

# for The Defense

Training Newsletter of the Maricopa County Public Defender's Office

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## The New Rule 15

### Arizona's Discovery Rules Get A Long-Awaited Update

By Jim Haas, Public Defender and Jeremy Mussman, Special Assistant

On December 1, 2003, a number of substantive changes to Rule 15 of the Arizona Rules of Criminal Procedure will take effect. These changes, which will apply to cases filed on or after that date, are the result of three years of work by a committee appointed by the Supreme Court, which included representatives from the defense, prosecution, bench, law enforcement and crime labs.

The changes to Rule 15 came about because of widespread dissatisfaction with the discovery rules that had been in existence, and nearly untouched, since the 1970's. The administration of criminal justice has changed dramatically since that time, and the old rules simply were no longer regarded as effective.

The full text of new Rule 15 is available at [http://www.supreme.state.az.us/rules/Recent\\_rules.htm](http://www.supreme.state.az.us/rules/Recent_rules.htm). All attorneys should carefully read the new rules and comments, as they contain many significant changes that will, hopefully, enhance our ability to effectively represent our clients.

Lori Voepel, an attorney with Kimerer & Derrick and member of the Rule

15 Committee, has prepared an excellent checklist that captures many of the changes to the rule. This checklist provides the basic disclosure guidelines that will apply to non-capital cases and should be a valuable tool for tracking disclosure in your cases. It is included as a pullout in this issue of *for The Defense*.

As detailed in the checklist, the rule changes implement a specific time frame for a new, three tiered approach to the discovery process. They also provide more specific and more stringent requirements regarding supplemental disclosure and sanctions. The intent underlying these changes is explained in the comments to the rules. For example, the comment to 15.1(a), the new "initial disclosure" section requiring the prosecution to provide basic discovery at "the arraignment, or at the preliminary hearing, whichever occurs first," explains that the amendment "recognizes the defense attorney's need for basic information early in the process in order to meaningfully confer with the client and make appropriate strategic decisions."



*Delivering  
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of Justice for All*

for The Defense

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Additional significant changes include:

\* Rule 15.3(b) now allows the court to order a follow-up deposition of a witness who provided limited testimony at a preliminary hearing who refuses to grant a defense interview. As explained in the comment to this change: “[u]nder former Rule 15.(a)(2), if a witness who testified at a preliminary hearing refused to cooperate in a later defense interview, the defense was not allowed to obtain an order for a deposition. The 2003 changes to Rule 15.3 correct this problem by allowing the court to order a follow-up examination of any witness who testifies at a preliminary hearing when the testimony at the preliminary hearing was limited to the issue of probable cause.”

\* Rule 15.4(a)(2) establishes new discovery obligations regarding “handwritten notes” (e.g., notes that an investigating police officer has created). The comment explains that this amendment “requires timely preservation of information contained in handwritten notes. If the information is not substantially incorporated into a written report within the time frame established in the rule [twenty working days of the notes being created], the information contained in the handwritten notes must be saved entirely, so that the parties may have the opportunity to evaluate the information not otherwise preserved.”

\* Rule 15.6(c) establishes a final deadline for disclosure of seven days before trial, and Rule 15.6(d) provides specific criteria that must be met if a party is seeking to disclose evidence after that deadline. The party must seek an extension by motion, supported by affidavit, and the court may extend the time for disclosure if the party is able to show due diligence in obtaining and disclosing the evidence.

\* Rule 15.6(e) creates an “Extension of Time for Scientific Evidence,” *requiring* the court to grant a reasonable continuance if an affidavit from a scientific expert establishes that additional time is needed to conduct testing and that the request for additional time is not the result of “dilatatory conduct, neglect, or other improper reason...”

