

for The Defense

Training Newsletter of the Maricopa County Public Defender's Office

James J. Haas, Maricopa County Public Defender

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*Delivering America's
Promise of Justice for All*

for The Defense

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2007 Legislative Summary

By Dana Hlavac, Mohave County Public Defender and Allen Elzerman, Mohave County Deputy Public Defender

Significant legislation was passed by the Arizona Legislature and signed by the governor during this past session. Due to space limitations this article will focus on those pieces of legislation which are most likely to have the broadest impact on the widest audience. Other significant changes are described and may be no less important, but may have an impact on a more limited audience. Additionally, some of the more minor changes have not been detailed at the discretion of the authors. For the full details of each piece of legislation, please refer to the underlying legislation found at the website for the Arizona Legislature. This material should not be viewed as legal advice, or the definitive authority on any piece of legislation. Each reader is encouraged to review the language of each bill of interest and consult with other members of their organization to determine the impact of each change on the operations of the office and individual client cases.

DUI

One of the most talked about and publicized laws that was enacted mandates that for every DUI conviction, a person must have an ignition interlock device installed on their vehicle. The device must be on any vehicle the person is driving for a twelve month period. This time frame begins either when the Motor Vehicle Department receives notice of the conviction or whenever the license is reinstated – whichever is later! If the person's BAC reading is .20 or greater, the interlock device must be installed for a period of 18 months – or longer at the judge's discretion. If this would be the person's second DUI conviction in seven years, the device must be installed for a period of no less than 24 months.¹



Also enacted were laws which created a "super extreme" DUI category for people whose BAC is .20 or greater. If a person has a BAC of .20 or greater, they must serve a minimum of 45 consecutive days in jail. If it is their second DUI conviction in seven years, it is a mandatory 180 days in jail, and 90 days must be consecutive. *Caution should be used in advising clients about the impact of bonding out when they have been*

*in custody less than the required number of consecutive days prior to any sentencing on their case. It can be anticipated that a client who posts bond after being held for 40 days, and is subsequently found guilty, or enters a plea, may be required to serve an additional 45 **consecutive** days.* It should be noted that any time a person has spent in a correctional facility of any kind, or time a person was deemed to be on absconder status, tolls the seven year time frame.²

Lastly, the legislature has given permission for judges to order people convicted of DUI to refrain from consuming any alcohol for a period of 30 days. Although this is a discretionary measure, if it is imposed, the person is subject to continuous alcohol testing or twice daily monitoring.³

JUVENILE LAWS

Juveniles who are convicted of criminal damage shall have a fine imposed between \$300 and \$1,000. There had previously not been a statutory minimum for the fine.⁴

Monies may be collected for crime victims from juveniles if the juvenile is adjudicated delinquent. They do not have to be convicted of a crime as an adult to be ordered to pay restitution!!!⁵

Juvenile competency reports that are sealed, may be opened by the department of corrections if a juvenile is in the custody of, or being transferred to, the department of corrections.⁶

If the juvenile is a convicted sex offender and placed in a sex offender program, their placement must be with people of similar age, maturity and offenders. If the person committed an act while under the age of 18, they can petition to have a review of if they should be required to register as a sex offender provided they are under the age of 22.⁷

If a juvenile is being prosecuted as an adult, they, or by the court's own motion, can transfer the matter back to juvenile court (reverse transfer hearing). The transfer to juvenile court will occur if the court finds by clear and convincing evidence that public safety and the rehabilitation of the juvenile would be best served by transferring the case to juvenile court. The new statute lists ten criteria to be used when the court makes its determination.⁸

SEX TRAFFICKING

There is now a distinction for recruiting, enticing, harboring or transporting a person for the purposes of prostitution. If the person is over the age of 18, the recruiting has a mental element of knowingly. If the person is under the age of 18, the recruiting is strict liability while the specific intent of causing the person to engage in prostitution remains. Any sentence must be consecutive (notwithstanding other law).⁹

If a person is "engaged" in child prostitution (victim 15-17) and receives a term of probation, a minimum of 30 days jail must be imposed.¹⁰

If a person is receiving engaged in child prostitution as other than a "John" and the child is 15, 16, or 17 years of age, the mandatory, non-suspendable, prison sentencing range is as follows:

	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
First offense:	7	10.5	21
One historical prior:	14	15.75	28
Two or more historic priors:	21	28	35

SEXUAL OFFENSE SENTENCING

For a person convicted as an Adult of a Dangerous Crime against Children involving Luring a Minor for Sexual Exploitation now faces a mandatory presumptive sentence of 10 years (may be modified up or down depending on whether there have been prior convictions for predicate felonies) with no early release. If previously convicted of a predicate felony the presumptive sentence is 15 years with no early release and no modification up or down.¹¹

SEX OFFENDER REGISTRATION

Any person who is required to register as a sex offender must also include any online identifier and the name of any websites or internet communication service where the identifier is being used. Online identifiers must be disclosed even if it was not required at the time of initial registration. Online identifiers are electronic e-mail addresses, or instant message, chat or social networking or other similar internet communications. Although not effective until January 1, 2008, current registrants are “encouraged” to submit online identifier information before this date. Includes provision for updating registration records within 3 days of any modifications.¹²

MATERIAL WITNESS TO HUMAN SMUGGLING



A person who is a material witness to human smuggling can be detained by law enforcement if their immigration status may make them unavailable at trial. This detention applies **only** to human smuggling. On the motion of a party or the person detained, the material witness may be deposed. Such deposition must be held within seven (7) days of the order granting the deposition. Essentially it permits the detention of a person who would be a witness to human smuggling with little

recourse except to file their own motion to hold a deposition. This would require the person being detained to know of their rights.¹³

GUILTY EXCEPT INSANE

If a person is found guilty except insane, the court shall sentence the person to the department of corrections under the jurisdiction of the psychiatric security review board and committed to a state mental health facility under the department of health services.¹⁴

If the person is deemed no longer in need of ongoing treatment for a mental disease and is dangerous or has a propensity to re-offend, by the psychiatric security review board, the person shall be transferred to the department of corrections for the remainder of their sentence. A judicial review can occur within 20 days of the psychiatric security review board’s order to determine: (1) whether the person no longer needs ongoing treatment; (2) whether the person is dangerous or has a propensity to re-offend. The burden is on the person requesting the review to prove by clear and convincing evidence.

