

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:

October 12, 2023

Type of Action Requested:

Formal Action/Request
 Information Only
 Other

Subject:

Task Force on Plea Agreements, Sentencing, and Dispositions Report and Recommendations

FROM:

Justice John R. Lopez, IV (virtual attendance)

DISCUSSION:

Task Force created on Plea Agreements, Sentencing, and Dispositions, and the purpose of the Task Force, the details of the Report and Recommendations.

RECOMMENDED COUNCIL ACTION:

Yes, Approval Requested



Task Force on Plea Bargaining, Sentencing, and Dispositions

Report and Recommendations

September 2023



**Task Force on Plea Bargaining, Sentencing, and Dispositions
Members and Staff**

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EXECUTIVE SUMMARY

Each year, more than 300,000 cases are adjudicated in Arizona’s criminal courts. Of those, over 39,000 are dispositioned within the Superior Court, with 98% of the convictions and penalties imposed resulting from plea bargaining ([Statistics \(https://www.azcourts.gov/statistics\)](https://www.azcourts.gov/statistics), Arizona Supreme Court). Plea bargaining has become an essential component of our justice system, as it promptly resolves criminal cases and provides greater certainty about the case outcome for the state, defendants, and victims. While we recognize that the process of negotiating a plea ultimately rests with the prosecutor and the defendant’s attorney, judges have an important oversight role in determining the plea’s accuracy and completeness, and the defendant’s voluntary and intelligent acceptance of the plea agreement. A court may reject a plea or any provision of the agreement.¹

The Judicial Branch’s Strategic Agenda, *Justice for the Future: Planning for Excellence*, Goal 5, emphasizes the need to recognize and address concerns that affect public trust and confidence in our justice system. The penalties imposed at sentencing are the most visible, impactful, and measurable point of comparison for similarly situated individuals. Because most defendants in our courts are sentenced pursuant to a negotiated guilty plea, it is important to determine if there are ways to improve transparency, fairness, and consistency in the process. Additionally, we must ensure that all pleas and the resulting orders are sufficiently complete, accurate, and clear to allow clerks to enter reliable data into the court’s case management system that accurately reflects the results of the plea hearing. The sentencing order is critically important for probation supervision, Department of Corrections administration, and any further court proceedings and revocation matters.

In addition to the Strategic Agenda, the Administrative Office of the Courts’ (“AOC”) Committee on Diversity, Equity, and Justice (formerly known as the “Committee on Minorities”), in conjunction with the Arizona Judicial Council (“AJC”), identified the plea negotiation, disposition, and sentencing processes as candidates for improvement in the context of racial justice initiatives, current practices, and system improvements (see Appendix 1).

¹ Rule 17.4 (e), Az. R. Cr. Pr.

TASK FORCE CONSIDERATIONS

On June 2, 2021, Chief Justice Robert M. Brutinel issued Administrative Order 2021-84 to establish a Task Force on Plea Bargaining, Sentencing and Dispositions. The Task Force was instructed to evaluate and offer recommendations on the following topics:

- a. Compiling and publishing demographic data on plea bargains, sentencing and dispositions;
- b. Developing and providing implicit bias training for attorneys who negotiate plea agreements;
- c. Developing and providing judicial training on plea agreements to improve bias awareness, ensure sufficiency of facts, and to utilize data to inform decision making and increase awareness of disproportionate sentencing outcomes for minority defendants;
- d. Identifying and training judges on best practices for ensuring sentencing orders are complete and legible for those responsible for data entry into the court's case management system;
- e. Doing more to advise defendants of the possible collateral consequences of a guilty plea;
- f. Proposing amendments to the Rules of Criminal Procedure, as needed, to accomplish the goals of this Task Force.

Although all members voted to approve the recommendations of this report, the recommendations may not reflect or represent the opinions or views of the member's workplace or affiliated agency.

DATA

The first topic the Task Force examined was the scope and nature of criminal case data currently collected on a statewide basis, dedicating the first two meetings to evaluating data collection within the state's criminal justice agencies. Specifically, Task Force members discussed their county and agency methods for gathering data, including whether their data collection processes differed, and whether the data offered insight into the plea and sentencing process. Of the many concerns about current criminal justice system data collection, the Task Force narrowed its focus on identifiable areas of inaccurate or incomplete criminal case data collection and where missing data in the plea and sentencing process might offer greater insight into whether bias impacts plea or sentencing decisions.

