

**COMMITTEE ON PROBATION
(COP)
ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
1501 WEST WASHINGTON STREET
CONFERENCE ROOMS 345 A & B
PHOENIX, ARIZONA**

**AUGUST 26, 2011
9:00 A.M. – 12:00 P.M.**

Chair:

Tim Hardy

Attending Members:

Stan Alexander
Rene Baca
Margie Brakefield
Mike Branham
Barbara Broderick
C. Daniel Carrion
John Dyess
Hon. Warren Granville
Billie Grobe
Arno Hall
Steve Hardy
Tim Hardy
Vincent Iaria
Scott Mabery
Bryon Matsuda
Mario Moreno

Kendall Rhyne
Tivo Romero
David F. Sanders
Rik Schmidt
Sharon Sikora
Betty Smith
Don Stokes
Livingston Sutro
Sue Von Borstel
Kathy Waters
Todd Zweig

With Regrets:

John Armstrong
Hon. Peter Cahill
Chad Campbell
Carl Fox
Diane McGinnis
Chuck Moter
Delcy Scull
Cindy Winn

Mohave Vacancy

Proxies:

Jeanne Brandner

Denise Smith
Don Farr

Mary Walsh

Alan Palomino

Guests:

JL Doyle
Rona Newton
Brett Watson
David Withey

**AOC Committee
Staff:**

Mark Koch
Diane Herst

I. WELCOME

Tim Hardy called the meeting to order at 9:05 a.m. He asked that Arno Hall lead the committee in reciting the Pledge of Allegiance. Introductions were made around the room.

Nothing to update on the Legislative and Budget fronts, so agenda items III. and IV. were removed from the agenda. Sharon Sikora announced it was the 30th anniversary of her crash, and thanked everyone for the jobs they do in law enforcement. Tim H. then gave her accolades for her tremendous work with MADD and SADD on a state and national level.

It was established that there was a quorum present as defined in the business rules for the committee. 2/3rds of the members present at any vote are required for a motion to pass.

II. APPROVAL OF MINUTES

Mr. Hardy asked for a motion to approve

MOTION: Barbara Broderick made a motion to approve the meeting minutes from April 29, 2011. Sharon Sikora seconded the motion.

Mr. Hardy called for a vote on the motion. **Motion passed unanimously. COP 11-10.**

III. LEGISLATIVE UPDATE – REMOVED FROM AGENDA – NO UPDATE NECESSARY

IV. BUDGET UPDATE – REMOVED FROM AGENDA – NO UPDATE NECESSARY

V. ACJA 6-206: Adult Probation Services Fund, Probation Fees Account (Action Item) – JL Doyle, Manager, Administrative Services Unit, APSD

(Handouts provided)

Background:

- Expenditure guidelines section - over several legislative sessions, bills were passed allowing more of your Adult Probation Service Fees (PSF) money to cover for global position services (GPS) and risk management; still holding to the same standards of how to spend money for personnel
- No real uniformity as to when PSF begins and when should be suspended
- HB2404 now requires the criminal restitution order being completed in reference to absconders

Proposed change to the code:

- Proposed change allows for staying at 60% of expenditures, but excludes what is removed for GPS and risk management
- What is left at the 60% then has to cover personnel

- Adding a section for assessment guidelines; concern with the rollout of AJACS and the integration piece; this proposed change will create uniformity for assessments

Discussion –

Barb Broderick asked what the thought was behind the change in the assessment guidelines, section G (b)(2) – “A probationer is incarcerated for more than 30 days”. She stated that Maricopa County performs re-entry services which create extensive contact with many probationers. She asked that it be changed from “...more than 30 days” to “...more than 90 days” as probation also services incarcerated individuals.

Ms. Doyle replied that the issue behind it dealt with the individuals who are not in a work furlough program, have no means of income, and they are in fact being assessed administratively and not as a funded case. Ms. Doyle then stated that changing the number of days has not been considered, but it is open for discussion. Ms. Broderick further commented that in Maricopa County, work furlough is also longer than 30 days so careful wording of the code may be in order.

