

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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| In the Matter of: |) | |
| |) | |
| AMENDING ARIZONA CODE OF |) | Administrative Order |
| JUDICIAL ADMINISTRATION |) | <u>No. 2011 - 118</u> |
| § 6-201.01: STANDARD PROBATION |) | (Affecting Administrative |
| EVIDENCE BASED PRACTICES |) | Order No. 2010-62) |
| |) | |

Pursuant to the Arizona Code of Judicial Administration § 1-201(E), the Chief Justice may adopt emergency administrative code proposals and technical changes in existing code sections by administrative order without prior distribution for comment and action by the Arizona Judicial Council. In the First Regular Session of the Fiftieth Legislature (2011), the Legislature passed House Bill 2404 (Chapter 263). The bill was signed by the Governor on April 26, 2011 and had an effective date of July 20, 2011. These technical changes reflect that amendment, and other recent statutory amendments.

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

IT IS ORDERED that Arizona Code of Judicial Administration § 6-201.01 is amended as indicated on the attached document. All other provisions of § 6-201.01 as adopted, remain unchanged and in effect.

Dated this 23rd day of November, 2011.

REBECCA WHITE BERCH
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 2: Adult Services
Section 6-201.01: Standard Probation Evidence Based Practice

~~Courts shall be governed by section 6-201, except and until approved by the Administrative Director to be governed by section 6-201.01.~~

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

~~“Absconder” as provided in A.R.S. §13-105(1) means a probationer who has moved from the primary place of residence without permission of the probation officer and whose whereabouts are unknown.~~ “means a probationer who has moved from the probationer’s primary residence without permission of the probation officer, who cannot be located within ninety days of the previous contact and against whom a petition to revoke has been filed in the superior court alleging that the probationer’s whereabouts are unknown. A probationer is no longer deemed an absconder when the probationer is voluntarily or involuntarily returned to probation service.”

“Actuarial risk” means measurable factors that have been correlated to the probability of offender recidivism that are gathered informally through routine interactions and observations with offenders and by formal assessment guided by instruments.

“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 test, blood test, 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 law enforcement officer.

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

“Case plan” means the documented behavior change plan and supervision strategy developed by the supervising probation officer, in collaboration with the probationer, 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.

“Collateral” means any individual or agency that has a relationship to a particular probationer that serves as a source of information or point of contact, including but not limited to friends, family members, law enforcement, victims, community members, neighbors, treatment providers or other associates.

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

“Court” means the superior court.

“Criminogenic need” means any issues of concern which are directly linked to criminal behavior that when addressed and changed affect a probationer’s risk for recidivism, which include, but are not limited to criminal personality, antisocial attitudes, values, beliefs, low self control, criminal peers, substance abuse, dysfunctional family, unemployment and lack of education.

“Direct case” means probationers actively supervised.

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

“Evidence-based practice” means strategies that have been shown through current, scientific research to lead to a reduction in recidivism.

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

“Pro-social activity” means any action or event that promotes sobriety and/or provides an opportunity for building a social support system that encourages a crime free lifestyle and improved community bonds.

“Residing temporarily” means living at a location 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 the state-approved tool to determine the offender’s needs related to criminogenic behavior and propensity to re-offend.

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

“Target interventions” means supervision related services determined by the probationer’s risk, criminogenic needs, and other factors such as temperament, learning style, motivation, gender and culture.

“Visual contacts” 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. Contacts with probationers are not ends in themselves but are opportunities for officers to achieve specific objectives. These objectives include establishing rapport with the offender, assessing the offender’s criminogenic factors and triggers, developing and, when needed, modifying a supervision plan, and using both subtle and overt incentives and sanctions to guide the offender toward positive change.

B. Applicability. 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. A.R.S. § 13-805(A) provides:

The trial court shall retain jurisdiction of the case for purposes of modifying the manner in which court-ordered payments are made until paid in full or until the defendant’s sentence expires. At the time the defendant completes the defendant’s period of probation or the defendant’s sentence or the defendant absconds from probation or the defendant’s sentence, the court shall enter both:

(1) A criminal restitution order in favor of the state for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed.

