

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
AMENDING ARIZONA CODE OF)	
JUDICIAL ADMINISTRATION § 6-201:)	Administrative Order
STANDARD PROBATION)	<u>No. 2005-82</u>
)	(Affecting Administrative
)	Order No. 2000-79)
_____)	

An amendment to the above captioned section of the Arizona Code of Judicial Administration having come before the Arizona Judicial Council on October 19, 2005, and having been approved and recommended for adoption,

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that Arizona Code of Judicial Administration § 6-201 is amended as indicated on the attached document. All other provisions of § 6-201, as originally adopted, remain unchanged and in effect.

IT IS FURTHER ORDERED that the effective date of this amendment shall be December 31, 2005.

Dated this 15th day of November, 2005.

RUTH V. MCGREGOR
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 2: Adult Services
Section 6-201: Standard Probation

[Added text is shown underlined, deleted text by ~~strikethrough~~.]

A. Definitions. In this section, the following definitions apply:

“Absconder” means a probationer who has moved from the primary place of residence without permission of the probation officer ~~or~~ and whose whereabouts are unknown.

“Administrative director” means both the administrative director of the Administrative Office of the Courts and the director’s designee.

“Alcohol and drug testing” means any method of determining the level or identifiable substances in the body including, but not limited to, breathalyzer tests, blood tests, and urine samples.

“AOC” means Arizona Supreme Court, Administrative Office of the Courts.

“Arrest notification” means a notice, by any means, that the probationer has been arrested, cited or had official contact with a law enforcement officer.

“Average caseload” means the total active cases divided by total number of supervising probation officers.

“Case plan” means the documented supervision strategy developed by the supervising probation officer which clearly identifies the risk factors and needs of the probationer and how they will be addressed.

“Case record” means any record pertaining to a particular probationer maintained by the probation department in electronic or paper medium.

“Community ~~service~~ restitution” means unpaid labor or services provided to a not-for-profit private or governmental agency.

“Court” means the superior court.

“Employment verification” means face-to-face communication, telephone contact, or obtaining pay stubs.

“Hand counts” means the manual tabulation of all standard probation case files in the ~~county~~ probation department, conducted independently from any automated system.

~~“Long term residential treatment” means any type of treatment or counseling where the probationer resides at the facility for 31 days or more.~~

“Residing temporarily” means living at a location for 30 days or less.

~~“Short term residential treatment” means any type of treatment or counseling where the probationer resides at the facility for 30 days or less.~~

“Residential treatment” means any type of licensed treatment or counseling where the probationer resides at the facility. “Short term residential treatment” is 30 days or less. “Long term residential treatment” is 31 days or more. Halfway houses are not considered residential treatment.

“Specialized caseload” means a group of probationers with similar presenting problems or needs who are supervised by a probation officer focusing on addressing the problem or need.

~~“Standardized assessment” means a the state-approved tool to indicate determine the individual’s offender’s needs related to criminal behavior and propensity to re-offend and the treatment services needed to help prevent further illegal activities.~~

“Standardized reassessment” means the state-approved tool designed to measure changes in the offender’s needs related to criminal behavior and propensity to re-offend.

“Visual contact” means face-to-face communication with the probationer at any place, including but not limited to the probation department, the probationer’s residence, place of employment, treatment location or community restitution placement to discuss progress, issues of concern or other appropriate matters.

B. Applicability. ~~Article VI, Section 3 of the Arizona Constitution~~ Az. Const. Art. 6, § 3 and A.R.S. § 12-261 authorize the supreme court to administer state funding to aid probation services. The AOC shall administer state aid funding for adult standard probation on behalf of the supreme court. The following requirements are adopted to govern the administration and operation of standard probation supervision.

C. Purpose. The purpose of standard probation supervision in Arizona is to provide the highest quality service to the court, community and offenders. This is accomplished by promoting public safety through effective community based supervision and enforcement of court orders, offering accurate and reliable information and affording offenders opportunities to be accountable and initiate positive changes.

