

**STAFF SAFETY ADVISORY COMMITTEE (SSAC)
SUBCOMMITTEE OF THE COMMITTEE ON PROBATION (COP)**

**MINUTES
APRIL 23, 2010
10:00 A.M. - 2:00 P.M.**

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS (AOC)
1501 W. WASHINGTON
CONFERENCE ROOMS 345A&B**

MEMBERS PRESENT:

Livingston Sutro, Chair
Dustin Alder
Leslie Anderson
George Baum for Art Waterman
Patrice Buzan
Mike Faust
Chad Feipel for John Ryder
Brenda Flynn

Vincent Iaria
Martin Mendez for Steve Hardy
Lance Nickell
George Owens
Mark Smalley
Jon Thompson
Dan Tomlinson

MEMBERS ABSENT:

Charles Counts
Henry Meraz
Jim Meyer
Steve Nesky

Alan Palomino
David F. Sanders, Vice Chair
Saul Schoon
Tim Schouten

GUESTS:

Fred Santesteban

Brett Watson

STAFF:

Kevin Jeffries

Lorraine Lerma

CALL TO ORDER

Livingston Sutro called the meeting to order at 10:05 a.m., welcomed the committee members and guests, and asked everyone to introduce themselves. Livingston mentioned that Vincent Iara, Juvenile Director, Maricopa County Juvenile Probation, replaced Carol Boone.

I. APPROVAL OF THE DECEMBER 10, 2009, MINUTES

MOTION: Dustin Alder made a motion to approve the December 10, 2009, meeting minutes. Mark Smalley seconded the motion. Motion passed with 11 votes, 0 opposed, and 1 abstention. SSAC 10-01

II. SSAC OFFICER DUTIES

Livingston went on record that he remains neutral and will not take a stand on this issue principally because the necessity for this to come about at all had to do with something going on in his department in Cochise County. The only caveat is there is a decent representation of rural departments at this table, but with very limited resources in terms of the numbers of people available to do the types of jobs that need to be done in probation, and chiefs in those departments need to make quick decisions about who they are going to staff vacant positions with, and there are some departments where chiefs write presentence reports or perform field and presentence duties themselves not to mention staff doing multiple duties as well.

Kevin Jeffries first thanked the subcommittee that helped craft the document Defining Officer Essential Functions (handout attached): Leslie Anderson, Charles Counts, Steve Hardy, Martin Mendez, Steve Nesky, Lance Nickell, Barbara Ortolano, David Sanders, Fred Santesteban, Tim Schouten, Gary Streeter, and Brett Watson. Kevin presented on the outcome based on the subcommittee's meetings and wanted to capture the questions posed by AOC Legal:

- Are the Defensive Tactics (DT) skills essential to the job functions of a probation officer?
 - All departments do not necessarily send reports to AOC, there were roughly 70 reports of officer safety incidents that occurred since the beginning of the program. Some of these were standard use of force that may happen incident to an arrest, others were officers that had demonstrated some type of physical prowess to get out of a situation, others were threats and intimidations, and others were dealing with vicious dogs, but 5 were far more serious that exemplify the possible hazards that a probation officer or surveillance officer may face. According to David Withey, DT is a proxy for the ability to be a probation officer, but it is indirect. If it is direct, we need to make that statement and that DT is a direct proxy for the ability to be a probation officer. This report makes it direct.
- Why is it that they need to be performed? What do they provide in the performing of essential functions (DT techniques)?
 - The recommendations from the subcommittee have produced 10 physical agility pre-screening testing requirements are tasks that an officer would need to be able

- to do in order to either pass DT or just be able to do the job of a probation officer.
- Injuries
 - The injury element of DT was overstated to David Withey. There are injuries that happen in training and unavoidable. Gary Streeter produce an opinion from a professional law enforcement trainer that basically claimed that 5% injuries is acceptable. Kevin did an informal survey of Officer Safety Coordinators throughout the state and many felt were well below the 5% tolerance level, more in the 1% range.
- What do probation officers physically do to do their job duties?
 - Based on a report Kevin has, Maricopa County had contracted with Concentra (professional occupational therapists) determine the physical duties of probation and surveillance officers. This contract included Concentra doing ride a longs with probation officers. Concentra did take the officer safety element into consideration and the need for self-defense.
- What are the federal law requirements?
 - Federal law enables agencies to list what they believe are Bona Fide Occupational Qualifications (BFOQ). The subcommittee determined based on the 70 safety incidents (reports), the Maricopa Concentra report, the Pima Juvenile Probation Department essential skills doucment and the fact that DT is the standard across the county, that the successful completion of DT must be considered a BFOQ.