The Task Force determined that county jails, prosecutors' offices, clerks' offices, and probation departments use numerous case management systems, there is limited integration between these systems, and they collect different data. In fact, even within a single system, the same document type (e.g., the "Financial Judgment and Order" contract) is often uploaded inconsistently depending on a particular county process. Moreover, this inter-agency disconnect is illustrated by AOC Senior Statistical Analyst Humberto Cisneros' report that, although AOC collects voluminous data from county clerks and probation departments, the court's data reports do not include data from law enforcement agency, jail, and county attorney systems.

The Task Force also concluded that data collection concerning biographical information is often inconsistent and inaccurate, in part, because it may vary as information is gathered at different stages of the legal process. For example, during the initial point of contact with a defendant leading to criminal charges (the "citation event"), data on the defendant's race is often unreliable or inconsistent for numerous reasons. Several law enforcement representatives—Yavapai County Sheriff David Rhodes and Coconino County Jail Commander Matthew Figueroa— noted that data collection criteria often varies between jurisdictions; some citations collect only information on race, while others also collect ethnicity information. Additionally, race identification frequently is based on an arresting officer's subjective determination at the citation event, which is often influenced by limited observation and without any discussion with a defendant. To compound the risk of unreliability of this data, it may be gathered both by the arresting officer and the detention officer and, potentially, may differ based on the subjective impressions of these officials. Given these systemic flaws in current data collection—non-uniform collection procedures and methodologies—and the resulting potential unreliability of various data, including race, attempts to extract reliable information and derive meaningful insights from the data will likely yield questionable results.

Despite the significant flaws in our state's current criminal justice data collection system, the Task Force noted a step to improve the reliability of criminal justice data—the statutorily mandated Arizona Criminal Justice Commission's ("ACJC") designation as the central repository for criminal justice data pursuant to A.R.S. § 41-2408. ACJC's expectation was that Senate Bill (SB) 1588, (<https://www.azleg.gov/legtext/56leg/1R/bills/SB1588S.pdf>) would implement a model uniform criminal justice data collection system by mandating that state and local criminal

justice agencies timely report standardized complete and accurate criminal justice data and make it publicly accessible. Although the Governor vetoed SB1588, ACJC intends to reintroduce the bill or, alternatively, use an existing justice data repository system to collect and publicize statewide data and assist agencies in analyzing and reporting the data.

In recognition of the importance of transparency, three counties have developed pilot project dashboards to facilitate data collection. Former Yavapai County Attorney Sheila Polk and Deputy Maricopa County Attorney Division Chief Jason Kalish demonstrated their data dashboards and noted some of the data collection limitations, including the omission of ethnicity information in their systems. The Task Force concluded that the proposed ACJC data repository, although not a panacea, would address many of the existing data collection flaws, advance important state and national data collection interests, and promote criminal justice data transparency and confidence in the Arizona justice system.

Once a statewide criminal justice data repository is established, reliable and comprehensive data will improve insight into whether disparate plea and sentencing outcomes exist and, if so, whether they are causally related to race or any other biographical factors. The Task Force concluded that it is essential to collect data at each stage of the criminal justice process (e.g., arrest, initial appearance, probable cause hearing, plea negotiations, sentencing, etc.) to identify any disparities indicating bias (e.g., race, custody status, employment status, neighborhood of residence, etc.) at any prosecution stage.

In addition to determining whether improper systemic bias exists in the Arizona criminal justice system, the Task Force noted that reliable criminal justice data could be used for related purposes such as informing attorneys and judges of identified statewide trends in particular sentencings resulting from plea dispositions. Such information could be published on attorney and judicial training websites, stakeholder websites, and updated periodically. Routine analysis of plea and sentencing data may assist the courts in ensuring the integrity, fairness, and consistency of plea negotiation and sentencing processes and avoiding unwarranted sentencing disparities.

Finally, the Task Force considered whether data on aggravating and mitigating factors, both as alleged and imposed, should be collected because they are a crucial factor in sentencing. The Task Force noted that courts and county attorney offices do not collect data on sentencing

factors, so this would represent an expansion of data collection. The Task Force also noted several practical hurdles in collecting this data. For example, in pronouncing a sentence, if a judge deviates from the presumptive sentence, then the aggravating and mitigating circumstance(s) must be stated on the record. However, because only a single factor may be required for a deviated sentence, the record may be incomplete as to other aggravating or mitigating factors. Nevertheless, some sentencing factor data is typically available for capture. Given the importance of aggravating and mitigating factors in sentencing, the Task Force recommends that meaningful effort be made to collect this data.

