

ARIZONA JUDICIAL COUNCIL

Date Action Requested:	Type of Action Requested:	Subject:
December 15, 2016	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Legislative Proposals

FROM:

Jerry Landau
Amy Love

DISCUSSION:

2017 Legislative Proposals – Cause/Effect and Implementation

RECOMMENDED COUNCIL ACTION:

Council may vote to include or not include in the Legislature a Judicial Branch proposal or to support, oppose or take no action on proposals from other entities presented to the Council.

Arizona Judicial Council Legislative Update December 2016

2017-06. Court Security (AOC)

Creates a Statewide Court Security Fund consisting of monies derived from an increase in filing fees. Requires the Administrative Office of the Courts to administer the fund. Requires monies in the fund to be used to provide assistance, training and grants to courts to assist in meeting minimum standards of courthouse security adopted by the Supreme Court.

Contemplates a 2% increase in both the Superior Court and Justice Court filing fees.

2017-08. Permanent Guardianship (Pima County Superior Court)

Permits the court to establish a permanent guardianship under Title 8 prior to an adjudication of dependency for a child who is the subject of a dependency petition. All parties must agree to the guardianship and revocation may only occur upon court order after a preponderance of evidence shows that a parent has remedied the grounds alleged in the guardianship petition and that return of the child would not create a substantial risk of harm to the child. Creates a rebuttable presumption that it is in the child's best interest to be reunited with a parent absent clear and convincing evidence to the contrary.

Amends Title 8 guardianship statutes to track Title 14 by requiring applicants for permanent guardianship submit a valid fingerprint clearance card or full set of fingerprints to the court for purposes of obtaining a criminal background check. Further, allows the court to appoint a permanent guardian nominated by a child who is at least twelve years of age.

2017-09. Arizona Lengthy Trial Fund (AOC)

Extends the Lengthy trial fund for eight years. The filing fee sunsets January 1, 2027 and the fund itself July 1, 2027.

2017-A. Judicial productivity credits (Justice of the Peace Association)

Amends the judicial productivity credits formula and the compensation for a justice of the peace based upon those credits. The formula changes include:

- inclusion of small claims filings heard by a volunteer hearing officer under the civil filings category
- in criminal and traffic cases, counts not complaints filed are included in the formula. Reference to juvenile traffic violations in the "civil filings" paragraph is removed as they are counted the same as the applicable adult filings.
- DUI cases are weighted more heavily than minor traffic
- additional credits are earned for protective order filings

Effective January, 2018, changes the bi-annual calculation of judicial productivity credits to an annual calculation for the twelve month period ending June 30 of each year. The productivity credits are then reported to the applicable board of supervisors within one-hundred and twenty days after June 30. Judicial Productivity Credits are calculated and reported in subsequent twelve month periods. Salary adjustments take effect the following January 1.

Prohibits the reduction of a salary of a justice of the peace during each term of office unless there is a division of a judicial precinct. The salary cannot be reduced more than one step in between terms. The salary of a justice of the peace, in the event of a division of a judicial precinct, will be set at the highest salary of any of the justices of the peace whose precinct is affected by the division until the annual adjustment at the end of the first full fiscal year after the precincts are divided.

Includes definitions for “civil,” “civil traffic violation,” “felony,” “misdemeanor” and “protective order.”

2017-B. Fines; fees; payment history (Clerk’s Association)

When the court imposes a fine, fee, assessment or incarceration cost, the Clerk of Court is required to make the defendant’s payment history available to the prosecutor, victim, probation department and sentencing court on request. Repeals the provision requiring the Clerk to notify the prosecutor and sentencing court if the defendant is in default. Similar language covering persons imprisoned in the Department of Corrections, requiring notification the Board of Executive Clemency.

2017-C. Alternate Grand Jurors (Maricopa County Attorney’s Office)

An alternate grand juror is defined as an additional grand juror who is sworn at the time of impanelment but not designated as permanent juror until an impanelled and sworn permanent grand juror is permanently excused. Current statute has the alternate grand juror not being administered the oath until the permanent grand juror is excused. A designee of the Presiding Judge may excuse a grand juror.

11/30/16

Courthouse security; funding

1 Section 1. Add §12-114.02

2 **12-114.02. Statewide court security fund**

3 **A. THE STATEWIDE COURT SECURITY FUND IS ESTABLISHED CONSISTING OF MONIES**
4 **DEPOSITED PURSUANT TO 12-284.03(B)(9) AND 22-281(D)(4). THE**
5 **ADMINISTRATIVE OFFICE OF THE COURTS SHALL ADMINISTER THE FUND.**

6 **B. MONIES IN THE FUND:**

7 **1. SHALL BE USED TO PROVIDE ASSISTANCE, TRAINING AND GRANTS TO COURTS**
8 **TO MEET MINIMUM STANDARDS OF COURTHOUSE SECURITY ADOPTED BY THE SUPREME**
9 **COURT.**

10 **2. ARE NOT SUBJECT TO REVERSION.**

11 **3. ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING**
12 **OF APPROPRIATIONS.**

13 **C. THE SUPREME COURT MAY DIRECTLY PROVIDE OR CONTRACT FOR SERVICES**
14 **CONSISTENT WITH THE PURPOSE OF THE FUND. MONIES FROM THE FUND SHALL**
15 **SUPPLEMENT MONIES ALREADY PROVIDED TO LOCAL COURTS FOR PURPOSES**
16 **CONSISTENT WITH THE PURPOSE OF THE FUND.**

17 **D. ON NOTICE FROM THE SUPREME COURT, THE STATE TREASURER SHALL INVEST**
18 **AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES**
19 **EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.**

