

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
AMENDING ARIZONA CODE OF)	Administrative Order
JUDICIAL ADMINISTRATION)	<u>No. 2011- 116</u>
§ 6-105.01: POWERS AND DUTIES OF)	(Affecting Administrative
OFFICERS EVIDENCE BASED)	Order No. 2010-35)
PRACTICES)	
)	

Pursuant to the Arizona Code of Judicial Administration § 1-201(E), the Chief Justice may adopt emergency administrative code proposals and technical changes in existing code sections by administrative order without prior distribution for comment and action by the Arizona Judicial Council. In the First Regular Session of the Fiftieth Legislature (2011), the Legislature passed House Bill 2404 (Chapter 263). The bill was signed by the Governor on April 26, 2011 and had an effective date of July 20, 2011. These technical changes reflect that amendment.

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that Arizona Code of Judicial Administration § 6-105.01 is amended as indicated on the attached document. All other provisions of § 6-105.01 as adopted, remain unchanged and in effect.

Dated this 23rd day of November, 2011.

REBECCA WHITE BERCH
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 1: General Administration
Section 6-105.01: Powers and Duties of Officers Evidence Based Practices

Courts shall be governed by section 6-105, except and until approved by the Administrative Director to be governed by section 6-105.01.

A. Definitions. In this section the following definition applies:

“Absconder” as provided in A.R.S. §13-105(1) means a probationer who has moved from the primary place of residence without permission of the probation officer and whose whereabouts are unknown “means a probationer who has moved from the probationer’s primary residence without permission of the probation officer, who cannot be located within ninety days of the previous contact and against whom a petition to revoke has been filed in the superior court alleging that the probationer’s whereabouts are unknown. A probationer is no longer deemed an absconder when the probationer is voluntarily or involuntarily returned to probation service.”

“Alcohol and drug testing” means any method of determining the presence or level of identifiable substances in the body including, but not limited to, breathalyzer, blood tests and urine samples.

“Arrest notification” means notice, by any means, that the probationer has been arrested, cited or had official contact with a law enforcement officer.

“Case record” means any record pertaining to a particular probationer maintained by the probation department in electronic or paper medium.

“Community restitution” means unpaid labor or services provided to a not-for-profit or governmental agency.

“Court” means superior court.

“Criminogenic need” means any issues of concern which are directly linked to criminal behavior that when addressed and changed affect a probationer’s risk for recidivism, which include, but are not limited to criminal personality, antisocial attitudes, values, beliefs, low self control, criminal peers, substance abuse, dysfunctional family, unemployment and lack of education.

“Standardized assessment” means the state-approved tool to determine the offender’s needs related to criminal behavior and propensity to re-offend.

“Standardized reassessment” means the state-approved tool designed to measure changes in an offender’s needs related to criminal behavior and propensity to re-offend.

“Target interventions” means supervision related services determined by the probationer’s risk, criminogenic needs, and other factors such as temperament, learning style, motivation, gender and culture.

B. Applicability. Az. Const. Art. 6, § 3 and A.R.S. §§ 12-253 and 12-254 authorize the supreme court to establish powers and duties of officers. A.R.S. § 13-805(A) provides:

The trial court shall retain jurisdiction of the case for purposes of modifying the manner in which court-ordered payments are made until paid in full or until the defendant’s sentence expires. At the time the defendant completes the defendant’s period of probation or the defendant’s sentence or the defendant absconds from probation or the defendant’s sentence, the court shall enter both:

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

(2) A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered.

The provisions of this code section requiring a probation officer to request a criminal restitution order apply to a probationer who moved from the probationer’s primary residence on or after July 20, 2011 without permission of the probation officer.

