

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of: )  
 )  
ARIZONA CODE OF JUDICIAL ) Administrative Order  
ADMINISTRATION § 5-201: ) No. 2014 –12  
EVIDENCE-BASED PRETRIAL )  
SERVICES )  
\_\_\_\_\_ )

Article 2, Section 22(A)(1-4) of the Arizona Constitution provides that “[a]ll persons charged with a crime shall be bailable by sufficient sureties,” unless they have committed certain serious crimes or pose a substantial danger to the public. A.R.S. § 13-3961(A)(1-5) lists offenses for which bail is not available “if the proof is evident or the presumption great that the person is guilty of the offense charged.”

A.R.S. § 13-3967(A) further confirms that persons charged with bailable public offenses may either be released on their own recognizance or on bail.

Arizona Rules of Criminal Procedure 7.2 requires that “any person charged with an offense bailable as a matter of right shall be released pending or during trial on the person’s own recognizance, unless the court determines, in its discretion, that such a release will not reasonably assure the person’s appearance as required. If such a determination is made, the court may impose conditions described in Rule 7.3(a) and (b) that will reasonably assure the person’s appearance.”

National criminal justice research shows that more than sixty percent of the jail population comprises defendants who are being held for crimes for which they have been charged, but have not yet been tried or convicted. Research suggests many of those pretrial detainees do not present a threat to public safety or a substantial risk of failure to appear at future proceedings or appointments. They simply cannot afford bail. The research also suggests that these low-risk defendants could be safely released from jails while awaiting trial if evidence-based procedures are put in place, including use of validated risk assessments and appropriate community supervision.

Key national organizations, including the Conference of Chief Justices, the Conference of State Court Administrators, the American Bar Association, the National Association of Counties, the American Jail Association, the International Association of Chiefs of Police, the American Council of Chief Defenders, the Association of Prosecuting Attorneys, and the American Probation and Parole Association support the adoption of an evidence-based assessment of risk in setting pretrial release conditions.

Validated evidence-based risk assessment tools have been developed and are being successfully used in several jurisdictions in the United States. These tools assess the likelihood that a defendant will appear for court and the likelihood of re-arrest while a defendant is on pretrial status. Pretrial service programs using risk assessments and providing supervision services currently exist in some courts in Arizona. This code section will provide structure and support for current and future programs.

Arizona Code of Judicial Administration (ACJA) section 5-201 authorizes courts to operate pretrial service programs that incorporate evidence-based practices, including the use of risk assessments for the purpose of making pretrial release decisions, establishing pretrial release conditions, and providing pretrial release supervision. That section was approved by the Arizona Judicial Council on December 12, 2013.

ACJA § 5-201(E)(1) approves use of the validated pretrial risk assessment tools currently in use in the Superior Court in Maricopa County, the Superior Court in Pima County, and the Superior Court in Coconino County. The Arizona Judicial Council approved the use of the Virginia model pretrial risk assessment tool currently in use in the Superior Court in Pinal County and the Superior Court in Yuma County until the implementation of a new risk assessment tool named the “Public Safety Assessment-Court (PSA-Court)” that will be piloted during 2014. Additionally, the Superior Court in Gila and Mohave Counties and the Mesa Municipal Court will participate in the pilot implementation and are approved to use the PSA-Court risk assessment tool.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that ACJA § 5-201, attached hereto, is adopted as a section of the Arizona Code of Judicial Administration.

IT IS FURTHER ORDERED that courts currently operating pretrial services shall be in full compliance with ACJA § 5-201(E)(1) regarding use of an approved pretrial risk assessment tool and all other provisions of this code section on or before December 31, 2014.

IT IS FURTHER ORDERED that courts implementing pretrial service programs after the date of this Order shall comply with ACJA § 5-201(E)(1) regarding use of an approved pretrial risk assessment tool and all other provisions of this code section before services begin.

Dated this 10th day of January, 2014.

