

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
December 14, 2017	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Defensive Driving - ACJA § 7-205

FROM:

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DISCUSSION:

At the October Arizona Judicial Council meeting, the Council requested that staff consider and then place on the Council's December agenda two additional amendments to ACJA § 7-205: (i) a surety bond requirement; and (ii) IT security requirements. Staff has added language addressing both issues.

In addition to those amendments, staff has provided amended language: (i) so that all Board members are voting members; (ii) so that Board members are limited to being appointed to serve two consecutive terms unless the Chief Justice determines good cause for appointment to an additional term; (iii) clarifying that ADM school owners owning multiple schools must demonstrate the curriculum is substantially different at certification and the substantially different requirement continues for the duration of ADM school certification; and (iv) removing the requirement that ADM schools include participation questions in the course presentations.

Finally, AOC staff has worked with a third-party vendor to develop a modified AOC webpage that will sort by location, date and time. There will be a presentation of the proposed website modifications.

RECOMMENDED COUNCIL ACTION:

AOC requests the Council take formal action recommending the adoption of the proposed changes to ACJA § 7-205 and such technical changes as necessary to conform the existing code to the proposed changes.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 7: Administrative Office of the Courts
Chapter 2: Certification and Licensing Programs
§ 7-205: Defensive Driving

A. Definitions. In addition to the definitions contained in ACJA § 7-201(A), the following definitions apply:

“Additional modality application fee” means the fee imposed for certifying each additional course delivery method utilized by a school that offers more than one mode of delivery, as specified in subsection (K)(8).

“Affirmation of eligibility” means a form, approved by division staff, an offender signs affirming the offender’s eligibility to attend a defensive driving course.

“Alternative delivery method (ADM)” means a defensive driving course other than a live classroom presentation by an instructor.

“Attend” means to participate in a defensive driving course, whether at a classroom site, or using the materials for an ADM course.

“Batch processing” means the method by which multiple student records are transmitted to the defensive driving database as one group.

“Bond card” means a court’s civil sanction schedule providing contact information for defensive driving schools.

“Class schedule directory” means a complete listing of a school’s defensive driving courses for a specified advance period of time including instructor name, time of courses, date and location.

“Co-mingling” means to mix a school’s trust account funds with funds from any other source.

“Complete” means to begin and successfully fulfill all requirements of a defensive driving course.

“Completion certificate” means a document that ~~may be~~ is issued by a school to an individual who has successfully completed a defensive driving course.

“Continuance” means the extension of the scheduled court arraignment date for an individual, pursuant to court order or an administrative order issued by the presiding judge.

“Course demonstration” means a presentation of an applicant school’s complete curriculum including all ADM options.

~~“Course participation questions” means the set of queries asked of a student throughout the ADM course to determine if the student is actively viewing and participating in the ADM course.~~

“Court” means, pursuant to A.R.S. § 28-3391, “... unless the context otherwise requires, ... a juvenile division of the superior court, a justice of the peace court or a municipal court.”

“Court automation requirements” means the minimum capabilities necessary to electronically transmit student completion records and fund transfers to the court of jurisdiction and the Administrative Office of the Supreme Court.

“Court reporting requirements” means the method and minimum amount of information needed by a court of jurisdiction to adjudicate a citation.

“Curriculum” means a detailed written outline of the defensive driving course or lesson plan, films or audiovisual materials and any written materials the school intends to use to supplement the presentation.

“Days” unless otherwise defined, means calendar days.

“Defensive driving course” means an educational and behavior modification presentation designed to teach safe driving practices and attitudes used for the purpose of court diversion or as an element of a sentence.

“Defensive driving database” means the database instituted pursuant to A.R.S. § 28-3395(B)(3) for the purpose of recording all individual completions of defensive driving courses for court diversion programs and court orders.

“Diversion” means a procedure allowing a person cited for certain designated minor moving traffic violations to complete a defensive driving course in lieu of payment of a court fine and entry of the citation against the Motor Vehicle Division of the Arizona Department of Transportation driver record.

