

# COMMITTEE ON PROBATION

ARIZONA SUPREME COURT  
ADMINISTRATIVE OFFICE OF THE COURTS  
1501 WEST WASHINGTON STREET  
CONFERENCE ROOMS 345 A & B  
PHOENIX, ARIZONA

SEPTEMBER 4, 2009  
9:00 A.M. – 12:00 P.M.

## Chair:

Tim Hardy

## Attending Members:

Rene Baca  
Carol L. Boone  
Margie Brakefield  
Mike Branham  
Barbara Broderick\*  
Kenneth Brown  
Chad Campbell  
Marilee Dal Pra  
Ray Garcia  
Hon. Warren Granville  
Billie Grobe  
Arno Hall

Bryon Matsuda  
Doug Pilcher  
Tivo Romero  
David F. Sanders  
Rik Schmidt  
Delcy Scull\*  
Sharon Sikora  
Susan Stodola  
Rich Tozer  
Kathy Waters  
Todd Zweig

## With Regrets:

John Armstrong  
Frank Begay  
Vincent Craig  
Carol Fox  
Scott Mabery  
Robert Seymour  
Cindy Winn  
Jerold Wolf

## Proxies:

Elaine Bridschge for  
Diane McGinnis  
Denise Caraballo for  
Delcy Scull  
Zack Dal Pra for  
Barbara Broderick  
Don Goldstrom for  
Livingston Sutro  
Elaine Grissom for  
Friend Walker  
David C. Jones for  
Mario Moreno  
Tim Orona for  
Chuck Moter  
Greg Stewart for  
Steve Hardy

## Guests:

Dave Byers  
Amy Champeau  
Mike Colwell  
Dori Ege  
Jennifer Green  
Evita Holmes  
Chad Kewish  
Geoff Kudel  
Jerry Landau

## AOC Committee Staff:

JL Doyle  
Lorraine Lerma

\*Members present for part of meeting

## I. WELCOME

Tim Hardy called the meeting to order at 9:00 a.m. and asked Rik Schmidt to lead the group to recite the Pledge of Allegiance. Introductions were made around the room and he welcomed everyone.

It was established that there was a quorum present as defined in the business rules for the committee. Twenty-two committee members and eight proxies were identified. (Note: A total of 30 committee members attended the meeting; 2/3rds of the members voting would be needed for a motion to pass).

## II. APPROVAL OF MINUTES

The Chair asked if there were any additions, corrections or deletions to the minutes of the last meeting.

**MOTION: Mike Branham made a motion to approve the minutes with the recommended changes of May 8, 2009. David Sanders seconded the motion. Motion passed unanimously. COP 09-14.**

## IV. BUDGET UPDATES

Agenda item taken out of order.

Kathy Waters provided the following FY2010 update for adult probation.

- Governor signed HB2010 (Criminal Justice Budget Reconciliation Bill (BURB)), which increases JCEF probation surcharge from \$10 to \$20, increases Adult Intensive Probation fees from \$50 to \$75, increases adult standard probation caseload ratio from 60:1 to 65:1. Juvenile intensive probation team was defined to be 2 probation officers or a probation officer and a surveillance officer or a 2 probation officers and a surveillance officer. This will also mirror on the adult side for any county. The bill goes into effect November 24, 2009.

Chad Campbell provided the following FY2010 update for juvenile probation.

- There are no additional reductions.
- BURB did not include much on juvenile other than not having to do some annual reports for this particular session.

Jerry Landau mentioned that July revenues are down. The budget will need to be looked at again by the legislature at least twice. The BURB's would not include cuts, but does not relieve us that there is going to be future action on the budget to try to deal with the expected shortfall.

### III. LEGISLATIVE PROPOSALS

Jerry Landau presented on ACJC Legislative Proposal 2010-01 draft (handout attached).

- Amendment to Statute 12-270 deals with AOC and Corrections reporting to the President of the Senate, the Speaker, and JLBC, information regarding persons on probation who commit new crimes. Request is to change the statute to require a reporting of persons who are convicted of new felony offenses each year.
- Proposed changes to the Earned Time Credit (ETC) Statute 13-924. Probationers will be required to be paid in full on court ordered restitution and current on all court ordered financial obligations. Probationer cannot be early terminated from probation until restitution is paid in full.

In reference to ETC, Kathy Waters recommends that COP work with Jerry on the correct verbiage between current and compliant and to leave it to the courts to make those decisions.

Jerry recommends not to make any of the changes in the current draft, to leave the statute the way it is, but add one subsection that would say “a probationer shall not be early terminated pursuant to this section unless restitution is paid in full.”

**MOTION:** Kathy Waters made a motion that COP accept the changes as discussed on (12-270) the new felonies, and (13-924) strike the changes and leave them as it currently reads then add the additional paragraph as stated by Jerry Landau’s recommendation. Todd Zweig seconded the motion. Motion passed unanimously. COP 09-15.