PRISONERS

Additional requirements for people convicted for drug offenses to be eligible for early release (90 day) programs include being labeled as low risk to the community, not be convicted of a violent crime under ARS 13-604.04 and have good behavior while incarcerated as determined by the department of corrections. Even though there is a system established for early release, the legislature specifies that no prisoner is guaranteed an early release. Further, any person released with community supervision may be required to partake in drug counseling at their own expense. Lastly, a new provision requires prisons to offer classes to teach inmates who are being released how to live in the community.¹⁵

If a prisoner is ordered to pay restitution, between twenty to fifty per cent of the prisoner’s spendable account shall be withdrawn to pay the restitution each month. This is a non-discretionary withdrawal.¹⁶

If a person is in the custody of the Department of Corrections and commits a felony offense, the sentence on the newly charged felony must be served consecutively to any pending undischarged sentence.¹⁷

FINES/ASSESSMENTS/DNA

Through December 31, 2011, all fines are subject to an assessment of seven per cent, not the current three per cent. Beginning January 1, 2012, the assessment is reduced to six per cent.

Beginning January 1, 2008, a person **arrested** for the following crimes **must** submit for a DNA sample within five days of arrest: indecent exposure; public sexual indecency; sexual abuse; sexual conduct with a minor; sexual assault; molestation of child; bestiality; continuous sexual abuse of a child; burglary in the second degree; burglary in the first degree; keeping or residing in a house of prostitution; prostitution; portraying adult as a minor; incest; and any dangerous and repetitive crimes under ARS 13-604. The arresting agency is required to transmit the sample to DPS.¹⁸

Expunging DNA samples and results can occur if any of the following occurs: (1) the charges are not filed within the time frame given in ARS 13-107; (2) the criminal charges are dismissed; **or** (3) the person is acquitted at trial. The burden of pursuing expungement rests on the accused!!!¹⁹

RESIDENTIAL MORTGAGE LOAN FRAUD

A person who knowingly misstates, misrepresents or materially omits information relied upon by a residential mortgage loan provider can be charged with a Class 4 Felony. If there is a pattern of misrepresentation, the person can be charged with a Class 2 Felony.²⁰

THEFT OF MEANS OF TRANSPORTATION

If a person reports a theft of means of transportation, they must sign an affidavit attesting that fact and give the affidavit to law enforcement. Failure to provide a signed affidavit within 30 days after the initial report, shall result in the vehicle being removed from national crime information center database. Affiants will be made aware that filing a false affidavit will subject them to criminal prosecution.²¹

AGGRAVATED ASSAULT

Aggravated assault now includes any of the following situations: (1) if the assault causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part or a fracture; (2) if the person is in violation of a valid order of protection; (3) the victim's ability to resist is substantially impaired; (4) the victim is listed in a special category.²²

AGGRAVATED DOMESTIC VIOLENCE

The time frame for committing acts of domestic violence which would constitute aggravated domestic violence is increased from sixty months to eighty-four months.²³

CRIMINAL DAMAGE

New section to the statute adds damaging or tampering any utility, agricultural infrastructure, construction site or existing structure for obtaining nonferrous metals (copper, zinc, tin and aluminum). Can be a Class 3, 4 or 5 Felony. Also requires each scrap metal dealer to keep a picture and detailed records of all transactions over \$25. The purpose of the new provision is to stiffen the penalties for the stealing of copper and other metals.²⁴

SHOPLIFTING

The culpable state of mind is achieved if unpaid merchandise is concealed on the person or person of another or uses an artifice, instrument, container, device or other article to facilitate in the shoplifting. This permits prosecution for using another person to aid in shoplifting.²⁵

"Continuous criminal episode," now includes a dollar amount of at least \$1,500, three separate incidences (which can be at the same retail location), within 90 days, and with intent to resell the merchandise.²⁶

CONCEALED WEAPONS

Changes designation for failure to provide permit upon request by a law enforcement officer, from a Class 2 Misdemeanor to a petty offense. This does NOT change the general treatment of unlawfully carrying of a concealed weapon, only the manner in which failure to produce an otherwise valid permit is dealt with.²⁷

PUBLIC UTILITY INFORMATION

ARS 44-1376.01 is amended to include “communication service records” and “public utility records,” to telephone records which may not be fraudulently or deceptively procured. Any such information that is obtained illegally is not admissible in court proceedings.²⁸

SALE OF ANTIFREEZE

It is a Class 3 Misdemeanor for manufactures, packagers, distributors, recyclers or sellers of antifreeze to sell such antifreeze if it does not contain a bittering agent that makes the antifreeze unpalatable. There previously was no such requirement for antifreeze to contain a bittering agent.²⁹