20 Amend Section 2. Amend §12-284.03

21 **12-284.03. Distribution of fees**

22 **A. Excluding the monies that are kept by the court pursuant to subsection**
23 **B of this section, the county treasurer shall transmit, distribute or**
24 **deposit all monies received from the clerk of the superior court pursuant**
25 **to section 12-284, subsection K as follows:**

26 **1. ~~1.31~~ 1.28 percent to the state treasurer for deposit in the resource**
27 **center fund established by and for the purposes of section 41-2402,**
28 **subsection G.**

29 **2. ~~8.87~~ 8.70 percent to the state treasurer for deposit in the domestic**
30 **violence services fund established by section 36-3002.**

31 **3. ~~1.93~~ 1.89 percent to the state treasurer for deposit in the child**
32 **abuse prevention fund established by section 8-550.01.**

33 **4. In the county law library fund established by section 12-305, either:**

34 **(a) ~~7.62~~ 7.47 percent if the county treasurer is serving in a county with**
35 **a population of more than five hundred thousand persons.**

36 **(b) ~~15.30~~ 14.99 percent if the county treasurer is serving in a county**
37 **with a population of five hundred thousand persons or less.**

38 **5. ~~0.35~~ 0.34 percent to the state treasurer for deposit in the alternative**

1 dispute resolution fund established by section 12-135.

2 6. To the elected officials' retirement plan fund established by section
3 38-802, either of the following percentages, which shall be distributed
4 to the fund pursuant to section 38-810:

5 (a) ~~23.79~~ 23.31 percent if the county treasurer is serving in a county
6 with a population of more than five hundred thousand persons.

7 (b) ~~15.30~~ 14.99 percent if the county treasurer is serving in a county
8 with a population of five hundred thousand persons or less.

9 7. ~~17.07~~ 16.74 percent to the state treasurer for deposit in the judicial
10 collection enhancement fund established by section 12-113.

11 8. ~~0.26~~ 0.25 percent to the state treasurer for deposit in the
12 confidential intermediary and fiduciary fund established by section 8-
13 135.

14 9. 2.0 PERCENT TO THE STATE TREASURER FOR DEPOSIT IN THE COURT SECURITY
15 FUND ESTABLISHED BY SECTION 12-114.02

16 ~~9~~ 10. In the county general fund, the following percentages:

17 (a) ~~31.29~~ 30.66 percent if the county treasurer is serving in a county
18 with a population of more than five hundred thousand persons.

19 (b) ~~32.10~~ 31.46 percent if the county treasurer is serving in a county
20 with a population of five hundred thousand persons or less.

21 B. ~~7.51~~ 7.36 percent of the monies transmitted, distributed or deposited
22 pursuant to subsection A of this section shall be kept and used by the
23 court collecting the fees in the same manner as the seven dollars of the
24 time payment fee prescribed by section 12-116, subsection B.

25 Section 3. Amend §22-281

26 ~~22-281~~. Fees and deposits

27 A. Justices of the peace shall receive fees established and classified
28 as follows in civil actions:

Class	Description	Fee
A	Initial case filing fee	
	Civil filing fees	\$ 65.00
B	Subsequent case filing fee	
	Civil filing fees - defendant	\$ 35.00
C	Initial case filing fee	
	Forcible entry and detainer filings	\$ 30.00
	Small claims filing	23.00
D	Subsequent case filing fee	
	Small claims answer	\$ 13.00
	Forcible entry and detainer filings - defendant	16.00

1	E	Minimum clerk fee	
2		Document and transcript transfer on appeal	\$ 24.00
3		Certification of any documents	24.00
4		Issuance of writs	24.00
5		Filing any paper or performing any act for	
6		which a fee is not specifically prescribed	24.00
7		Subpoena (civil)	24.00
8		Research in locating a document	24.00
9		Seal a court file	24.00
10		Reopen a sealed court file	24.00
11		Record duplication	24.00
12	F	Per page fee	
13		Copies of any documents per page	\$ 0.50
14	G	Special fees	
15		Small claims service by mail	\$ 8.00

16 **B. This section does not deprive the parties to the action of the**
17 **privilege of depositing amounts with the justice, in addition to those**
18 **set forth in this section, for use in connection with the payment of**
19 **constable's and sheriff's fees for service of process, levying of writs**
20 **and other services for which fees are otherwise provided by law.**

21 **C. Excluding the monies that are kept by the court pursuant to subsection**
22 **D of this section, justices of the peace shall transmit monthly to the**
23 **county treasurer all monies collected pursuant to subsection A of this**
24 **section. The county treasurer shall distribute or deposit all of the**
25 **monies received pursuant to this subsection as follows:**

26 **1. To the state treasurer for deposit in the judicial collection**
27 **enhancement fund established by section 12-113, in the following**
28 **percentages:**

29 **(a) ~~14.02~~ 13.74 per cent if the county treasurer is serving in a county**
30 **with a population of more than five hundred thousand persons.**

31 **(b) ~~15.58~~ 15.27 per cent if the county treasurer is serving in a county**
32 **with a population of five hundred thousand persons or less.**

33 **2. To the state treasurer for deposit in the alternative dispute**
34 **resolution fund established by section 12-135, in the following**
35 **percentages:**

36 **(a) ~~1.84~~ 1.80 per cent if the county treasurer is serving in a county**
37 **with a population of more than five hundred thousand persons.**

38 **(b) ~~2.05~~ 2.01 per cent if the county treasurer is serving in a county**
39 **with a population of five hundred thousand persons or less.**

1 3. To the elected officials' retirement plan fund established by section
2 38-802, either of the following percentages, which shall be distributed
3 to the fund pursuant to section 38-810:

4 (a) ~~23.79~~ 23.31 per cent if the county treasurer is serving in a county
5 with a population of more than five hundred thousand persons.