Don Stokes stated that La Paz County supervises individuals who are on work release and have a jail sentence. He also said that traditionally they keep sentenced individuals jailed for up to 60 days, soon increasing to 90 days as they send them straight from jail to residential rehab, so it would also impact their program.

Ms. Doyle replied as to work release and work furlough, most departments who utilize those programs charge the individuals work furlough, work release, and PSF fees which are a lot of fees for them when there is usually minimal probation contact in most instances. Also, some jurisdictions have been charging fees beginning at the date of sentence even if the person’s probation had not begun yet (If they were in jail for a few months, for example) – they were being supervised by the jail not by probation but were being charged probation fees and had no means of income.

David F. Sanders commented that in Pima County, they are charged \$10 a day and most of them want to work 6 to 7 days a week; the fines approach \$300 a month; DUI’s can sometimes run into the thousands. Since they typically are working for minimum wage, he likes the practice of waiving fees when an individual is in prison even if there is some level of service being provided.

Mr. Hardy asked for any further discussion; there was none. He then asked Ms. Doyle what she would like from the committee on this issue. She responded that she would like a vote to forward it on to the other committees and ultimately up to Arizona Judicial Council (AJC) for adoption.

Mike Branham then stated that he would like to address the concerns raised; that it may not work for everyone. Ms. Doyle commented that she would entertain suggestions on change of language. Mr. Hardy asked for any recommended changes. There were none.

MOTION: Livingston Sutro moved that the code section go forward. Mike Branham seconded the motion. No discussion.

Mr. Hardy called for a vote. **28 votes yes; 1 vote no and motion carries. COP 11-11.**

**VI. ACJA 6-111 Vehicle Fleet Management
(Action Item) - Brett Watson, Adult Services Budget Analyst, AOC**

(Handouts provided)

Background:

- Recent change to ADOA risk management rules: motor vehicle records (MVR) checks are now required annually rather than bi-annually

Proposed change to the code:

- The significant recommended change to the code is that bi-annual MVR (Motor Vehicle Record) checks will now be annual for any employee who operates a vehicle in the scope of probation business. This is to comply with changes to Risk Management rules for operation of vehicles.

MOTION: Mike Branham moved that the code section be adopted as written. Barb Broderick seconded the motion.

Mr. Sanders commented that the personnel code requires criminal history checks every two years, and some counties require them annually, so this change would not be inconsistent and would be beneficial.

Mr. Hardy asked Mr. Watson where the Arizona State Employee Drivers Record Application (ASEDRA) is now in the process that began a year ago. Mr. Watson replied that the executive branch is the only one included in it as, last he knew, they were working on programming to include counties so that the judicial and legislative branches could be brought in as well.

Mr. Hardy asked if there was any other discussion prior to the vote; there was none.

Vote taken; unanimously passed and motion carries COP 11-12.

**VII. PROBATIONERS USE OF MEDICAL MARIJUANA
- David Withey, Chief Counsel, AOC**

(Handouts provided)

Background:

- Previously discussed the Medical Marijuana (MM) issue with this committee as it pertains to employees and supervision of probationers who use MM
- Some policies have been developed

General Requirements:

(Refer to Power Point slide handout):

- Physician written certification for debilitating medical condition
 - Patient may possess up to 2.5 ounces of MM per 14 day period
 - Patient may cultivate up to 12 MM plants if more than 25 miles from qualifying dispensary (right now Arizona has no dispensaries)
 - Certification to grow MM plants is on the card, but is a separate requirement
- Mr. Withey added that he has heard no new progress on the case filed by the state challenging the dispensary provisions under federal law.
- Caregiver may possess and cultivate MM on behalf of 5 qualified patients
 - Non-profit MM dispensary may cultivate, possess and dispense only for patients and registered caregivers

Medical Considerations:

(Refer to Power Point handout):

- Physician certification is not prescription
- Type of MM, dosage, time and how it is taken is up to the patient
- For some patients, the medicinal effect of THC (delta-9-tetrahydrocannabinol) can be more effective than morphine
- THC of street marijuana has been selectively enhanced to increase the intoxicating effect rather than the medicinal effect

