

for The Defense

Training Newsletter of the Maricopa County Public Defender's Office
James J. Haas, Maricopa County Public Defender

Volume 22, Issue 2

May 2012 – July 2012



*Delivering America's
Promise of Justice for All*

for The Defense

Editor: Stephanie Conlon

Assistant Editors:
Jeremy Mussman
Susie Graham

Office:
620 West Jackson, Ste. 4015
Phoenix, AZ 85003
(602) 506-7711

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Sanctioning Silence: Evaluating the Constitutionality of A.R.S. § 13-3102(A)(1)(b)



By Mikel Steinfeld, Defender Attorney

In 2010, the Arizona Legislature passed S.B. 1108 which, among other changes, revised the Misconduct Involving Weapons statute, creating the following offense:

A person commits misconduct involving weapons by knowingly:

Carrying a deadly weapon except a pocket knife concealed on his person or within his immediate control in or on a means of transportation:

...

When contacted by a law enforcement officer and failing to accurately answer the officer if the officer asks whether the person is carrying a concealed deadly weapon

A.R.S. § 13-3102(A)(1)(b). Because this offense criminalizes the failure to provide an accurate answer, the impact of the statute is to punish the failure (or refusal) to provide an answer, thereby violating the Fifth Amendment. While this offense is a misdemeanor (A.R.S. § 13-3102(L)), it is still necessary to evaluate the constitutionality of this offense when developing a strategy and advocating for our clients. The purpose of this article is to provide a brief overview of the constitutional challenge that can be made and evaluate some of the anticipated responses that may arise during such a challenge.

Subsection (A)(1)(b) violates the Fifth Amendment because it requires suspects to answer a question or face criminal sanctions

The heart of the concern over A.R.S. § 13-3102(A)(1)(b) is that it violates a core protection provided by the Constitution: the Fifth Amendment.

The Fifth Amendment provides:

No person ... shall be compelled in any criminal case to be a witness against himself

U.S. Const. Amend. 5 (extended to States through Fourteenth Amendment in *Malloy v. Hogan*, 378 U.S. 1, 84 S.Ct. 1489 (1964)). This amendment ensures a criminal defendant the right “to remain silent unless he chooses to speak in the unfettered exercise of his own will, and to suffer no penalty ... for such silence.” *Estelle v. Smith*, 451 U.S. 454, 468, 101 S.Ct. 1866, 1875 (1981) (quoting *Malloy v. Hogan*, 378 U.S. 1, 84 S.Ct. 1489, 1493-94 (1964)). The availability of the right to remain silent “does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure which it invites.” *Id.* at 462, 1872 (quoting *In re Gault*, 387 U.S. 1, 49, 87 S.Ct. 1428, 1455 (1967)). The U.S. Supreme Court has applied the protection to civil proceedings as well as criminal proceedings, “since the test is whether the testimony might later subject the witness to criminal prosecution.” *Lefkowitz v. Cunningham*, 431 U.S. 801, 805, 97 S.Ct. 2132, 2135 (1977).

The U.S. Supreme Court has also made clear that the Fifth Amendment “speaks of compulsion, and the Court has insisted that the constitutional guarantee is only that the witness not be *compelled* to give self-incriminating testimony.” *McKune v. Lile*, 536 U.S. 24, 35-36, 122 S.Ct. 2017, 2026 (2002) (internal citations and quotation marks omitted, emphasis original).

Evaluating subsection (A)(1)(b) through the lens of the Fifth Amendment, the offense requires a criminal suspect provide an answer to an officer question. If a person refused to answer or invoked their right not to provide statements against their interest, they would be guilty of this offense. A person who provides no answer still fails to provide an accurate answer. With this brief overview of the argument, the next step is to evaluate some of the anticipated responses.

Anticipated Responses

This issue came up in a case of mine and the responses highlighted below were the responses that were provided by the State in my case. These responses represent the first volley of defenses of the statute and additional responses may arise in the future. The State raised three arguments: 1) The subsection was an extension of the Public Safety Exception, 2) The offense is appropriate because the Fifth Amendment does not confer a right to silence, and 3) The offense is similar to previously approved legislation that punishes false answers because the Fifth Amendment does not confer a right to lie. Each of these responses will be evaluated independently.