6 (b) ~~15.30~~ 14.99 per cent if the county treasurer is serving in a county
7 with a population of five hundred thousand persons or less.

8 **4. 2.0 PERCENT TO THE STATE TREASURER FOR DEPOSIT IN THE COURT SECURITY**
9 **FUND ESTABLISHED BY SECTION 12-114.02**

10 **4 5.** To the county general fund, in the following percentages:

11 (a) ~~54.22~~ 53.14 per cent if the county treasurer is serving in a county
12 with a population of more than five hundred thousand persons.

13 (b) ~~60.26~~ 59.05 per cent if the county treasurer is serving in a county
14 with a population of five hundred thousand persons or less.

15 D. In counties with a population of more than five hundred thousand
16 persons, ~~6.13~~ 6.01 per cent of the monies transmitted pursuant to
17 subsection C of this section shall be kept and used by the court
18 collecting the fees in the same manner as the seven dollars of the time
19 payment fee prescribed by section 12-116, subsection B.

20 E. In counties with a population of five hundred thousand persons or
21 less, ~~6.81~~ 6.68 per cent of the monies transmitted pursuant to subsection
22 C of this section shall be kept and used by the court collecting the fees
23 in the same manner as the seven dollars of the time payment fee prescribed
24 by section 12-116, subsection B.

25 F. The supreme court may increase the fees prescribed in subsection A of
26 this section in an amount not to exceed the per cent of change in the
27 average consumer price index as published by the United States department
28 of labor, bureau of labor statistics between that figure for the latest
29 calendar year and the calendar year in which the last fee increase
30 occurred.

11/25/16

9:06am

Permanent guardianship; procedure

Section 1. 8-871. Permanent guardianship of a child

A. The court may establish a permanent guardianship between a child and the guardian if the prospective guardianship is in the child's best interests and all of the following apply:

1. The child has been adjudicated a dependent child **OR IS THE SUBJECT OF A PENDING DEPENDENCY PETITION. IF THE CHILD HAS NOT BEEN ADJUDICATED DEPENDENT, AND ANY PARTY OBJECTS TO A MOTION FOR PERMANENT GUARDIANSHIP, THE COURT MAY SCHEDULE A SETTLEMENT CONFERENCE OR MEDIATION OR STRIKE THE MOTION AND PROCEED WITH THE DEPENDENCY PETITION.**

2. The child has been in the custody of the prospective permanent guardian for at least nine months. The court may waive this requirement for good cause.

3. If the child is in the custody of the ~~division~~**DEPARTMENT** or agency, the ~~division~~**DEPARTMENT** or agency has made reasonable efforts to reunite the parent and child and further efforts would be unproductive. The court may waive this requirement if it finds that reunification efforts are not required by law or if reunification of the parent and child is not in the child's best interests because the parent is unwilling or unable to properly care for the child **OR THE CHILD IS THE SUBJECT OF A PENDING DEPENDENCY PETITION AND THERE HAS BEEN NO ADJUDICATION OF DEPENDENCY.**

4. The likelihood that the child would be adopted is remote or termination of parental rights would not be in the child's best interests.

B. The court may consider any adult, including a relative or foster parent, as a permanent guardian. An agency or institution may not be a permanent guardian. The court ~~shall~~ **MAY** appoint a person nominated by the child if the child is at least twelve years of age, unless the court finds that the appointment would not be in the child's best interests. The court shall consider the child's objection to the appointment of the person nominated as permanent guardian.

C. In proceedings for permanent guardianship, the court shall give primary consideration to the physical, mental and emotional needs of the child.

D. Unless otherwise set forth in the final order of permanent guardianship, a permanent guardian is vested with all of the rights and responsibilities set forth in section 14-5209 relating to the powers and duties of a guardian of a minor, other than those rights and responsibilities of the birth or adoptive parent, if any, that are set forth in the decree of permanent guardianship.

E. At the guardianship hearing, or by notice filed after the appointment of a permanent guardian or a successor permanent guardian pursuant to section 8-874, the guardian may advise the court as to the identity and contact information of potential successor permanent guardians.

F. The ~~division~~ **DEPARTMENT** or agency shall not be responsible for the requirements pursuant to subsection A, paragraph 3 of this section for

1 a petition concerning a child not in the care, custody and control of
2 the **division DEPARTMENT** or agency.

3 **Section 2. 8-872. Permanent guardianship; procedure**

4 A. Any party to a dependency proceeding may file a motion for permanent
5 guardianship. The motion shall be verified by the person who files the
6 motion and shall include the following:

7 1. The name, sex, residence and date and place of birth of the child.

8 2. The facts and circumstances supporting the grounds for permanent
9 guardianship.

10 3. The name and address of the prospective guardian and a statement that
11 the prospective guardian agrees to accept the duties and responsibilities
12 of guardianship.

13 4. The basis for the court's jurisdiction.

14 5. The relationship of the child to the prospective guardian.

15 6. Whether the child is subject to the federal Indian child welfare act
16 of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901
17 through 1963) and if so:

18 (a) The tribal affiliations of the child's parents.

19 (b) The specific actions the person who files the motion has taken to
20 notify the parents' tribes and the results of those contacts, including
21 the names, addresses, titles and telephone numbers of the persons
22 contacted. The person shall attach to the motion as exhibits any
23 correspondence with the tribes.

24 (c) The specific efforts that were made to comply with the placement
25 preferences under the federal Indian child welfare act of 1978 or the
26 placement preferences of the appropriate Indian tribes.

27 7. The name, address, marital status and date of birth of the birth
28 parents, if known.

