

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
ARIZONA CODE OF JUDICIAL)	Administrative Order
ADMINISTRATION § 6-201.01:)	No. 2017 - <u>03</u>
STANDARD PROBATION EVIDENCE)	(Affecting Administrative
BASED PRACTICE)	Order No. 2014-19)
)	

An amendment to the above-captioned section of the Arizona Code of Judicial Administration having come before the Arizona Judicial Council on December 15, 2016, and having been approved and recommended for adoption,

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that Arizona Code of Judicial Administration § 6-201.01 is amended as indicated on the attached document. All other provisions of § 6-201.01, as originally adopted, remain unchanged and in effect.

Dated this 11th day of January, 2017.

SCOTT BALES
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 2: Adult Services
Section 6-201.01: Standard Probation Evidence Based Practice

A. Definitions. In this section, the following definitions apply:

“Absconder” as provided in A.R.S. § 13-105(1) “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.”

“Actuarial risk” means measurable factors that have been correlated to the probability of offender recidivism that are gathered informally through routine interactions and observations with offenders and by formal assessment guided by instruments.

“Administrative director” means both the administrative director of the Administrative Office of the Courts and the director’s designee.

“Alcohol and drug testing” means any validated or verified method of determining the level of identifiable substances in the body including, but not limited to, breath, blood, oral fluid, urine, hair, and sweat testing.

“AOC” means Arizona Supreme Court, Administrative Office of the Courts.

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

“Average caseload” means the departmental total of direct cases divided by total number of supervising probation officers.

“Case plan” means the documented behavior change plan and supervision strategy developed by the supervising probation officer, in collaboration with the juvenile and family or adult probationer, which clearly identifies the risk factors and needs of the probationer and how they will be addressed.

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

“Collateral” means any individual or agency that has a relationship to a particular probationer that serves as a source of information or point of contact, including but not limited to friends, family members, law enforcement, victims, community members, neighbors, treatment providers or other associates.

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

“Court” means the superior court.

“Criminogenic need” means any issues of concern which are directly linked to criminal or delinquent 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.

“Direct case” means probationers actively supervised.

“Employment verification” means face-to-face communication, telephone contact, or obtaining pay stubs, or other electronic means as approved by the department.

“Evidence-based practice” means strategies that have been shown through current, scientific research to lead to a reduction in recidivism.

“Hand counts” means the manual tabulation of all standard probation case files in the probation department, conducted independently from any automated system.

“Pro-social activity” means any action or event that promotes sobriety and/or provides an opportunity for building a social support system that encourages a crime free lifestyle and improved community bonds.

“Residing temporarily” means living at a location for 30 days or less.

“Residential treatment” means any type of licensed treatment or counseling where the probationer resides at the facility. “Short term residential treatment” is 30 days or less. “Long term residential treatment” is 31 days or more. Halfway houses are not considered residential treatment.

“Specialized caseload” means a group of probationers with similar presenting problems or needs who are supervised by a probation officer focusing on addressing the problem or need.

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

“Standardized reassessment” means the state-approved tool designed to measure changes in the offender’s needs related to ~~criminogenic~~ criminogenic 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.

“Visual contacts” means face-to-face communication or visual contacts conducted via AOC approved policy and department approved technology with the probationer at any place, including but not limited to the probation department, the probationer’s residence, place of employment, treatment location or community restitution placement to discuss progress, issues of concern or other appropriate matters. Contacts with probationers are not ends in themselves but are opportunities for officers to achieve specific objectives. These objectives include establishing rapport with the offender, assessing the offender’s criminogenic factors and triggers, developing and, when needed, modifying a supervision plan, and using both subtle and overt incentives and sanctions to guide the offender toward positive change.

B. through D [No changes]

E. Budget Request Preparation.

1. A.R.S. § 12-262 provides:

A. The presiding judge of the superior court in each county desiring to improve, maintain or expand juvenile probation services, or to achieve or maintain the average adult probation case supervision requirement prescribed in § 12-251, may prepare a plan in accordance with guidelines issued by the supreme court. The plan shall be submitted to the state supreme court. The supreme court guidelines shall require that the plan include:

1. That funds received under this article shall be used primarily for payment of salaries of probation officers supervising adults or juveniles on probation to the superior, justice or municipal court.
2. That the funds provided by the state for this purpose will be used to supplement county funds provided for probation services.
3. The proposed budget necessary to implement the plan, including the amount currently budgeted for that county's probation program.