Legal Considerations:

- Recent versions of the MM laws are very clear; those exercising the right to use it for medical purposes cannot be penalized in any way
- The law has evolved over time; cases found prohibiting probationers from using MM are based on laws that read differently than the AZ law
- Need to know which law the Court is interpreting and applying to know if it is precedent for us
- Montana case, State v. Nelson (refer to handout) – concluded under their law (similar to AZ) that probationer could use MM although he had previously abused marijuana
- Montana law also states that sentencing judges do not have the authority to limit the privilege of MM use while under state supervision
- Montana law does allow the sentencing court to impose conditions prohibiting defendants from abusing lawfully-obtained prescription drugs; including MM
- Refer to ARS §36-208; provides limitations on those who are MM users under the law
- Consider abusive use during probation (not only previous), even if they are qualifying patient
- AOC Legal will do more research on probationers who are designated caregivers; need to distinguish between them and the actual MM patient

Rik Schmidt asked about §36-2802 and what constitutes negligence; specifically in terms of childcare. Mr. Withey stated that he can look to the other states for counterpart to it, but as of now AZ is the only one with the negligence language.

Mr. Stokes asked about three issues:

1. Driving under the influence and THC being in the bloodstream for 30 days;
2. Sale of MM across state lines as per federal statute; example of dispensary in Needles, CA that is supposed to be servicing 11 area patients but have 330 in total, legally buying from them; most from other states;
3. Levels of concentration in the bloodstream; do we need to establish a guideline for the level of THC?

Mr. Withey responded:

(Addressing question #3) - THC level has come up in other states and is addressed in the law now; prohibits consideration of only THC level in the body. There has been no established relationship between THC level and impairment, as there is with alcohol.

(Addressing question #1) – (From a medical professional perspective) there is no test to definitively say that an individual is intoxicated with marijuana; no level has been established as of now. The way the drug is metabolized, the THC level may not be what the future tests look for. As of now urine analysis does not provide results, but blood tests and saliva can reveal recent usage which can help in the observation of someone; (being intoxicated on the job for instance).

(Addressing question #2) – It is illegal under AZ law to obtain MM from anywhere except an AZ dispensary. Registered users are only allowed to obtain from a legal dispensary within the state they are registered. Of course, AZ has no dispensaries as of yet, so marijuana clubs are now forming which are illegal.

Judge Granville then commented that the AOC may need to be proactive in determining a rationally fact based level as a guideline for probation officers. It will be coming up case by case and there may be different answers for each without a guideline.

Mr. Sanders asked if judges would have the discretion to prohibit probationers from driving a vehicle during MM use to render the safety issue primarily moot.

C. Daniel Carrion replied that there was marijuana and driving case study done in the Netherlands which showed that people on marijuana were safer drivers than people who were not on marijuana; may not be able to survive rational scrutiny.

THC has to be in your bloodstream to actually affect an individual; this new rule requires that actual impairment is shown and marijuana is one of the most difficult drugs for the State to prove impairment.

Alan Palomino asked that since there are no legal dispensaries in AZ, and if the patient chooses to not grow it themselves, is there another legal means for them to obtain it? And, as to the caregiver, can the patient just have them grow it for them? Mr. Withey replied that a person can only be a legal caregiver for up to 5 people and has to be registered to serve those particular people. There are no other legal sources for the patient to obtain MM other than, a legal dispensary, grow it themselves, or someone specifically registered as their caregiver growing it and dispensing it to them.

Jeanne Brandner commented that §36-2802(D) states the patient cannot be considered to be under the influence solely because of the presence of metabolites; this may need to be considered as well in establishing a level. Also, she asked if any jurisdictions could comment on barriers that have come up attempting to verify the registered user card because they are probation and not law enforcement.

Ms. Broderick replied that Maricopa County has had no issue of their 300 probation officers being able to verify the cards. Mr. Palomino also stated that Mohave County Adult has had no issues that he is aware of.