ISSUE 1: Criminal Justice System Data

As noted, there is currently no publicly accessible centralized database in Arizona reflecting or permitting the analysis of criminal justice information from arrest to disposition. However, as discussed, ACJC will attempt to fill this void either through statute or use of another national data collection system. The goal is, once established, that ACJC's data repository will offer reliable and comprehensive data to allow meaningful insight into whether disparate plea and sentencing outcomes exist and, if so, whether they are causally related to race or any other biographical factors.

RECOMMENDATIONS:

- 1) It is recommended that the Arizona judiciary support the ACJC data repository project to collect statewide comprehensive criminal justice data and make it available to policy makers and the public. ACJC is encouraged to seek state and federal funding to implement the project.**
- 2) It is recommended that the ACJC Statistical Analysis Center or a contracted researcher review, by county, case demographic information (e.g., race, age, gender, employment status, custody status, etc.), at each stage of criminal case proceedings (e.g., arrest, pretrial release, plea bargain, sentencing, disposition hearings), to determine whether unexplained or unjustified disparities may exist.**

- 3) It is recommended that each agency listed in the ACJC data repository project collect identified uniform data to permit county and state comparison of case data from the point of proposed pleas to disposition and sentencing.
- 4) It is recommended that ACJC establish a data governance board that includes all stakeholders from the criminal justice system at the municipal, county, and state level (e.g., representatives of the public, law enforcement, prosecutors, judges, corrections, probation, clerks of court, and criminal defense bar) to ensure that data remains relevant and accurate.

TRAINING FOR JUDGES AND ATTORNEYS

The Task Force discussed the fundamental purpose of training for judges and attorneys and how best to devise training to ensure impartiality and fairness in the plea bargaining, sentencing, and disposition processes. The Task Force agreed that training is critical to improving awareness of common issues and disparities, if any, discovered in analyzing the data, and to encourage best practices.

The Task Force engaged in considerable discussion on the merits and distinctions of implicit bias training. Although such training is available, its effectiveness is being reexamined. Relatedly, without considering the merits of a claim that some forms of implicit bias training may violate Arizona law, the Task Force noted that some iterations of implicit bias training may be subject to challenge in Arizona. For instance, ARS § 41-1494 prohibits all state entities from requiring, "... an employee to engage in training, orientation or therapy that presents any form of blame or judgment on the basis of race, ethnicity, or sex." This statute further prohibits the use of public monies to fund such training. (See Appendix 2, ARS § § 41-1494 - Training, orientation, and therapy; blame and judgment; prohibition; annual report; definition). The Task Force also discussed alternative forms of bias training geared more specifically to the criminal justice stakeholder, such as confirmation bias awareness training. The Task Force agreed that, although judicial and attorney training on the mechanics for plea bargaining, sentences, and dispositions, is widespread, there are very few trainings available on maximizing fair decisions in the criminal justice system centered on cognitive bias.

The Task Force consulted with several experts on bias in the criminal justice system. Professor Megan T. Stevenson, Associate Professor of Law and Economics at the University of Virginia School of Law, posited that training in evidence-based practices and research can promote better outcomes in the criminal justice system. She cautioned, however, that a single training session on a comprehensive topic like implicit bias is probably insufficient to achieve desired results. Honorable Robbin Stuckert, (Retired) Illinois state court judge, stated that the first step toward improving the criminal justice system is understanding the data and what is actually happening in the justice system. She elaborated on her efforts in assisting court agencies in pursuing their goals and initiatives by first educating them on the data. She also discussed the benefits of state equity assessments and shared other courts' Racial and Ethnic Disparities reports. Finally, Task Force members also reviewed representative trainings, including a training webinar titled "Aristotle to Einstein; Avoiding Confirmation Bias" and a bias training video, "The Conversation with Dr. Robert Livingston." The Task Force also noted that Rule 309, Rules of Procedure for the Juvenile Court, provides guidance on continuing education on certain topics such as "culture awareness, issues related to race, ethnicity, disability, mental health, sexual orientation, gender identity and expression, disproportionate involvement and implicit bias."