2. The administrative director shall review each request and may ~~notify~~ modify the request based on appropriate statewide considerations. The AOC shall include the court’s request or the modified request in the supreme court’s annual budget request. The administrative director shall allocate to the court the monies appropriated by the legislature to aid probation services based on the proposed plan, availability of funds, caseload population, past year use, county support and program effectiveness.

3. through 5. [No changes]

F. through I. [No changes]

J. Program Operations.

1. Each probation department shall develop:
 - a. Policies and procedures that aim to reduce offender risk and the likelihood of future criminal behavior that are consistent with the principles of evidence-based practices;
 - b. Policies and procedures which require probation officers providing standard supervision to use the results of the standardized assessment, as well as any other relevant information, when developing a case plan; Case plans are dynamic and therefore shall be updated as goals are completed and supervision strategies change based on criminogenic risk and needs of the offender. Case plans shall reference the most recent completed assessment;
 - ~~c. Policies and procedures which require the administration of standardized reassessments upon the discovery of significant changes in criminogenic risk and needs or continued criminal conduct, including arrests for new criminal offenses for probationers that assess as low on the initial standardized assessment;~~
 - ~~c.~~ Policies and procedures ~~that~~ which require probation officers to utilize graduated responses of consequences and incentives to address violation behavior and promote positive behavioral change;
 - ~~e~~d. Policies and procedures that identify the criteria for the recommendation of early termination for eligible probationers. This policy shall include requirements for officers to review case file to determine eligibility;
 - ~~f~~e. Policies and procedures regarding the alcohol and drug testing of persons on standard probation. The procedure shall address the methods used to select probationers for testing, the frequency of testing, and the type of test to be administered;
 - ~~g~~f. Policies and procedures concerning the monitoring of probationers' compliance with court-ordered or disclosed prescription medications for mental health or public health concerns. This policy shall include requirements to ensure routine and timely communication between the supervising probation officer and physician regarding the probationer's compliance with dosage requirements;
 - ~~h~~g. Policies and procedures ~~requiring~~ which require officers to maintain accurate and timely records of the completion of community restitution hours for each probationer. Credit toward court-ordered community restitution requirements are awarded on the basis of actual hours completed unless otherwise authorized by the court;
 - ~~i~~h. Protocols to work with the office of the clerk of court to establish policies and procedures by which supervising probation officers are provided with accurate and timely information concerning collections;

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 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.

3. For all probation eligible cases, presentence reports shall also contain case information related to criminogenic risk and needs as documented by the standardized risk assessment and other file and collateral information. The report shall also contain the officer's recommendation for supervision and treatment services based upon the convicted person's documented criminogenic risk and needs when authorized.
4. A.R.S. § 12-253(1) provides that adult probation officers shall "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." Adult probation officers shall immediately contact the law enforcement officer or agencies 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. The supervising probation officer shall document in the case record all contacts, information received pertaining to the incident, and actions taken as a result of the incident. Probations officers shall also document information, including but not limited to, violation behavior, positive progress and behavioral changes.
5. A.R.S. § 12-253(2) provides that adult probation officers shall "Exercise general supervision and observation over persons under suspended sentence, subject to control and direction by the court."
 - a. Adult probation officers shall:
 - (1) 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;
 - (2) Re-evaluate the adequacy and applicability of the court-ordered conditions of probation as part of the ongoing assessment and planning process and, if applicable, petition the court for modifications;
 - (3) Utilize the results of the standardized assessment to establish a level of supervision and address needs for behavioral changes;
 - (4) 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 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;

- (5) 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;
- (6) Target interventions to higher-risk cases to promote public safety;
- (7) Administer the first standardized reassessment ~~every 180 days~~ twelve months from the ~~last~~ initial assessment or release from custody for probationers that assess as medium or high risk to measure behavior changes. Subsequent reassessments shall be completed every twelve months until later assessments indicate a decrease in risk factors which assess the probationer as low risk;
- (8) Review the assessment and 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;
- (9) Reassess low risk probationers ~~that assess as low risk upon discovery of new criminal conduct, if the current assessment is more than 180 days old;~~ the discovery of significant changes in criminogenic risk and needs or new criminal conduct;
- (10) Complete a case plan if a probationer assessed as low risk has criminogenic risks and needs that require intervention: beyond those required as basic compliance with conditions of probation;
- (11) Document in the case record that a case plan is not needed for an assessed low risk probationer if no intervention case plan is required;
- (12) Conduct documented case file reviews for probationers assessed as low risk every year. 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. Probationers that are eligible and in compliance with court-ordered conditions of probation shall 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;
- (13) Respond to emerging risk indicators with graduated increases in the level of supervision, pursuant to probation departmental policy;
- (14) 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;
- (15) 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
- (16) Consider the suitability of early termination for all eligible cases.