D. General Administration.

1. The AOC shall:

- a. Administer and direct ~~state aid for~~ standard probation services on behalf of the supreme court;

- b. Monitor ~~state aid for~~ standard probation services;
 - c. Prepare written material setting forth various techniques, practices, guidelines and other recommendations regarding the management of ~~state aid for~~ standard probation services and distribute this material to superior court judges and probation personnel.
 - d. Inspect, audit, or have audited the records of any court receiving state aid for probation services;
 - e. Prescribe and adopt procedures, forms and reports necessary for financial administration, program administration and management of ~~state aid for~~ standard probation services;
 - f. Conduct seminars and educational sessions regarding the purpose and management of ~~state aid for~~ standard probation services;
 - g. Establish performance measures and expectations in consultation with the court for determining compliance with each court's program plan and budget request;
 - h. Assist courts in developing their program plans and budget requests;
 - i. Provide general assistance to courts on the administration and management of ~~state aid for~~ standard probation services; and
 - j. Adopt other administrative practices and procedures, consistent with this ~~code~~ section, as necessary for the administration of ~~state aid for~~ standard probation services.
2. ~~For purposes of~~ To promote uniform administration, each adult probation department ~~receiving state funds to aid~~ providing standard probation services shall comply with this ~~code~~ section.

E. Budget Request Preparation.

1. Pursuant to A.R.S. § 12-262, the presiding judge wishing to receive state aid for probation services shall submit a proposed plan and budget request for the subsequent fiscal years to the AOC. The administrative director shall establish the date for submission, as well as the forms to be used and the corresponding instructions.
2. The administrative director shall review each request and may modify the request based on appropriate statewide considerations. The AOC shall include the court's request or the modified request in the supreme court's annual budget request. The administrative director shall allocate to the court the monies appropriated by the legislature to aid probation services based on the proposed plan, availability of funds, caseload population, past year use, county support and program effectiveness.

3. If a court does not agree with the allocations and requests further review, the chief justice shall make the final determination.
4. Each ~~participating~~ court requesting state aid for standard probation services shall support the budget request with written justification and explanation as required by the administrative director.

F. Program Plan and Financial Management.

1. Each ~~participating~~ court requesting state aid for standard probation services shall submit an expenditure plan to the administrative director. The expenditure plan shall outline how the requested state funds shall be used in achieving or maintaining the average case supervision requirements prescribed in A.R.S. § 12-251(A). The ~~participating~~ court shall submit the plan within the prescribed time frame and on forms required by the administrative director.
2. Each presiding judge shall submit, in writing, all requests to modify expenditure plans on a form approved by the administrative director.
3. Each program plan shall explicitly document:
 - a. That a minimum of 80 percent of the state aid for probation services allocated to a court shall be used for the payment of salaries and employee related benefits of probation officers involved in the case management, field supervision and enforcement of court orders of persons placed on standard probation to the court who reside in the county; and
 - b. That not more than 20 percent of the allocated state aid for probation services are used to otherwise maintain, improve or enhance adult probation services.
4. On request, the administrative director may approve a plan permitting an expenditure of allocated funds of more than 20 percent on support, operating and ancillary services. The participating court shall file the request with the AOC on a form prescribed by the administrative director.
5. In the event that the administrative director disapproves a plan or plan modification submitted by a court, the presiding judge of the court may request that the administrative director submit the plan to the chief justice for consideration and final determination.
6. Pursuant to A.R.S. § 12-263, on approval of the plan as submitted or modified and the availability of funds, the administrative director shall enter into a written funding agreement with the submitting court for the distribution of funds. The administrative director may amend or terminate funding agreements due to lack of funds, lack of financial need, or the court's failure to comply with applicable statutes, the approved plan, funding agreement or this code.