\* Rule 15.7 provides new criteria for the imposition of sanctions. The comment explains that “[t]he sanctions formerly provided in Rule 15.7(a) were regarded by litigants as ineffective in compelling compliance with the discovery rules.” The new rule provides the court with more specific guidelines for the imposition of sanctions and a more meaningful menu of sanctions. It also gives the parties more detailed notice of the criteria that will be used by the court in evaluating motions for sanctions. Among the inquiries that the court is now required to make when presented with a motion for sanctions are:

- “ Was the failure to comply harmless?
- “ Could the information have been disclosed earlier?
- “ Did the party exercise due diligence in finding and disclosing the information?
- “ Was the disclosure made immediately upon discovery?
- “ What is the impact of the failure to disclose on the parties or victim?
- “ In what stage of the proceeding did the late disclosure occur?

## Contents

The New Rule 15 .....	1
What Does Our Mental Health Division Do?.....	4
Flowers in Bloom .....	7
Show Me Your Papers.....	9
Arizona Advance Reports .....	12
Jury and Bench Trial Results .....	13

\* Finally, new Rule 15.8 creates a presumptive sanction for failure to disclose material evidence sufficiently in advance of a plea deadline. The rule applies when the prosecution imposes a plea deadline in a superior court case (it does not apply to plea deadlines imposed in justice court or other lower courts). If the state fails to provide the defense with the materials listed in Rule 15.1(b) at least 30 days prior to the plea deadline, the defendant may file a motion for sanctions. In considering the motion, the court is required to take into account the impact of the failure to provide disclosure on the defendant's decision to accept or reject the plea offer. If the court determines that the failure to disclose *materially impacted* the defendant's decision, and the prosecutor declines to reinstate the plea offer, the court must impose a presumptive minimum sanction of preclusion of the late-disclosed evidence. The comment to the rule explains that it is intended to provide a mechanism whereby adequate information about the prosecution's case is provided to the defendant "well enough in advance of any plea deadline to enable the defendant to make an

informed decision on the plea offer with the effective assistance of counsel."

These are only some highlights of the changes to Rule 15. We encourage you to read the entire rule and comments carefully to fully grasp the nature of the numerous amendments. Feel free to contact us with any questions regarding the changes — both of us served on the Rule 15 Committee and may have some helpful insights.

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**A SAMPLE DRAFT CHECKLIST FOR DISCLOSURE DEADLINES IN NON-CAPITAL CRIMINAL CASES HAS BEEN INCLUDED AS A SPECIAL SECTION. LOOK FOR THE YELLOW PULLOUT SECTION IN THIS ISSUE.**

**Checklist prepared by Lori Voepel, Esq., Kimerer & Derrick, P.C.  
Member, Rule 15/Rule 8 Reform Committee  
(with assistance from Law Clerk, Daniel Yu)**

# What Does Our Mental Health Division Do?

## An Overview<sup>1</sup>

By Vince Troiano, Mental Health Supervisor

The Maricopa County Public Defender's Civil Mental Health Division defends those who may suffer from a mental illness and are at risk of having a court impose an order for up to one year of mental health treatment. Of that year, a certain number of days may include inpatient treatment.

### The Four Categories of Findings

Should the court find that as a result of a mental disorder a person (our client) is a *danger to self*, the court usually orders a maximum of 90 days of inpatient treatment.

A finding of *danger to others* or *persistently or acutely disabled* holds a maximum of 180 days of inpatient treatment. If there is a finding of *grave disability*, a person may receive one full year of inpatient treatment. These four categories are defined in ARS §36-501. For example, the definition of "persistently or acutely disabled" includes a severe mental disorder that "if not treated has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality."

### The Beginning of the Process

The process of obtaining a court order for mental health treatment begins when someone applies to have a person evaluated. A.R.S. §36-520 provides in part that "*any responsible individual* may apply for a court ordered evaluation of a person who is alleged to be, as a result of a mental disorder, a danger to self or to others, persistently or acutely disabled, or gravely disabled and who is unwilling or unable to undergo a voluntary evaluation." (*emphasis added*).

A.R.S. §36-520(E) states that "except in the case of an emergency evaluation, the person

to be evaluated shall not be detained or forced to undergo pre-petition screening against the person's will." The majority of petitions for court ordered evaluation, however, are for "emergency evaluation".