Sections C through D – No changes

E. Duties of Probation Officers.

1. Adult and juvenile probation officers shall:
 - a. Abide by the Code of Conduct for Judicial Employees and the Code of Ethics for Arizona Probation Personnel;
 - b. Treat probationers, victims, criminal justice personnel and the public with dignity and respect;
 - c. Adhere to all federal and state statutes, local ordinances, the ACJA and all administrative orders concerning adult and juvenile probation services;
 - d. Comply with all current departmental policies and procedures;
 - e. Acknowledge the impact of crime on victims by adhering to the Victim’s Bill of Rights and other applicable legislation;

- f. Communicate and coordinate with treatment providers concerning probationer participation in and compliance with treatment requirements, to ensure probationer rehabilitation, community protection and victim restoration;
- g. Work with the community and department personnel to develop resources and opportunities for treatment and rehabilitation for persons on probation and under their supervision;
- h. Ensure that persons under their supervision are referred to available treatment and rehabilitation resources as needed within the level of authorized appropriations, and adhering to department policies and procedures and the ACJA;
- i. Maintain accurate and verifiable case records of all persons assigned to them for supervision; and
- j. Perform other duties as prescribed by the chief probation officer or director of juvenile court services.

2. Adult probation officers shall also:

- a. As provided by A.R.S. § 12-253(1), “Make and file a complete record of persons placed under suspended sentence by the court, and of all reports made to the officer in writing or in person, in accordance with the conditions imposed by the court”;
 - (1) Adult probation officers shall immediately contact the law enforcement officer or agency involved on receipt of an arrest notification to ascertain the nature and circumstances surrounding the contact and obtain a copy of any corresponding incident report or citation.
 - (2) The supervising probation officer shall document in the case record all contacts and information received pertaining to the incident, as well as the actions taken as a result of the incident.
- b. As provided by A.R.S. § 12-253(2), “Exercise general supervision and observation over persons under suspended sentence, subject to control and direction by the court”;
 - (1) Adult probation officers shall:
 - (a) Administer the standardized assessment within 30 days of a probationer’s placement on probation or initial release from custody if an assessment was not completed prior to sentencing;
 - (b) Re-evaluate the adequacy of the court-ordered conditions of probation as part of the ongoing assessment and planning process and, if applicable, petition the court for modifications;
 - (c) Utilize the results of the standardized assessment to establish a level of supervision and address needs for behavioral changes and monitor probationer behavior and compliance with the conditions of standard or intensive probation and, when appropriate, increase or decrease the probationer’s level of supervision;
 - (d) Develop a case plan for all probationers that assess as medium or high risk on the standardized assessment within 60 days of a probationer’s placement on

standard probation or initial release from custody and within 30 days of a probationer's placement on intensive probation or initial release from custody. The officer shall ensure the case plan includes signatures of the officer and probationer and objectives in the case plan are measurable;

- (e) Develop and implement supervision strategies that are matched by standardized assessment results and criminogenic factors with the probationer's risks, needs and strengths that promote supervision goals and to provide effective supervision that is individualized, proportional and purposeful;
 - (f) Target interventions to higher-risk cases to promote public safety;
 - (g) Administer the standardized reassessment every 180 days for probationers on intensive probation and for standard probationers that assess as medium or high risk to measure behavior changes until later assessments indicate a decrease in risk factors which assess the probationer as low risk.
 - (h) Review the previous case plan during the development of a new case plan to determine if a change in strategies is required to promote behavioral changes. Strategies shall be re-evaluated if there has been regress or no change in behavior;
 - (i) Reassess standard probationers that assess as low risk upon discovery of changes in criminogenic risk and needs or involvement in criminal conduct, if the current assessment is more than 180 days old;
 - (j) Complete a case plan if a standard probationer assessed as low risk has criminogenic risks and needs that require intervention;
 - (k) Document in the case record that a case plan is not needed for an assessed low risk standard probationer if no intervention is required;
 - (l) Conduct case file reviews for standard probationers assessed as low risk every 365 days. Case file reviews shall include, but are not limited to, case notes, collateral information and investigation of any arrest notification. Actions shall be taken in response to indicators of changes in criminogenic risk and needs or involvement in criminal conduct. Standard probationers that are eligible and in compliance with court-ordered conditions of probation may be recommended for early termination. The officer shall recommend that any outstanding financial obligations be reduced to a criminal restitution order. Probationers with outstanding restitution are not eligible for early termination;
 - (m) Respond to emerging risk indicators with graduated increases in the level of supervision, pursuant to probation departmental policy;
 - (n) Reduce the level of supervision, up to and including recommendation for early termination of supervision, as risk issues are addressed and probationers meet their objectives;
 - (o) Provide probationers with feedback on the results of an assessment or reassessment and progress with the established behavioral goals and conditions of probation and provide positive reinforcement to encourage behavioral changes; and
 - (p) Consider the suitability of early termination for all eligible cases.
- (2) Adult probation officers shall provide a written directive to the probationer referring the probationer to an appropriate service provider within 60 days of sentencing, release from custody, or identification of the need if a need for