Task Force members concluded that analysis of statewide criminal case data, discussed in Issue One, will ultimately yield conclusions about whether disparities in the criminal justice system exist and will inform specific training needs. In the interim, the Task Force concludes that specialized training on decision making would benefit criminal justice system stakeholders. Specifically, training aimed at identifying and combatting cognitive or other forms of bias would help ensure that stakeholders minimize the risk of faulty reasoning and experiential bias based on any factor.

ISSUE 2: Education Programs for Judicial Officers and Attorneys

Although judges and attorneys participate in significant training on the mechanics of plea bargaining, sentences, and dispositions, there is a dearth of comprehensive training centered on ensuring fair resolution of criminal cases, particularly concerning the risk of bias in the criminal justice system.

RECOMMENDATION:

- 1.) It is recommended that educational programs be designed based on findings from the ACJC data repository project and on best practices for plea negotiations and evidence-based sentencings and dispositions. It is further recommended that a workgroup comprised of members from the various justice system stakeholders establish a consistent standard to be applied to these educational programs.**

COMPLETE AND LEGIBLE COURT DOCUMENTS

The Task Force concluded that court documents are at times incomplete, inaccurate, or illegible. For example, official documents that are handwritten are difficult to read and understand. This issue can result in erroneous outcomes and incorrect data being recorded. Moreover, plea and sentencing documents often include interlineated corrections and changes that are difficult to read.

Superior Court Clerks reported that a common point of confusion centers on the disposition of each specific charge and the fines and fees imposed. Clerks note that incomplete sentencing forms often result in incomplete sentencing orders which cause systemic challenges, including misinterpretation of orders, inaccurate case management system entries, and misconstruing court orders. The Coconino County Clerk of the Court, Valerie Wyant, shared examples of various illegible templates and forms. She emphasized that illegible court documents risk entry of erroneous orders or conditions into the system.

The Task Force concluded that, to avoid creating incomplete or illegible court documents, court forms should be standardized and electronic or, if non-electronic, handwritten interlineation should be avoided, if possible. The Task Force identified several forms that are ideal candidates for improvement (with work group recommendations), including forms concerning pretrial release conditions, plea proceedings, Uniform Conditions of Probation and Financial Judgment Orders. The Task Force acknowledges that the Arizona Supreme Court

recently adopted newly revised Uniform Conditions of Probation and Financial Judgment and Order, AJCA 6-207.

ISSUE 3: Accuracy and Understandability of Plea Bargaining and Sentencing Orders

Superior Court Clerks have reported several problems with deciphering handwritten documents and resulting sentencing orders. For example, the disposition of each charge and the number of fines and fees imposed is often unclear. Consequently, incomplete sentencing forms frequently generate incomplete sentencing orders which, in turn, create systemic challenges, including misinterpretation of orders, inaccurate entries into case management systems, and confusion about judges' orders. Similarly, illegible, inaccurate, and incomplete documents often fail to include all legal requirements.

RECOMMENDATIONS:

- 1) It is recommended that AOC establish a workgroup to modify templates in order to generate clear plea agreement documents and guilty plea proceeding documents, which conform to constitutional requirements and may expand notice of statutory consequences of conviction. It is further recommended that all courts utilize the standardized court forms adopted by the Arizona Judicial Council and the Arizona Supreme Court.**
- 2) It is further recommended that AOC expand its operational review procedures to include a review of plea agreement forms and sentencing orders to ensure improvement in collection of this critical data.**
- 3) It is further recommended that all courts prioritize implementation of the use of electronic documents and forms.**

MODIFYING RULES OF CRIMINAL PROCEDURE

The Task Force was instructed to consider whether defendants should receive greater notice of the possible consequences of a guilty plea and whether other amendments to the Rules of Criminal Procedure are necessary to accomplish the goals of the Task Force. To that end, the Task Force considered revisions to Criminal Rule of Procedure 41, Form 18(a), Felony Plea Agreement.

Form 18(a) apprises defendants of many aspects of the plea agreement process, but it does not provide an exhaustive list of the possible collateral consequences of accepting a guilty plea. The Task Force weighed the pros and cons of expanding the form's list of collateral consequences. One option entailed retaining a general collateral consequence notice because the universe of potential collateral consequences is too expansive to include an exhaustive list and the list may change. A second option involved limiting the list of potential collateral consequences to the most significant loss of rights, including those most likely to affect a defendant's life, such as immigration, core civil rights such as voting and gun rights, and restoration of rights. A third option entailed retaining the current Form 18(a) list, which confines the list to notice of potential collateral consequences that courts mandate to ensure compliance with constitutional standards. The Task Force concluded that the first option was impracticable and cumbersome and may diminish a defendant's willingness to consider entering a plea agreement. Moreover, the Task Force noted the risk that the validity of the plea may be challenged if a purportedly exhaustive list of collateral consequences failed to mention every potential collateral consequence.