29 B. The person who files the motion shall serve notice of the hearing and
30 a copy of the motion on all parties as prescribed in rule 5(c) of the
31 Arizona rules of civil procedure, including any person who has filed a
32 petition to adopt or who has physical custody pursuant to a court order
33 in a foster-adoptive placement. In addition to the requirements of rule
34 5(c) of the Arizona rules of civil procedure, the notice shall be sent
35 by registered mail, return receipt requested, to any parent, Indian
36 custodian and tribe of an Indian child as defined by the federal Indian
37 child welfare act of 1978 (25 United States Code section 1903).

38 C. The person who files the motion shall provide a copy of the notice
39 of hearing to the following persons if the person has not been served
40 pursuant to subsection B of this section:

41 1. The child's current physical custodian.

42 2. Any foster parent with whom the child has resided within six months
43 before the date of the hearing.

44 3. The prospective guardian if the guardian is not the current physical
45 custodian.

46 4. Any other person the court orders to be provided notice.

1 D. In a proceeding for permanent guardianship, on the request of a
2 parent, the court shall appoint counsel for any parent found to be
3 indigent if the parent is not already represented by counsel. The court
4 may also appoint one for the child if a guardian ad litem has not already
5 been appointed.

6 E. Before a final hearing, the ~~division~~ DEPARTMENT, the agency or a person
7 designated as an officer of the court shall conduct an investigation
8 addressing the factors set forth in section 8-871, whether the
9 prospective permanent guardian or guardians are fit and proper persons
10 to become permanent guardians and whether the best interests of the child
11 would be served by granting the permanent guardianship. The findings of
12 this investigation shall be set forth in a written report provided to
13 the court and all parties before the hearing. The court may require
14 additional investigation if it finds that the welfare of the child will
15 be served or if additional information is necessary to make an
16 appropriate decision regarding the permanent guardianship. The court may
17 charge a reasonable fee for this investigation pursuant to section 8-
18 133, if performed by an officer of the court. THE COURT MAY WAIVE THIS
19 REQUIREMENT FOR GOOD CAUSE.

20 F. BEFORE THE COURT MAY APPOINT AS GUARDIAN A PERSON UNRELATED TO THE
21 MINOR WHEN THERE IS NO ADJUDICATION OF DEPENDENCY, THE COURT SHALL, IN
22 ORDER TO DETERMINE THE APPLICANT'S SUITABILITY AS GUARDIAN, REQUIRE THE
23 PROSPECTIVE GUARDIAN TO FURNISH EITHER A VALID FINGERPRINT CLEARANCE
24 CARD OR A FULL SET OF FINGERPRINTS TO ENABLE THE COURT TO CONDUCT A
25 CRIMINAL BACKGROUND INVESTIGATION. THE COURT SHALL SUBMIT THE PERSON'S
26 COMPLETED FINGERPRINT CARD WITH THE FEE PRESCRIBED IN SECTION 41-1750 TO
27 THE DEPARTMENT OF PUBLIC SAFETY. THE PERSON SHALL BEAR THE COST OF
28 OBTAINING THE PERSON'S CRIMINAL HISTORY RECORD INFORMATION. THE COST
29 SHALL NOT EXCEED THE ACTUAL COST OF OBTAINING THE PERSONS CRIMINAL
30 HISTORY RECORD INFORMATION. THE DEPARTMENT OF PUBLIC SAFETY SHALL CONDUCT
31 CRIMINAL HISTORY RECORDS CHECKS PURSUANT TO SECTION 41-1750 AND PUBLIC
32 LAW 92-544. THE DEPARTMENT OF PUBLIC SAFETY IS AUTHORIZED TO SUBMIT
33 FINGERPRINTS CARD INFORMATION TO THE FEDERAL BUREAU OF INVESTIGATION FOR
34 A NATIONAL CRIMINAL HISTORY RECORDS CHECK.

35 F G. The person who files the motion has the burden of proof by clear
36 and convincing evidence. In any proceeding involving a child who is
37 subject to the federal Indian child welfare act of 1978, the person who
38 files the motion has the burden of proof by beyond a reasonable doubt.

39 G H. A court order vesting permanent guardianship with an individual
40 divests the birth or adoptive parent of legal custody of or guardianship
41 for the child but does not terminate the parent's rights. A court order
42 for permanent guardianship does not affect the child's inheritance rights
43 from and through the child's birth or adoptive parents.

44 H I. On finding that grounds exist for a permanent guardianship, the
45 court may incorporate into the final order provisions for visitation
46 with the natural parents, siblings or other relatives of the child if

1 this order would be in the child's best interests and any other provision
2 that is necessary to rehabilitate the child or to provide for the child's
3 continuing safety and well-being. The court may order a parent to
4 contribute to the support of the child to the extent it finds the parent
5 is able.

6 **I J.** On the entry of the order establishing a permanent guardianship,
7 the dependency action shall be dismissed. If the child was in the legal
8 custody of the ~~division~~ DEPARTMENT during the dependency, the court may
9 order the ~~division~~ DEPARTMENT to conduct the investigation and prepare
10 the report for the first report and review hearing. **IF THE CHILD WAS NOT**
11 **IN THE LEGAL CUSTODY OF THE DEPARTMENT, THE COURT MAY ORDER THE CHILD'S**
12 **ATTORNEY OR GUARDIAN AD LITEM TO FILE A REPORT FOR THE REVIEW** The court
13 shall retain jurisdiction to enforce its final order of permanent
14 guardianship. The court ~~shall cause a report and review~~ **MAY ORDER A**
15 **REPORT AND SHALL SET A REVIEW** to be held within one year following the
16 entry of the final order and **THE PERMANENT GUARDIAN AND CHILD'S ATTORNEY**
17 **OR GUARDIAN AD LITEM SHALL APPEAR. THE COURT** may set such other and
18 further proceedings as may be in the best interests of the child. Before
19 a report and review hearing, the court may cause an investigation to be
20 conducted of the facts and circumstances surrounding the welfare and
21 best interests of the child and a written report to be filed with the
22 court. The court may charge a reasonable fee for this investigation
23 pursuant to section 8-133, if performed by an officer of the court.