“Eligible individual” means person cited for a moving traffic violation, who qualifies for diversion under A.R.S. § 28-3392(A)(1) or (A)(2).

“Identity verification questions” means ~~the~~ queries asked of a student throughout an ADM course presentation for personal information from the student participating in the course.

“Instructional time” means the time spent presenting the school’s approved curriculum. Instructional time does not include breaks, registration, audiovisual set-up, technical breakdown or assistance, or time devoted to other administrative functions.

“Instructor” means a person who is certified pursuant to ACJA § 7-201(E) and this section to conduct defensive driving courses for a school.

“Instructor seminar” means the course of study a school presents to an applicant for certification as an instructor prior to the submission of the individual’s application for certification or an instructor prior to the instructor conducting a course for the school.

“Interactive format” means a format in which the student is required to interact and engage materially with the content, using methods such as a requested keystroke, “drag and drop” of an item, or a mouse-click on a designated portion of the content, which shall occur randomly, in no more than fifteen-minute increments.

“Multi-purpose agency” means an entity which conducts other traffic related classes, or conducts other activities, services or sales in addition to and apart from its court diversion business.

“Negative state fee report” means a standard form submitted in lieu of payment of state fees and completion reports when no students completed a school’s defensive driving course during a reporting period and therefore, no state fees are due.

“On-line processing” means a school submits student records to the defensive driving database through direct access, one record at a time.

“Owner” means any individual or entity that holds a beneficial interest in a defensive driving school.

“Remittance report” means a detailed statement of an individual student’s court diversion or state fees attached to the disbursement check for any court or the AOC.

“Reporting period” means the two periods of the month set forth for receipt of payments and remittance reports.

“Restricted certificate” means permission granted to a school owner or principal to present defensive driving courses.

“School” means an entity certified pursuant to ACJA § 7-201(E) and this section to provide an educational defensive driving course designed to teach safe driving practices and attitudes.

“School fee” means the total amount, including all fees, charged to each student by a school for attending a defensive driving course and retained by the school for its services.

“Serious physical injury” means “physical injury that creates a reasonable risk of death, or that causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb” as provided by A.R.S. § 13-105(38).

“State fee” means the amount mandated by A.R.S. §§ 28-3397(A) and 12-114(A) collected by a school from each individual who begins a defensive driving course for diversion, or by an order of a court.

“State fiscal year” means the state business year from July 1 to June 30.

“State surcharge” means the amount mandated by A.R.S. § 28-3396 (A)(2) collected by a school from each individual who begins a defensive driving course and transmitted to the state treasurer for deposit in the state general fund.

B through D (3) [No changes]

4. Role and Responsibilities of Division Staff. In addition to the requirements of ACJA § 7-201(D)(4), division staff shall:

a. Review and make recommendations, in writing when necessary, to an applicant school regarding the applicant’s:

- (1) Affirmation of eligibility;
- (2) Fee refund policy;
- (3) Defensive driving course evaluation form;
- (4) Completion certificate and/or receipting;
- (5) Instructor training seminar;
- (6) Administrative manual;
- (7) Operational manual;
- (8) Financial procedures manual;
- (9) Third - party contracts involving direct delivery of defensive driving services to the public or any duties normally performed by the school;
- (10) Capability of operating as a batch or on-line school;
- (11) Course curriculum;
- (12) ~~Course participation questions;~~
- (13 12) Identity verification questions and processes; and
- (14 13) Substantive questions embedded in the exam.

b. through i. [No changes]

5. Role and Responsibilities of the Board. In addition to the requirements of ACJA § 7-201(D), the following requirements apply:

a. The Defensive Driving Board is established pursuant to ACJA § 7-201(D), comprised of the following eleven members:

- (1) ~~Two~~ One certified instructor who ~~have~~ has worked as a certified instructor for at least five years;
- (2) ~~One~~ Two judges from a limited jurisdiction court;
- (3) Two court administrators from limited jurisdiction courts;
- (4) ~~Three~~ Two owners, principal officers or administrators of a classroom or ADM school who have owned the school or been a business partner in Arizona for at least two years;
- (5) Two public members; and
- (6) ~~One~~ Two additional members appointed by the chief justice.