- b. 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.
- c. The supervising officer shall administer or cause to have administered alcohol and drug tests on a variable schedule, when 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.

6. through 9. [No changes]

10. Probation officers, surveillance officers and absconder or warrant officers shall follow the minimum requirements for probationers on warrant status for less than 90 days:

- ~~a. Send a certified letter to last known physical address if any, except for probationers incarcerated or in residential treatment;~~
- ba. Physically check last known address and place of employment. Ask sources, such as neighbors, apartment managers and former employers, for information;
- eb. Contact collaterals who may know the probationer's whereabouts including former associates, relatives and friends;
- dc. Run a criminal history check;
- ed. Validate obtained information with agencies and companies such as law enforcement and utility companies.
- fe. Provide information that can be used for flyers and wanted posters for dissemination to local law enforcement that has jurisdiction.
- gf. Follow up on these requirements at least once every 30 days and document efforts to locate and reengage the probationer, if necessary; and
- hg. Maintain a complete record of activities in case notes.

11. through 12. [No changes]

K. Minimum Supervision Requirements.

1. A.R.S. § 12-253(2) provides: “Exercise general supervision and observation over persons under suspended sentence, subject to control and direction by the court.” The following supervision requirements are established as minimum thresholds for probationers supervised in the community. Each probation department may establish more rigorous supervision requirements. Each chief probation officer shall ensure that all established minimum supervision requirements are provided in writing to each supervising probation officer, along with appropriate training on adherence to those requirements.
2. The probation department shall establish and document minimum supervision requirements for probationers incarcerated in jail. Each probation department shall provide in writing to supervising probation officers the minimum supervision requirements established for probationers incarcerated in jail and furnish appropriate training on adherence to those requirements.
3. The probation department shall establish supervision strategies that are directed toward achieving desired outcomes that include, but are not limited to, the reduction of offender recidivism and criminogenic factors. The probation department shall ensure the majority of supervision resources are dedicated to medium high and high risk probationers in order to successfully complete their term of probation and promote positive behavioral changes. Supervision strategies shall include the following considerations:
 - a. Tailored to the risks, needs and strengths presented by the individual probationer as determined by the standardized assessment.
 - b. Supervision monitoring and intervention strategies are to involve no greater deprivations of liberty or property than are reasonably necessary to address sentencing purposes. Supervision programs and strategies utilized shall be the least intrusive means necessary to promote supervision goals.
 - c. Initial and subsequent supervision planning shall develop specific goal - directed objectives to be accomplished by the probationer during the term of supervision and include strategies the officer will use to monitor compliance and promote the accomplishment of those objectives. Supervision contacts shall be integral to implementing the overall supervision strategies, have a purpose that is directly related to case objectives and the probationer’s level and type of risk.
 - d. High risk cases shall require the concurrent implementation of multiple intervention strategies that apply the skills from a variety of disciplines to address the level and type of risk presented by the individual probationer, build on a probationer’s strengths, and provide probationers with incentives to change.
 - e. Document changes in the probationer’s circumstances throughout the period of probation and actively engage in assessing the impact of any changes on the level and type of supervision. Officers shall independently assess a probationer’s

circumstances through field and collateral contacts at a level proportional to the issues in the individual case.