AMUSEMENT RIDE RECORDS

Any person who knowingly discloses amusement ride records received by the municipality or county without written consent of the owner of the amusement ride is guilty of a Class 3 Misdemeanor.³⁰

WRITS OF RESTITUTION

A defendant’s social security number shall no longer be placed on the judgment. If a person is served with a Writ of Restitution or is found guilty of forcible detainer and is on the property without permission of the owner, they can be charged with criminal trespass in the third degree, a Class 3 Misdemeanor.³¹

NON-DUI DRIVING RELATED OFFENSES

An individual may attend **any** supreme court certified defensive driving school, not just a primary driving school as had been the prior law.³²

A person with a Class G license (permit) for the first six months cannot drive between midnight and 5:00 a.m. Furthermore, for the first six months a Class G license holder cannot drive with more than one passenger under the age of 18. **A peace officer may not stop a vehicle solely for this violation.**³³

A civil traffic proceeding must commence within 60 days of the alleged violation and must be served within 90 days of filing. If the violation caused a traffic accident involving death, the action may be commenced up to one year from the date of incident. The 90 day and one year windows are new time frames.³⁴

ARS 28-672, which provides for additional penalties for injuries or death which occurs during a moving violation, now includes overtaking a stopped school bus on the road. Previously, this was not a specified violation.³⁵

COURTS

ARS 21-101 is added with definitions for juror pool, jury commissioner, jury manager, jury panel, master jury file and master jury list.³⁶

A jury commissioner may appoint a designee to perform the duties of jury commissioner.³⁷

Superior Court criminal case minute entries must become available electronically. These records must be searchable by case name, number and name of the judge or commissioner. In a county with a population of two million or more people, this must begin no later than December 31, 2007. If a county's population is less than two million, this must begin by January 1, 2010.³⁸

In a county with a population of more than two million people, justice of the peace shall have original jurisdiction to hear misdemeanors, except if the offense is filed in a municipal court or consolidated with a felony in the complaint, information or indictment.³⁹

LAW ENFORCEMENT

It is now a Class 1 Misdemeanor to impersonate a Department of Public Safety Officer, as well as a Highway Patrol member.⁴⁰

During a interview with an employer, a law enforcement officer or probation officer has the right to be told in writing of the nature of the investigation, the officer's status in the investigation and all known allegations of misconduct that are the subject of the interview. This could be an important document to request when investigating the background of an officer.⁴¹

Prohibits any limitations placed on a peace officer's carrying of a firearm. Then provides a laundry list of when they can be prohibited!⁴²

Law enforcement must now inform a crime victim, or their family if the victim is deceased or incapacitated, they have the right to receive one copy of the police report at no charge.⁴³

New legislation clarifies that multi-county water conservation officers are not peace officers.⁴⁴

APPELLATE PROCEDURE

Repealed unused sections of victim's rights in appellate procedures.

CHILD PROTECTIVE SERVICES

Law enforcement shall take whatever measures are necessary to protect the identity of the person reporting an incident to CPS before releasing records it receives during an investigation. Information that would compromise a CPS or law enforcement investigation does not have to be disclosed.⁴⁵

Legislation simply numerates what a CPS worker shall inform a family that's under investigation. Same wording as previous, except there is no longer a requirement that CPS take reasonable steps to get a signed statement that the family has been informed of their rights.⁴⁶

COLLATERAL CONSEQUENCES

Permits schools that permit or require students to do clinical or hospital training as part of their schooling to obtain a fingerprint clearance card. If the person cannot obtain a fingerprint card, pursuant to ARS 41-1758.03, that person can be excluded from continuing their education and/or have their clinical employment terminated. The person who applies for the fingerprint clearance is contacted if clearance cannot be obtained. This could be an issue for any client who may have aspirations of working in health care.⁴⁷

Collection proceedings shall **not** be started against a person who has failed to pay on a civil penalty if all of the following apply: (1) the final disposition was three years before collection proceedings are initiated; (2) the court has no record of notice being sent within three years that civil judgment



was due; (3) the court has not contacted MVD to suspend person's license; (4) the court has not contacted the driver or MVD about request by court to suspend person's license; and (5) the court does not have record of extending time payments or record of installment payments.⁴⁸

A victim of domestic violence may terminate a residential lease early and without penalty if written notice is provided to the landlord within 30 days of the incident. A tenant who is the victim of domestic violence may require a landlord to re-key or change all locks at the tenant's expense. This would permit people who have been charged with domestic violence to lose their residence. This may now become a derivative consequence of being simply being charged with an act of domestic violence.⁴⁹

(Endnotes)

1. SB 1029
2. Id.
3. SB 1252
4. HB 2344
5. SB 1445
6. SB 1130
7. SB 1628
8. Id.
9. HB 2342
10. Id.
11. HB 2342
12. HB 2734
13. HB 2016
14. SB 1428
15. HB 2298
16. SB 1619
17. SB 1020
18. HB 2787
19. Id.
20. HB 2040
21. SB 1043
22. SB 1084
23. SB 1424
24. HB 2314
25. SB 1333
26. Id.
27. HB 2469
28. HB 2726
29. SB 1323
30. SB 1483
31. HB 2077
32. HB 2001
33. HB 2033
34. SB 1131
35. HB 2052
36. SB 1434
37. Id.
38. SB 1167
39. HB 2750
40. HB 2088
41. HB 2209
42. HB 2457
43. HB 2756
44. SB 1609
45. SB 1306
46. HB 2263
47. HB 2021
48. HB 2226
49. SB 1227



Mitigation Services

By Carol E. Johnson, Client Services Supervisor

In addition to working toward resolving cases through trials and motion practice, public defenders spend substantial time working toward negotiated pleas and seeking fair and just prison sentences. Each of these duties is equally important in providing the best defense for our clients. Something that can be helpful in working on *any* part of a criminal case is the discovery and the development of “mitigation”.