Any comparison to the Public Safety Exception is unpersuasive

An exception exists to the requirements set forth in *Miranda* if Public Safety is a pressing issue. *New York v. Quarles*, 467 U.S. 649, 651 (1984). Arizona has also repeatedly recognized the Public Safety Exception. *E.g. State v. Ramirez*, 871 P.2d 237, 244 (1994); *State v. Stanley*, 809 P.2d 944, 950 (1991); *In re Roy L.*, 4 P.3d 984, 989 (App. 2000). The State may argue that this statute is simply an extension of the Public Safety Exception because it helps better protect officers and the public by requiring accurate answers be provided.

While public safety has been interpreted as an exception to *Miranda*, it does not appear to have ever been used as a justification to criminalize a suspect’s refusal to answer. The Public Safety Exception is an exception to the typical requirement that questions by law enforcement officers be preceded by warnings pursuant to *Miranda*. If officers asked questions when public safety necessitated the questions be answered, and the suspect provided incriminating answers, the State could still rely upon those statements at trial. *E.g. State v. Londo*, 215 Ariz. 72, ¶¶ 6-7, 158 P.3d 201, ¶¶ 6-7 (App. 2006); *In re Roy L.*, 197 Ariz. 441, ¶¶ 13-15, 4 P.3d 984, ¶¶ 13-15 (App. 2000). However, even under a public safety situation, a suspect who simply refused to answer any questions could not be charged with a separate offense.

In *Murphy v. Waterfront Com'n of New York Harbor*, the United States Supreme Court noted that one of the policy reasons behind the privilege against self-incrimination was, “our unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury or contempt.” 378 U.S. 52, 55, 84 S.Ct. 1549, 1596 (1964). Here, the statutory system set in place by the Legislature forces such a trilemma upon criminal defendants. A person improperly possessing a weapon is forced to choose between providing evidence against themselves of a crime, lying and facing prosecution under A.R.S. § 13-3102(A)(1)(b), or refusing to answer and facing prosecution under the statute. Fundamentally, there is no refuge for such a person.

While the Fifth Amendment does not confer a right to silence, it does not authorize criminalization of the exercise of silence

As was indicated above, the Fifth Amendment protects suspects from being compelled to provide statements against their interest. *McKune v. Lile*, 536 U.S. 24, 35-36, 122 S.Ct. 2017, 2026 (2002). There have been instances when a defendant’s decision to remain silent was used against them as impeachment. *E.g. Fletcher v. Weir*, 455 U.S. 603, 102 S.Ct. 1309 (1982); *Jenkins v. Anderson*, 447 U.S. 231, 100 S.Ct. 2124 (1980). However, impeachment is a far cry from the criminalization of a suspect’s decision to remain silent.

In *Lefkowitz v. Cunningham*, 431 U.S. 801, 97 S.Ct. 2132 (1977), the United States Supreme Court analyzed the imposition of sanctions when a person invokes their privilege against self-incrimination. *Id.* at 804-06, 2135-36. The Court concluded that “a State may not impose substantial penalties because a witness elects to exercise his Fifth Amendment right not to give incriminating testimony against himself.” *Id.* at 805, 2135-36. When briefly discussing the potential penalties capable of resulting in self-incrimination, the Court stated, “the touchstone of the Fifth Amendment is compulsion, and direct economic sanctions and imprisonment are not the only penalties capable of forcing the self-incrimination which the Amendment forbids.” *Id.* at 806, 2136.

The Arizona Court of Appeals recently affirmed this premise in *Jacobsen v. Lindberg*, 225 Ariz. 318, 238 P.3d 129 (App. 2010). In *Jacobsen* the Court noted that waiver of the privilege against self-incrimination cannot be made a condition of probation. *Id.* at ¶ 1. Relying on *State v. Eccles*, 179 Ariz. 226, 877 P.2d 799 (1994), the Court concluded that the “State cannot require Jacobsen to waive his Fifth Amendment rights as a condition of probation and cannot require him to answer questions that could incriminate him in future proceedings.” *Jacobsen*, 225 Ariz. 318, ¶ 6, 238 P.3d 129, ¶ 6.

A.R.S. § 13-3102(A)(1)(b) attempts to criminally sanction the decision to remain silent, thereby compelling a suspect to provide an answer. While permitting impeachment of a defendant with their prior exercise of silence could certainly be considered punitive, it is not the same as creating a completely separate offense for suspects who choose to remain silent. The establishment of a separate offense for deciding to remain silent is clearly impermissible.