ACTION ITEM: If the attached handout is approved by SSAC, the handout is to be sent to the COP members and AOC Legal in advance of the upcoming April 30, 2010, COP meeting for their review and is for pre-employment, with the exception of the pass/fail, which is for current employees.

Discussions took place regarding:

- Temporary/permanent waivers; Disability
 - Temporary waivers are acceptable, but Code has never allowed for permanent waivers;
 - If someone cannot perform physically, the departments have a choice of providing a desk job, if possible, or take a medical retirement.
- Certification Academy; DT Refreshers Pass/Fail; Grandfathering; Aging workforce
 - If a certified probation officer that resigns and returns after 2 years, they would have to go through the DT academy and be recertified;
 - The employees that have brought this to light will not attend a required 8-hour refresher to know whether they can pass or fail based off of what they and their doctors say is a medical excuse;
 - After meeting with HR professionals, they indicate you can change the rules mid stream;
 - CORP and ASRS have disability benefits.
 - Physical testing (screening) is for pre-employment; for existing officers completing the annual testing, there will be reasonable accommodations; not interested in pushing an aging workforce out, but interested in an aging workforce that cannot protect themselves.
 - Kevin and Barbara Ortolano will send out every year one-third of the DT curriculum to the Safety Coordinators to test the techniques for the current year.

- Medical/Physicals
 - Get with AOC Legal as to what can be requested at pre-employment.
 - Possibly have a medical doctor or an AED on site.

ACTION ITEM: Kevin Jeffries and Fred Santesteban to meet with the CORP liaison to discuss the disability benefits prior to COP's April 30, 2010, meeting.

MOTION: George Owens made a motion that SSAC pass the Defining Officer Essential Functions on to COP and AOC Legal to accept.

After a brief discussion George Owens amended his motion.

MOTION: George Owens amended his motion of whether a doctor should be present, should there be a pre-employment, and for SSAC to approach AOC Legal and CORP on some of the retirement and medical questions posed, and to forward the Defining Officer Essential Functions to COP and to AOC Legal.

After additional discussions, George Owens withdrew his motion.

MOTION: Jon Thompson made a motion to move forward submitting Defining Officer Essential Functions document to COP. Mark Smalley seconded the motion. Motion passed with 14 votes, 0 opposed, and 1 abstention. SSAC 10-02.

III. LEOSA (LAW ENFORCEMENT OFFICER'S SAFETY ACT)

Dustin Alder presented (handout attached). LEOSA is a Federal legislation that was passed post 9/11 authorizing law enforcement officers to carry a firearm across state lines anywhere in the nation. Back in 2007, a state senator asked the Attorney General (AG) to issue an opinion whether or not probation officers and surveillance officers in the State of Arizona qualified or met the criteria for that Federal legislation, and simply put, the answer was No. The AG did not feel we met one piece of the criteria out of five elements of the legislation. Mohave County probation feels they do meet the criteria. Mohave County borders with California, Nevada, and Utah. There is a section in Mohave County probation has to cross through two states north of the Grand Canyon. Dustin has not seen anything in writing, but has been told that the State of Arizona has reciprocal agreements with those states that do allow them to carry firearms into those states while on duty. Dustin would like clarification if they meet Federal legislation that allows them to cross state lines.

MOTION: George Baum made a motion that a subcommittee be created to address the Law Enforcement Officer's Safety Act (LEOSA) and get a determination whether adult and juvenile probation officers and surveillance officers would qualify under the U.S. Code. Lance Nickell seconded the motion. Motion passed with 15 votes, 0 opposed, and 0 abstention. SSAC 10-03.

The subcommittee will consist of Dustin Alder, George Baum, Kevin Jeffries as Chair, and Lance Nickell.

IV. NON AGENDA ITEMS

There were none.

V. ADJOURNMENT

MOTION: George Baum made a motion to adjourn. Vince Iara seconded the motion. Motion passed unanimously. SSAC 10-04.

Livingston thanked everyone for coming.

The meeting adjourned at 12:10 P.M.