### After the Application is Received

Upon receiving an application for evaluation, the "screening agency" is required to provide a pre-petition screening within 48 hours (excluding weekends and holidays). A.R.S. §36-501(36) defines "screening agency" as "a health care agency which is licensed by the department and which provides those services required of such agency by this chapter". If the agency as part of this evaluation process determines that there is "reasonable cause to believe that the proposed patient is, as a result of a mental disorder, a danger to self or to others, is persistently or acutely disabled, or is gravely disabled and that the proposed patient is unable or unwilling to voluntarily receive evaluation or is likely to present a danger to self or to others, is gravely disabled or will further deteriorate before receiving a voluntary evaluation . . ." then the screening agency prepares a petition for a court ordered evaluation. When there is further "reasonable cause" to believe that without immediate hospitalization the patient is likely to harm himself or others, then reasonable steps should be taken to procure hospitalization on an emergency basis. A.R.S. §36-521(D).

### The Application for Emergency Petition Packet

However, in addition to the application for court ordered evaluation for which "any responsible individual may apply" to take someone into custody immediately without a hearing, the application must be accompanied by a written request for emergency admission before the person may be involuntarily hospitalized by the agency. A.R.S. §36-524(A). The application for

emergency admission must be made by a person with “knowledge of the facts.” Consequently, the pleadings we often initially receive include: (1) a packet that contains the Detention Order for Evaluation and Notice; (2) the Petition for Court Ordered Evaluation signed by a petitioner doctor from the evaluating agency; (3) an Application for Involuntary Evaluation; (4) an Application for Emergency Admission for Evaluation or a Pre-petition Screening Report in non-emergency matters; and (5) a Recommendation of County Attorney which must be filed with an allegation of “danger to others”. A.R.S. §36-521(G).

### **The Admitting Officer Should Investigate**

Upon presentation of the person for emergency admission, the admitting officer (doctor) performs an examination of the person and should also investigate the application to determine if there is “reasonable cause” to believe that immediate admission is required. Then, on the same or succeeding court day, the medical director in charge of the agency is required to file a petition for court ordered evaluation, unless the person is discharged or has become a voluntary patient. A.R.S. §36-526. In addition, A.R.S. §36-527 specifies that “[a] person taken into custody for an emergency admission may not be detained longer than 24 hours excluding weekends and holidays following such detention unless a petition for court ordered evaluation is filed.”

### **The 72 Hour Evaluation**

If a petition for court ordered evaluation is filed, the court rules on it *ex parte*. Assuming it is granted (it normally is), a 72-hour detention period begins to conduct the evaluation and to determine whether a petition for court ordered treatment should be filed. This 72-hour evaluation detention has certain important statutory parameters. The person is to be “evaluated” and not “treated” for a mental disorder unless the person consents to the treatment. A.R.S. §36-528(A). Despite this, seclusion and mechanical or pharmacological restraints *may be administered* as “emergency measures” during the 72-hour evaluation

phase. By this point in the process, the person is required to have been advised of his right to consult a lawyer and to have one appointed if the person cannot employ his own counsel. A.R.S. §36-528(D).

### **A Decision Must Be Made**

Consequently, this initial evaluation phase is when we meet our clients. The initial evaluation phase is when a determination is made whether clients are discharged from the court-ordered evaluation process, accepted as voluntary patients, or if a court-order for treatment will be sought. If the evaluation team decides that a court order for treatment is needed, a petition for court-ordered treatment must be filed within 72-hours of the person’s hospitalization pursuant to the court order for evaluation. A.R.S. §36-531(D). Weekends and holidays are specifically excluded from the 72-hour time calculation by statute. Subsequently, the filing of the petition seeking a court order for treatment, if one is filed within the 72 hours, starts the next timeline, a six-day hold of the person as an inpatient, also excluding weekends and holidays, within which the court must set a hearing date to determine if the person will be court-ordered for treatment. The person almost always remains in the hospital during this six-day hold unless he was one of a few released at a release hearing. A.R.S. §36-529(D). Doctors are much more inclined to recommend release and the courts are much more likely to grant it once a court order for treatment is in place.