Punishing a lie is fundamentally different from what A.R.S. § 13-3102(A)(1)(b) attempts

“[N]either the text nor the spirit of the Fifth Amendment confers a privilege to lie.” *Brogan v. U.S.*, 522 U.S. 398, 404, 118 S.Ct. 805, 810 (1998). Courts have authorized the criminalization of affirmative lies. *Id.* In *Brogan*, the United States Supreme Court dealt with the issue of whether there was an “exculpatory no” exception to the criminal liability imposed under 18 U.S.C. § 1001 for false statements. *Id.* at 399, 807. The Court concluded that no such exception existed. *Id.* at 408, 811. When *Brogan* was decided, 18 U.S.C. § 1001 stated:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any

false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Brogan, 522 U.S. at 400, 118 S.Ct. at 808.

However, *Brogan* actually provides insight as to why the Misconduct Involving Weapons subsection is improper. False reporting to law enforcement agencies provides a similar crime to 18 U.S.C. § 1001:

It is unlawful for a person to knowingly make to a law enforcement agency of either this state or a political subdivision of this state a false, fraudulent or unfounded report or statement or to knowingly misrepresent a fact for the purpose of interfering with the orderly operation of a law enforcement agency or misleading a peace officer.

A.R.S. § 13-2907.01(A). The difference between false reporting and the Misconduct Involving Weapons offense demonstrate the reason A.R.S. § 13-3102(A)(1)(b) is unconstitutional. Under false reporting—and under 18 U.S. C. § 1001—a suspect is not punished for failing to answer or refusing to answer; a suspect is punished for affirmatively providing inaccurate answers. Under § 13-3102(A)(1)(b), though, a suspect would also be subject to punishment for electing not to answer the question posed by the law enforcement officer, because such an election would still “fail[] to accurately answer the officer.”

Final Thought: Interpretation

The uphill battle with A.R.S. § 13-3102(A)(1)(b) may come in how the statute is interpreted and applied. When a statute is challenged on constitutional grounds, “there is a strong presumption that it is constitutional and [courts] will, if possible, interpret the regulation in such a way as to render it constitutional.” *State v. Kaiser*, 204 Ariz. 514, ¶ 8, 65 P.3d 463, ¶ 8 (App. 2003) (internal citations omitted). If a court were to interpret A.R.S. § 13-3102(A)(1)(b) in a manner to render it constitutional, the court would necessarily interpret it as not criminalizing the decision to remain silent. Thus, the court would interpret the statute as merely criminalizing a misleading answer.

In such a case, however, the statute is rendered useless. The statute is no different from false reporting under A.R.S. § 13-2907.01(A) because any affirmative misleading answer regarding a weapon would be “a false, fraudulent or unfounded ... statement” to a law enforcement agency or a “misrepresent[ation] of fact for the purpose of ... misleading a peace officer.” Thus, the Misconduct statute would be rendered superfluous. Another axiom of statutory construction is that courts “construe related statutes and rules to give effect to each provision without making any rule or statute superfluous.” *Saldade v. Montgomery*, 228 Ariz. 495, ¶ 10, 268 P.3d 1152, ¶ 10 (App. 2012). While in different chapters of the criminal code, if the court interprets the Misconduct statute as only criminalizing affirmative acts, both statutes are related in their goal (criminalize affirmative lies) and in their punishment (both are misdemeanors). Thus, the only way that the court can engage in such an interpretation would be to violate a different axiom of statutory interpretation.

This issue has not been litigated by an appellate court yet, making it ripe for challenges at the trial level. Challenges at the trial level are important to make sure that the record is appropriately set before the matter is appealed. It may take a while for a challenge to this issue to be brought up on appeal. This is why it is especially important to set a good record before your trial judge. Finally, because this is a constitutional challenge, keep in mind that A.R.S. § 12-1841 requires you to notify and serve the Attorney General, President of the State Senate and Speaker of the State House.

Maricopa County Public Defender

New Attorney Training Series

This new training program is designed to develop attorney skills, including basic criminal defense, pretrial practice, and trial advocacy.

The New Attorney Training Series is primarily designed for attorneys practicing in Maricopa County; however, the topics and techniques are applicable to attorneys practicing in other counties.