Board members shall be eligible to serve no more than two consecutive three year terms unless the Chief Justice determines there is good cause for additional reappointment.

b. [No change]

(D)(6) through E (1)(g) [No changes]

E. Initial Certification. In addition to the requirements of ACJA § 7-201(E), the following requirements apply:

1. Eligibility for Certification as a School. An applicant for certification as a school shall:

a. through g. [No changes]

h. Purchase and maintain:

(1) general liability insurance, naming the certified school as the insured, that meets the following conditions:

- (a) Incidental malpractice with a minimum combined single limit of \$1,000,000 per occurrence;
- (b) The policy shall name as additional insureds the state of Arizona and its political subdivisions, the Supreme Court and the Arizona Superior Court and all Arizona limited jurisdiction courts and their officers, agents and employees;
- (c) The insurer shall hold a valid license to do business in the state of Arizona with minimum ratings as specified by the Arizona Department of Administration; and
- (d) If the applicant is part of a self-insured government entity, the applicant shall submit documentation from the government entity stating the applicant's coverage.

(2) Surety bond:

- (a) The surety bond shall name as insureds the state of Arizona, the Supreme Court and the Arizona Superior Court and all Arizona limited jurisdiction

courts;

- (b) The insurer shall hold a valid license to do business in the state of Arizona with minimum ratings as specified by the Arizona Department of Administration;
- (c) If the applicant is part of a self-insured government entity, the applicant shall submit documentation from the government entity stating the applicant's coverage; and
- (d) The surety bond shall be in the amount of \$20,000 or an amount equal to the cumulative amount of all state and limited jurisdiction fees collected by the school during the last six calendar months, whichever is higher.

i. and j. [No changes]

k. File a defensive driving course curriculum only by electronic means. Pursuant to A.R.S. § 28-3395, the time allowed for the course, including a reasonable period of time to allow for an interactive format, but not including time for completion of an evaluation form, shall not exceed 270 minutes nor be less than 240 minutes. Defensive driving courses shall be presented in a manner to encourage behavior modification with the purpose of reducing driving violations and accidents. Defensive driving courses shall be presented in an interactive format throughout the course. ADM courses shall indicate to the student the timeframe for completion begins when the student logs into the course. ~~An ADM school shall require students to complete and pass the course participation test~~ In addition, an ADM or traditional school may require a student to complete a course content review. All applicants for certification shall include, at a minimum, the following Arizona specific educational and behavioral modifications:

- (1) Collision prevention, including:
 - (a) Vehicle maintenance; and
 - (b) Recognition of physical, sensory and mental limitations and disabilities, including:
 - (i) Fatigue;
 - (ii) Stress; and
 - (iii) Attitude and road rage
 - (c) Inattention and distractions, including:
 - (i) Texting, and
 - (ii) Mobile devices.
- (2) Practical defensive driving techniques:
 - (a) Reaction time and following distances;
 - (b) The importance of driving safely in adverse conditions; and
 - (c) Proper vision techniques, including:
 - (i) Scanning;
 - (ii) High aim; and
 - (iii) Blind spots.
- (3) Use and importance of safety systems including:
 - (a) Seat belt law and usage;

- (b) Crash forces and fallacies of not wearing seat belts;
 - (c) Child restraint law and proper usage;
 - (d) Air bags; and
 - (e) Anti-lock braking systems.
- (4) Alcohol and drug use including:
- (a) DUI laws, penalties and implied consent;
 - (b) Degree of impairment;
 - (c) Zero tolerance; and
 - (d) Underage drinking and driving.
- (5) Major traffic laws of Arizona and local ordinances, including:
- (a) Speeding;
 - (b) Obeying traffic control devices;
 - (c) Passing;
 - (d) Intersections, lane changes and turning;
 - (e) Stopping and yielding;
 - (f) Roundabouts;
 - (g) School crossings;
 - (h) School buses and emergency vehicles;
 - (i) Pedestrians and crosswalks, marked or unmarked; and
 - (j) Major criminal traffic violations.
- (6) The division director may require such other educational or behavior modification topics as the division director determines is appropriate.
- ~~(7) If an ADM course, the course participation questions shall consist of twenty-five course participation questions and five identity verification questions having a maximum 30 second timeframe to respond to each question.~~
- ~~(9) 7~~ If an ADM course, the identify verification questions must all be answered correctly.
- ~~(10) 8~~ If an ADM course the substantive questions required by subsection (F)(24)(d)(5)(p) must be answered correctly prior to proceeding;
- ~~(11) 9~~ If an ADM course, the student's electronic record of participation shall include:
- (a) a footprint of student navigation through the course;
 - (b) the login and logout times from the course; and
 - (c) times when a student has been logged out for inactivity in the course.