In other words, a person who is being evaluated as an inpatient is to be released within 72 hours, excluding weekends and holidays, from the time of hospitalization pursuant to a petition for court-ordered evaluation. However, the filing of the petition for court-ordered treatment then triggers the next holding phase of the client — the six-day hold. A.R.S. §36-531(D).

### **A Hearing Must Be Held**

A petition for court-ordered treatment requests the court to order the person to undergo treatment involuntarily. A.R.S. §36-533(C). After the petition is filed, the court shall either

release the person or order a hearing to be held within six days after the petition is filed. A.R.S. §36-535. The language of the statute giving the six-day time limit does not expressly exclude intermediate weekends and holidays, however, Arizona Rule of Civil Procedure 6(a) arguably does. Rule 6(a), in part, proposes to encompass “any period of time prescribed or allowed by these rules, by any local rules, by order of court, or by any applicable statute, ...”

## We Are Back to Those Four Categories

If, after the hearing, the person is found in need of court-ordered treatment, the client is back to the original time line for court-ordered treatment discussed at the beginning of this article. It is no longer referred to as a “commitment”, however, since “commitment” implies inpatient treatment and detainment. The court will often order a combination of inpatient/outpatient treatment, with the outpatient treatment normally lasting for a year. During that year, a maximum of 90 days may be inpatient if the person is found to be a danger to self, 180 days inpatient for danger to others and/or persistent or acute disability, and 365 days inpatient for gravely disabled. The court will usually allow the doctor or treatment team involved to determine when a person is ready to begin outpatient treatment. There is a statutorily defined preference for the least restrictive appropriate setting. A.R.S. §36-540(B). Even if outpatient treatment begins immediately after the hearing, if a person fails to abide by the terms of his treatment or begins to decompensate in the community and again needs inpatient treatment, the person may be brought back into the inpatient setting for all or part of his remaining inpatient days ordered during the overall year of inpatient/outpatient treatment.

## A Specific Look at Rule 11 Cases

This process describes the majority of cases that the Mental Health Division handles. Another, far smaller, category of cases that we handle are the “Rule 11s” – cases that we receive

after a person in a criminal proceeding has gone through the Rule 11 process, is found not competent/not restorable and the case is dismissed without prejudice. Those cases do not come to us by way of emergency petition. Instead, they come to us by way of a pickup order which expires after 14 days. A.R.S. §36-529. This order is *not a hold*. That is why the jail should either be transporting these persons to begin their evaluation process as ordered in the Rule 11 minute entry as soon as possible or the jail should be releasing these clients. The standard language in the minute entry order when a client in a criminal proceeding is found incompetent/not restorable reads in part: “It is ordered that the Defendant shall be immediately taken into custody by the Sheriff and immediately transported to the Desert Vista Psychiatric Center for inpatient evaluation pursuant to A.R.S. Section 36-530.”

The client’s criminal defense attorney should follow up on this order and, if the client has not been immediately transported pursuant to the Rule 11 minute entry or as otherwise appropriate for the civil mental health evaluation, then this unnecessary delay issue should be raised before the Rule 11 Commissioner or Judge for immediate resolution. At that point, there is a strong argument that the client is being held illegally (unless there are other valid holds on the client) and the client should be released if the jail is not going to immediately act on the pickup order.

<sup>1</sup>A special note of thanks to all my colleagues at our Mental Health Unit for their valuable ongoing insights about the practice of Mental Health law. Special thanks go to Josephine Jones, Mary Miller and our legal secretary, Ronnie Heim, for their suggestions and help with this article.

