

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Proposal Cover Sheet**

**Section 6-105: Powers and Duties of Officers**

**1. Effect of the proposal:** The proposed amendments to this section stem from the implementation of the Offender Screening Tool (OST) as the statewide adult probation assessment tool in January 2005; best practices in adult probation supervision; statutory changes; and changes to the approved ACJA drafting guidelines.

**2. Significant new or changed provisions:**

- The implementation of the OST as the statewide approved standardized assessment tool for adult probation and its use in the development of a case plan
- Reflects statutory change (effective December 31, 2005) from community service to community restitution

**3. Committees actions and comments:** The proposed code section was provided to members of the Committee on Superior Court and Committee on Probation. It was also sent to Presiding Judges of the Superior Court, Clerks of the Superior Court, Court Administrators, and staff of the Adult and Juvenile Probation Services Divisions of the Administrative Office of the Courts. All comments received have been incorporated, where appropriate (see attached).

On November 10, 2005 the Committee on Probation, approved the proposed amendments, with the request that “legal residency” be included in paragraph E (2)(g)(2)(k) (page 6), as a risk factor to be considered when determining the time frame necessary to file a petition to revoke probation and request that a warrant be issued once an officer has reason to believe a probationer has absconded. AOC legal counsel advised against making this change as the literature does not support an individual’s legal residency status as a risk factor.

On November 18, 2005 the Committee on Superior Court formally endorsed the current proposed amendments (which do not include the language change requested by the Committee on Probation noted above).

**4. Controversial issues:** None anticipated.

**5. Recommendation:** It is recommended that the Arizona Judicial Council approve the proposed amendments.

**Comments and Responses to  
ACJA Section 6-105: Powers and Duties of Officers**

PARAGRAPH	COMMENT	RESPONSE
E.2.b (1)(a)	“Utilize the results of the standardized assessment to establish a level of supervision and develop a case plan within one month ...” Pursuant to the department’s FROST policy the officer has two months to complete the case plan.	Not incorporated. Timeframe has already been adopted in other ACJA sections. Department will have to modify policy.
E.2.b (1)(c)	Suggest adding the following test “... monitor <u>and document in the case record</u> probationer behavior and compliance with the conditions of standard or intensive probation and, when appropriate, increase or decrease the level of supervision <u>with supervisor approval.</u> ”	Not incorporated. Language already adopted in other ACJA sections. Other provisions already require case record documentation. Local policy should address supervisory approval of changes in level of supervision.
E.2.b (2)	Suggest adding to the last sentence, “The supervising probation officer shall then address the remaining treatment or counseling areas in descending order <u>of importance.</u> ”	Not incorporated. Language already adopted in other ACJA sections. Unnecessary.
E.2.d	Suggest adding to the last sentence, “The officer shall also promptly inquire into the physical, emotional, and financial impact of the offense <u>on the victim or immediate ...</u> ”	Not incorporated. Statutory quote – can not be altered.
E.2.g (2)	List of risk factors for absconders should include residency status such as if the probationer is an illegal alien.	While the Committee on Probation approved incorporating “legal residency” as a risk factor, AOC legal counsel has advised against inclusion as the literature does not support an individual’s legal residency status as a risk factor.

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 6: Probation**  
**Chapter 1: General Administration**  
**Section 6-105: Powers and Duties of Officers**

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

**A. Definitions.** In this section the following definition applies:

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

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

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

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

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

“Court” means superior court.

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

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

**B. Applicability.** ~~Article VI, Section 3 of the Arizona Constitution~~ Az. Const. Art. 6, § 3 and A.R.S. §§ 12-253 and 12-254 authorize the ~~Supreme~~ Court to establish powers and duties of officers.

**D. Duties of Directors of Juvenile Court Services and Chief Probation Officers.**

1. Directors of juvenile court services and chief probation officers shall:

- a. Abide by the Code of Conduct for Judicial Employees and the Code of Ethics for Arizona Probation Personnel;

- b. Treat probationers, victims, criminal justice personnel and the public with dignity and respect;
- c. Require that all probation employees adhere to all federal and state statutes, local ordinances, the Arizona Code of Judicial Administration (ACJA) and all administrative orders concerning adult and juvenile probation services;
- d. Require that probation employees are provided with, or have access to:
  - (1) Applicable local policies and procedures; and
  - (2) ACJA ~~code~~ sections pertaining to probation related matters.
- e. Require all probation employees to comply with all applicable policies and procedures;
- f. Promote and support the existence of a drug-free workplace through the enactment and enforcement of ACJA ~~code~~ sections or local policy;
- g. Uphold the mission and strive to meet all related performance measures of state funded probation services;
- h. Maintain accurate and verifiable records of all persons under supervision of the court; and
- i. Support the implementation of all probation and court related goals contained within the strategic agenda for Arizona's courts.