l. through p. **[No changes]**

q. Present a demonstration of the defensive driving course curriculum by the applicant's owner, principal or instructor to division staff. The demonstration shall:

- (1) Include all elements and intended delivery formats as proposed in the applicant's curriculum program, including the ADM ~~participation~~ and substantive questions;
- (2) Make evident the owner, principal or chief instructor understands the curriculum and the curriculum is accurate and created for the state of Arizona's traffic laws; and

- (3) If the curriculum contains materials that are not original to the applicant or in the public domain, the applicant shall provide written authorization for the use of the materials.
- r. through u. **[No changes]**
- v. Provide proof ~~the applicant has a~~ that applicant's secured website and other computer hardware and software complies with all functionality and security standards established by the division director. ~~when collecting confidential information from students.~~
- w. If an ADM applicant, provide documentation of processes regarding:
 - (1) Identification of a student's dishonesty; and
 - (2) Student failure of identity verification questions; ~~and~~
 - ~~(3) Student failure of course participation questions.~~

E(2) through E(3) No changes

- 4. Decision Regarding Certification for Schools or Instructors. In addition to the requirements of ACJA § 7-201(E) the following requirements apply:
 - a. **[No change]**
 - b. The board shall refuse to certify an ADM applicant or course for certification:
 - (1) If applicant fails to demonstrate that the applicant's curriculum is substantially different from the curriculum of other programs in which the applicant has common ownership or a financial interest.
 - (2) Substantially different curriculum means:
 - (a) The curriculum and the manner of presenting the curriculum use different organization, videos, and demonstrative props than other programs; and
 - (b) A person participating in both classes would not believe the curriculum was developed by the same person or entity. ~~understand from the presentation that there was common ownership.~~
 - (3) Common ownership means:
 - (a) Ownership of or an interest in two or more schools by an individual or entity;
 - (b) Ownership of or an interest in two or more entities that have an interest in a school; or
 - (c) Financial or other benefit, direct or indirect, in or from two or more schools by an individual or entity.
 - (4) Decisions of the board concerning substantially different curriculum are final as to third parties. The Board is not authorized to enforce a third party's copyright.

E (4)(c) through E (5) [No changes]

F. Role and Responsibilities of Certificate Holders. In addition to the requirements of ACJA § 7-201(F), each school shall:

1. through 4. [No changes]

5. Designate a principal who holds contracting authority for the school, with whom division staff can immediately make contact concerning any process or procedure of the school or court operation. The principal shall:

a. through l. [No changes]

m. If an ADM school, ensure the ~~course participation and~~ identity verification questions are included in the on-line course; and

n. In addition to the provisions contained in ACJA § 7-201(H)(6)(c), a certificate holder is subject to disciplinary action if the board finds the certificate holder has failed to cooperate with or supply information to any court or court staff by the time specified in any request.

6. At the discretion of the school, in any proceeding under Arizona statutes, ACJA § 7-201 and this section, the principal may represent the school entity.