# Technology in Bloom

## Development of the Indigent Representation Information System

By Diane Terribile, Public Defender Administrator

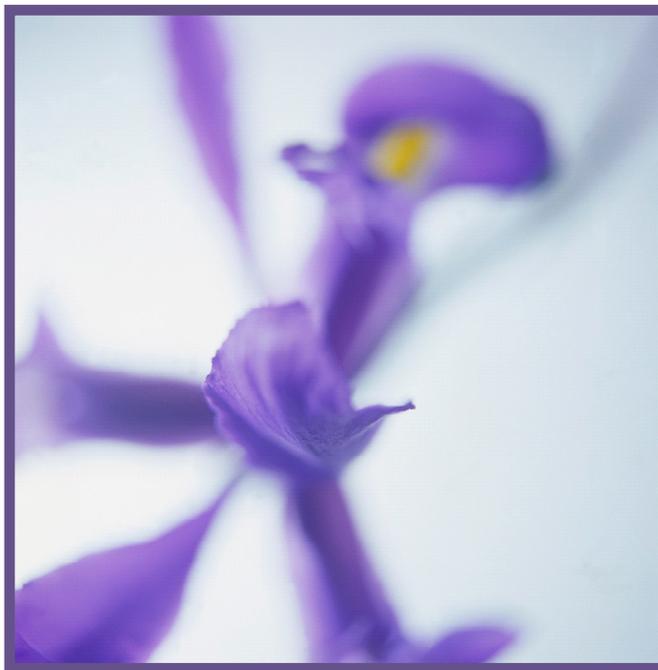
For many years, our office has had a vision of what we should be providing staff in terms of an automated case management system. We imagined a user-friendly system that would simplify routine aspects of our jobs and make document-generation and record-keeping less complicated. Although past budgetary considerations made fulfillment of that vision improbable, we made a commitment to finding a way to make it a reality.

We began investigating off-the-shelf case management systems and custom systems from other public defender offices. Available options proved too small, too costly, or too inflexible to suit our needs. Then, in 2001, we heard about a successful project in Orange County, Florida that involved the sharing of a case management system between prosecution and defense. We approached the Maricopa County Attorney's Office with a similar proposal and have worked with them for the better part of two years to pull together a cooperative agreement to share software in the development of our respective case management systems.

Under this innovative agreement, the County Attorney is providing us with a complete copy of their new case management system software, which is currently in the final stages of development. The agreement does *not* involve the sharing of data nor does it create security issues for either office. It will provide a solid infrastructure and foundation from which we can develop our own case management system, eliminating the need to build a system from scratch and allowing

us to make the most of scarce resources. In appreciation, the Public Defender will provide programming assistance to the County Attorney during the final stages of the redesign of their system. These arrangements offer Public Defender

programming staff the added benefit of working with the development tools and familiarizing themselves with the system, while receiving mentoring support from the County Attorney's technical staff.



Two teams have been created to get this project off the ground. The core team, which began meeting in February, is responsible for overseeing this project. The development team, made up of representatives from throughout the various classifications

in the office, is responsible for identifying our system functionality requirements. Additionally, they are responsible for seeking feedback from employees, for keeping staff apprised of the development team's progress, and for initial prototype testing.

The Core Team members are:

Diane Terribile, Chuck Brokschmidt, Keely Reynolds, Rose Adams, Susie Tapia, Frances Dairman, Amy Bagdol, Paul Prato, Ray Ybarra, and Viji Neelakantan.

The Development Team is comprised of:

Helene Abrams, Kristi Adams, Lisa Araiza, Gary Bevilaqua, Janet Blakely, Larry Blieden,

Terri Bublik, Dan Carrion, Armand Casanova, Pam Davis, Dana Gavin, Jason Goldstein, Brent Graham, Susie Graham, Lucie Herrera, Ken Huls, Christopher Johns, Chuck Krull, Vikki Liles, Edie Lucero, Martha Lugo, Lawrence Matthews, Carol Miller, Christine Oliver, Sherry Pape, Rebecca Potter, Renee Rivera-Thomas, Julie Roberg, Sophia Rosales, Nancy Shevock, Lee Anne Solano, Joe Stazzone, Christina Walker, and Chrissy Wight

Some issues that we hope to address through the development of a case management system include:

\* The office maintains separate hard copy files related to the same case by various functional groups within the office (e.g., investigators, paralegals, mitigation specialists and attorneys). The files are not centrally stored or maintained once the case is closed. Subsequent case research may result in incomplete retrieval of applicable materials.

\* Severe financial constraints and demands for increased efficiency require improved ability to manage cases.

\* Lack of available and affordable storage space necessitates automated management of file information.

\* System-wide growth demands enhanced communication mechanisms and information sharing.