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REBECCA WHITE BERCH  
Chief Justice

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**

**Part 5: Court Operations**

**Chapter 2: Programs and Standards**

**Section 5-201: Evidence Based Pretrial Services**

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

“Court” or “courts” means superior court or limited jurisdiction court.

“Electronic Monitoring” means various technologies utilized to monitor a defendant’s compliance with release conditions, including use of global positioning satellite and radio frequency.

“Evidence based practices” means programs, assessments and supervision policies and practices that scientific research demonstrates reduce instances of a pretrial defendant’s failure to appear in court and involvement in criminal activity.

“Offense” (or public offense) means “conduct for which a sentence to a term of imprisonment or of a fine is provided by any law of the state in which it occurred or by any law, regulation or ordinance of a political subdivision of that state and, if the act occurred in a state other than this state, it would be so punishable under the laws, regulations or ordinances of this state or of a political subdivision of this state if the act had occurred in this state” as provided in A.R.S. § 13-105(27).

“Pretrial risk assessment” means a state-approved validated actuarial assessment that predicts a pretrial defendant’s risk of committing a new crime or failing to appear while on pretrial release for the purpose of assisting the court in determining release decisions and release conditions and to assist the pretrial services staff with supervision monitoring requirements.

“Pretrial services” means programs that perform functions to assist the court in making prompt, fair, and effective decisions regarding the release, detention or conditions of release of persons arrested.

“Pretrial services staff” means court employees who assist the court in making determinations regarding the release or detention of persons arrested, make recommendations for release conditions, and provide supervision or monitoring of persons released under supervision. Pretrial services staff includes probation officers who perform these duties.

“Pretrial supervision” means monitoring and supervising defendants who are released pursuant to A.R.S. § 13-3967(D)(5) to minimize risks of committing a new crime or failing to appear while on pretrial release.

“Release order” means the court order that contains the conditions and restrictions imposed by the court as well as the next court date and location.

“Risk” means measurable factors that correlate to a pretrial defendant’s probability of committing a new crime or failing to appear while on pretrial release that are gathered

through a standardized risk assessment instrument, information from the defendant, victims, interested parties or other sources of information.

**B. Purpose.**

This code section provides the scope, requirements, and procedures for Arizona courts to establish and operate pretrial services consistent with evidence-based practices. The superior court in each county may operate pretrial services in the probation department, pretrial services department or court administration. Municipal and justice courts may also establish and operate pretrial services.

The purpose of pretrial services is to provide information that will assist the court in making pretrial release decisions, as well as supervising defendants who are released pursuant to A.R.S. § 13-3967(D)(5).

**C. Authority.**

1. Az. Const. Art. 6, § 3, provides that the supreme court shall have administrative supervision over all the courts of the state. As part of that administrative supervision, this code section establishes requirements for the formation and operation of pretrial service programs consistent with Az. Const. Art. 2 § 22(A),(B) and A.R.S. § 13-3967.
2. In order to assist the court in making determinations regarding release, the imposition of conditions of release or to make determinations regarding violations of conditions of release pursuant to Az. Const. Art. 2 § 22(A),(B), and A.R.S. § 13-3967(C),(D)(5), pretrial services shall have authority to interview and process all persons charged with an offense either before or after first appearance.

**D. Applicability.**

This code section applies to all courts or court departments that operate pretrial services including interviewing pretrial defendants, administering pretrial risk assessments, providing recommendations regarding release conditions and/or supervising persons released to pretrial supervision.

**E. Program Operations.**

1. Courts operating pretrial services shall use a pretrial risk assessment tool approved by the Arizona Judicial Council to assist in determining a defendant's likelihood of committing a new crime or failing to appear for court while on pretrial release. The results of the pretrial risk assessment tool shall be provided to the court prior to the initial appearance and, when requested by the court, for use at any hearing in which release decisions are made.
2. To the extent this information is available, pretrial services staff shall assist in providing the following for the court's consideration in determining release decisions, pursuant to A.R.S. § 13-3967(A),(B):

1. The views of the victim.
2. The nature and circumstances of the offense charged.
3. The weight of evidence against the accused.
4. The accused's family ties, employment, financial resources, character and mental condition.
5. The results of any drug test submitted to the court.
6. Whether the accused is using any substance if its possession or use is illegal pursuant to chapter 34 of this title.
7. Whether the accused violated section 13-3407, subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01.
8. The length of residence in the community.
9. The accused's record of arrests and convictions.
10. The accused's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.
11. Whether the accused has entered or remained in the United States illegally.
12. Whether the accused's residence is in this state, in another state or outside the United States.

