

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
AMENDING ARIZONA CODE OF)	Administrative Order
JUDICIAL ADMINISTRATION § 6-201:)	<u>No. 2009 - 53</u>
STANDARD PROBATION)	(Affecting Administrative
)	Order No. 2007-86)
)	

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.

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 adopted, remain unchanged and in effect.

Dated this 10th day of June, 2009.

RUTH V. McGREGOR
Chief Justice

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

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 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~~ direct 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 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 probation department, conducted independently from any automated system.

“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 a state-approved tool to determine the offender’s needs related to criminal behavior and propensity to re-offend.

“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. Through 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 adults who reside in the county on probation to the superior court.” Only those probationers on the probation officer’s active direct caseload are included in determining the average caseload of sixty adults.

I. Active Direct Case.

1. The standard probation officer’s active direct 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 who are participating in work furlough, work release or job search as a condition of probation or pending probation revocation proceedings, regardless of the length of incarceration;
- c. Probationers in a residential treatment in the officer’s county;
- d. Probationers in a short term residential treatment in another county;
- e. Probationers placed on probation after January 1, 1999, in a limited jurisdiction court, for aggravated domestic violence; ~~and~~
- f. Probationers residing temporarily out of the officer’s county or state through the

issuance of a travel permit;

g. Probationers in the officer's county on behalf of another state in accordance with the Interstate Compact for Adult Offender Supervision; and

h. Probationers on warrant status for less than 90 days.

2. The standard probation officer's active direct 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 for 90 days or more;

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;

g. Probationers in a long term residential treatment 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. An offender not yet convicted who is participating in a diversion program ~~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 jail as a condition of probation, regardless of the length of incarceration, who are not participating in work furlough, work release, or job search program ~~Probationers in the officer's county on behalf of another state in accordance with the Interstate Compact for Adult Offender Supervision;~~

k. Offenders supervised as a part of pretrial services; or An offender not yet convicted who is participating in a diversion program;

l. Unsupervised or summary probation cases. ~~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 restitution hours are maintained 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;
- 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 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 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;
- f. Develop policies and procedures which require that once every ~~six months~~ 180 days the supervising probation officer administer the standardized reassessment and develop a new case plan; and
- g. 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 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:
 - (1) Utilize the results of the standardized assessment to establish a level of supervision and develop a case plan within ~~one month~~ 30 days 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;
 - (2) Administer the standardized reassessment every ~~six months~~ 180 days. The results of the standardized reassessment, along with probationer's compliance with the conditions of probation and any other relevant factors shall be used to develop a new case plan; and
 - (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 ~~two months~~ 60 days 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, if 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 ~~three months~~ 90 days, 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. 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.
3. The maximum probation supervision level shall include:
 - a. A minimum of two visual contacts ~~per month~~ every 30 days which shall occur at the probationer's residence at least once every 30 days ~~a month~~. Visual contacts shall be varied, scheduled and unscheduled;
 - b. Employment verification as necessary or employment search verification once per week, if probationer is authorized to work in the United States;
 - c. Investigation of arrest notification;
 - d. Community restitution monitoring;
 - e. Alcohol and drug testing, as necessary; and
 - f. Treatment, counseling, or both, as necessary.
4. The medium probation supervision level shall include:
 - a. A minimum of one visual contact every 30 days ~~per month~~, which shall occur at the probationer's residence at least once every ~~three months~~ 90 days. Visual contacts shall be varied, scheduled and unscheduled;
 - b. Employment verification as necessary or employment search verification once per week, if probationer is authorized to work in the United States;
 - c. Investigation of arrest notification;

- d. Community restitution monitoring;
 - e. Alcohol and drug testing, as necessary; and
 - f. Treatment, counseling, or both, as necessary.
5. The minimum probation supervision level shall include:
- a. A minimum of one visual contact every ~~three months~~ 90 days which shall occur at the probationer's residence at least once every ~~six months~~ 180 days. Visual contacts shall be varied, scheduled and unscheduled;
 - b. Employment verification as necessary or employment search verification once per week, if probationer is authorized to work in the United States;
 - c. Investigation of arrest notification;
 - d. Community restitution monitoring;
 - e. Alcohol and drug testing, as necessary; and
 - f. Treatment, counseling, or both, as necessary.
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. No Change