\* Despite available technology, the office continues to move at the "speed of paper." Process reengineering efforts require cost-effective automated solutions.

\* A lack of demographic information hinders effective conflict checking and results in delays and increased costs.

\* Justice system partners are becoming increasingly reliant on electronic records. The MCPD must be able to efficiently utilize data feeds from other criminal justice agencies.

\* County Administration and the public are demanding greater accountability that requires improved record keeping and the ability to measure workload.

\* The other Indigent Representation Offices (Legal Defender and Legal Advocate) use their own hybrid systems. Development of a system suitable for the Public Defender's Office will lead the way toward future software sharing agreements with these offices resulting in their ability to achieve the various potential benefits outlined above.

This is a long-term project that could take two to five years to complete. The resultant system, which has been named IRIS (Indigent Representation Information System), will be built in stages with calendaring being the first module distributed. Each module will be rolled out following development, testing and refinement. Training will be a critical aspect of the project and plans are underway to effectively address training issues.

This is an exciting step for our office in terms of future development. Our development team will keep you posted on our efforts. As always, feel free to contact project team members with ideas, suggestions or questions.

# Show Me Your Papers

By Michelle Lawson, Defender Attorney

Far too often police arrest individuals for failing to provide written identification. This generally happens during “an investigation” for a traffic offense that itself does not provide a basis for arrest. For instance, a bike rider does not have a light displayed on the bicycle after sunset; a passenger in a car is not wearing a seat belt; or a pedestrian does not cross the street at a crosswalk. All are civil traffic violations for which police cannot make an arrest. See A.R.S. §§ 28-817 (A), 28-909 (A) (1) (G), and 28-793 (C). Yet your client somehow is arrested and searched.

A review of the police report reveals that the arrest was made pursuant to A.R.S. § 28-1595 (C), which provides:

A person *other than the driver of a motor vehicle* who fails or refuses to provide evidence of the person’s identity to a police officer or a duly authorized agent of a traffic enforcement agency on request, when such officer or agent has reasonable cause to believe the person has committed a violation of this title, is guilty of a class 2 misdemeanor.

A.R.S. § 28-1595 (C) (emphasis added). So your client is now in police custody and searched, not because that person has committed some criminal traffic violation or other type of crime, but because that person has no identity papers.

The Arizona Court of Appeals recently addressed the basis for these arrests in *State v. Akins*, No. 1 CA-CR 02-0963, slip opinion (Ct. App. 9-11-03). It essentially has stopped the practice by its holding that A.R.S. § 28-1595 is unconstitutionally vague because the term “evidence of identity” “fails to give persons, including passengers, notice of what type of identification is required to avoid arrest under the statute, and it encourages arbitrary and discriminatory enforcement.” *Id.* at 7.

The Court’s opinion factually relates to a passenger in a car “investigated” for failing to wear a seat belt. But its language and rationale apply equally to all non-drivers of motor vehicles. This includes bike riders and pedestrians.

The applicability of the decision to all non-drivers also is made clear by another subsection of the statute – § 28-1595 (B). That subsection specifically applies to “the driver of a motor vehicle” and states that “evidence of identity” “shall contain all of the following information:

1. The driver’s full name.
2. The driver’s date of birth.
3. The driver’s residence address.
4. A brief physical description of the driver, including the driver’s sex, weight, height and eye and hair color.
5. The driver’s signature.

A.R.S. § 28-1595 (B). Not surprisingly, another statute requires motor vehicle operators to carry state issued identification. See A.R.S. § 28-3151 (“a person shall not drive a motor vehicle or vehicle combination on a highway without a valid driver license”). Additionally, the requirements of “evidence of identity” are mirrored by § 28-3166, which states that a driver’s license shall contain “the licensee’s full name, date of birth and residence address, a brief description of the licensee” and the licensee’s signature. A.R.S. § 28-3166 (A). “A licensee shall have a legible driver license in the licensee’s immediate possession at all time when operating a motor vehicle.” A.R.S. § 28-3169 (A).