3. A.R.S. § 13-3967(D)-(E) states:

D. After providing notice to the victim pursuant to section 13-4406, a judicial officer may impose any of the following conditions on a person who is released on his own recognizance or on bail:

1. Place the person in the custody of a designated person or organization agreeing to supervise him.
2. Place restrictions on the person's travel, associates or place of abode during the period of release.
3. Require the deposit with the clerk of the court of cash or other security, such deposit to be returned on the performance of the conditions of release.
4. Prohibit the person from possessing any dangerous weapon or engaging in certain described activities or indulging in intoxicating liquors or certain drugs.
5. Require the person to report regularly to and remain under the supervision of an officer of the court.
6. Impose any other conditions deemed reasonably necessary to assure appearance as required including a condition requiring that the person return to custody after specified hours.

E. In addition to any of the conditions a judicial officer may impose pursuant to subsection D of this section, the judicial officer shall impose both of the following conditions on a person who is charged with a felony violation of chapter 14 or 35.1 of this title and who is released on his own recognizance or on bail:

1. Electronic monitoring where available.
2. A condition prohibiting the person from having any contact with the victim.

4. Pretrial services staff shall provide information and may make recommendations to assist the court in setting release conditions consistent with A.R.S. § 13-3967(D)-(E) and local policy. Release conditions recommendations shall be based on results from a risk assessment, and may also include but are not limited to:
  - a. Use of electronic monitoring;
  - b. Imposing curfews or house arrest;
  - c. Drug and alcohol monitoring, testing, evaluation or treatment; and
  - d. Assessing needs of seriously mentally ill defendants.
5. Pretrial services staff supervising defendants released to pretrial supervision shall:
  - a. Ensure released defendants are informed of their next court date and, when required by local policy, provide released defendants with a reminder of future court dates;
  - b. Inform the court of violations of pretrial release conditions pursuant to local policy;
  - c. Facilitate the return to court of defendants who fail to appear for their scheduled court dates;
  - d. Make arrests of persons on pretrial release if authorized pursuant to A.R.S. § 12-256;
  - e. Promptly inform the court of any danger the person poses to other persons or the community, or other significant changes that may impact the person's risk; and
  - f. Provide reports to the court to inform of violations or assist the court in modification or revocation of conditions of release pursuant to Rule 7.4(b) or 7.5(c), Rules of Criminal Procedure.
6. When juveniles transferred or charged in adult court are released to pretrial supervision, pretrial services staff shall assist the court as necessary in notifying the appropriate school district, pursuant to A.R.S. § 13-3967(J) which provides:

A judicial officer who orders the release of a juvenile who has been transferred to the criminal division of the superior court pursuant to section 8-327 or who has been charged as an adult pursuant to section 13-501 shall notify the appropriate school district on the release of the juvenile from custody.
7. Courts shall establish supervision requirements which support the goals of minimizing the risk of defendants committing a new crime or failing to appear while on pretrial release.

**F. General Administration.**

1. A presiding judge or designee operating pretrial services or pretrial supervision shall adopt policies and procedures in support of this code that conform with this section and are consistent with the principles of evidence-based practices.
2. A presiding judge or designee operating pretrial services or pretrial supervision shall provide data reports to the AOC as requested.

**G. Training Requirements.**

1. Courts using a risk assessment instrument shall ensure that pretrial services staff responsible for administration of a pretrial risk assessment instrument complete approved training.
2. Courts that provide supervision of persons released under supervision of a pretrial services agency shall ensure that all pretrial services staff providing supervision have completed approved training.