7. The administrative director may reallocate funds during the year based on documented need, current use of funds and approved plan or budget modifications.
8. A.R.S. § 12-262(2) provides that state aid for probation services shall “. . . supplement county funds provided for probation services.” A.R.S. § 12-265(C) provides: “No state funds may be used to increase any salaries funded under current county probation programs.”
 - a. A.R.S. § 12-267(D) provides: “State monies expended from the adult probation services fund shall be used to supplement, not supplant, county appropriations for the superior court adult probation department.” State funds shall not be used by the county for administrative overhead or to reduce the level of county funding available for adult probation services.
 - b. ~~The probation department shall at a minimum maintain the level of county funding and the same number of case-carrying officers as that of fiscal year 1995 as required by the legislature in Session Laws 1993, Chapter 4. Authorization of additional state funded adult standard probation positions is dependent on the county maintenance of effort as defined. In accordance with the general appropriations act, probation department receipt of state probation monies is contingent on the county maintenance of expenditure levels for each probation program the previous fiscal year.~~
 - c. The county probation departments receiving state aid for standard probation services shall fund one standard probation officer through non-state funds for every four standard probation officers funded by state aid for probation monies.
9. Pursuant to A.R.S. § 12-267(B), the county’s chief fiscal officer shall deposit funds received by the court pursuant A.R.S. § 12-262 into a separate account within the adult probation services fund.
10. The ~~participating~~ court receiving state funding for standard probation services shall use allocated ~~state~~ funds and interest only to aid standard probation services.
11. On agreement with a participating court, the administrative director may withhold funds allocated to the court and may authorize direct expenditures for the benefit of the court. The administrative director may also reallocate these funds during the fiscal year.
12. The presiding judge of each participating court shall submit to the AOC, by January 31 of each year, a mid-year financial and program activity report related to the court’s plan through December 31. Failure to submit the report in a timely manner may result in financial sanctions.
13. The presiding judge of each participating court shall submit to the AOC, by August 31 of each year, a closing financial and program activity report related to the court’s plan through June 30. Failure to submit the report in a timely manner may result in financial sanctions.

14. The presiding judge of each participating court shall return to the AOC, by August 31 of each year, all state aid for probation services funds distributed to the court which are unencumbered as of June 30 and unexpended as of July 31. Failure to revert the unencumbered funds in a timely manner may result in financial sanctions.
15. The administrative director shall determine how the funds are used in the event that a court experiences a decreased need for funds or declines to participate after the legislature has appropriated funds for state aid for probation services.
16. Each ~~participating~~ court and its probation department providing standard probation services shall maintain and provide to the AOC data and statistics as may be required by the supreme court to administer ~~state aid for~~ standard probation services.
17. On request of the AOC, the chief probation officer shall conduct hand counts of the ~~county's~~ department's standard probation population. The chief probation officer shall submit the results of the hand counts to the AOC.
18. Each ~~participating~~ court and its probation department providing standard probation services shall retain all financial records, applicable program records, and data related to each approved plan for a period of at least ~~5~~ five years from the close of each fiscal year.

G. Allocation and Management of State Aided Personnel Placements. The administrative director shall allocate state funded adult standard probation personnel placements approved for standard probation among courts. The administrative director may prepare and implement procedures for adjusting allocated placements and associated monies among courts.

H. Standard Probation Caseload Limit. A.R.S. § 12-251(A) provides: “. . . probation officers engaged in case supervision shall supervise no more than an average of sixty adults who reside in the county on probation to the superior court.” Only those probationers on the probation officer’s active caseload are included in determining the average caseload of sixty adults.

I. Active Case.

1. The standard probation officer’s active caseload shall include:
 - a. Probationers residing in the officer’s county and receiving direct supervision services, regardless of supervision level;
 - b. Probationers in jail in the officer’s county as a condition of probation or pending probation revocation proceedings, regardless of the length of incarceration;
 - c. Probationers in a residential treatment ~~facility~~ in the officer’s county;
 - d. Probationers in a short term residential treatment ~~facility~~ in another county;