- f. Responses to noncompliance shall be timely, realistic and escalating and shall include elements designed to both control and correct noncompliance.
 - g. The intensity and frequency of supervision activities shall be reduced over time for stable, compliant probationers meeting supervision objectives.
4. The high risk probation supervision level shall include a monthly minimum of two of the following:
- a. Visual contact with the probationer. Visual contacts shall be varied, scheduled and unscheduled. The probation officer shall determine a schedule for visual contacts and supervision strategies that are proportionate to the level of risk and needs of the probationer based upon the results of the standardized assessment and other significant case information including the probationer's readiness to change.
 - b. Contact with collateral sources who have meaningful knowledge of the probationer.
5. The high risk probation supervision level shall also include:
- a. An initial contact at the probationer's residence within 30 days of sentencing or release from incarceration;
 - ~~ab.~~ Employment verification or employment search verification as necessary;
 - ~~bc.~~ Investigation of arrest notification including periodic warrants check to be performed a minimum of no less than once prior to the termination of probation. Contact with probationers found to be involved in criminal conduct shall be initiated upon receipt of reliable information that criminal conduct has occurred. An officer shall respond to known serious violations and bring defaulting probationers into court when the conduct of the probationer justifies the court to revoke suspension of the sentence;
 - ed. Community restitution monitoring;
 - ~~de.~~ Alcohol and drug testing, as necessary;
 - ef. Treatment, counseling, or both, to include evidence-based interventions as necessary;
 - fg. Monitoring of court-ordered financial obligations;
 - gh. Development of case plans that target risk and needs areas evidenced to be significant predictors of risk to re-offend;

- hi. The use of communication techniques that engage the probationer in his or her own case plan, motivation and goals;
 - ij. Responses to offender behavior pursuant to established departmental policies on graduated responses of consequences and incentives;
 - jk. Evaluation of ongoing supervision and strategies; and
 - kl. Consideration for early termination for eligible probationers' meeting behavioral goals and in compliance with court-ordered conditions of probation. The probation officer shall recommend that outstanding financial obligations be reduced to a criminal restitution order. Probationers with outstanding restitution shall not be considered for early termination.
6. The medium risk probation supervision level shall include a monthly minimum of one of the following:
- a. An initial contact at the probationer's residence within 30 days of sentencing or release from incarceration;
 - ab. Visual contact with the probationer. Visual contacts shall be varied, scheduled and unscheduled. The probation officer shall determine a schedule for visual contacts and supervision strategies that are proportionate to the level of risk and needs of the probationer based upon the results of the standardized assessment and other significant case information including the probationer's readiness to change;
 - bc. Contact with collateral sources who have meaningful knowledge of the probationer.
7. **[No changes]**
8. The low risk probation supervision level shall include:
- a. A minimum of one visual contact as an initial interview to provide instruction on the conditions of probation and behavioral expectations. The probation officer shall determine supervision strategies that are proportionate to the level of risk and needs of the probationer based upon the results of the standardized assessment and other significant case information. Subsequent visual contacts shall be varied, scheduled and unscheduled, with at least one residence contact within 60 days of sentencing or release from incarceration;
 - b. through l. **[No changes]**
9. Waiver of Minimum Supervision Requirements.
- a. The chief probation officer may waive minimum supervision requirements, in writing, for a specified period of time only if exigent circumstances exists. The

supervising probation officer shall place a copy of the written waiver of minimum supervision requirements in the case file of each probationer for whom a waiver has been granted.

- b. The chief probation officers shall not grant a ~~wavier~~ waiver for minimum supervision for probationers on high risk supervision level and convicted of a sex offense as defined by A.R.S. § 13-1402 through 13-1412, 13-1417 through 13-1419, 13-3552 through 13-3556, a domestic violence offense under A.R.S. § 13-3601 or 3601.02, or an offense involving driving under the influence under A.R.S. § 28-1381 through 28-1383.
- c. The chief probation officer shall not waive minimum requirements when doing so would compromise public safety.

L. Specialized Caseloads.

1. Any court establishing or maintaining specialized caseloads shall have a written description of the specialized caseload, including objectives, ~~and~~ goals, and caseload size. Caseload sizes may be less than or greater than 65:1, based upon criteria proposed by the probation department and approved by the AOC, as long as the department maintains an overall average of 65:1 for the standard probation supervision population and adequate supervision is provided.
2. Any court establishing or maintaining specialized caseloads shall have research-based written screening and assessment criteria for placement on the caseload, as well as standardized criteria for exiting or graduating from the caseload.
3. Any court establishing or maintaining specialized caseloads shall have research-based written minimum supervision requirements specific to the needs and goals of the caseload.
4. Probation officers assigned to supervise specialized caseloads shall participate in AOC approved continuing education/training on the specific needs of the specialized population.