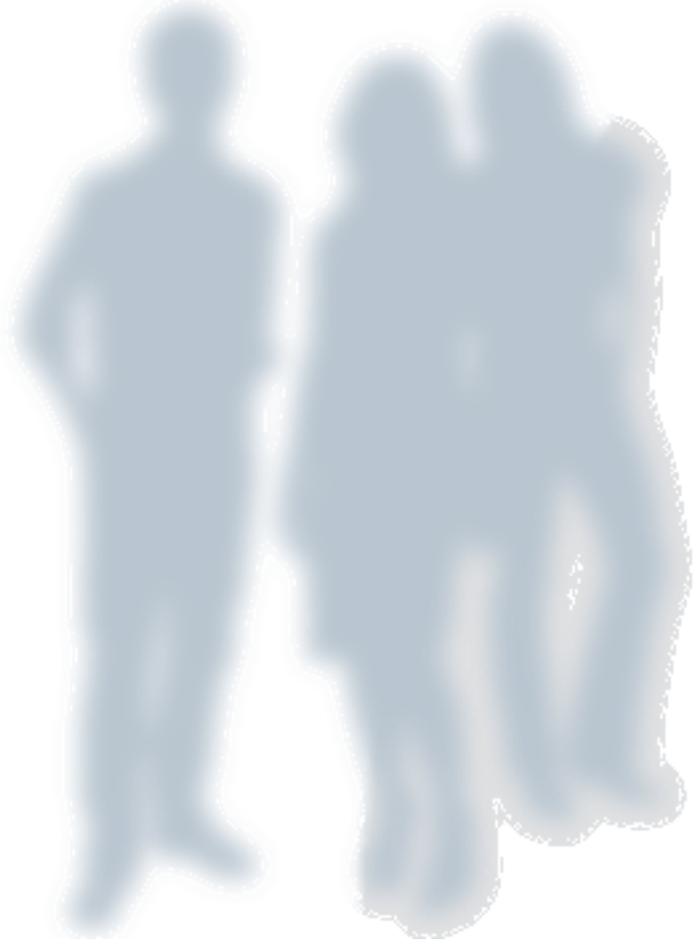
What is mitigation?

Mitigating circumstances is defined in *Black’s Law Dictionary, 6th Edition*, as follows:

Such as do not constitute a justification or excuse for the offense in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability.

Mitigating circumstances are those issues and conditions we disclose to help humanize our clients in the eyes of the prosecutor and/or the judge. Our clients make mistakes and errors in judgment which bring them into the criminal justice system. Many public defender clients are capable of learning from these mistakes and can become productive members of the community. Some may desire to turn their lives around, but lack the support and assistance they need to accomplish that goal. Mitigation specialists can offer these clients and their attorneys assistance by developing family and social histories, gathering data on mental health and substance abuse concerns, and crafting sentencing plans that address issues and concerns that require intervention and treatment.

The fact is, all of us make mistakes at some point. Most of us are given an opportunity to correct the “error of our ways”. Identification of mitigating factors in probation-eligible cases can provide our client with an opportunity to learn from his or her mistakes and to chart a more positive and constructive course for the future. Identification of mitigation for a prison-bound client can persuade the prosecutor or judge and reduce the number of years that person is facing in the Arizona Department of Corrections. If nothing more, mitigation can provide inmate classification officers information for making appropriate prison placements and serve as means for obtaining valuable



services for our client. In capital cases, the presentation of mitigating factors can make the difference between life and death.

Process of Referring cases to Mitigation Services

Public Defender mitigation services are provided by Mitigation Specialists assigned throughout the Office. In all, we have nineteen staff members that develop mitigation. Nine Mitigation Specialists are assigned to the Capital Unit. Two are assigned to Juvenile. The remaining eight Specialists serve our one-hundred ninety trial division attorneys.

Given our limited resources, attorneys must weigh many factors in analyzing potential referrals to a Mitigation Specialist. For example, consider the clients' special circumstances, e.g., whether or not the client is struggling with physical, mental health, or substance abuse issues. Perhaps he or she is the victim of an abusive relationship or is a juvenile charged as an adult. At the same time, it is critical to consider the likelihood that the services provided will be considerably different than what you can develop independently or that the services will make a substantial difference in the outcome of the case. If so, more likely than not, the case is one that will benefit from the services of a Mitigation Specialist.

Additionally, a Mitigation Specialist will need time to meet the client, conduct research, developing a plan of action, and formulate a written sentencing proposal. All of this requires **at least 30 business days**. Therefore, if you are requesting mitigation assistance, it may mean that you have to obtain a continuance to allow the mitigation specialist an opportunity to prepare. It is always wise to consider the potential need for mitigation services far in advance to ensure that you can meet court-imposed deadlines.

Once a decision is made to refer the case to a Mitigation Specialist, the attorney must complete a referral form. To make a referral, obtain the Trial Division Mitigation Specialist Referral Form from the shared drive. Open *WORD* and click:

- File
- New
- Templates -- On my computer
- Mitigation
- Referral Form

Complete the form on-line and save a copy to your H:/ drive. Send an e-mail with the referral form attached to the Mitigation Specialist handling all referrals.