24 **J K.** The ~~division~~ DEPARTMENT or agency shall not be responsible for the
25 requirements pursuant to subsections E, H and I of this section for a
26 motion concerning a child not in the care, custody and control of the
27 ~~division~~ DEPARTMENT or agency.

28 **K L.** The court shall provide the guardian with written notice of the
29 sibling information exchange program established pursuant to section 8-
30 543.

31 **Section 3. 8-873. Revocation of permanent guardianship**

32 **A.** The child, a parent of the child or any party to the dependency
33 proceeding may file a petition for the revocation of an order granting
34 permanent guardianship if there is a significant change of circumstances,
35 including:

- 36 1. The child's parent is able and willing to properly care for the child.
- 37 2. The child's permanent guardian is unable to properly care for the
38 child.

39 **B.** The court shall appoint a guardian ad litem for the child in any
40 proceeding for the revocation of permanent guardianship.

41 **C.** The court may revoke the order granting permanent guardianship:

- 42 1. **AND ORDER THAT THE CHILD BE RETURNED TO THE CHILD'S PARENT IF THE**
43 **COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE PARENT HAS**
44 **REMEDIED THE GROUNDS ALLEGED IN THE GUARDIANSHIP PETITION AND RETURN OF**

1 THE CHILD WOULD NOT CREATE A SUBSTANTIAL RISK OF HARM TO THE CHILD'S
2 PHYSICAL, MENTAL OR EMDTIONAL HEALTH OR SAFETY. THE COURT SHALL CONSIDER
3 THE DURATION OF THE GUARDIANSHIP AND THE LEVEL OF CONTACT BETWEEN THE
4 PARENT AND THE CHILD DURING THE GUARDIANSHIP WHEN DETERMINING WHETHER
5 TERMINATING THE GUARDIANSHIP WOULD CREATE A SUBSTANTIAL RISK OF HARM TO
6 THE CHILD. THERE IS A REBUTTABLE PRESUMPTION THAT ABSENT CLEAR AND
7 CONVINCING EVIDENCE TO THE CONTRARY IT IS IN THE BEST INTERESTS OF THE
8 CHILD TO BE RETURNED TO THE CHILD'S PARENT OR;

9 **2. if the party petitioning for revocation proves BY CLEAR AND CONVINCING**
10 **EVIDENCE THAT THERE HAS BEEN a change of circumstances ~~by clear and~~**
11 **~~convincing evidence~~ and THAT the revocation is in the child's best**
12 **interest.**

13 **9/15/16**

14 **9:41am**

Arizona Lengthy trial fund; continuation

1 Section. 1. Laws 2003, chapter 200, section 13, as amended by Laws 2014, chapter 77, section 3
2 is amended to read:

3 Sec. 13. Delayed repeal

4 Section 21-222, Arizona Revised Statutes, as added by this act, is repealed from and after June
5 30, ~~2019~~ 2027.

6 Sec. 2. Laws 2014, chapter 77, section 4 is amended to read:

7 Sec. 3. Delayed repeal

8 Section 12-115, Arizona Revised Statutes, as added by this act, is repealed from and after
9 December 31, ~~2018~~ 2026.

11/28/16
2:15pm

Judicial Productivity credits; calculation

22-125. Justice of the peace compensation; judicial productivity credits

A. The annual salary of each justice of the peace is ~~determinable on the basis of~~ DETERMINED BY the total judicial productivity credits of each court as reported in statistics compiled by the Arizona supreme court. ~~according to the following formula:~~

~~B. Total judicial productivity credits for a justice of the peace is the sum of the figures computed in subsection A of this section.~~

~~C. The board of supervisors shall use the average number of cases filed annually in each justice court for the two year period ending December 31, 1979 to determine the initial judicial productivity credits for each of the case load categories described in subsection A of this section. The board of supervisors shall compute judicial productivity credits every two years thereafter using the average annual filings for the preceding two year period.~~

~~D. In determining the compensation levels appropriate to the case load of each justice of the peace, the board of supervisors shall use the total judicial productivity credits as follows:~~

~~1. Five hundred or more judicial productivity credits, seventy per cent of the annual compensation payable to a judge of the superior court.~~

~~2. Two hundred to four hundred ninety nine total judicial productivity credits, sixty five per cent of the annual compensation payable to a judge of the superior court.~~

~~3. One hundred fifty to one hundred ninety nine total judicial productivity credits, fifty five per cent of the annual compensation payable to a judge of the superior court.~~

~~4. One hundred to one hundred forty nine total judicial productivity credits, fifty per cent of the annual compensation payable to a judge of the superior court.~~

~~5. Fifty to ninety nine total judicial productivity credits, forty five per cent of the annual compensation payable to a judge of the superior court.~~

~~6. Twenty five to forty nine total judicial productivity credits, thirty five per cent of the annual compensation payable to a judge of the superior court.~~

~~7. Twenty four or fewer total judicial productivity credits, a part time case load for one justice of the peace, twenty five per cent of the annual compensation payable to a judge of the superior court.~~

1 **B. JUDICIAL PRODUCTIVITY CREDITS SHALL BE DETERMINED ACCORDING TO THE**
2 **FOLLOWING FORMULA.**

3 1. ~~Total~~ ALL civil filings, ~~excluding those small claims filings heard~~
4 ~~by a volunteer hearing officer,~~ divided by ten equals _____ judicial
5 productivity credits. ~~Juvenile hearings pursuant to section 8-323,~~
6 ~~excluding juvenile traffic violations, shall be counted as civil filings.~~

7 2. ~~Total~~ ALL felony ~~complaint filings~~ COUNTS divided by ten equals
8 _____ judicial productivity credits.