On the other hand, nothing requires or gives notice to passengers, bike riders, pedestrians, or all other non-drivers that they must carry written identification or risk arrest. By its “clear language,” § 28-1595 (C) “applies only to *non-drivers*.” Similarly, the clear language of § 28-1595 (B) “applies *only to operators of motor*

vehicles.” *Akins* at 6 (emphasis added). “Thus, [section 28-1595 (C)] still provides no definition of what is required of passengers *or others* when presenting evidence of [their] identity.” *Akins*, at 5 (emphasis added).

identity,” a motion to suppress is appropriate to challenge the unlawful arrest.

After the *Akins* opinion, police cannot arrest *non-drivers* solely because these individuals fail to present “evidence of identity,” written or otherwise. Although the Court’s decision resulted from a case in which a passenger was arrested, the Court’s holding applies equally to all other non-drivers including bike riders. If a review of police courts shows that the only basis for arrest is failure to present “evidence of

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## CLOTHING DRIVE FOR THE THOMAS J. PAPPAS ELEMENTARY SCHOOL

The Public Defender’s Office will be holding a clothing drive to benefit the students of the Thomas J. Pappas Elementary School, beginning November 12, 2003. The Pappas School is dedicated to providing quality education to Phoenix’s homeless population. One of the services the school provides to its students is that once a month the children are allowed to go to the clothing room at the school and pick out a new outfit, underwear, shoes, and hygiene products, such as shampoo, lotion and combs.

Presently, with the winter months and colder temperatures approaching, the students are in need of warm clothing, such as pants, coats, sweaters, and sweatshirts. The clothing may be new or “gently used” for boys and girls, sizes 5-14. Underwear is always needed and must be new. The boys prefer boxers to briefs and when it comes to socks, both sexes prefer the low ankle socks rather than anklets or tube socks.

Terry Bublik and Daniel Carrion will be coordinating the drive. Please drop off your donations with either of them. If you don’t have time to shop or gather “gently used” items, monetary donations will also be accepted and Terry will do the shopping for you.

Please help us show the Thomas J. Pappas kids how much we care!

# Arizona Advance Reports

By Stephen Collins, Defender Attorney - Appeals



State v. Story  
407 Ariz. Adv. Rep. 16 (CA 1 8/26/03)

Convictions for possession of drugs and possession of associated drug paraphernalia for personal use, arising out of the same occasion, constitute just one 'time' of conviction under Proposition 200. Community service may be imposed on a first-time offender under Proposition 200.

State v. Prasertphong  
407 Ariz. Adv. Rep. 31 (SC, 9/2/03)

At trial, Prasertphong introduced a portion of a co-defendant's statement to the police. It was held that, under Arizona Evidence Rule 106, the prosecution could introduce other portions of the statement to explain the admitted portion. The Vienna Convention on Consular Relations gives foreign national arrestees the right to consult with a consular official from the arrestee's home nation before answering police questions. The Arizona Supreme Court held that the treaty applies to Arizona, but that no relief will be granted when the police violate its provisions.

State v. Huerstel  
407 Ariz. Adv. Rep. 23 (SC, 9/2/03)

Huerstel was charged with three counts of first-degree murder. After a three-week jury trial and three days of jury deliberation, the trial judge found out there was one juror holding out for acquittal. The trial judge then twice expressly singled out the holdout juror by first asking the holdout juror to list specific issues that he had a problem with, and then subsequently asking that juror what he may want reargued. The Arizona Supreme Court reversed Huerstel's convictions because they were the result of coercion by the trial judge.

State v. Cropper, 407 Ariz. Adv. Rep. 45 (SC, 9/5/03); State v. Prince, 407 Ariz. Adv. Rep. 48 (SC, 8/25/03); State v. Ring, 407 Ariz. Adv. Rep. 51 (SC, 9/5/03)

Pursuant to *Ring v. Arizona*, these cases were remanded for juries to weigh the aggravating and mitigating factors to determine if the death penalty was appropriate.

State v. Rayes (Flath)  
407 Ariz. Adv. Rep. 42 (CA 1, 9/2/03)

Proposition 103 amended the Arizona Constitution by adding sexual assault, sexual conduct with a minor under fifteen years of age, and molestation of a child under fifteen years of age as offenses where bail can be denied when "the proof is evident or the presumption great" that the individual charged committed the offense. The Court of Appeals held that the amendment did not violate the *ex post facto* provisions of the state and federal constitutions.