Developing Mitigation on Your Own

Trial Division Mitigation Specialists must, because of our limited resources, allocate their time to cases where they can expect to have the greatest impact. Much like when attorney caseloads exceed reasonable limits, mitigation specialists must turn away a sizeable number of cases each year just to keep pace while simultaneously maintaining the highest quality of service possible.

Since they cannot provide services for every case that requires mitigation, development of mitigation often falls squarely in the attorney's lap. When you find yourself with a case for which no mitigation specialist is available, do not despair. Mitigation Specialists can help even when they cannot take the case for completion of "full-blown workup". They can staff cases with you and offer referrals, suggestions on the best approach to take, and guidance on what is most persuasive. Because they have developed an expertise in creating effective treatment and sentencing plans, a fifteen-minute conversation with a mitigation specialist can set you off in directions that you had never thought to head and save you many frustrating hours.

One of the first steps our Trial Division Mitigation Specialists recommend in developing mitigation for a client is to review the *Initial Assessment* document that is placed in the case file whenever an “adult” client is seen by a Public Defender Initial Services staff person (ISS). That document provides information to help you identify “red flags” and to alert you to the types of physical health, mental health, or substance abuse issues that your client is facing in his or her life.

Another step that they recommend is to gather additional information from your client using the **Client Questionnaire**. This document was created to help you gather more extensive detail concerning family, social, medical, and mental health information for your client. A copy of the Client Questionnaire also is provided on the shared drive and can be accessed using the steps identified above. This brief questionnaire is available in both English and Spanish, enabling you to better serve our diverse client population. In addition, this form is available on the [Mitigation Services link](#) of our website.

In an article published in *for The Defense* (Volume 17, Issue 2, pp. 16-17), Mitigation Specialist Tammy Velting provided a brief checklist to help you formulate mitigating factors that contribute to your client’s current circumstances. Some of her suggestions include the following issues: mental health (does client have a psychiatric diagnosis); substance abuse (drug of choice); family and social history (were there instances of physical or emotional abuse, or other instances of childhood trauma?); and education (was client placed in special education classes?). The **Client Questionnaire** can help you analyze your client’s personal circumstances so that you and your client better understand how he or she became involved in, or grew accustomed to a particular criminal activity or unlawful lifestyle and what can be done to effectively address the issues.

After gathering all this information, you may find that you possess sufficient information to develop mitigation without assistance. If, however, you are still hesitant, staff the case with a Mitigation Specialist for additional guidance. Occasionally, you will discover something about your client during this fact-gathering process that convinces you that advanced mitigation services are required. If so, resubmit your original Referral Form, with a copy of the Client Questionnaire for additional consideration.

The overriding goal of our Mitigation Specialists is to provide quality mitigation services to Public Defender clients and, in so doing, our primary focus is on helping you, the attorney. There are times, however, when our workload simply does not allow us to accept another case. The steps outlined above and the newly revised **Client Questionnaire** are intended to help you when our ability to do so is limited. Additionally, *for the Defense* is an excellent and convenient resource to distribute up-to-date mitigation information for your convenience. The table provided at the end of this article offers a sample of recent, related articles that have been prepared for you by mitigation staff.

Mitigation staff are invested in a positive outcome for your clients. We welcome suggestions on how we can better serve them. If you have suggestions, please feel free to contact us directly.

Employment Available for Ex-Offenders	Vol. 15, Issue 01, Pg. 07
A Long-Time Partner in the Community: Friendly House	Vol. 16, Issue 04, Pg. 11
Co-Occurring, Dual Diagnoses – What is a Co-Occurring Disorder?	Vol. 15, Issue 04, Pg. 04
Childhood Trauma as a Foundation for Mitigation	Vol. 15, Issue 01, Pg. 04
A New and Improved Resource – Lodestar Day Reporting Center	Vol. 16, Issue 04, Pg. 14
Damaging Presentence Report, The	Vol. 15, Issue 05, Pg. 04
Initial Assessment Project, The	Vol. 15, Issue 03, Pg. 06
Navigating the Mental Health System	Vol. 16, Issue 03, Pg. 01

Death Penalty 2007

Presented by Federal Public Defender Habeas Unit, Maricopa County Public Defender, Legal Defender and Legal Advocate

December 6 & 7, 2007

Death Penalty 101
Pre-Conference

December 6, 2007

Registration: 8:30-9:00am

Sessions: 9:00-11:30am

Death Penalty Conference

December 6, 2007

Registration: 12:00-1:00pm

Sessions: 1:00-5:00pm

Conference

December 7, 2007

Registration: 8:30-9:00am

Sessions: 9:00-4:30pm

REGISTRATION IS LIMITED!

Phoenix Convention Center

2nd Floor—Lecture Hall

100 N. 3rd. Street

Phoenix, AZ

This seminar is designed to meet the Arizona Supreme Court C.L.E. requirements for criminal defense attorneys engaged in death penalty litigation under Rule 6.8, AZ Revised Criminal Procedures. It will provide valuable information to any lawyer who anticipates involvement in the defense of homicide cases.