- e. Probationers placed on probation after January 1, 1999, in a limited jurisdiction court, for aggravated domestic violence; ~~or~~ and
 - f. Probationers residing temporarily out of the officer's county or state through the issuance of a travel permit.
2. The standard probation officer's active caseload shall not include:
- a. Probationers imprisoned in the Arizona Department of Corrections as a condition of probation;
 - b. Probationers residing in another state through the interstate compact for adult offender supervision;
 - c. Probationers considered absconders with an active warrant;
 - d. Probationers deported to another country and the officer has received a copy of the deportation notice;
 - e. Probationers serving concurrent or consecutive prison commitments;
 - f. Probationers residing in another county pending acceptance of transfer to another county ~~or state~~;
 - g. Probationers in a long term residential treatment ~~facility~~ in another county;
 - h. Probationers residing in another state or county, regardless of whether they may be reporting to their county in person or in writing;
 - i. Probationers placed on probation by a limited jurisdiction court (except aggravated domestic violence after January 1, 1999, pursuant to A.R.S. § 13-3601.02);
 - j. Probationers in the officer's county on behalf of another state in accordance with the Interstate Compact for ~~Parolees and Probationers~~ Adult Offender Supervision;
 - k. An offender not yet convicted who is participating in a diversion program;
 - l. Probationers placed on supervised probation by a limited jurisdiction court for a second or subsequent misdemeanor domestic violence offense after January 1, 1999, pursuant to A.R.S. § 13-3601.01;
 - m. Probationers supervised as a part of pretrial services; or
 - n. Unsupervised or summary probation cases.

J. Program Operations.

1. Each probation department shall:
 - a. Have a written procedure regarding the alcohol and drug testing of persons on standard probation. The procedure shall address the methods used to select probationers for testing, the frequency of testing, and the type of test to be administered;
 - b. Have a process by which accurate and timely records of the completion of community ~~service~~ restitution hours are maintained for each probationer. Credit toward court-ordered community ~~service~~ restitution requirements are awarded on the basis of actual hours completed unless otherwise authorized by the court;
 - c. Work with the office of the clerk of the court to establish a process by which supervising probation officers are provided with accurate and timely information concerning collections;
 - d. ~~Ensure each probation department shall ensure~~ the collection of monies owed as a condition of probation. Each probation department and supervising probation officer shall immediately address any arrearage. Each probation department and supervising officer shall also encourage the probationer's payment of other assessments, such as child support or traffic fines, ordered by any court;
 - e. Develop policies and procedures ~~that ensure that~~ which require probation officers providing standard supervision ~~reexamine and reassess the risk and needs of each probationer under their supervision and the factors associated with reducing, maintaining or increasing the probationer's level of supervision~~ to use the results of the standardized assessment, as well as any other relevant information, when developing a case plan;
 - f. Develop policies and procedures which require that once every six months the supervising probation officer administer the standardized reassessment and develop a new case plan; and
 - fg. Have a written policy concerning the monitoring of probationers' compliance with court-ordered or disclosed prescription medications for mental health or public health concerns. This policy shall include protocols to ensure routine and timely communication between the supervising probation officer and physician regarding the probationer's compliance with dosage requirements.
2. A.R.S. § 12-253(4) provides that adult probation officers shall:

“Investigate cases referred to the officer for investigation by the court in which the officer is serving and report to the court. In an investigation for a presentence report, the adult probation officer shall promptly inquire into

the circumstances of the offense, the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, including the ability to contribute to reimbursement for the costs of the person's legal defense pursuant to ~~section~~ § 11-584, education and personal habits. The presentence report shall contain a recommendation by the officer regarding contribution by the convicted person toward the costs of legal defense pursuant to ~~section~~ § 11-584. The officer shall also promptly inquire into the physical, emotional and financial impact of the offense on the victim and the emotional and financial impact of the offense on the immediate family of the victim and shall notify the victim or the immediate family of the victim of the right to appear personally or by counsel at any aggravation or mitigation proceeding."