The Task Force further concluded that if a decision is made to expand advisement of potential collateral consequences, the defendant should be notified of the potential collateral consequences at the commencement of the case—arraignment—as well as the time of the plea. This early advisement would encourage attorneys to discuss potential consequences with their clients prior to the plea entry proceeding.

ISSUE 4: Notification to Defendants

Form 18(a), of Rule 41 of the Criminal Rules of Procedure, notifies defendants of many aspects of the plea agreement process, but it does not apprise a defendant of all of the potential collateral consequence of entering a felony guilty plea. The Task Force recommends the modest expansion of the notice of potential collateral consequences set forth in Form 18(a) to include a broader advisement of the potential loss of core civil rights. (See Appendix 3.) To that end, Jerry Landau, Pro-Tem Judge and AOC Consultant, at the Task Force's request, drafted proposed amendments to Rules of Criminal Procedure, Rule 14.4 (Proceedings at Arraignment) and Rule 17.2 (Advising of Rights and Consequences of a Guilty or No Contest Plea), Rules of Criminal Procedure (plea agreement rule and form). (See Appendix 4.)

The Task Force also recommends that, in addition to enacting conforming changes to Form 18(a), the entire form should be reviewed by a separate workgroup.

RECOMMENDATION:

- 1.) It is recommend that, to inform each defendant of the possible collateral consequences of a felony conviction, Rule 41, Form 18(a), Felony Plea Agreement be amended to include notice and acknowledgment of the following:
"I understand by pleading guilty to a felony (and/or misdemeanor) offense, certain civil rights will be suspended, including my right to possess a firearm, my right to vote, my right to serve as a juror, and my right to hold public office."**
- 2.) It is further recommended that Rules of Criminal Procedure, Rule 14.4 (Proceedings at Arraignment) and Rule 17.2 (Advising of Rights and Consequences of a Guilty or No Contest Plea), Rules of Criminal Procedure (plea agreement rule and form) be amended (per Appendix 4) to notify defendants of potential collateral consequences of a conviction at the commencement of the case, as well as at the time of the plea.**
- 3.) It is further recommended that a workgroup be established to undertake a comprehensive review of Rule 41, Form 18(a), and to consider the Task Force's recommended amendments to Rule 41, Form 18(a), and Rules of Criminal**

Procedure, Rule 14.4 and Rule 17.2, for purposes of preparing and submitting a Rule Petition.

APPENDIX 1



Arizona State Courts' Racial Justice Initiatives

While the Arizona Judicial Branch has ongoing initiatives to improve racial justice, more can be done to improve diversity and equality in the judicial system. Planned initiatives include improving the bail system, appointing a culturally diverse bench and court workforce, ensuring representative juries, and addressing racial disparities in the adult and juvenile justice systems.

To this end, the Arizona Judicial Council and the Commission on Minorities in the Judiciary met on December 17, 2020. The resulting joint session recommendations are targeted for implementation in the Arizona state courts in 2021.

Bail Reform

File Supreme Court rule petitions and amendments to Arizona Code of Judicial Administration (ACJA):

- Allow representation of a defendant by a legal paraprofessional (LP) at an initial appearance hearing to assist with determining the amount of bail and other release conditions
- Require a review hearing if a defendant remains in jail after a judge sets a cash bond
- Modify the current rule clarifying that failure to post the required bail would be grounds for a review hearing



“No-Knock” (Unannounced) and Nighttime Warrants:

- Create a task force to make recommendations regarding “no-knock” and nighttime warrants, addressing:
 - Statutory and rule changes to clarify requirements to issue a no-knock warrant. As an example, require that requests for no-knock warrants must be approved by a command-level officer or prosecutor.
 - Updated bench scripts and additional judicial training on no-knock and nighttime warrants, including training and materials at new judge orientation.
- Incorporate task force recommendations into bench books and other judicial training platforms

Representative Juries and Juror Service:

Create a jury task force to study and make recommendations regarding:

- Peremptory challenges to jurors
- Increased minority participation on juries
- Economic roadblocks that prevent citizens with low incomes from serving on juries, such as juror pay and associated costs such as parking, public transportation, and lost wages
- Sufficiency of prospective juror source lists
- Coordination with tribal nations on improving prospective juror source lists
- Distance issues that present challenges for rural residents to participate in jury service
- Use of the statewide jury management system for collection of demographic information and statistical reporting



Plea Bargains:

- Encourage County Attorneys to develop and publish plea bargain guidelines for their county
- Create a task force to make recommendations regarding plea bargains, sentencing and dispositions, addressing:
 - Ways to compile, analyze, and publish demographic data on plea bargains, sentencing, and dispositions
 - Judicial training on plea agreements (improving bias awareness, tracking of dispositions, sufficiency of facts, county attorney plea guidelines, probation discretion, and data entry integrity)
 - Judicial training on best practices in criminal sentencing to ensure that all required assessments and data entry fields are populated and appear on sentencing orders
 - The deployment of public defenders, legal paraprofessionals, or both, to advise defendants about collateral consequences of pleading guilty.
 - Clarify by rule, statute, or both, that small bond amounts (\$1-\$100) are not required to ensure that the defendant receives credit for time served when the defendant is also being held on another case.



Disproportionate Minority Contact in Juvenile Justice System:

- Adoption of the juvenile detention screening instrument in all counties
- Adoption of the dispositional matrix tool that determines supervision level based on risk and most serious adjudicated offense in all counties
- Continuing work of the Juvenile Detention Alternative Initiative (JDAI) committees to research, define, and decrease identified racial disparities in their counties
- Publish the Seventh Arizona Statewide Report Card on Equitable Treatment of Minority Youth (FY17-19) and present findings to stakeholders.
- Research the creation of a data dashboard with demographic breakdowns of juvenile case data to be published on www.azcourts.gov

Enhance the Diversity of the Bench and Court Personnel:

- Create a law student intern/extern program to encourage diverse law school students to apply for law clerkships at the Arizona Court of Appeals and Supreme Court
- Encourage the American Bar Association Section of Legal Education and Admissions to the Bar to create standards for diversity of law school faculty, staff and student bodies.
- Require attorney admission applicants to provide demographic data
- Ask the State Bar of Arizona to identify ways to improve the collection of racial and ethnic membership data
- Collect racial and ethnic demographic data workforce composition on judicial officers and court employees, including probation officers and detention officers



APPENDIX 2

ARS 41-1494. Training, orientation and therapy; blame and judgment; prohibition; annual report; definition

A. This state, a state agency or a city, town, county or political subdivision of this state may not require an employee to engage in training, orientation or therapy that presents any form of blame or judgment on the basis of race, ethnicity or sex. This subsection does not preclude any training on sexual harassment.

B. This state, a state agency or a city, town, county or political subdivision of this state may not use public monies for training, orientation or therapy that presents any form of blame or judgment on the basis of race, ethnicity or sex. This subsection does not preclude any training on sexual harassment.

C. On or before December 1 of each year the department of administration shall submit a report that includes state agencies in compliance with this section to the governor, the president of the senate and the speaker of the house of representatives and submit a copy of this report to the secretary of state.

D. "Blame or judgment on the basis of race, ethnicity or sex" means the following concepts:

1. One race, ethnic group or sex is inherently morally or intellectually superior to another race, ethnic group or sex.
2. An individual, by virtue of the individual's race, ethnicity or sex, is inherently racist, sexist or oppressive, whether consciously or unconsciously.
3. An individual should be invidiously discriminated against or receive adverse treatment solely or partly because of the individual's race, ethnicity or sex.
4. An individual's moral character is determined by the individual's race, ethnicity or sex.
5. An individual, by virtue of the individual's race, ethnicity or sex, bears responsibility for actions committed by other members of the same race, ethnic group or sex.
6. An individual should feel discomfort, guilt, anguish or any other form of psychological distress because of the individual's race, ethnicity or sex.
7. Meritocracy or traits such as a hard work ethic are racist or sexist or were created by members of a particular race, ethnic group or sex to oppress members of another race, ethnic group or sex.

<https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/41/01494.htm>

APPENDIX 3

Proposed Form Change for Workgroup to Review

Form 18(a). Felony Plea Agreement--Non-Capital

_____ COURT _____ County, Arizona
STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]
**FELONY
PLEA
AGREEMENT
(Non-Capital)**

-vs-

Defendant (FIRST, MI, LAST)

The defendant agrees to plead guilty / no contest to _____ committed on or about _____.