Pay Parking Areas

Chase Garage

2nd St/Monroe St

Regency Garage

Washington/2nd St



Seminar Registration—Death Penalty 2007

Name: _____

Address: _____

City/State _____

Zip code: _____ Phone# _____

State Bar ID#: _____

Conference Fees—Please Check

No Fee Federal/County Public & Legal Defenders

\$75.00 Court Appointed/Contract Counsel; City Public Defenders

\$ 150.00 Other/Private

\$ 15.00 Late Fee (After November 29)

Pre-Conference Fees—Please Check

No Fee Federal/County Public & Legal Defenders

\$25.00 Court Appointed/Contract Counsel; City Public Defenders

\$50.00 Other/Private

TOTAL: _____ **No Refunds after 12/3/07

Please return completed form & payment by November 29, 2007

TO:

Maricopa County Public Defender

Attn: Celeste Cogley

Downtown Justice Center

620 W. Jackson, Suite 4015

Phoenix, AZ 85003

Enclose a check payable to

Maricopa County

(no cash or credit)

Any Questions please contact Celeste Cogley at 602-506-7711 X37569 or cogleyc@mail.maricopa.gov

Interstate Compact

By Brian Sloan, Defender Attorney

Editor's Note: The following guide on the Interstate Compact was developed by Brian Sloan for our clients who wish to move out of state after dealing with their cases. Simply provide them with this two-page guide to assist them in their efforts to relocate out of Arizona. We appreciate the assistance of Dori Ege, Deputy Compact Administrator with Adult Probation Services, for providing a Brown Bag presentation on this topic and assisting Mr. Sloan in the creation of this guide.

This form is also available on our website under the Legal Resources link: [INTERSTATE COMPACT FORM](#)

INTERSTATE COMPACT – PROBATION SUPERVISION IN ANOTHER STATE – A.R.S. §31-467
 INTERSTATECOMPACT.ORG / 602-452-3805; 602-372-2479 (A-K); 602-372-2408 (L-Z)

REQUIREMENTS FOR INTERSTATE COMPACT

Fee	Application Fee - \$300, which must be paid upon application (in full). In exchange, the monthly probation fee in Arizona is waived. The application fee may be waived, but is unlikely. There will also be the monthly probation fees of the receiving state
States	All states are involved, including D.C., U.S. Virgin Islands, and Puerto Rico
Time	Process takes about 60 days (time for a transfer request, and a response from the receiving state)
Qualifications	<p>All Felonies with three months or more of probation</p> <p>Misdemeanors – the Interstate Compact is available to misdemeanor offenders if their sentence includes one year or more of supervised probation, all other criteria for transfer have been met, and is at least one of the following:</p> <ul style="list-style-type: none"> • An offense in which a person has incurred direct or threatened physical or psychological harm; or • An offense that involves the use or possession of a firearm; or • A second or subsequent misdemeanor offense of DUI; or • A sexual offense that requires the offender to register as a sex offender in the sending state

ELIGIBILITY:

- Receiving state shall accept supervision if:
 - o There is three months or more of supervision remaining; and
 - o There is a valid plan of supervision in other state; and
 - o The offender must intend to relocate to other state for more than 45 consecutive days in 12 month period
- Eligibility is in the discretion of the sending state (Arizona)
- Offenders subject to deferred sentences are eligible
- Offenders under pre-trial intervention programs, bail, or a similar program are not eligible

LIMITATIONS:

- Offenders who are relocated to the receiving state under this compact are not allowed to relocate to another state except as provided by the rules of Interstate Compact
- Supervision duration is determined by the sending state. Supervision level is determined by the receiving state

MANDATORY ACCEPTANCE:

An offender must be accepted into Interstate Compact if:

- Substantial compliance – offender is in substantial compliance with the terms of supervision in the sending state: sufficiently in-compliance with the terms and conditions of supervision so as not to result in the initiation of revocation procedures by the sending state

AND

- Offender is a resident of the receiving state:
 - o Has continuously inhabited what would be the receiving state for at least one year prior to the commission of the offense for which the offender is under supervision; and
 - o That state is the person's principle place of residence; and
 - o Has not, unless incarcerated, relocated to another state or states for a continuous period of six months or more with the intent to establish a new principle place of residence

OR

- Offender has family in the receiving state:
 - o Family in receiving state are willing to assist and have the ability to assist; and
 - o The offender can obtain employment or has visible means of support
 - o *Resident family must:*
 - *Be a parent, grandparent, aunt, uncle, adult child, adult sibling, spouse, legal guardian, or step-parent; and*
 - *Have resided in the receiving state for 180 days or longer as of the date of the transfer request; and*
 - *Indicate a willingness and ability to assist the offender as specified in the plan of supervision*

DISCRETIONARY ACCEPTANCE:

The sending state may request transfer of supervision of an offender who does not meet the mandatory requirements (above) if:

- The sending state provides sufficient documentation to justify the requested transfer; and
- The receiving state shall have the discretion to accept or reject the transfer of the supervision in a manner consistent with the purpose of the compact; and
- Offender shall not travel until
 - o The application has been completed and submitted
 - o Receiving state shall have the opportunity to investigate prior to offender's arrival. Arrival in the receiving state prior to acceptance and investigation may lead to automatic rejection.
 - o Exceptions:
 - Sending state may grant travel permit to an offender living in receiving state at time of sentencing; or
 - Offender sentenced to a period of incarceration of six months or less and who were living in the receiving state at the time of sentencing will qualify for reporting instructions upon release to probation
 - If the formal investigation is denied, Arizona must order the offender to return. If the offender fails to return within 10 days, Arizona must issue a nation-wide warrant*

Military Members or family of Military Members – first, the offender must meet the eligibility requirements, then:

- If the offender is a member of the military, and has been deployed by the military to another state, they shall be immediately eligible for transfer of supervision; or
- If the offender lives with a family member who has been deployed to another state, the offender shall be immediately eligible for transfer, provided that the offender will live with the military member in the receiving state

Employment of family members in another state – first, the offender must meet the eligibility requirements, then, the offender must live with the family member in the receiving state. When the family member is transferred to the other state by their full-time employer, the offender shall be immediately eligible for reporting instructions and transfer of supervision.