treatment, education or counseling is identified through the use of a statewide standardized assessment or is ordered by the court. If more than one area of treatment or counseling is identified, the supervising probation officer shall prioritize the needs and address the one with highest priority within the prescribed time frame. The supervising probation officer shall then address the remaining treatment or counseling areas in descending order.

- (3) The supervising officer shall administer alcohol and drug tests on a variable schedule, if appropriate. The frequency of testing shall be dependent upon the probationer's substance abuse history, unless otherwise directed by the court, and shall be documented in the case record.
 - (4) Adult probation officers shall ensure the collection of monies owed as a condition of probation and immediately address any arrearage. The probation officer shall also encourage the probationer's payment of other assessments, such as child support or traffic fines, ordered by any court.
 - (5) Adult probation officers shall monitor and enforce probationer compliance with court-ordered community restitution requirements. Credit toward court-ordered community restitution requirements are awarded on the basis of actual hours completed unless otherwise authorized by the court.
- c. As provided by A.R.S. § 12-253(3), "Serve warrants, make arrests and bring persons before the court who are under suspended sentences. The officer has the authority of a peace officer in the performance of the officer's duties."
- d. As provided by A.R.S. § 12-253(4), "Investigate cases referred to the officer for investigation by the court in which the officer is serving and report to the court. In an investigation for a presentence report, the adult probation officer shall promptly inquire into the circumstances of the offense, the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, including the ability to contribute to reimbursement for the costs of the person's legal defense pursuant to § 11-584, education and personal habits. The presentence report shall contain a recommendation by the officer regarding contribution by the convicted person toward the cost of legal defense pursuant to § 11-584. The officer shall also promptly inquire into the physical, emotional and financial impact of the offense on the victim and the emotional and financial impact of the offense on the immediate family of the victim and shall notify the victim or the immediate family of the victim of the right to appear personally or by counsel at any aggravation or mitigation proceeding.
- e. As provided by A.R.S. § 12-253(5), "Secure and keep a complete identification record of every person released under a suspended sentence and a written statement of the conditions of the suspension." Probation officers shall maintain verifiable case records for each probationer supervised, including, but not limited to:
- (1) A written statement of the conditions of probation;
 - (2) An individual case plan setting forth behavioral and program expectations for probationers on intensive probation supervision and for standard probationers that assess as medium or high risk on the standardized assessment, or for those

- standard probationers assessing as low risk on the standardized assessment and have identified criminogenic needs; and
- (3) Contact logs detailing the time, nature and location of each contact made with each person on probation.
- f. As provided by A.R.S. § 12-253(6), “Obtain and assemble information concerning the conduct of persons placed under suspended sentence and report the information to the court.” Reports shall contain case information, including but not limited to, violation behavior, positive progress and behavioral changes while under supervision. Adult probation officers shall petition the court to terminate the period of probation based on the use of standardized assessments and an evaluation of the probationer’s compliance with the conditions of probation; and
- g. As provided by A.R.S. § 12-253(7), “Bring defaulting probationers into court when in the probation officer’s judgment the conduct of the probationer justifies the court to revoke suspension of the sentence.”
- (1) Adult probation officers shall make documented efforts to locate a probationer ~~they~~ that is believed to have absconded defaulted.
 - (2) A supervising officer shall consider the following risk factors in determining the time frame necessary to file a petition to revoke probation and request that the court issue a warrant once an officer has reason to believe that a probationer has ~~absconded supervision~~ defaulted:
 - (a) Probationer’s general history;
 - (b) History of violence, including weapons use;
 - (c) History of drug or alcohol abuse;
 - (d) History of mental illness;
 - (e) Offense history;
 - (f) Supervision history;
 - (g) Illegal use of drugs or alcohol;
 - (h) Failure to participate in or complete treatment;
 - (i) Current or recent patterns of avoiding officer contact;
 - (j) Emotional or mental instability or distress on the part of the probationer or the family unit, including evidence of domestic violence; or
 - (k) Current or recent unstable pattern of employment, residence, or associations.
 - (3) If the ~~absconder~~ probationer is on standard probation supervision and is not located within 90 days, the supervising probation officer shall file a petition to revoke probation, seek a criminal restitution order pursuant to A.R.S. § 13-805(A)(1)(2) for a probationer who is an absconder as defined in A.R.S. § 13-105(1), and request that the court issue a warrant. The supervising officer shall file the petition to revoke sooner, when required by local departmental policies, the circumstances surrounding the case or the need for community protection.
 - (4) If the ~~absconder~~ probationer is on intensive probation supervision and is not located within 72 hours, the intensive probation officer shall file a petition to revoke probation no later than the next business day and request that the court issue a warrant. The supervising officer shall file the petition to revoke sooner, when required by local departmental policies, the circumstances surrounding the