**E. Duties of Probation Officers.**

- 1. Adult and juvenile probation officers shall:
  - a. Abide by the Code of Conduct for Judicial Employees and the Code of Ethics for Arizona Probation Personnel;
  - b. Treat probationers, victims, criminal justice personnel and the public with dignity and respect;
  - c. Adhere to all federal and state statutes, local ordinances, the ACJA and all administrative orders concerning adult and juvenile probation services;
  - d. Comply with all current departmental policies and procedures;
  - e. Acknowledge the impact of crime on victims by adhering to the Victim's Bill of Rights and other applicable legislation;

- f. Communicate and coordinate with treatment providers concerning probationer participation in and compliance with treatment requirements, to ensure probationer rehabilitation, community protection and victim restoration;
  - g. Work with the community and department personnel to develop resources and opportunities for treatment and rehabilitation for persons on probation and under their supervision;
  - h. Ensure that persons under their supervision are referred to available treatment and rehabilitation resources as needed within the level of authorized appropriations, and adhering to department policies and procedures and the ACJA;
  - i. Maintain accurate and verifiable case records of all persons assigned to them for supervision; and
  - j. Perform other duties as prescribed by the chief probation officer or director of juvenile court services.
2. Adult probation officers shall also:
- a. As provided by A.R.S. § 12-253(1), “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” as provided by A.R.S. § 12-253(1);
    - (1) 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.
    - (2) The supervising probation officer shall document in the case ~~file~~ record all contacts and information received pertaining to the incident, as well as the actions taken as a result of the incident.
  - b. As provided by A.R.S. § 12-253(2), “Exercise general supervision and observation over persons under suspended sentence, subject to control and direction by the court” as provided by A.R.S. § 12-253(2);
    - (1) Adult probation officers shall ~~conduct a standardized assessment on every offender;~~
      - (a) ~~Each probation officer providing probation supervision shall conduct a~~ Utilize the results of the standardized assessment of each new probationer to establish a level of supervision and develop a case plan within 30 days one month of a probationer’s placement on probation or initial release from custody as a condition of standard or intensive probation. The case plan shall contain the signatures of the supervising probation officer, the probationer, and if the

~~probationer is on intensive probation, the surveillance officer; unless a standardized assessment was previously conducted during the presentence process. The supervising probation officer shall use the results of the assessment to establish a level of supervision for the probationer and formulate a supervision plan.~~

- ~~(b) Each probation officer providing standard probation supervision shall examine and reassess the risk and needs of each probationer under their supervision every 180 days. Administer the standardized reassessment every six months. The results of the standardized reassessment, along with the probationer's compliance with the conditions of probation and any other relevant factors shall be used to develop a new case plan; and The probation officer may increase or decrease a probationer's level of supervision based on standardized assessments and the probationer's compliance with conditions of probation.~~
- ~~(c) Each probation officer providing intensive probation supervision shall every 90 days examine and reassess the risk and needs of each probationer under the officer's supervision and the factors associated with reducing, maintaining or increasing the intensive probationer's level of supervision. The probation officer shall petition the court to increase or decrease a probationer's level of supervision at regular intervals, when appropriate, based on standardized assessments and the probationer's compliance with conditions of probation. Monitor probationer behavior and compliance with the conditions of standard or intensive probation and, when appropriate, increase or decrease the probationer's level of supervision.~~
- (2) Adult probation officers shall provide a written directive to the probationer referring the probationer to an appropriate service provider within ~~60 days~~ two months of sentencing, release from custody, or identification of the need if a need for treatment or counseling is identified through the use of a statewide standardized assessment or is ordered by the court. If more than one area of treatment or counseling is identified, the supervising probation officer shall prioritize the needs and address the one with highest priority within the prescribed time frame. The supervising probation officer shall then address the remaining treatment or counseling areas in descending order.
- (3) The supervising officer shall administer 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.
- (4) Adult probation officers shall ensure the collection of monies owed as a condition of probation and immediately address any arrearage. The probation officer shall also encourage the probationer's payment of other assessments, such as child support or traffic fines, ordered by any court.
- (5) Adult probation officers shall monitor and enforce probationer compliance with court-ordered community ~~service~~ restitution requirements. Credit toward court-ordered community ~~service~~ restitution requirements are awarded on the basis of actual hours completed unless otherwise authorized by the court.