(2) A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered.

The provisions of this code section requiring a probation officer to request a criminal restitution order apply to a probationer who moved from the probationer’s primary residence on or after July 20, 2011 without permission of the probation officer.

Sections C through D – No changes

E. Budget Request Preparation.

1. A.R.S. § 12-262 provides:

A. The presiding judge of the superior court in each county desiring to improve, maintain or expand juvenile probation services, or to achieve or maintain the average adult probation case supervision requirement

prescribed in § 12-251, may prepare a plan in accordance with guidelines issued by the supreme court. The plan shall be submitted to the state supreme court. The supreme court guidelines shall require that the plan include:

1. That funds received under this article shall be used primarily for payment of salaries of probation officers supervising adults or juveniles on probation to the superior, justice or municipal court.
 2. That the funds provided by the state for this purpose will be used to supplement county funds provided for probation services.
 3. The proposed budget necessary to implement the plan, including the amount currently budgeted for that county's probation program.
2. The administrative director shall review each request and may notify 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 court requesting state aid for standard probation services shall support the budget request with written justification and explanation as required by the administrative director.
 5. A.R.S. § 12-269(A) provides:

The administrative office of the courts shall not disburse any direct state aid for probation services monies, including motor pool costs, that are appropriated for juvenile intensive probation services pursuant to section 8-353, state aid for probation services pursuant to section 12-262, adult intensive probation pursuant to title 13, chapter 9 and community punishment programs pursuant to article 11 of this chapter to a county with a population of two million or more persons.

F. Program Plan and Financial Management.

1. Each 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 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 twenty 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 twenty 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, "...Upon approval of a plan submitted, the supreme court shall enter into a funding agreement with the county and shall make payments to the county as necessary to carry out the agreement." 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 section.
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. 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.

9. A.R.S. § 12-267(B) provides:

The chief fiscal officer shall establish and maintain separate accounts in the fund showing receipts and expenditures of monies from each source listed in subsection A of this section. The presiding judge of the superior court shall annually present to the board of supervisors for approval a detailed expenditure plan for the adult probation services fund accounts. Any modifications to the expenditure plan affecting state appropriations shall be made in accordance with the rules and procedures established by the supreme court. Any modifications to the expenditure plan affecting county appropriated funds shall be made in accordance with the policies established by the county. The chief fiscal officer shall disburse monies from the fund accounts only at the direction of the presiding judge of the superior court. The chief fiscal officer of each county shall, on or before August 31 of each year for the preceding fiscal year, submit an annual report to the supreme court showing the total amount of receipts and expenditures in each account of the adult probation services fund.

10. The court receiving state funding for standard probation services shall use allocated 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 closing 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, 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 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 standard probation services.
17. On request of the AOC, the chief probation officer shall conduct hand counts of the department's standard probation population. The chief probation officer shall submit the results of the hand counts to the AOC.
18. Each 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 five years from the close of each fiscal year.

G. – No changes

- 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-five adults who reside in the county on probation to the court." Only those probationers on the probation officer's direct caseload are included in determining the average caseload of 65 adults. Pursuant to A.R.S. § 12-269(B):

A county with a population of two million or more persons shall maintain probation standards that are otherwise prescribed by law, except that the probation ratios and team compositions that are listed in §§ 8-203, 8-353, 12-251 and 13-916 do not apply. The county shall maintain appropriate ratios of officers to probationers consistent with evidence based practices in differentiated case management...