case or the need for community protection.

(5) The probation department shall make documented efforts to locate the absconder probationer until the absconder probationer is apprehended.

(6) When a petition to revoke is filed prior to the expiration of 90 days, the probation officer shall seek a criminal restitution order upon the expiration of 90 days, pursuant to A.R.S. § 13-805(A)(1)(2), for a probationer who is an absconder as defined in A.R.S. § 13-105(1).

h. Monitor the payment of restitution.

3. Juvenile probation officers shall also:

a. As provided by A.R.S. § 8-205(1), "Except as provided by § 8-323, receive and examine all referrals or Arizona uniform traffic ticket and complaint forms involving an alleged delinquent juvenile or incorrigible child."

b. As provided by the juvenile court and as provided by A.R.S. § 8-205(3), "... Have the authority of a peace officer in the performance of the court officer's duties." These duties shall include, but are not limited to:

(1) Serve warrants;

(2) Make arrests; and

(3) Bring non-compliant probationers before the court.

c. As provided by A.R.S. § 8-205(4), "Receive petitions alleging a child or children as dependent and transmit the petitions to the juvenile court."

d. Maintain verifiable case records for each juvenile supervised, including, but not limited to:

(1) A written statement of the conditions of the probation;

(2) An individual service plan or court report setting forth behavioral and program expectations and recommendations subject to the approval of the director; and

(3) Contact logs detailing the time, nature, and location of each contact made with each juvenile on probation.

e. As provided by A.R.S. § 8-321(F)(1) through (7):

If the county attorney diverts the prosecution of a juvenile to the juvenile court, the juvenile probation officer shall conduct a personal interview with the alleged juvenile offender. At least one of the juvenile's parents or guardians shall attend the interview. The probation officer may waive the requirement for the attendance of the parent or guardian for good cause. If the juvenile acknowledges responsibility for the delinquent or incorrigible act, the juvenile probation officer shall require that the juvenile comply with one or more of the following conditions:

1. Participation in unpaid community restitution work.
 2. Participation in a counseling program that is approved by the court and that is designed to strengthen family relationships and to prevent repetitive juvenile delinquency.
 3. Participation in an education program that is approved by the court and that has as its goal the prevention of further delinquent behavior.
 4. Participation in an education program that is approved by the court and that is designed to deal with ancillary problems experienced by the juvenile, such as alcohol or drug abuse.
 5. Participation in a nonresidential program of rehabilitation or supervision that is offered by the court or offered by a community youth serving agency and approved by the court.
 6. Payment of restitution to the victim of the delinquent act.
 7. Payment of a monetary assessment.
- f. Exercise general supervision and observation over juveniles on probation, enforcing all court orders and emphasizing probationer accountability, and notify the court when probationer conduct displays an inability or unwillingness to comply with the conditions of probation and all court orders.
- (1) Juvenile probation officers shall make documented efforts to locate a probationer ~~they~~ that is believed to have absconded defaulted.
 - (2) A supervising officer shall consider the following risk factors in determining the time frame necessary to file a petition to revoke probation and request that the court issue a warrant once an officer has reason to believe that a probationer has ~~absconded supervision~~ defaulted:
 - (a) Probationer's general history;
 - (b) History of violence, including weapons use;
 - (c) History of drug or alcohol abuse;
 - (d) History of mental illness;
 - (e) Offense history;
 - (f) Supervision history;
 - (g) Illegal use of drugs or alcohol;
 - (h) Failure to participate in or complete treatment;
 - (i) Current or recent patterns of avoiding officer contact;
 - (j) Emotional or mental instability or distress on the part of the probationer or the family unit, including evidence of domestic violence; or
 - (k) Current or recent unstable pattern of employment, residence, or associations.
 - (3) If the ~~absconder~~ probationer is on standard probation supervision and is not located within 90 days, the supervising probation officer shall file a petition to revoke probation and request that the court issue a warrant. The supervising probation officer shall file the petition to revoke sooner, based on local departmental policies, the circumstances surrounding the case and the need for community protection.
 - (4) If the ~~absconder~~ probationer is on intensive probation supervision and is not located within 72 hours, the intensive probation officer shall file a petition to

revoke probation no later than the next business day and request that the court issue a warrant. The supervising probation officer shall file the petition to revoke sooner, based on local departmental policies, the circumstances surrounding the case and the need for community protection.

- (5) Probation officers shall make documented efforts to locate the ~~absconder~~ probationer until the ~~absconder~~ probationer is located pursuant to local departmental policy.
- g. Ensure that juveniles placed on probation pay restitution and probation fees as ordered and establish monthly payment schedules which emphasize payment of restitution and probation fees in the absence of specific court-ordered monthly payment schedules.
 - h. Conduct a risk needs assessment on every juvenile supervised within 30 days if not completed during the pre-dispositional process. The result of the assessment shall be used to establish a level of supervision for the juvenile and formulate a supervision plan.
 - i. Closely monitor school attendance and performance.
 - j. Assist those juveniles authorized to work in the United States who are seeking employment and closely monitor employment of probationers.
 - k. Involve the parent or guardian in the rehabilitation and treatment of the juvenile.
 - l. Provide or arrange for appropriate supervision of juveniles performing community service.
 - m. Bring before the court, at another scheduled proceeding, including a drug court proceeding, or by filing a new petition, a juvenile on probation for an offense involving the purchase, possession, or consumption of spirituous liquor or a violation of Title 13, Chapter 34 if the officer has probable cause to believe the probationer consumed any spirituous liquor or used any drug listed in A.R.S. § 13-3401 for the third or subsequent time while on probation.

F. Duties of Surveillance Officers.

1. Adult and juvenile surveillance officers shall:
 - a. Abide by the Code of Conduct for Judicial Employees and the Code of Ethics for Arizona Probation Personnel;
 - b. Treat probationers, victims, criminal justice personnel and the public with dignity and respect;
 - c. Adhere to all federal and state statutes, local ordinances, the ACJA and all administrative orders concerning adult and juvenile probation services;

- d. Comply with all current departmental policies and procedures;
 - e. Acknowledge the impact of crime on victims by adhering to the Victims Bill of Rights and other applicable legislation;
 - f. Maintain accurate and verifiable case records of all persons assigned to them for supervision;
 - g. Enforce the collection of monies owed as a condition of probation;
 - h. Monitor and enforce probationer compliance with court-ordered community restitution requirements;
 - i. Make documented efforts to locate defaulting probationers ~~absconders~~ pursuant to local departmental policy; and
 - j. Perform other duties as prescribed by the presiding judge, chief probation officer or director of juvenile court services.
2. Adult surveillance officers, as provided by A.R.S. §§ 13-916(E) and 12-259.01(1), "...have the authority of a peace officer in the performance of the officer's duties..."
 3. Juvenile surveillance officers, as authorized by the juvenile court and as provided by A.R.S. §§ 8-353 and 8-205(3), "...have the authority of a peace officer in the performance of the court officer's duties."