Mr. Withey then commented further on §36-2802(D) where it discusses “insufficient concentration to cause impairment”; implies that there is a level of concentration that would cause impairment; need to look further into that.

Stan Alexander commented on the issue of mentally ill individuals being arrested for DUI due to prescribed medication; is this issue really any different? Mr. Withey replied that blood tests that can show recent usage can indicate the impairment witnessed and can be related back to the MM use; they may claim it is some other cause, but that is a matter of evidence.

Mr. Stokes brought up the concern of line officers knowing that a probationer is legally a MM user, who then cause an accident or injury. The officers could be sued because they knew about the use and didn't tell anyone.

Todd Zweig asked what the definition of a “non-profit dispensary” actually means. Mr. Withey replied that, as far as he knows, it means that all the costs are covered and there is nothing generated for others not directly involved in the business.

Mr. Alexander commented on the intoxication issue; used example that anyone can go to the dentist and end up with a prescription pain killer and still go about their daily routine, yet they are still intoxicated.

Scott Mabery asked if there has been any question of juveniles using MM. Mr. Withey replied that it would stand to reason the parent would have to be involved just like anything else, but he will look further into it.

Mr. Hardy asked if there were any juvenile departments that have policy on the matter as of yet; none as of now. Kathy Waters offered to send out Pima County's adult policy to the juvenile directors as it is slightly different than Maricopa's which they have already received.

Mr. Schmidt asked about amendments that he heard approved on the issue of prohibiting safety sensitive positions from MM use. Mr. Withey replied that yes that is true and they will address that topic at future meetings.

Mr. Sanders asked if APETS (Adult Probation Enterprise Tracking System) should have a special attribute to track these cases. Mr. Withey replied that it would not be

necessary from a legal standpoint, but maybe from a business one. Ms. Broderick commented that she had decided it was unnecessary, as they then would need to track cases of other prescription medications as well; Mr. Sanders agreed.

Mr. Stokes brought up the issue of training officers more extensively on Nystagmus Gaze testing to help in determining if an individual is under the influence.

Mr. Hardy called for a 10-15 minute break.

VIII. AZCOPS – RECENT CHANGES AND OVERVIEW

- Don Stokes, Juvenile Line Officer, La Paz County

Background:

- AZCOPS formed over 10 years ago and has 4800 members; probation membership from 11 counties
- Major changes within the last 6 months; former legal counsel broke away and took 2000 members with him
- Juvenile corrections stayed with AZCOPS
- Still financially sound; stand alone and not affiliated with anyone
- Realigned with National Ass'n of Police Officers; have a strong DC lobby
- New chief counsel is Mike Storie; the organization has attorneys across AZ on retainer to respond to local incidents
- Request for services has to come through the chapter leader which is directed to either the coordinator or the president
- Do not generally provide legal assistance to an officer unless some disciplinary action is involved that will result loss of pay, days or job
- Provides advocate training to officers to assist those going through the disciplinary or investigative hearings; advocates ensure that rights under the merit system are preserved
- Also provide grievance procedure training and Freedom of Information Act training on a regular basis
- Organization has a legislative action committee and a full-time paid lobbyist at the State Capitol representing law enforcement position on issues

Mr. Sanders asked who is eligible for membership. Mr. Stokes replied that support personnel and non-safety sensitive personnel are eligible. Supervisory personnel being eligible would depend on how the local by-laws are written. Generally, at-will employees would not be eligible; a Lead PO or a Deputy Chief in a smaller department might be, depending on the by-laws.

Mr. Branham commended the association on the work they did during the tough issues that ADJC went through with the downsizing. Ms. Broderick added that she has worked with Mike Storie in the past and found him to be a tremendous advocate for probation.