I. – No changes

J. Program Operations.

1. Each probation department shall develop:
 - a. Policies and procedures that aim to reduce offender risk and the likelihood of future criminal behavior that are consistent with the principles of evidence-based practices;
 - b. Policies and procedures which require probation officers providing standard supervision to use the results of the standardized assessment, as well as any other relevant information, when developing a case plan;
 - c. Policies and procedures which require the administration of standardized reassessments upon the discovery of significant changes in criminogenic risk and

- needs or continued criminal conduct, including arrests for new criminal offenses for probationers that assess as low on the initial standardized assessment;
- d. Policies and procedures that require probation officers to utilize graduated responses of consequences and incentives to address violation behavior and promote positive behavioral change;
 - e. Policies and procedures that identify the criteria for the recommendation of early termination for eligible probationers. This policy shall include requirements for officers to review case file to determine eligibility;
 - f. Policies and procedures 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;
 - g. Policies and procedures concerning the monitoring of probationers' compliance with court-ordered or disclosed prescription medications for mental health or public health concerns. This policy shall include requirements to ensure routine and timely communication between the supervising probation officer and physician regarding the probationer's compliance with dosage requirements;
 - h. Policies and procedures requiring officers to maintain accurate and timely records of the completion of community restitution hours for each probationer. Credit toward court-ordered community restitution requirements are awarded on the basis of actual hours completed unless otherwise authorized by the court;
 - i. Protocols to work with the office of the clerk of court to establish policies and procedures by which supervising probation officers are provided with accurate and timely information concerning collections;
 - j. Policies and procedures to ensure the collection of monies owed as a condition of probation. Each probation department and supervising probation officer shall address any arrearage per departmental policy. Each probation department and supervising officer shall also encourage the probationer's payment of other assessment, such as child support or traffic fines as ordered by any court;
 - k. Policies and procedures requiring an officer to administer a standardized reassessment and develop a new case plan for medium and high risk probationers once every 180 days; and
 - l. Policies and procedures requiring the supervising officer to develop a new case plan for probationers that assess as low risk on the standardized assessment or reassessment if an intervention to criminogenic risk or needs area is required. The officer shall document in the file that no case plan was completed if no intervention is required.

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 person's legal defense pursuant to § 11-584, education and personal habits. The presentence report shall contain a recommendation by the officer regarding contribution by the convicted person toward the cost of legal defense pursuant to § 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. For all probation eligible cases, presentence reports shall also contain case information related to criminogenic risk and needs as documented by the standardized risk assessment and other file and collateral information. The report shall also contain the officer's recommendation for supervision and treatment services based upon the convicted person's documented criminogenic risk and needs when authorized.
4. 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 agencies 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 record all contacts, information received pertaining to the incident, and actions taken as a result of the incident. Probations officers shall also document information, including but not limited to, violation behavior, positive progress and behavioral changes.
5. 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:
 - (1) Administer the standardized assessment within 30 days of a probationer's placement on probation or initial release from custody if an assessment was not completed prior to sentencing;

- (2) Re-evaluate the adequacy of the court-ordered conditions of probation as part of the ongoing assessment and planning process and, if applicable, petition the court for modifications;
- (3) Utilize the results of the standardized assessment to establish a level of supervision and address needs for behavioral changes;
- (4) Develop a case plan for all probationers that assess as medium or high risk on the standardized assessment within 60 days of a probationer's placement on probation or initial release from custody. The officer shall ensure the case plan includes signatures of the officer and probationer and objectives in the case plan are measurable.
- (5) Develop and implement supervision strategies that are matched by standardized assessment results and criminogenic factors with the probationer's risks, needs and strengths that promote supervision goals and to provide effective supervision that is individualized, proportional and purposeful;
- (6) Target interventions to higher-risk cases to promote public safety;
- (7) Administer the standardized reassessment every 180 days from the last assessment for probationers that assess as medium or high risk to measure behavior changes until later assessments indicate a decrease in risk factors which assess the probationer as low risk.
- (8) Review the assessment and the previous case plan during the development of a new case plan to determine if a change in strategies is required to promote behavioral changes. Strategies shall be re-evaluated if there has been regress or no change in behavior;
- (9) Reassess probationers that assess as low risk upon discovery of new criminal conduct, if the current assessment is more than 180 days old;
- (10) Complete a case plan if a probationer assessed as low risk has criminogenic risks and needs that require intervention.
- (11) Document in the case record that a case plan is not needed for an assessed low risk probationer if no intervention is required;
- (12) Conduct documented case file reviews for probationers assessed as low risk every year. Case file reviews shall include, but are not limited to, case notes, collateral information and investigation of any arrest notification. Actions shall be taken in response to indicators of changes in criminogenic risk and needs or involvement in criminal conduct. Probationers that are eligible and in compliance with court-ordered conditions of probation shall be recommended for early termination. The officer shall recommend that any outstanding financial obligations be reduced to a criminal restitution order. Probationers with outstanding restitution are not eligible for early termination;
- (13) Respond to emerging risk indicators with graduated increases in the level of supervision, pursuant to probation departmental policy.
- (14) Reduce the level of supervision, up to and including recommendation for early termination of supervision, as risk issues are addressed and probationers meet their objectives.
- (15) Provide probationers with feedback on the results of an assessment or reassessment and progress with the established behavioral goals and conditions of