9 3. ~~Total~~ ALL misdemeanor ~~filings~~ COUNTS EXCEPT THOSE REFERRED TO IN
10 PARAGRAPH 4 OF THIS SUBSECTION divided by ten equals _____ judicial
11 productivity credits.

12 4. ~~Total traffic filings of a violation of sections 28-662 through 28-~~
13 ~~664, 28-693, 28-702.01, 28-702.04, 28-708, 28-1381 and 28-1382 divided~~
14 ~~by ten equals _____ judicial productivity credits~~ ALL COUNTS FILED
15 PURSUANT TO TITLE 28, CHAPTER 4, ARTICLE 3, TITLE 5, CHAPTER 3, ARTICLE
16 10 OR SECTION 28-8282, DIVIDED BY FIVE EQUALS _____ JUDICIAL PRODUCTIVITY
17 CREDITS.

18 5. ~~Total of~~ All ~~other traffic~~ CIVIL TRAFFIC ~~filings~~ COUNTS divided by
19 sixty equals _____ judicial productivity credits

20 6. ALL PETITIONS FOR A PROTECTIVE ORDER FILINGS DIVIDED BY FIVE EQUALS
21 _____ JUDICIAL PRODUCTIVITY CREDITS.

22 **C. BEGINNING JANUARY 1, 2018 THE ARIZONA SUPREME COURT SHALL ANNUALLY**
23 **PERFORM THE CALCULATIONS REQUIRED BY SUBSECTION B IN EACH JUSTICE COURT**
24 **FOR THE TWELVE MONTH PERIOD ENDING JUNE 30 TO DETERMINE THE TOTAL**
25 **JUDICIAL PRODUCTIVITY CREDITS. THE ARIZONA SUPREME COURT SHALL REPORT**
26 **THE TOTAL JUDICIAL PRODUCTIVITY CREDITS FOR EACH JUSTICE COURT TO THE**
27 **APPLICABLE BOARD OF SUPERVISORS WITHIN ONE HUNDRED AND TWENTY DAYS AFTER**
28 **THE END OF THIS TWELVE MONTH PERIOD. THE TOTAL JUDICIAL PRODUCTIVITY**
29 **CREDITS SHALL BE CALCULATED AND REPORTED FOR EACH SUBSEQUENT TWELVE MONTH**
30 **PERIOD THEREAFTER. ADJUSTMENTS TO THE SALARY OF THE JUSTICE OF THE PEACE**
31 **SHALL BECOME EFFECTIVE THE FOLLOWING JANUARY 1.**

32 **D. EACH JUSTICE OF THE PEACE SHALL BE PAID A PERCENTAGE OF THE SALARY**
33 **OF A SUPERIOR COURT JUDGE BASED UPON THE FOLLOWING SCHEDULE:**

34 1. 500-699 JUDICIAL PRODUCTIVITY CREDITS EQUALS 70 PERCENT.

35 2. 200-499 JUDICIAL PRODUCTIVITY CREDITS EQUALS 65 PERCENT.

36 3. 150-199 JUDICIAL PRODUCTIVITY CREDITS EQUALS 55 PERCENT.

37 4. 100-149 JUDICIAL PRODUCTIVITY CREDITS EQUALS 50 PERCENT.

38 5. 50-99 JUDICIAL PRODUCTIVITY CREDITS EQUALS 45 PERCENT.

39 6. 25-49 JUDICIAL PRODUCTIVITY CREDITS EQUALS 35 PERCENT.

40 7. 24 AND FEWER JUDICIAL PRODUCTIVITY CREDITS EQUALS 25 PERCENT.

1 E. If a justice court is not assigned clerical help, the board of
2 supervisors shall multiply the total judicial productivity credits by
3 two for purposes of determining ~~compensation~~ **THE SALARY OF THE JUSTICE**
4 **OF THE PEACE.**

5 F. If the board of supervisors divides a justice precinct into two or
6 more precincts, the board shall set the ~~level of compensation consistent~~
7 ~~with the intent of this section until such time as statistics are~~
8 ~~available for computation of compensation levels using the formula~~
9 ~~prescribed by this section~~ **SALARY OF THE JUSTICE OF THE PEACE OF EACH**
10 **PRECINCT EQUAL TO THE HIGHEST SALARY OF ANY OF THE JUSTICES OF THE PEACE**
11 **WHOSE PRECINCT IS AFFECTED BY THE DIVISION. THE SALARY OF EACH JUSTICE**
12 **OF THE PEACE SHALL BE ADJUSTED AT THE END OF THE FIRST FULL FISCAL YEAR**
13 **AFTER THE PRECINCTS ARE DIVIDED.**

14 G. The board of supervisors shall review and adjust the ~~level of~~
15 ~~compensation,~~ **SALARY** for each justice of the peace within the county,
16 **AS PRESCRIBED BY SUBSECTION D** every ~~two years beginning January 1, 1983~~
17 **YEAR BEGINNING JANUARY 1, 2019.**

18 **H. EXCEPT TO ADJUST THE SALARY OF THE JUSTICE OF THE PEACE PURSUANT TO**
19 **SUBSECTION F, THE SALARY OF A JUSTICE OF THE PEACE SHALL NOT BE REDUCED**
20 **DURING EACH TERM OF OFFICE NOR SHALL THE SALARY BE REDUCED MORE THAN ONE**
21 **STEP BETWEEN TERMS OF OFFICE.**

22 I. The judicial productivity credits for ~~any~~ **A** justice court precinct
23 shall not exceed twelve hundred credits. If the total judicial
24 productivity credits of a justice court precinct exceed twelve hundred
25 credits, the county board of supervisors shall create sufficient courts,
26 or redraw the justice court precinct boundaries according to section 22-
27 101, in order to reduce the judicial productivity credits for any
28 precinct which exceeds that limit.