This crime is a dangerous non-dangerous, repetitive non-repetitive offense under the criminal code.

Terms: On the following understandings, terms and conditions:

___ 1. The crime carries a presumptive sentence of ___ years; a minimum sentence of ___ years; and a maximum sentence of ___ years. Probation is / is not available. A maximum amount of restitution for economic loss to the victim not to exceed the amount specified in paragraph 2 and waiver of extradition for probation revocation procedures may be required. The maximum fine that can be imposed is \$150,000 plus a surcharge of ___ + ___. Special conditions regarding the sentence imposed by statute (if any) are:

None

If sentenced to a term of imprisonment, the defendant shall also be sentenced to a term of community supervision equal to one-seventh of the prison sentence to be served consecutively to the actual period of imprisonment. If the defendant fails to abide by the conditions of community supervision, the defendant can be required to serve the remaining term of community supervision in prison.

Other:

___ 2. The parties stipulate to the following additional terms, subject to court approval at sentencing as set forth in paragraph 7:

___ 3. The following charges are dismissed, or if not yet filed, shall not be brought against the defendant.

___ 4. This agreement serves to amend the complaint, indictment, or information to charge the offense to which the defendant pleads, without the filing of any additional pleading. However, if the plea is rejected by the court or withdrawn by either party, or if the conviction is subsequently reversed, the original charges and any charges that are dismissed by reason of this plea agreement are automatically reinstated.

___ 6¹. Unless this plea is rejected by the court or withdrawn by either party, the defendant hereby gives up any and all motions, defenses, objections or requests which he or she has made or raised, or could assert hereafter, to the court's entry of judgment against him or her and imposition of a sentence upon him or her consistent with this agreement. The defendant acknowledges by entering this agreement that he or she will have no right to direct appeal (ARS § 13-4033) and that the only available review is pursuant to Rule 33, Rules of Criminal Procedure.

___ 7. If after accepting this plea agreement the court concludes that any of its provisions regarding the sentence or the terms and conditions of probation are inappropriate, it can reject the plea. If the court decides to reject the plea agreement provisions regarding sentencing, it must give both the State and the defendant each an opportunity to withdraw from the plea.

___ 8. If the court decides to reject the plea agreement provisions regarding sentencing and neither the State nor the Defendant elects to withdraw the plea agreement, then any sentence either stipulated to or

recommended herein in paragraph 2 is not binding upon the court, and the court is bound only by the sentencing limits set forth in paragraph 1 and the applicable statutes.

___ 9. I understand that if I am not a citizen of the United States, my decision to go to trial or enter into a plea agreement may have immigration consequences. Specifically, I understand that pleading guilty or no contest to a crime may affect my immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. My plea or admission of guilt could result in my deportation or removal, could prevent me from ever being able to get legal status in the United States, or could prevent me from becoming a United States citizen. I understand that I am not required to disclose my legal status in the United States to the court.

[I understand by pleading guilty to a felony \(and/or misdemeanor\) offense, certain civil rights will be suspended, including my right to possess a firearm, my right to vote, my right to serve as a juror, and my right to hold public office.](#)

___ 10. I have read and understand the provisions of all pages of this agreement. I have discussed the case and my constitutional rights with my attorney. I understand that by pleading (guilty) (no contest) I will be giving up my right to a determination of probable cause, to a trial [] by jury [] by a judge [] by jury on facts used to aggravate a sentence, to confront, cross-examine, and compel the attendance of witnesses, to present witnesses on my behalf; my right to remain silent, my privilege against self-incrimination, the presumption of innocence and right to direct appeal. I agree to enter my plea as indicated above on the terms and conditions set forth herein. I fully understand that, as part of this plea agreement, if I am granted probation by the court, the terms and conditions thereof are subject to modification at any time during the period of probation in the event that I violate any written condition of my probation. I understand that if I violate any of the written conditions of my probation, my probation may be terminated and I can be sentenced to any term or terms stated above in paragraph 1.

I have personally and voluntarily placed my initials beside each of the above paragraphs and signed the signature line below to indicate that I read, or had read to me, understood and approved all of the previous paragraphs in this agreement, both individually and as a total binding agreement. My plea is voluntary and not the result of force, or threat, or promises other than those contained in the plea agreement.