3. A.R.S. § 12-253(1) provides that adult probation officers shall "Make and file a complete record of persons placed under suspended sentence by the court, and of all reports made to the officer in writing or in person, in accordance with the conditions imposed by the court." Adult probation officers shall immediately contact the law enforcement officer or agency involved on receipt of an arrest notification to ascertain the nature and circumstances surrounding the contact and obtain a copy of any corresponding incident report or citation. The supervising probation officer shall document in the case ~~file~~ record all contacts and information received pertaining to the incident, as well as the action taken as a result of the incident.
4. A.R.S. § 12-253(2) provides that adult probation officers shall "Exercise general supervision and observation over persons under suspended sentence, subject to control and direction by the court."
 - a. Adult probation officers shall ~~conduct a standardized assessment on every offender.~~ :
 - (1) ~~Each probation officer providing standard probation supervision shall conduct a~~ Utilize the results of the standardized assessment of each new probationer to establish a level of supervision and develop a case plan within 30 days one month of a probationer's placement on probation or initial release from custody as a condition of standard probation. The case plan shall contain the signatures of the supervising probation officer and the probationer; unless a standardized assessment was previously conducted during the presentence process. The supervising probation officer shall use the results of the assessment to establish a level of supervision for the probationer and formulate a supervision plan.
 - (2) ~~Each probation officer providing standard probation supervision shall examine and reassess the risk and needs of each probationer under their supervision every 180 days~~ Administer the standardized reassessment every six months. The results of the standardized reassessment, along with the probationer's compliance with the conditions of probation and any other relevant factors shall be used to develop a new case plan; and ~~The probation officer may increase or decrease a probationer's level of supervision based on standardize assessments and the~~

~~probationer's compliance with conditions of probation.~~

- (3) Monitor probationer behavior and compliance with the conditions of probation and, when appropriate, increase or decrease the probationer's level of supervision.
- b. Adult probation officers shall provide a written directive to the probationer referring the probationer to an appropriate service provider within ~~60 days~~ two months of sentencing, release from custody, or identification of the need if a need for treatment or counseling is identified through the use of a statewide standardized assessment or is ordered by the court. If more than one area of treatment or counseling is identified, the supervising probation officer shall prioritize the needs and address the one with highest priority within the prescribed time frame. The supervising probation officer shall then address the remaining treatment or counseling areas in descending order.
 - c. The supervising officer shall administer or cause to have administered alcohol and drug tests on a variable schedule, when appropriate. The frequency of testing shall be dependent upon the probationer's substance abuse history, unless otherwise directed by the court, and shall be documented in the case record.
5. A.R.S. § 12-253(3) provides that adult probation officers shall "Serve warrants, make arrests and bring persons before the court who are under suspended sentences. The officer has the authority of a peace officer in the performance of the officer's duties."
6. A.R.S. § 12-253(5) provides that adult probation officers shall "Secure and keep a complete identification record of every person released under a suspended sentence and a written statement of the conditions of the suspension." Each standard probation officer shall maintain verifiable case records for each probationer supervised, including, but not limited to:
- a. A written statement of the conditions of probation,
 - b. An individual case plan setting forth behavioral and program expectations, and
 - c. Contact logs detailing the time, nature and location of each contact made with each person on standard probation.
7. A.R.S. § 12-253(6) provides that adult probation officers shall "Obtain and assemble information concerning the conduct of persons placed under suspended sentence and report the information to the court." Adult probation officers shall petition the court to terminate the period of probation based on the use of standardized assessments and an evaluation of the probationer's compliance with the conditions of probation.
8. A.R.S. § 12-253(7) provides that adult probation officers shall "Bring defaulting probationers into court when in his judgment the conduct of the probationer justifies the court to revoke suspension of the sentence." Adult probation officers shall make a documented effort to locate an absconder. If the probationer is not located within ~~90 days~~ three months, the supervising probation officer shall file a petition to revoke probation

and request that the court issue a warrant. The supervising probation officer may file the petition to revoke sooner based on the circumstances surrounding the case and the need for community protection. The probation department's Efforts to locate the probationer shall continue until the probationer is apprehended.

9. Pursuant to A.R.S. § 13-4415, when the probation officer petitions the court to terminate probation, the court shall notify those victims who have requested notification of probation matters.

K. Minimum Supervision Requirements.

1. In accordance with A.R.S. § 12-253(2), the following supervision requirements are established as minimum thresholds for probationers supervised in the community. Each probation department may establish more rigorous supervision requirements ~~for any supervision level~~. Each chief probation officer shall ensure that all established minimum supervision requirements are provided in writing to each supervising probation officer, along with appropriate training on adherence to those requirements.
2. The probation department shall establish and document minimum supervision requirements for probationers incarcerated in jail. Each probation department shall provide in writing to supervising probation officers the minimum supervision requirements established for probationers incarcerated in jail and furnish appropriate training on adherence to those requirements.
- 2 3. The maximum probation supervision level shall include:
 - a. A minimum of two visual contacts per month ~~with at least one of these contacts occurring at which shall occur at the probationer's residence at least once a month; employment, treatment or community service placement~~. Visual contacts shall be varied, scheduled and unscheduled;
 - b. Employment verification as necessary or employment search verification once per week;
 - c. Investigation of arrest notification;
 - d. Community ~~service~~ restitution monitoring;
 - e. Alcohol and drug testing, as necessary; and
 - f. Treatment, counseling, or both, as necessary.
34. The medium probation supervision level shall include:
 - a. A minimum of one visual contact per month, which shall occur at the probationer's