probation and provide positive reinforcement to encourage behavioral changes;
and

- (16) Consider the suitability of early termination for all eligible cases.
- b. Adult probation officers shall provide a written directive to the probationer referring the probationer to an appropriate service provider within 60 days of sentencing, release from custody, or identification of the need if a need for treatment, education 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.
6. 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."
7. 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 ordered conditions of probation;
 - b. An individual case plan setting forth behavioral expectations for probationers that assess as medium or high risk on the standardized assessment;
 - c. Contact logs detailing the time, nature and location of each contact made with each person on standard probation.
8. 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." Reports shall contain case information, including but not limited to, violation behavior, positive progress and behavioral changes while under supervision. 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.

9. A.R.S. § 12-253(7) provides that adult probation officers shall “Bring defaulting probationers into court when in ~~his~~ the probation officer’s judgment the conduct of the probationer justifies the court to revoke suspension of the sentence.”
 - a. Adult probation officers shall make a documented effort to locate ~~an absconder~~ a defaulting probationer. If the probationer is not located within 90 days, the supervising probation officers shall file a petition to revoke probation, seek a criminal restitution order pursuant to A.R.S. § 13-805(A)(1)(2), for a probationer who is an absconder as defined in A.R.S. § 13-105(1) 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.
 - b. The probation department’s efforts to locate the probationer shall continue until the probationer is apprehended.
 - c. When a petition to revoke is filed prior to the expiration of 90 days, the probation officer shall seek a criminal restitution order upon the expiration of 90 days, pursuant to A.R.S. § 13-805(A)(1)(2), for a probationer who is an absconder as defined in A.R.S. § 13-105(1).
10. Probation officers, surveillance officers and absconder or warrant officers shall follow the minimum requirements for probationers on warrant status for less than 90 days:
 - a. Send a certified letter to last known physical address if any, except for probationers incarcerated or in residential treatment;
 - b. Physically check last known address and place of employment. Ask sources, such as neighbors, apartment managers and former employers, for information;
 - c. Contact collaterals who may know the ~~absconder’s~~ probationer’s whereabouts including former associates, relatives and friends;
 - d. Run a criminal history check;
 - e. Validate obtained information with agencies and companies such as law enforcement and utility companies.
 - f. Provide information that can be used for flyers and wanted posters for dissemination to local law enforcement that has jurisdiction.
 - g. Follow up on these requirements at least once every 30 days, if necessary; and
 - h. Maintain a complete record of activities in case notes.

11. Pursuant to A.R.S. § 13-4415(A):

On request of a victim who has provided an address or other contact information, the court shall notify the victim of any of the following:

1. A probation revocation disposition proceeding or any proceeding in which the court is asked to terminate the probation or intensive probation of a person who is convicted of committing a criminal offense against the victim.
2. Any hearing on a proposed modification of the terms of probation or intensive probation.
3. The arrest of a person who is on supervised probation and who is arrested pursuant to a warrant issued for a probation violation.

12. Notify the court having jurisdiction upon finding that the probationer has become in arrears in an amount totaling two full court ordered monthly payments of restitution. This notification shall consist of a petition to modify, petition to revoke, or memorandum to the court outlining the reasons for the delinquencies and expected duration thereof. A copy of the memorandum shall be provided to the victim, if the victim has requested notice of restitution modifications;

Sections K through L – No changes