29 **J. A FILING AGAINST A JUVENILE SHALL BE TREATED IN THE SAME AS A SIMILAR**
30 **FILING AGAINST AN ADULT.**

31 **K. FOR THE PURPOSES OF THIS SECTION:**

32 **1. "CIVIL" MEANS A LAWSUIT, EVICTION ACTION, PETITION FOR PROVISIONAL**
33 **REMEDY, OTHER CIVIL PETITION, SMALL CLAIMS CASE OR CIVIL LOCAL ORDINANCE.**

34 **2. "CIVIL TRAFFIC VIOLATION" MEANS A TRAFFIC VIOLATION NOT FILED AS A**
35 **MISDEMEANOR OR FELONY.**

36 **3. "FELONY" INCLUDES EACH FELONY COUNT FILED ON A COMPLAINT.**

37 **4. "MISDEMEANOR" INCLUDES EACH MISDEMEANOR AND PETTY OFFENSE COUNT FILED**
38 **ON A COMPLAINT OR UNIFORM TRAFFIC TICKET AND COMPLAINT.**

39 **5. "PROTECTIVE ORDER" MEANS A PETITION FOR AN ORDER OF PROTECTION, AN**
40 **INJUNCTION AGAINST HARASSMENT OR WORKPLACE HARRASSMENT OR A PEACE BOND.**

11/29/16
11:05

1 Section 1. 13-810. Consequences of nonpayment of fines, fees,
2 restitution or incarceration costs

3 A. In addition to any other remedy provided by law, including a
4 writ of execution or other civil enforcement, if a defendant who
5 is sentenced to pay a fine, a fee or incarceration costs defaults
6 in the payment of the fine, fee or incarceration costs or of any
7 installment as ordered, ~~the clerk of the court imposing the~~
8 ~~fine, fee or incarceration costs shall notify the prosecutor and~~
9 ~~the sentencing court.~~ The court, on motion of the prosecuting
10 attorney or on its own motion, shall require the defendant to
11 show cause why the defendant's default should not be treated as
12 contempt and may issue a summons or a warrant of arrest for the
13 defendant's appearance.

14 B. In addition to any other remedy provided by law, including a
15 writ of execution or other civil enforcement, if a defendant who
16 is ordered to pay restitution defaults in the payment of the
17 restitution or of any installment as ordered, ~~the clerk of the~~
18 ~~court that imposed the restitution shall notify the prosecutor~~
19 ~~and the sentencing court on a monthly basis.~~ The court, on motion
20 of the prosecuting attorney, on petition of any person entitled
21 to restitution pursuant to a court order or on its own motion,
22 shall require the defendant to show cause why the defendant's
23 default should not be treated as contempt and may issue a summons
24 or a warrant of arrest for the defendant's appearance.

25 C. At any hearing on the order to show cause the court, the
26 prosecuting attorney or a person entitled to restitution may
27 examine the defendant under oath concerning the defendant's
28 financial condition, employment and assets or on any other
29 matter relating to the defendant's ability to pay restitution.

30 D. If the court finds that the defendant has wilfully failed to
31 pay a fine, a fee, restitution or incarceration costs or finds
32 that the defendant has intentionally refused to make a good
33 faith effort to obtain the monies required for the payment, the
34 court shall find that the default constitutes contempt and may
35 do one of the following:

36 1. Order the defendant incarcerated in the county jail until the
37 fine, fee, restitution or incarceration costs, or a specified
38 part of the fine, fee, restitution or incarceration costs, is
39 paid.

1 2. Revoke the defendant's probation, parole or community
2 supervision and sentence the defendant to prison pursuant to
3 law.

4 3. Enter an order pursuant to section 13-812. The levy or
5 execution for the collection of a fine, a fee, restitution or
6 incarceration costs does not discharge a defendant who is
7 incarcerated for nonpayment of the fine, fee, restitution or
8 incarceration costs until the amount of the fine, fee,
9 restitution or incarceration costs is collected.

10 4. Order the defendant to perform community restitution.

11 E. If the court finds that the default is not wilful and that
12 the defendant cannot pay despite sufficient good faith efforts
13 to obtain the monies, the court may take any lawful action
14 including:

15 1. Modify the manner in which the restitution, fine, fee or
16 incarceration costs are to be paid.

17 2. Enter any reasonable order that would assure compliance with
18 the order to pay.

19 3. Enter an order pursuant to section 13-812. The levy or
20 execution for the collection of a fine, a fee, restitution or
21 incarceration costs does not discharge a defendant incarcerated
22 for nonpayment of the fine, fee, restitution or incarceration
23 costs until the amount of the fine, fee, restitution or
24 incarceration costs is collected.

25 F. If a fine, a fee, restitution or incarceration costs are
26 imposed on an enterprise it is the duty of the person or persons
27 authorized to make disbursement from the assets of the
28 enterprise to pay them from those assets, and their failure to
29 do so shall be held a contempt unless they make the showing
30 required in subsection A or B of this section.

31 G. WHEN THE COURT IMPOSES A FINE, A FEE, RESTITUTION OR
32 INCARCERATION COSTS UNDER THIS SECTION, THE CLERK OF THAT COURT
33 SHALL MAKE THE DEFENDANT'S PAYMENT HISTORY AVAILABLE TO THE
34 PROSECUTOR, THE VICTIM, THE PROBATION DEPARTMENT AND THE
35 SENTENCING COURT ON REQUEST AND AT NO COST TO THE REQUESTING
36 PARTY.

