a guardian pursuant to Title 14, Chapter 5.

(C) If the court enters an order under (B)(i) or (ii) of this section, it may retain jurisdiction and enter further orders as specified in A.R.S. §13-4517 and A.R.S. §13-4518.

(3) If the superior court determines that the defendant is incompetent, it shall order competency restoration treatment unless there is clear and convincing evidence that defendant will not regain competency within 15 months. The court shall determine whether the defendant should be subject to involuntary treatment and may extend the treatment for six months beyond the 15 month limit if it finds defendant is making progress toward restoration of competency. All treatment orders shall specify the place where treatment will occur; whether the treatment is inpatient or outpatient pursuant to A.R.S. § 13-4512(A); transportation to the treatment site; length of treatment; and transportation after treatment. The treatment order shall specify that the court shall be notified if the defendant regains competency before the expiration of the order of commitment.

c.-e. [No change in text.]

* * *

Rule 11.7. Privilege

a. General Restriction. No evidence of any kind obtained under these provisions shall be admissible at any proceeding to determine guilt or innocence unless the defendant presents evidence intended to rebut the presumption of sanity.

b. Privileged Statements of Defendant.

(1) No statement of the defendant obtained under these provisions, or evidence resulting therefrom, concerning the events which form the basis of the charges against the defendant shall be admissible at the trial of guilt or innocence, or at any subsequent proceeding to determine guilt or innocence, without his or her consent.

(2) No statement of the defendant or evidence resulting therefrom obtained under these provisions, concerning any other events or transactions, shall be admissible at any proceeding to determine the defendant's guilt or innocence of criminal charges based on such events or transactions.

(3) A statement of the defendant obtained under these provisions, or evidence resulting therefrom, may be used by any party in a hearing to determine whether the defendant is eligible for court-ordered treatment pursuant to Title 36, Chapter 5, or is a sexually violent person.

MENTAL HEALTH CODE (EXCERPT)
Act 258 of 1974

330.1468 Treatment; disposition; order of assisted outpatient treatment.

Sec. 468. (1) For a petition filed under section 434, if the court finds that an individual is not a person requiring treatment, the court shall enter a finding to that effect and, if the person has been hospitalized before the hearing, shall order that the person be discharged immediately.

(2) For a petition filed under section 434, if an individual is found to be a person requiring treatment, the court shall do 1 of the following:

(a) Order the individual hospitalized in a hospital recommended by the community mental health services program or other entity as designated by the department.

(b) Order the individual hospitalized in a private or veterans administration hospital at the request of the individual or his or her family, if private or federal funds are to be utilized and if the hospital agrees. If the individual is hospitalized in a private or Veterans Administration hospital under this subdivision, any financial obligation for the hospitalization shall be satisfied from funding sources other than the community mental health services program, the department, or other state or county funding.

(c) Order the individual to undergo a program of treatment that is an alternative to hospitalization and that is recommended by the community mental health services program or other entity as designated by the department.

(d) Order the individual to undergo a program of combined hospitalization and alternative treatment or hospitalization and assisted outpatient treatment, as recommended by the community mental health services program or other entity as designated by the department.

(e) Order the individual to receive assisted outpatient treatment through a community mental health services program, or other entity as designated by the department, capable of providing the necessary treatment and services to assist the individual to live and function in the community as specified in the order. The court may include case management services and 1 or more of the following:

(*i*) Medication.

(*ii*) Blood or urinalysis tests to determine compliance with or effectiveness of prescribed medication.

(*iii*) Individual or group therapy, or both.

(*iv*) Day or partial day programs.

(*v*) Educational or vocational training.

(*vi*) Supervised living.

(*vii*) Assisted community treatment team services.

(*viii*) Substance use disorder treatment.

(*ix*) Substance use disorder testing for individuals with a history of alcohol or substance use and for whom that testing is necessary to assist the court in ordering treatment designed to prevent deterioration. A court order for substance use testing is subject to review once every 180 days.

(*x*) Any other services prescribed to treat the individual's mental illness and either to assist the individual in living and functioning in the community or to help prevent a relapse or deterioration that may reasonably be predicted to result in suicide or the need for hospitalization.

(3) In developing an assisted outpatient treatment order, the court shall consider any preference or medication experience reported by the individual or his or her designated representative, whether or not the individual has an existing individual plan of services under section 712, and any direction included in a durable power of attorney or advance directive that exists.

(4) Before an order of assisted outpatient treatment expires, if the individual has not previously designated a patient advocate or executed a durable power of attorney or an advance directive, the responsible community mental health services program or other entity as designated by the department shall ascertain whether the individual desires to establish a durable power of attorney or an advance directive. If so, the community mental health services program or other entity as designated by the department shall direct the individual to the appropriate community resource for assistance in developing a durable power of attorney or an advance directive.

(5) If an order for assisted outpatient treatment conflicts with the provisions of an existing durable power of attorney, advance directive, or individual plan of services developed under section 712, the assisted outpatient treatment order shall be reviewed for possible adjustment by a psychiatrist not previously involved with developing the assisted outpatient treatment order. If an order for assisted outpatient treatment conflicts with the provisions of an existing advance directive, durable power of attorney, or individual plan of services developed under section 712, the court shall state the court's findings on the record or in writing if the court takes the matter under advisement, including the reason for the conflict.

History: 1974, Act 258, Eff. Nov. 6, 1974;—Am. 1980, Act 138, Imd. Eff. May 29, 1980;—Am. 1982, Act 178, Imd. Eff. June 14, 1982;—Am. 1986, Act 117, Eff. Mar. 31, 1987;—Am. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 2016, Act 320, Eff. Feb. 14, 2017.