**ACTION ITEM:** Jerry Landau will forward a new draft to Kathy Waters and JL Doyle by the end of the day for distribution.

### V. ACJA SECTION 6-202.01: ADULT IPS EVIDENCE-BASED PRACTICES ACJA SECTION 6-211: INTERCOUNTY COURTESY TRANSFERS

JL Doyle presented on code 6-202.01 (handout attached). There are two significant changes to prior versions:

- Contact standard and levels noted on the Contact Matrix.
- Spell out what the expectations for contact standards were on the “Waiver Provisions” requirements.

Now that BURB has passed, JL also mentioned they will do technical amendments to add in the \$75 to codes, 6-202 and 6-202.01.

**MOTION: Rich Tozer made a motion to move code 6-202.01 forward with the change under “Definitions”. Todd Zweig seconded the motion. Motion passed unanimously. COP 09-16.**

Dori Ege presented on code 6-211 (handout attached). This code has been in effect since 2004. Various discussions took place.

**MOTION: Todd Zweig made a motion to strike the language “In accordance with caseload capacities,” under Section E.1. Kathy Waters seconded the motion.**

Dori commented that the statewide work group wanted that language in, vetted this language at two different AMMs and did not come up then, and asked if it was fair that they are not giving everyone else the opportunity?

JL Doyle said procedurally the code does not have to go back out for public comment, it can just continue to go through the committee process.

There will be no ramifications of changing the language.

After additional discussion, Todd restated his motion.

**MOTION: Todd Zweig made a motion to strike the language under E.1. and E.2. “In accordance with caseload capacities,” from the code. Doug Pilcher seconded the motion. Motion passed unanimously. COP 09-17.**

**MOTION: Kathy Waters made a motion to move code 6-211 forward with the changes under “E. Transfer Request”. Zack Dal Pra seconded the motion. Motion passed unanimously. COP 09-18.**

## **VII. EXTENDED WORK WEEK FOR PROBATION OFFICERS**

Agenda item taken out of order.

David Withey presented, via teleconference, (handout attached). The extended work week allows the counties to manage the time worked of their probation staff more effectively. Overtime will not be paid if worked over 40-hours in a week, but will pay overtime if over 80-hours in 2 weeks. Based on a recent general audit of Pima County by the Department of Labor (DOL) was as an issue as to whether probation officers were qualified for what is called the Law Enforcement Activity Exception under the Fair Labor Standards Act (FLSA). This allows the counties to use this extended work period that goes beyond the 40-hour week period, which they are normally bound by federal law. There is a DOL opinion about probation officers in California qualifying and there is also a U.S. District

Court case out of Maine that indicates probation officers in Maine qualify for this. Currently, Arizona compares favorably with California and Maine in terms of the duties of the probation officers that are relevant to this issue of qualifying for this exception. The Arizona Attorney General's Office could not find the support for this and advised the extended work period should not be used until it gets resolved with the DOL. Currently awaiting the results from the DOL.

## **VI. ACJA SECTION 1-303: CODE OF CONDUCT FOR JUDICIAL EMPLOYEES**

David Withey presented on code 1-303 (handout attached). David also provided a PowerPoint (PP) presentation. David introduced the proposal to the presiding judges, court administrators, and AOC Directors in June 2009. In addition to meeting with COP, David will be meeting with the Clerks; Limited Jurisdiction Committee; Superior Court Committee; and the Arizona Judicial Council in October 2009. A satellite broadcast is scheduled for September 30, 2009.

**ACTION ITEM: COP to respond with comments to David Withey via email by September 30, 2009.**

**ACTION ITEM: JL Doyle to send a copy of the PP presentation to the COP members via email.**

**MOTION: Rich Tozer made a motion to accept the concept as presented by Mr. Withey with the intent that COP comment directly to Mr. Withey until September 30, 2009, but in concept the recommendation for AJC to approve. David Sanders seconded the motion.**

**ACTION ITEM: After comments are received by September 30, 2009, David Withey to send a revised Comments chart to COP indicating which were incorporated, which were not, and why.**

After additional discussions, Rich Tozer withdrew his motion

## **VIII. ACJA SECTION 1-202: PUBLIC MEETINGS**

Jennifer Greene presented on code 1-202 (handout attached). Jennifer addressed the minor modifications to the open meeting law code section and provided clarification to committee staff as well as committee members on the use of technology. Jennifer also addressed, and based on recent advice received from the Attorney General on the use of Email by committee members, that Email communication among a quorum of members is subject to the same restrictions as any other form of communication among a quorum of members. Members must be cognizant and sensitive to communication among a quorum.

**MOTION: David Sanders made a motion to support code 1-202. Barbara Broderick seconded the motion. Motion passed unanimously. COP 09-19.**

**IX. MEMBERSHIP ON THE COP**

Rich Tozer presented on behalf of the Court Administrators Association to appoint a Superior Court Administrator to COP (handout attached).