State v. Torres  
407 Ariz. Adv. Rep. 19 (CA 1, 8/28/03)

Torres filed a motion with the trial judge to substitute appointed counsel. Torres alleged that "he could no longer speak with his appointed counsel about his case, that he did not trust his appointed counsel, that he felt 'threatened and intimidated' by him, that he no longer felt there was 'confidentiality' between them, and that the attorney was no longer behaving in a professional manner." The Court of Appeals held the claims were "sufficiently colorable" to require investigation by the trial judge, because if true, they would necessitate the appointment of new counsel.

State v. Akins

408 Ariz. Adv. Rep. 3 (CA1, 9/11/03)

Police conducted a traffic stop on a vehicle for the driver's failure to signal before a turn. One of the officers approached Akins, the front seat passenger, who was not wearing a seatbelt, which is a civil traffic violation. The officer asked Akins for written identification, and, when he said he had none, he was arrested pursuant to A.R.S. Section 28-1595(C). This section provides that a passenger, who has committed a traffic violation and fails to provide evidence of identity, is guilty of a class 2 misdemeanor. A search incident to arrest produced marijuana and methamphetamine.

The Court of Appeals held 28-1595(C) is unconstitutionally vague because it fails to give passengers notice of the type of identification required to avoid arrest and "it encourages arbitrary and discriminatory enforcement." Therefore, the drugs were suppressed.

State v. Livingston

408 Ariz. Adv. Rep. 4 CA 2, 9/16/03)

A police officer in an unmarked car started following Livingston's vehicle on a curved rural road. The officer conceded that Livingston was driving within the speed limit and that she did not weave or engage in any erratic driving. However, the officer testified that he stopped her because her right side tires crossed the white shoulder line on one occasion. There was no other traffic. After the stop, the officer discovered marijuana and he arrested Livingston.

A.R.S. Section 28-729(1) provides that "a person shall drive a vehicle *as nearly as practicable* entirely within a single lane *and* shall not move the vehicle from that lane until the driver has first ascertained that the movement can be made with safety." The Court of Appeals held that this "language demonstrates an express legislative intent to avoid penalizing brief, momentary, and minor deviations outside the marked lines." Therefore, the marijuana was suppressed because there was no reasonable basis for the traffic stop.

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# Thank you for your continued interest in our newsletter!

# Jury and Bench Trial Results September 2003

Due to conversion problems, the Trial Results for this issue are not included in this electronic version. If you would like to view the Trial Results for this issue of for The Defense, please contact the Public Defender Training Division.

The Maricopa County Public Defender's Office  
& The Office of the Federal Public Defender for the District of Arizona,  
Capital Habeas Unit  
Present

## Get Life: A Death Penalty Seminar

December 4-5, 2003

AMC Theatres, Arizona Center  
565 N. 3rd Street  
Phoenix, Arizona

Topics will include a panel discussion on the Arizona jury selection experience and presentations on mitigation that works, psychological testing, social history investigation and making the case for life.

Speakers will include:

Bette J. Niemi  
Capital Branch Trial Manager, Frankfort, Kentucky

Kevin McNally  
Private Practitioner and Federal Death Penalty Resource Counsel, Frankfort, Kentucky

Kathy Wayland, PhD.  
California Appellate Project

Natman Shaye  
Private Practitioner, Tucson, Arizona

Dick Burr  
Private Practitioner and Federal Resource Counsel, Houston, Texas

For further information, please call (602) 506-7569 or (602) 506-3045

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### *for The Defense*

*for The Defense* is the monthly training newsletter published by the Maricopa County Public Defender's Office, James J. Haas, Public Defender. *for The Defense* is published for the use of public defenders to convey information to enhance representation of our clients. Any opinions expressed are those of the authors and not necessarily representative of the Maricopa County Public Defender's Office. Articles and training information are welcome and must be submitted to the editor by the 10th of each month.