Transportation to receiving state – an offender will be given a 7-day travel permit to get to the receiving state after acceptance or receipt of approved reporting instructions from the receiving state. Getting to the receiving state is the offender’s responsibility.

Victims – if any – will be notified of the offender’s desire to enter into the interstate compact, and will be allowed to give their input

Waiver of extradition – prior to the offender being transferred to the receiving state, they shall sign a waiver of extradition to be sent back to the sending state if they violate the terms of their probation

Violations of probation – a violation of probation may result in the sending state (Arizona) “retaking” the offender for possible probation revocation procedures, unless there are charges in the receiving state.

HOW TO START THE PROCESS:

The probation officer has the forms, and will fill out the application, which the offender must sign. If the offender is in prison, and has a probation term following the prison sentence, this application process can begin 120 days prior to release. It takes \$300 to start the process, in the form of a money order or cashier’s check, which can be paid by someone on the outside

NOTE: An application for interstate compact cannot be entered into prior to sentencing, but the offender can begin to gather the paperwork for acceptance (showing that a family member is willing to assist the offender, or proving residency in the receiving state) prior to sentencing.



Restoration of Rights Project

By Chris Phillis, Attorney Manager

On a beautiful Saturday morning in March volunteers from the Maricopa County Public Defender's Office waited patiently behind tables at the Pilgrims Rest Church for citizens interested in restoring their right to vote and set aside their convictions. The Public Defenders Office in conjunction with the ACLU, Middle Ground, NAACP and others assisted citizens in completing paperwork to restore their civil rights. Jerry Schreck, Vonda Wilkins and Lauren Guyton greeted members of the public and asked preliminary questions. Tennie Martin and Joe Stazzone electronically accessed records and provided a sympathetic ear for those who did not qualify. Vincent Barraza and Jennifer Guenther assisted in the filling out of the application form. Suzanne Sanchez provided forms and information on the setting aside of adjudications and the sealing of juvenile records.

Over the course of three hours, fifty-two citizens received assistance in restoring their rights and setting aside their convictions. Many left the forum with an application ready to file. Those who did not qualify received information on what issues they needed to resolve, mainly fines. The compassion displayed was appreciated by the participants.

Citizens who were unable to attend the March forum had another opportunity to receive assistance as part of the Juneteenth celebration at South Mountain Community College on June 16, 2007. Once again the volunteers from the office donated a Saturday, this time in the evening, to assist citizens with paperwork. David and Ellen Katz along with the assistance of their daughters Rachael and Rebecca assisted citizens by answering questions and filling out forms. Joe Stazzone once again aided in accessing records electronically. Fredrica Strumpf was available to help wherever she was needed.

Another forum was held September 22, 2007 at the Maryvale Community Center. Members of the office volunteered to aid citizens through the process. For citizens who were unable to attend a forum, forms may be accessed on the web at <http://www.clerkofcourt.maricopa.gov/faxondemand/CATALOG.htm>

Citizens must file a copy of their discharge from probation or their absolute discharge from the Department of Corrections with their application. Unfortunately, persons discharged from the Department of Corrections must wait two years before applying to restore their civil rights.

In our quest to provide the community with helpful resources, a [Motion for Misdemeanor Designation](#) was created. Members of the public will be able to access the motion on our legal resource link. Persons convicted of a class six open felony may apply to have the offense designated a misdemeanor upon successful completion of probation. A defendant is eligible for a misdemeanor designation if prior to admitting to or being found guilty of the class six open felony he had not been convicted of two felony offenses and the class six felony did not involve the intentional or knowing infliction of serious physical injury or involve the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.

Clients who are convicted of a class six open felony should be made aware of the misdemeanor designation motion. When advising a juvenile client stresses the need to submit the request prior to the court losing jurisdiction on their 18th birthday. After all, a client with a misdemeanor record will find the work force a friendlier place than an ex-felon.

Jury and Bench Trial Results

July 2007

Public Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 1						
6/25 - 7/2	T. Baker Schreck Brazinskas	Foster	Oberpriller	CR06-171211-001DT Unlawful Discharge of Firearm, F6D Endangerment, F6D Criminal Damage, F6 Disorderly Conduct, F6D	Guilty	Jury
7/5 - 7/16	Farrell	Harrison	Voyles	CR06-177574-001DT 2 cts. Agg. Assault, F3D Assault, M1	Not Guilty 2 cts. Agg. Assault; Hung on Misdemeanor Assault (11-1 Not Guilty)	Jury
7/16 - 7/17	Williams Curtis	Cunanan	Hernacki	CR06-152600-001DT Agg. Assault, F6	Not Guilty	Jury
7/17 - 7/18	Barraza	Garcia	Oberpriller	CR07-103825-001DT PODD, F4 PODP, F6 Driving While License Susp/ Rev/Cancelled, M1	Mistrial; Driving While License Susp/Rev/ Cancelled Dismissed before trial started.	Jury
7/23 - 7/26	Barraza	Garcia	Oberpriller	CR07-103825-001DT PODD, F4 PODP, F6	Guilty on both counts.	Jury
7/24 - 7/26	Friddle Davis Ralston	Sanders	Plicht	CR06-159316-001DT Disorderly Conduct, F6D	Guilty - Non Dangerous	Jury
7/26 - 7/31	Woodson Smith Ralston	Lynch	Golomb	CR06-149564-001DT Theft, F5	Not Guilty	Jury
Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 2						
7/11 - 7/19	Roskosz	Akers	Weinberg	CR07-005469-001DT Armed Robbery, F2D Unlawful Flight, F5 Agg. Assault, F3D 2 cts. Endangerment, F6D	Not Guilty Armed Robbery and Endangerment counts Guilty Agg. Assault and Unlawful Flight	Jury
7/30 - 7/31	DeLaTorre/ Martens Souther	Brnovich	Coates	CR07-108845-001 Agg. Assault, F6	Not Guilty	Jury
7/30	Kozelka	Ditsworth	Scott	CR07-114217-001DT Resisting Arrest, F6 Assault, M1	Directed Verdict on Assault Guilty Resisting Arrest	Bench