Rik Schmidt questioned whether the Court Administrator should be a voting member. Concern over the size of the Committee and the knowledge of probation matters to be a voting member.

**MOTION: Bryon Matsuda made a motion to support the appointment of a Court Administrator to COP. David Sanders seconded the motion. Motion passed unanimously. COP 09-20.**

**X. COMMITTEE UPDATES**

SSAC (Staff Safety Advisory Committee)

David Sanders provided the update on behalf of Livingston Sutro. SSAC met on June 22, 2009, and devoted the entire meeting to a personnel matter where an applicant who was hired as a probation officer gave assurances they would be able to complete the Defensive Tactics (DT) Academy. All new officers are required to attend and successfully complete the DT Academy (one has to demonstrate capacity in every area). The newly hired probation officer was reasonably successful overall, but was not successful in performing some of the mandatory kicks. AOC Legal was consulted. Current Safety Training Code (6-107) (Adopted via AO 2006-62) does allow for some accommodation. The AOC Safety Specialist worked with the Chief Probation Officer and the new officer to come up with a plan to accommodate the officer.

Discussions also took place relating to pre-employment physicals. To join the CORP Retirement System, new officers have to undergo a physical.

**ACTION ITEM: SSAC to review all codes that pertain to officer safety including the Safety Code, make recommendations and report back those recommendations to COP at COP's first meeting in 2010. Also, SSAC to review and make any recommendations in reference to the pre-employment physical requirements, if time permitted.**

A suggestion was made of having the Attorney General involved and some of the HR Directors from the counties assisting SSAC on their action item.

The Action Item has been amended as follows:

**ACTION ITEM: SSAC's priority is to review the existing Officer Safety Code, make recommendations, and report back of those recommended code revisions to COP at COP's first meeting in 2010.**

Kathy Waters went on record saying the individual was not really accommodated, but it is a temporary medical waiver per code.

At the May 8, 2009, COP meeting, SSAC was asked to do a full report on Tasers and report back to COP. Due to the priority set by Tim Hardy, the Taser report is on hold.

#### COPE (Committee on Probation Education)

Chad Kewish provided an update. The next COPE meeting is scheduled for September 15, 2009. Items to discuss are 5 lesson plans coming out of the officer safety program:

- 3 new lesson plans
  - 2 Train-the Trainers (TTT)
    - 1 for Defensive Tactics
    - 1 for Firearms Train-the-Trainer (FA TTT)
  - Holstering and Carrying Systems
- 2 revised lesson plans
  - Self-defense
  - Handcuffing and searching techniques

Due to the decrease in hiring of officers, the August 2009 Certification Academy was cancelled and also the possibility of cancelling the October 2009 class. The next academy will be January 2010. Chad does not foresee any officers being out of compliance if moved to January.

The IPS Academy will begin September 16, 2009, with 23 probation officers and 1 surveillance officer registered. The surveillance officer component of IPS will be cancelled; the 1 surveillance officer is to attend the latter part of the academy with the probation officers. The March 2009 IPS Academy was cancelled; COPE was required to get an Administrative Order due to the officer would have been out of compliance. The next IPS Academy is March 2010. The issue and concern Chad had is the liability of having the officer out in the field without receiving training.

Officer safety numbers are still holding in terms of the number of participants in firearms and refreshers, numbers are slowly decreasing with the number of DT participants.

Chad also reported that Barbara Ortolano, Officer Safety Specialist, is certified in first aid and CPR and is certified as an instructor. Barbara will be able to provide training to trainers out in the counties to keep their certifications up-to-date.

To register for the Faculty Skills Development (FSD) contact Kensley Gonzales, Education Services Division, AOC.

PACC (Probation Automation Coordinating Committee)

Rona Newton provided the update and gave a summary (handout attached). The last PACC meeting was on August 27, 2009.

**XI. NON-AGENDA ITEMS**

Fred Santesteban presented, for informational purposes only, the Required Code Amendments (handout attached). This was discussed at Juvenile Administrators Meeting (JAM) on September 3, 2009, and does not apply to adult. 6-105 – Concerns were brought up and are being looked at by AOC’s legal department. 6-302 – Included new language in the statute and the code. No concerns voiced at JAM. Contact Fred Santesteban, Brett Watson, or Nina Preston regarding any concerns not raised now.

Chad Campbell brought up the H1N1 Pandemic. Emails have been sent to the presiding judges, court administrators, and directors to review. Any calls should be directed to Niki O’Keefe at the AOC. Predicting 30,000-40,000 deaths in the state of Arizona.

**XII. CALL TO THE PUBLIC**

No respondents.

**XIV. ADJOURNMENT**

**MOTION: Barbara Broderick made a motion to adjourn the meeting. Kathy Waters seconded the motion. Motion passed unanimously. COP 09-21.**

**Meeting adjourned at 12:15 pm. Next meeting – Friday, November 6, 2009.**