All New Attorney Training is open to the defense community. There is no fee for Public Defense Offices; a \$20.00 registration fee is required for Private and Contract Counsel. If you have questions, would like specific course agendas, or would like to register, please contact Celeste Cogley by phone at 602-506-7711 X37569 or via email cogleyc@mail.maricopa.gov

New Attorney Training #1: Introduction to Criminal Defense

August 13—17, 2012

This four and a half day training introduces the basics of criminal defense practice. Topics include: Conflicts, Commencement of Proceedings, Modifying Release Conditions, Preliminary Hearings, Trebus Letters, Client Communication, File Documentation, Prior Felonies, Negotiation and Written Deviation Requests, Explaining Plea Offers, Sentencing Charts: First Time Offenders, Repeat Offenders and Enhancements, Preparing for Sentencing, Presentence Reports, Spotting Mental Health Issues and Gathering Documentation, Competency Determination, Drug Possession Cases, Immigration and Collateral Consequences, Intro to DUI, Probation and DOC, and Restitution.

New Attorney Training #2: Pretrial Practice

October 9—12, 2012

This three and a half day training focuses on improving pretrial skills and motion practice in order to achieve a favorable settlement or work up the case for trial. Topics include: Making the Record for Appeal, Pre and Post Accusation Delay, Insufficiency of the Indictment, Special Actions, Severance and Joinder, Remands, Competency Hearings, Requesting Specific Discovery, Miranda and Voluntariness, Suppression, Bad Acts, Identification and Desseureault, Daubert and Experts, Interviews, Subpoenas, Victim's Rights, Settlement Conference and Memoranda, and Useful Cases in Criminal Law.

New Attorney Training #3: Trial Skills

November 13—16, 2012

This three and a half day training takes a hypothetical case to trial to give new attorneys a chance to practice trial advocacy techniques. Topics include: Developing a Theme and Theory, Motions in Limine, Jury Selection, Opening Statement, Direct and Cross Examination, Evidence and Objections, Jury Instructions, Closing Argument, Trial on Priors, and Aggravation Hearing.

Practice Pointer: Criminal Justice Statutory Changes



By Nathan Wade, Law Clerk, Pima County Public Defender

The 2012 legislative session produced quite a few bills that will have an impact on the work of Public Defenders. While many of the laws that were passed this session will not likely be considered “defendant-friendly,” there were small victories. HB 2284, for example, restores the right of a jury trial to first-time DUI offenders.

A complete list of Criminal Justice Statutory Changes can be found at http://apaac.az.gov/images/stories/apaac_2012_legislative_session_in_review.pdf.

There are a few pieces of legislation going into effect on August 2, 2012 that all criminal defense attorneys should be aware of, as they will have a direct, and in some instances, immediate impact on your cases.

- SB 1151 Historical Prior Felonies:** This law redefines Historical Prior Felonies to include any felony that a defendant was convicted of in any jurisdiction, whether or not that felony was considered a felony in Arizona at the time, that was committed in the five years immediately preceding the date of the present offense. This means that for sentencing purposes, a historical prior felony is any previous conviction that was punishable as a felony under the provisions of any prior code in this state OR the jurisdiction in which the offense was committed in. There is one exception - if a person was convicted of a gun-possession felony in another state that would only have been a misdemeanor in Arizona, the Historical Prior Designation does not apply.

Note: The new, broadened definition of a historical prior felony with the five-year window is found in A.R.S. § 13-105(22)(e). However, A.R.S. § 13-105(22)(b) allows for a class 2 or 3 felony to be counted if it has been committed within 10 years immediately preceding the date of the present offense. There is an argument then that the broadened definition can only be applied to the first five years described in (22)(b) and leaves years 6-10 undefined as to how the statute would be applied.
- HB 2373 Sentencing, First and Second Degree Murder:** The new statute removes the court’s ability to determine whether to impose a sentence of life or natural life for a person convicted of first degree premeditated murder or for first degree murder- knowingly causing the death of a law enforcement officer, pursuant to A.R.S. §13-1105(A)(1) and (3) if the state has not filed notice of intent to seek the death penalty. Now, in these situations, when a defendant over the age of 18 is convicted of first degree murder and the death penalty is not being sought, the court SHALL impose a sentence of natural life. Life in prison does remain an option (along with natural life) for first degree felony murder charged under A.R.S. § 13-1105(A)(2). Additionally, the bill provides that, during the penalty phase, A.R.S. § 13-752(G) is amended to allow the state to introduce any evidence against leniency, including any evidence regarding the defendant’s character, propensities, criminal record or other acts, regardless of whether the defendant presents evidence of mitigation.
- HB 2374, Expansion of Offenders Eligible for Diversion:** This modification of A.R.S. § 11-361 enables prosecutors to offer diversion programs to a broader group of defendants. Under the new law, those automatically precluded from diversion consideration are individuals who have previously been convicted of a “serious offense as defined in § 13-706” and individuals with three or more prior convictions for personal possession of drugs or possession of drug paraphernalia.