7. File any report with the State of Arizona as required by law, court rule, ACJA § 7-201 or this section.

8. Maintain the confidentiality of all records regarding student personal and financial information and only transmit confidential information by U.S. Post, facsimile, or secure electronic file. A school shall house technical facilities (ISP host, data storage and support systems) and shall ensure all information is not accessible to unauthorized parties. The information contained in the defensive driving database is not a public record and is confidential. Certificate holders shall not access the database for any purpose other than to verify students' eligibility or to record students' registration, payment, or completion information. Accessing the database for the purpose of sale or resale or for the purpose of producing a document containing all or part of the database for sale or the obtaining of names and addresses from the database for the purpose of solicitation or the sale of such names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from direct or indirect use of such information is prohibited. The school shall comply with all computer hardware and software functionality and security standards established by the division director.

9. through 16. [No changes]

17. Issue at no cost an original, or if requested, duplicate completion certificate to a student who:
 - a. Provided proper identification;
 - b. Signed the eligibility affirmation;
 - c. Accepted the school refund policy;
 - d. Provided a copy of the citation or court order;
 - e. Paid all fees;
 - f. Passed the identity verification questions and ~~course participation questions~~ if an ADM course; and
 - g. Completed the defensive driving course.
18. Ensure each student who answers identity verification ~~and course participation~~ questions during a defensive driving class receives prompt notice of ~~passing or failing the~~ questions and require that the failing student to contact the school and establish the student's identity prior to being allowed to restart the class from the beginning. ~~examination course within 24 hours of the conclusion of the examination.~~
19. through 23. **[No changes]**
24. Comply with the following requirements:
 - a. through c. **[No changes]**
 - d. Eligibility, Registration and Attendance of Students.
 - (1) through (4) **[No changes]**
 - (5) The ADM school shall:
 - (a) Use the same methods for determining individual and citation eligibility pursuant to subsection F(24)(d).
 - (b) Make a positive identification of the individual enrolled in the defensive driving course, at the time of delivery of the course materials, by demonstrating the individual registered for the course is the actual participant during the time the course is taken and completed;

- (c) Obtain and keep on file a copy of the student's citation or court order prior to the student beginning an ADM course. A school may accept citations by fax, mail, or via electronic means;
- (d) Schedule system outages for server maintenance and upgrades and post advanced notice on the website, accordingly;
- (e) Notify students immediately of technical difficulties as they arise, including an estimate of the length of time the system may be unavailable;
- (f) Maintain a record of validation and course content questions and dates the examination was given for two years;
- (g) Maintain a record of each question and whether it was answered correctly, incorrectly, or not at all;
- (h) Maintain, for three years, a complete electronic record of each student's participation in the defensive driving course including student log-in and log-out times;
- (i) Shall provide its course in an interactive format and maintain evidence the student engaged in active participation during the presentation of the course, to include:
 - (i) student login and logout times; and
 - (ii) system logging off a student for inactivity
- (j) Not allow a retest when a student fails ~~the course participation questions or the~~ identity verification questions;
- (k) Maintain a record of each student's course ~~participation and~~ identity verification question results for three years;
- (l) Immediately refer any student caught cheating or being dishonest in participating in the course or examination to the court of jurisdiction;
- (m) ~~Refer a student who fails the examination twice to course participation questions to the court of jurisdiction or to a traditional classroom course, time permitting;~~
- (n) ~~Provide a student who fails the examination twice course participation questions with specific written instructions for the process of registering for a classroom course, and documentation to provide to the classroom school reflecting the student's failure of the online examination course participation questions; and~~
- (~~o~~ m) Not issue a student participating in an ADM course a certificate of completion unless the student correctly answered the ~~required number of course participation~~ and identity verification questions. If the student fails the identity verification questions the school must confirm the student's identity and cause the student to begin the course from the beginning before issuing a certificate of completion.
- (~~p~~ n) Divide the ADM course into segments of various lengths not to exceed 15 minutes and require the student to answer three substantive questions concerning the segment just completed correctly before the student can proceed to the next segment.
- (o) Maintain the curriculum approved by the Board and ensure that at all times in compliance with the terms of section E(4)(b).

- (6) Correct, or request division staff to correct, a registration record within three business days of system notice or discovery. A school shall correct the following types of registration errors without division staff assistance:
- (a) Citation number;
 - (b) Violation type;
 - (c) Charge identifier; and
 - (d) Court code number.

F(25) through I [No changes]