c. As provided by A.R.S. § 12-253(3), “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.”;

d. As provided by A.R.S. § 12-253(4),

“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 reimbursement for the costs of the 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;”

e. As provided by A.R.S. § 12-253(5), “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.” Probation officers shall maintain verifiable case records for each probationer supervised, including, but not limited to:

- (1)A written statement of the conditions of probation;
- (2)An individual case plan setting forth behavioral and program expectations; and
- (3)Contact logs detailing the time, nature and location of each contact made with each person on probation.

f. As provided by A.R.S. § 12-253(6), “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; and

g. As provided by A.R.S. § 12-253(7), “Bring defaulting probationers into court when in his judgment the conduct of the probationer justifies the court to revoke suspension of the sentence.”

- (1) Adult probation officers shall make documented efforts to locate a probationer that is believed to have absconded.

- (2) A supervising officer shall consider the following risk factors in determining the time frame necessary to file a petition to revoke probation and request that the court issue a warrant once an officer has reason to believe that a probationer has absconded supervision:
  - (a) Probationer's general history;
  - (b) History of violence, including weapons use;
  - (c) History of drug or alcohol abuse;
  - (d) History of mental illness;
  - (e) Offense history;
  - (f) Supervision history;
  - (g) Illegal use of drugs or alcohol;
  - (h) Failure to participate in or complete treatment;
  - (i) Current or recent patterns of avoiding officer contact;
  - (j) Emotional or mental instability or distress on part of the probationer or the family unit, including evidence of domestic violence; or
  - (k) Current or recent unstable pattern of employment, residence, or associations.
- (3) If the absconder is on standard probation supervision and is not located within ~~90 days~~ three months, the supervising probation officer shall file a petition to revoke probation and request that the court issue a warrant. The supervising probation officer shall file the petition to revoke sooner, based on local departmental policies, the circumstances surrounding the case and the need for community protection.
- (4) If the absconder is on intensive probation supervision and is not located within 72 hours, the intensive probation officer shall file a petition to revoke probation no later than the next business day and request that the court issue a warrant. The supervising probation officer shall file the petition to revoke sooner, based on local departmental policies, the circumstances surrounding the case and the need for community protection.
- (5) ~~Probation officers~~ The probation department shall make documented efforts to locate the absconder until the absconder is ~~located pursuant to local departmental policy~~ apprehended.

3. Juvenile probation officers shall also:

- a. As provided by A.R.S. § 8-205 (1), "Except as provided by ~~§section~~ 8-323, receive and examine all referrals or Arizona uniform traffic ticket and complaint forms involving an alleged delinquent juvenile or incorrigible child."
- b. As provided by the juvenile court and as provided by A.R.S. § 8-205(3), "... ~~H~~have the authority of a peace officer in the performance of the court officer's duties." These duties shall include, but are not limited to:
  - (1) Serve warrants;
  - (2) Make arrests; and
  - (3) Bring non-compliant probationers before the court.

c. As provided by A.R.S. § 8-205 (4), “Receive petitions alleging a child or children as dependent and transmit the petitions to the juvenile court.”

d. Maintain verifiable case records for each juvenile supervised, including, but not limited to:

- (1) A written statement of the conditions of the probation;
- (2) An individual service plan or court report setting forth behavioral and program expectations and recommendations subject to the approval of the director; and
- (3) Contact logs detailing the time, nature, and location of each contact made with each juvenile on probation.

e. As provided by A.R.S. § 8-321 (F) (1-7):

If the county attorney diverts the prosecution of a juvenile to the juvenile court, the juvenile probation officer shall conduct a personal interview with the alleged juvenile offender. At least one of the juvenile’s parents or guardians shall attend the interview. The probation officer may waive the requirement for the attendance of the parent or guardian for good cause. If the juvenile acknowledges responsibility for the delinquent or incorrigible act, the juvenile probation officer shall require that the juvenile comply with one or more of the following conditions:

1. Participation in unpaid community ~~service~~ restitution work.
2. Participation in a counseling program that is approved by the court, ~~which and that~~ is designed to strengthen family relationships and to prevent repetitive juvenile delinquency.
3. Participation in an education program that is approved by the court, ~~which and that~~ has as its goal the prevention of further delinquent behavior.
4. Participation in an education program that is approved by the court, ~~which and that~~ is designed to deal with ancillary problems experienced by the juvenile, such as alcohol or drug abuse.
5. Participation in a nonresidential program of rehabilitation or supervision that is offered by the court or offered by a community youth serving agency and approved by the court.
6. Payment of restitution to the victim of the delinquent act.
7. Payment of a monetary assessment.

f. Exercise general supervision and observation over juveniles on probation, enforcing all court orders and emphasizing probationer accountability, and notify the court when probationer conduct displays an inability or unwillingness to comply with the conditions of probation and all court orders.

- (1) Juvenile probation officers shall make documented efforts to locate a probationer that is believed to have absconded.
- (2) A supervising officer shall consider the following risk factors in determining the

time frame necessary to file a petition to revoke probation and request that the court issue a warrant once an officer has reason to believe that a probationer has absconded supervision:

- (a) Probationer's general history;
  - (b) History of violence, including weapons use;
  - (c) History of drug or alcohol abuse;
  - (d) History of mental illness;
  - (e) Offense history;
  - (f) Supervision history;
  - (g) Illegal use of drugs or alcohol;
  - (h) Failure to participate in or complete treatment;
  - (i) Current or recent patterns of avoiding officer contact;
  - (j) Emotional or mental instability or distress on part of the probationer or the family unit, including evidence of domestic violence; or
  - (k) Current or recent unstable pattern of employment, residence, or associations.
- (3) If the absconder is on standard probation supervision and is not located within 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 shall file the petition to revoke sooner, based on local departmental policies, the circumstances surrounding the case and the need for community protection.
- (4) If the absconder is on intensive probation supervision and is not located within 72 hours, the intensive probation officer shall file a petition to revoke probation no later than the next business day and request that the court issue a warrant. The supervising probation officer shall file the petition to revoke sooner, based on local departmental policies, the circumstances surrounding the case and the need for community protection.
- (5) Probation officers shall make documented efforts to locate the absconder until the absconder is located pursuant to local departmental policy.
- g. Ensure that juveniles placed on probation pay restitution and probation fees as ordered and establish monthly payment schedules which emphasize payment of restitution and probation fees in the absence of specific court ordered monthly payment schedules.
- h. Conduct a ~~r~~R~~i~~s~~k~~k ~~n~~N~~e~~e~~d~~s assessment on every juvenile supervised within 30 days if not completed during the pre-dispositional process. The result of the assessment shall be used to establish a level of supervision for the juvenile and formulate a supervision plan.
- i. Closely monitor school attendance and performance.
- j. Assist those juveniles seeking employment and closely monitor employment of probationers.
- k. Involve the parent or guardian in the rehabilitation and treatment of the juvenile.

1. Provide or arrange for appropriate supervision of juveniles performing community service.

## **F. Duties of Surveillance Officers.**

1. Adult and juvenile surveillance officers shall:
  - a. Abide by the Code of Conduct for Judicial Employees and the Code of Ethics for Arizona Probation Personnel;
  - b. Treat probationers, victims, criminal justice personnel and the public with dignity and respect;
  - c. Adhere to all federal and state statutes, local ordinances, the ACJA and all administrative orders concerning adult and juvenile probation services;
  - d. Comply with all current departmental policies and procedures;
  - e. Acknowledge the impact of crime on victims by adhering to the Victims Bill of Rights and other applicable legislation;
  - f. Maintain accurate and verifiable case records of all persons assigned to them for supervision;
  - g. Enforce the collection of monies owed as a condition of probation;
  - h. Monitor and enforce probationer compliance with court-ordered community ~~service~~ restitution requirements;
  - i. Make documented efforts to locate absconders pursuant to local departmental policy; and
  - j. Perform other duties as prescribed by the presiding judge, chief probation officer or director of juvenile court services.
2. Adult surveillance officers, as provided by A.R.S. §§ 13-916(E) and 12-259.01(1), ~~are~~ are “... have the authority of a peace officer in the performance of the officer's duties...”
3. Juvenile surveillance officers, as authorized by the juvenile court and as provided by A.R.S. §§ 8-353 and 8-205(3), ~~are~~ are “... Have the authority of a peace officer in the performance of the court officer's duties.”