residence at least once every ~~90 days~~ three months. Visual contacts shall be varied, scheduled and unscheduled;

- b. Employment verification as necessary or employment search verification weekly;
- c. Investigation of arrest notification;
- d. Community ~~service~~ restitution monitoring;
- e. Alcohol and drug testing, as necessary; and
- f. Treatment, counseling, or both, as necessary.

~~45.~~ The minimum probation supervision level shall include:

- a. A minimum of one visual contact every ~~90 days~~ three months which shall occur at the probationer's residence at least once every ~~6~~ six months. Visual contacts shall be varied, scheduled and unscheduled;
- b. Employment verification as necessary or employment search verification weekly;
- c. Investigation of arrest notification;
- d. Community ~~service~~ restitution monitoring;
- e. Alcohol and drug testing, as necessary; and
- f. Treatment, counseling, or both, as necessary.

~~5.~~ Report only supervision level.

- a. ~~The report only supervision level is reserved for probationers who:~~
 - ~~(1) Have completed all special conditions of probation, such as community service and treatment or counseling;~~
 - ~~(2) Are current on court ordered financial assessments;~~
 - ~~(3) Have been ordered by the court to be placed on this supervision level; or~~
 - ~~(4) Who have departmental approval to be placed on this supervision level.~~
- b. ~~If a probationer on the report only supervision level becomes delinquent in court ordered financial assessments in an amount totaling two full monthly payments, the supervising probation officer shall take appropriate action to address the delinquency and bring the account current.~~
- e. ~~Probationers on the report only supervision level shall submit written status reports to the probation department once each month. At a minimum, the report shall contain~~

~~the status of all outstanding special conditions of probation, including court ordered financial assessments.~~

- ~~d. When the supervising officer receives an arrest notification on a probationer on the report only supervision level, the supervising officer shall immediately contact the officer or agency involved to ascertain the nature and circumstances surrounding the contact and obtain a copy of any corresponding incident report or citation. The supervising probation officer shall document in the case file all contacts and information received pertaining to the incident, as well as the action taken as a result of the incident.~~

6. Waiver of Minimum Supervision Requirements.

- a. Where exigent circumstances exist, the chief probation officer may waive minimum supervision requirements, in writing, for a specified period of time. The supervising probation officer shall place a copy of the written waiver of minimum supervision requirements in the case file of each probationer for whom a waiver has been granted.
- b. Under no circumstances shall minimum supervision requirements be waived for probationers on the maximum supervision level, those convicted of a sex offense as defined by A.R.S. §§ 13-1402 through 13-1412, 13-1417 through 13-1419, 13-3552 through 13-3556, a domestic violence offense under A.R.S. §§ 13-3601 or 3601.02, or an offense involving driving under the influence under A.R.S. §§ 28-1381 through 28-1383, regardless of supervision level. The chief probation officer shall not waive minimum requirements when doing so would compromise public safety.

L. Specialized Populations Caseloads.

1. Any court establishing or maintaining specialized caseloads shall have a written description of the specialized caseload, including objectives and goals.
2. Any court establishing or maintaining specialized caseloads shall have written screening and assessment criteria for placement on the caseload, as well as criteria for exiting or graduating from the caseload.
3. Any court establishing or maintaining specialized caseloads shall have written minimum supervision ~~standards~~ requirements specific to the needs and goals of the caseload.
4. Probation officers assigned to supervise specialized caseloads shall participate in continuing education/training on the specific needs of the specialized population.

Adopted by Administrative Order 2000-79, Effective January 1, 2001.