Jury and Bench Trial Results

July 2007

Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 3						
7/16 - 7/17	Harrison Burgess	Davis	Golomb	CR07-109464-001DT Agg. Assault, F5 Resisting Arrest, F6	Not Guilty, Agg Asslt Guilty, Resist Arrest Tried in Absentia	Jury
7/24 - 7/25	Cooper Spizer Jaichner	Dunevant	Brockel	CR05-007960-001DT Theft, F3	Guilty	Jury
Group 4						
6/27 - 6/28	Gaziano / Ditsworth	French	Beaver	CR07-101350-001SE PODD, F2 PODP, F6	Guilty	Jury
6/28 - 7/5	Barnes	Udall	Krabbe	CR06-132579-001SE PODD, F4 PODP, F6	Guilty	Jury
7/9 - 7/10	Gaziano	Abrams	Flynn	CR06-168516-001SE Theft of Credit Card, F5	Guilty	Jury
Vehicular						
7/2 - 7/5	Timmer	Passamonte	Rassas	CR21006-163171 2 cts. Agg. DUI, F4	Guilty	Jury



Jury and Bench Trial Results

July 2007

Legal Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
7/9 -7/11	Wilhite	Mroz	Telles	CR2006-145613-001 PODD, F4	Guilty	Jury
7/12	Wilhite	Mahoney	Beckstead	CR2006-178802-001 POM, F6	Guilty of M1	Bench
7/23 - 7/24	Vogel	Gaines	Hernacki	CR07-100024-001 POND, F4	Not Guilty	Jury
7/23 - 7/26	Babbitt	McMurdie	Gilbert	CR06-157100-002 Armed Robbery, F2 Dang. 2 Cts: PODD, F4 POM, F6 Theft of Means of Transportation, F3	Guilty Armed Robbery; Theft of Means of Transportation Not Guilty: PODD; POM	Jury
7/31	Carlson	Duncan	Tasopoulos	CR07-108637-003 Agg. Assault, F6	Guilty of M1	Bench

Legal Advocate's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	CR# and Charges(s)	Result	Bench or Jury Trial
6/11 - 7/27	Kenyon Mudryj	Holt	JD-15550	Dependency	Bench
7/20	Miller Canecchia	Ishikawa	JD-506685	Dependency	Bench
6/11 - 7/17	Garcia Susorney Mullavey Brauer Prieto Sinsabaugh Stovall	Anderson	CR05-107872-002-DT 1st Deg Murder-F1 Kidnap-F2-Dang Armed Robbery-F2-Dang	Guilty of 1st Deg-F1; Kidnap-Dang-F2 Robbery (lesser-included)-F4	Jury
7/10 - 7/26	Centeno-Fegiere Sinsabaugh	Hall	CR06-106577-001-DT 2nd Deg. Murder-F2	Guilty of Lesser Reckless Manslaughter	Jury
6/18 - 7/26	Gray Sinsabaugh	O'Toole	CR05-009384-001-DT Child Abuse-F2, DCAC	Not Guilty	Jury
6/19 - 7/6	Koestner	Gordon	CR06-177198-001-DT Agg. Assault-F2, Dang. Crimes Against Children (3 counts) Agg. Assault-F3 (2 counts) Unlawful Flight-F5	Guilty of Lesser 5 Counts Assault-Class 1 Misd. Guilty of Unlawful Flight-F5	Jury

IT'S NOT TOO LATE TO REGISTER THERE ARE STILL SEATS AVAILABLE

PRESENTED BY MARICOPA COUNTY PUBLIC DEFENDER

The Newest Developments in Brady & Crawford

with Ira Mickenberg

Friday, October 5, 2007

8:15 am - 9:00 am	Registration & Continental Breakfast
9:00 am - 12:00 PM	Brady
12:00 pm - 1:30 pm	Lunch on your own
1:30 pm - 4:30 pm	Crawford

May Qualify for up to Six Hours CLE Credit

Wells Fargo Conference Center
100 W. Washington Street
Phoenix, AZ 85003

(Corner of 1st Street and Washington)

To register and make payment, please contact Celeste Cogley 602-506-7711, ext. 37569 or by email cogleyc@mail.maricopa.gov

The Speaker...

Ira Mickenberg is a criminal defense lawyer, defender trainer, and consultant from Saratoga Springs, NY. Ira has designed and taught trial, appellate, post-conviction and capital training programs for public defender organizations throughout the nation. He has also represented indigent defendants in the United States Supreme Court, the U.S. Courts of Appeal, and the highest courts of several states, and has done extensive felony work. From 1988-1994, Ira was founder and Attorney-in-Charge of the Office of the Appellate Defender in New York City. Ira has been certified as an expert witness in federal courts on subject of effective assistance of appellate counsel, and has taught criminal law, criminal procedure and appellate advocacy at American University School of Law, New York Law School, the University of Dayton School of Law, and Williams College.



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for The Defense

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