IX. SUB COMMITTEE UPDATES

SSAC (Staff Safety Advisory Committee) - David F. Sanders

- CONCENTRA - determining physical standards for applicants prior to appointment; work is expected to be completed before the next COP meeting
- Safety consultant, Robert Thornton, is looking at the use of force code and will present any recommendations to the committee
- Ending the taser pilot project; introducing the use of tasers to the use of force code not as a continuum of force, but in a free standing section as it will not be a force option for most officers
- Ms. Waters commented that Robert Thornton is looking at the entire officer safety program not just the code; utilizing his national expertise on many issues brought before this committee in the past

Mr. Hardy asked to see the issue of ballistic vest life added to the SSAC agenda; ensuring that the vests are put away when they should be for officer safety; Mr. Stokes commented that there might be a company that refurbishes vests at a lesser cost. Mr. Sanders replied that he would add the topic of best practices for the vests to the next SSAC agenda.

Mr. Schmidt asked why the taser program is now going into code when this committee had split votes on the topic by his recollection. Mr. Sanders replied that in three counties on the Adult side, Maricopa, Pima and Mohave, the pilot program has been institutionalized; now intending to take the current practice in Adult Probation relative to warrants teams and place it in code. Ms. Waters added that the part that is moving forward now only pertains for use in Adult Probation warrants teams (warrants search, apprehension, etc.), by armed officers in those assignments and not inclusive of Juvenile departments. The proposed code will be going through the committee process and to AJC in December. Mr. Stokes asked if this would be for use solely in warrant teams or high-risk operations. Ms. Broderick commented that it is solely for the fugitive apprehension units. Mr. Sanders added that it is for use incidental to an arrest.

COPE (Committee on Probation Education) - Todd Zweig

- Last met telephonically on August 11th to vote on the trainer excellence awards; in the areas of probation, detention, defensive tactics and firearms
- Awards will be presented at the Probation Recognition and Training Event in September
- June 21st meeting (in person) – reviewed the New Officer Orientation Training Curriculum; modifications were made and are under review
- IPS (Intensive Probation Services) Training Institute – looking at complete restructure; using evidence based practices and have a total of 21 new curriculum outlines to review; 8 of them have been approved and the classes will be piloted in September
- Reviewed a supervisor curriculum with CLIA (Court Leadership Institute of Arizona) committee and approved the outline

- Detention Subcommittee – working on classes in the subjects of professionalism, conflict of interest and substance abuse
- Intake scenarios have been added to the practicum component of the academy

✚ PACC (Probation Automation Coordinating Committee) – Rona Newton

(Handout)

- JOLTSaz – Pima rollout is scheduled over the President’s Day weekend in Feb. 2012; rural counties implementation will be decided closer to the Pima rollout
- SWID (Statewide ID for Juveniles) – all counties have been matched except for Maricopa; expected to have that county completed in September
- DES and CPS – initial discussions about implementing SWID into CHILDS in order to transfer information more efficiently
- AZYAS (Arizona Youth Assessment System) tool – vendor will be delivering the tool to AOC 10/28; requires certification by every probation officer who will be assessing a juvenile; must attend a 2 day certification process, however most of it is conceptual and not hands on, so the process can begin before tool is delivered; train the trainer sessions have already begun
- DCATS (Dependent Children Automated Tracking System) – started the business analysis earlier than expected
- APETS– Winter Build (final for 2011) came out in June; changing out the software soon so future builds are on hold for now
- JWI (Judicial Web Interface) – Paula Taylor at the AOC can be contacted for demos
- APETS Steering Committee reformed – topics of research, data reports and enhancements for future builds were discussed in June
- ROAM (sTRAC) – internal testing before rollout to larger groups
- AJACS-APETS integration – next AJACS release will have foundation for integration; testing will be approximately 3 months beginning in November 2011
- iCIS – Maricopa is completing normal enhancements; concentrating on the warrant process

X. NON AGENDA ITEMS

- Vince Iaria reminded everyone about the Employee Recognition Dinner, with George Kaiser as the speaker on September 22

XI. CALL TO THE PUBLIC

Nothing from the public.

XII. ADJOURNMENT

MOTION: Barbara Broderick made a motion to adjourn the meeting. David Sanders seconded the motion. Motion passed unanimously. COP 11-13.

Meeting adjourned at 11:23am Next meeting is October 14, 2011 9am – Noon, at the Arizona Courts Building