DO NOT SIGN THIS FORM UNLESS YOU HAVE READ IT COMPLETELY, OR HAD IT READ TO YOU AND UNDERSTAND IT FULLY.

Date

Defendant

I have discussed this case with my client in detail and advised my client of his or her constitutional rights and all possible defenses. I believe that the defendant's plea is knowing, intelligent, and voluntary and that the plea and disposition are consistent with law.

Date

Defense Attorney

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

Date

Prosecutor

[https://govt.westlaw.com/azrules/Document/N60EDF5113FC811EDA9B7C84D98A5D123?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/azrules/Document/N60EDF5113FC811EDA9B7C84D98A5D123?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

APPENDIX 4

Proposed Rule Change

Rule 14.4. Proceedings at Arraignment

At an arraignment, the court must:

(a) enter the defendant's plea of not guilty, unless the defendant pleads guilty or no contest and the court accepts the plea;

(b) decide motions concerning release conditions under Rule 7 if:

(1) the arraignment is held with the defendant's initial appearance under Rule 4.2;

(2) the moving party provides 5 days' notice of a contested release motion; or

(3) all parties agree;

(c) set the date for trial or a pretrial conference;

(d) provide written notice of the dates of further proceedings and other important deadlines;

(e) inform the defendant of the following:

(1) the right to counsel and the right to court-appointed counsel if eligible;

(2) the right to jury trial, if applicable;

(3) the right to be present at all future proceedings;

(4) the failure to appear at future proceedings may result in the defendant being charged with a new offense and the court issuing an arrest warrant;

(5) all proceedings may be held in the defendant's absence, other than sentencing; and

(6) the defendant may lose the right to a direct appeal if the defendant's absence from sentencing causes sentencing to occur more than 90 days after any conviction;

[\(7\) Conviction of a crime may have collateral consequences, including but not limited to immigration consequences;](#)

[\(8\) Conviction of a felony offense will result in certain civil rights being suspended.](#)

(f) appoint counsel if applicable;

(g) order a summoned defendant to be 10-print fingerprinted no later than 20 calendar days by the appropriate law enforcement agency at a designated time and place if:

(1) the defendant is charged with a felony offense; a violation of an offense listed in Title 13, Chapters 12, 14, 15 except A.R.S. § 13-1509, 18, 20 through 23, 32, 34, or 34.1; a domestic violence offense as defined in A.R.S. § 13-3601; a violation of A.R.S. §§ 13-1604, 13-2406, 13-2904, 13-2907 to 13-2907.05, 13-2910, 13-2916, 13-3102, 13-3103, 13-3513, 13-3555, 13-3558,

13-3613, 13-3619, 13-3623, 13-3704, or 46-215; or a violation of an offense listed in Title 28, Chapter 4; and

(2) the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number.

Proposed Rule Change

Rule 17.2. Advising of Rights and Consequences of a Guilty or No Contest Plea

(a) Generally. Except as provided in Rule 17.1(f)(2), before accepting a plea of guilty or no contest, the court must address the defendant personally, inform the defendant of the following, and determine that the defendant understands:

- (1) the nature of the charges to which the defendant will plead;
- (2) the range of possible sentences for the offenses to which the defendant is pleading, any special conditions regarding sentencing, parole, or commutation imposed by statute;
- (3) the constitutional rights that the defendant foregoes by pleading guilty or no contest, including the right to counsel if defendant is not represented by counsel;
- (4) the right to plead not guilty;
- [\(5\) conviction of a crime may have collateral consequences;](#)
- [\(6\) pleading to a felony offense will affect certain of the defendant's civil rights;](#) and
- (7) in a noncapital case, the defendant's plea of guilty or no contest will waive the right to appellate court review of the proceedings on a direct appeal; and that the defendant may seek review only by filing a petition for post-conviction relief under Rule 33 and, if it is denied, a petition for review.

(b) Immigration Advisement.

(1) *Advisement.* The court must advise that a plea may have immigration consequences and specifically state:

“If you are not a citizen of the United States, pleading guilty or no contest to a crime may affect your immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. Your plea or admission of guilt could result in your deportation or removal, could prevent you from ever being able to get legal status in the United States, or could prevent you from becoming a United States citizen.”

(2) *Advisement Before Admission of Facts.* A court also must give the advisement in (b)(1) before any admission of facts sufficient to warrant a finding of guilt, or before any submission on the record.

(3) *Disclosure of Immigration Status.* A court may not require a defendant to disclose his or her legal status in the United States.