37 Section 2. 31-412. Criteria for release on parole; release;
38 custody of parolee; definition

39 A. If a prisoner is certified as eligible for parole pursuant
40 to section 41-1604.09 the board of executive clemency shall
41 authorize the release of the applicant on parole if the applicant
42 has reached the applicant's earliest parole eligibility date
43 pursuant to section 41-1604.09, subsection D and it appears to
44 the board, in its sole discretion, that there is a substantial

1 probability that the applicant will remain at liberty without
2 violating the law and that the release is in the best interests
3 of the state. The applicant shall thereupon be allowed to go on
4 parole in the legal custody and under the control of the state
5 department of corrections, until the board revokes the parole
6 or grants an absolute discharge from parole or until the prisoner
7 reaches the prisoner's individual earned release credit date
8 pursuant to section 41-1604.10. When the prisoner reaches the
9 prisoner's individual earned release credit date the prisoner's
10 parole shall be terminated and the prisoner shall no longer be
11 under the authority of the board but shall be subject to
12 revocation under section 41-1604.10.

13 B. Notwithstanding subsection A of this section, the director
14 of the state department of corrections may certify as eligible
15 for parole any prisoner, regardless of the classification of the
16 prisoner, who has reached the prisoner's parole eligibility date
17 pursuant to section 41-1604.09, subsection D, unless an
18 increased term has been imposed pursuant to section 41-1604.09,
19 subsection F, for the sole purpose of parole to the custody of
20 any other jurisdiction to serve a term of imprisonment imposed
21 by the other jurisdiction or to stand trial on criminal charges
22 in the other jurisdiction or for the sole purpose of parole to
23 the custody of the state department of corrections to serve any
24 consecutive term imposed on the prisoner. On review of an
25 application for parole pursuant to this subsection the board may
26 authorize parole if, in its discretion, parole appears to be in
27 the best interests of the state.

28 C. A prisoner who is otherwise eligible for parole, who is not
29 on home arrest or work furlough and who is currently serving a
30 sentence for a conviction of a serious offense or conspiracy to
31 commit or attempt to commit a serious offense shall not be
32 granted parole or absolute discharge from imprisonment except
33 by one of the following votes:

34 1. A majority affirmative vote if four or more members consider
35 the action.

36 2. A unanimous affirmative vote if three members consider the
37 action.

38 3. A unanimous affirmative vote if two members consider the
39 action pursuant to section 31-401, subsection I and the chairman
40 concurs after reviewing the information considered by the two
41 members.

42 D. The board, as a condition of parole, shall order a prisoner
43 to make any court-ordered restitution.

1 E. Payment of restitution by the prisoner in accordance with
2 subsection D of this section shall be made through the clerk of
3 the superior court in the county in which the prisoner was
4 sentenced for the offense for which the prisoner has been
5 imprisoned in the same manner as restitution is paid as a
6 condition of probation. ~~The clerk of the superior court shall~~
7 ~~report to the board monthly whether or not restitution has been~~
8 ~~paid for that month by the prisoner.~~ **THE CLERK OF THE SUPERIOR**
9 **COURT SHALL MAKE THE PRISONER'S PAYMENT HISTORY AVAILABLE TO THE**
10 **BOARD, THE VICTIM, AND THE DEPARTMENT ON REQUEST AND AT NO COST**
11 **TO THE REQUESTING PARTY.**

12 F. The board shall not disclose the address of the victim or the
13 victim's immediate family to any party without the written
14 consent of the victim or the victim's family.

15 G. For the purposes of this section, "serious offense" includes
16 any of the following:

17 1. A serious offense as defined in section 13-706, subsection
18 F, paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h),
19 (i), (j) or (k).

20 2. A dangerous crime against children as defined in section 13-
21 705. The citation of section 13-705 is not a necessary element
22 for a serious offense designation.

23 3. A conviction under a prior criminal code for any offense that
24 possesses reasonably equivalent offense elements as the offense
25 elements that are listed under section 13-705, subsection P,
26 paragraph 1 or section 13-706, subsection F, paragraph 1.

Alternate grand jurors

1 Section 1. 21-401. Definitions

2 In this chapter unless the context otherwise requires:

3 1. "Alternate grand jurors" means the additional grand jurors who are
4 selected **AND SWORN** at the time of impanelment but who are not **DESIGNATED**
5 **AS PERMANENT JURORS UNTIL THE PRESIDING JUDGE OF THE SUPERIOR COURT OR**
6 **A DESIGNEE HAS PERMANENTLY EXCUSED A DULY IMPANELLED AND SWORN PERMANENT**
7 **GRAND JUROR.** ~~administered the oath unless a duly impanelled and sworn~~
8 ~~grand juror is permanently excused by the presiding judge of the superior~~
9 ~~court.~~

10 2. "Grand jury" means a body of the required number of qualified persons
11 who are duly convened and impanelled by the presiding judge of the
12 superior court and who are sworn to inquire into public offenses that
13 may be tried within the county, including corrupt or willful misconduct
14 in office of public officials within the county.

15 3. "Indictment" means an accusatory statement that is in writing, that
16 is presented by the grand jury to the superior court and that charges
17 the commission of a public offense that may be tried within the county.

18 Section 2. 21-406. Absence

19 A. At any time, for good cause, the presiding judge of the superior
20 court **OR A DESIGNEE** may excuse a grand juror temporarily or
21 permanently. In the event that a grand juror is excused permanently,
22 the presiding judge of the superior court or a designee may ~~administer~~
23 ~~the oath to~~ **REPLACE THE EXCUSED JUROR WITH** an alternate grand juror so
24 as to maintain the original membership at the prescribed number of
25 persons. The alternate grand juror shall be selected as prescribed by
26 title 21, chapter 3.

27 B. No grand juror shall vote on any matter on which evidence has
28 been taken in the juror's absence or before the juror's impanelment.