Additional Practice Pointers on developments in these areas will be provided as they occur.

Sponsored by Maricopa County Public Defender

Save the Date

November 29 & 30, 2012

Fall Trial College 2012

Presented by
Ira Mickenberg



This two-day Trial College will utilize a “bring your own case” format, using lecture and small-group practice sessions led by experienced attorneys to hone your trial skills.

When the college is over, you will have an effective Story of Innocence, Persuasive Closing, and Voir Dire specifically related to your case.

Registration will begin September 2012.
If you have questions, please contact Celeste Cogley by telephone at 602-506-7711 x37569 or e-mail at cogleyc@mail.maricopa.gov

There is no fee for Public Defense Offices.

Impart Smart With a Sentencing Chart You Can Heart

By Adam Schwartz and Kristi Setzer, Defender Attorneys

For two new attorneys, delving into the A.R.S. to try to understand Arizona's complex sentencing scheme was like trying to learn calculus in Old English (but without oxford commas). This chart is the result of an attempt to prevent apoplexy for future new attorneys and to create a more user friendly, attractive, and comprehensive sentencing reference guide for all. It reflects the 2012-2013 changes, other than those changes for first and second degree murder, which are discussed in this issue's Practice Pointer.

SENTENCING EXPOSURE

[1]

NON-DANGEROUS, FIRST FELONY OFFENSE - § 13-702(D)						
CLASS	MIT.	MIN.	P	MAX.*	AGG.*	MAX. PROBATION
2	3	4	5	10	12.5	7
3	2	2.5	3.5	7	8.75	5
4	1	1.5	2.5	3	3.75	4
5	.5	.75	1.5	2	2.5	3
6	.33	.5	1	1.5	2	3

* JURY MUST FIND 1 AGGRAVATOR B.R.D. TO SENTENCE OVER PRESUMPTIVE, & 2 AGGRAVATORS TO SENTENCE OVER MAX. A.R.S. § 13-702(C)

 PROBATION ELIGIBLE, 12 MO. JAIL POSSIBLE AS A TERM OF PROBATION

MISDEMEANOR OFFENSES - § 13-707			
CLASS	MAX. JAIL	MAX. PROBATION	MAX. FINES
1	6 MO.	3 YR.	\$2,500
2	3 MO.	2 YR.	\$750
3	1 MO.	1 YR.	\$500

NON-DANGEROUS, REPETITIVE FELONY OFFENSES															
CLASS	CATEGORY 1 - § 13-703(A), +(H)					CATEGORY 2 - § 13-703(B), (I)					CATEGORY 3 - § 13-703(C), (J)				
	MIT.	MIN.	P	MAX.*	AGG.*	MIT.	MIN.	P	MAX.*	AGG.*	MIT.	MIN.	P	MAX.*	AGG.*
2	3	4	5	10	12.5	4.5	6	9.25	18.5	23.1	10.5	14	15.75	28	35
3	2	2.5	3.5	7	8.75	3.3	4.5	6.5	13	16.25	7.5	10	11.25	20	25
4	1	1.5	2.5	3	3.75	2.25	3	4.5	6	7.5	6	8	10	12	15
5	.5	.75	1.5	2	2.5	1	1.5	2.25	3	3.75	3	4	5	6	7.5
6	.33	.5	1	1.5	2	.75	1	1.75	2.25	2.75	2.25	3	3.75	4.5	5.75

* JURY MUST FIND 1 AGGRAVATOR B.R.D. TO SENTENCE OVER PRESUMPTIVE, & 2 AGGRAVATORS TO SENTENCE OVER MAX. A.R.S. § 13-703(K)

DANGEROUS OFFENSES - § 13-704									
"DANGEROUS" - INVOLVING DISCHARGE, USE OR THREATENING EXHIBITION OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT OR INTENTIONAL/KNOWING INFLECTION OF SERIOUS PHYS. INJURY. § 13-105(13).									
CLASS	FIRST DANGEROUS FELONY OFFENSE § 13-704(A)			ONE HISTORICAL DANGEROUS PRIOR § 13-704(B), (D)**			TWO HISTORICAL DANGEROUS PRIORS § 13-704(C), (E)**		
	MIN.	P	MAX.	MIN.	P	MAX.	MIN.	P	MAX.
2	7	10.5	21	14	15.75	28	21	28	35
3	5	7.5	15	10	11.25	20	15	20	25
4	4	6	8	8	10	12	12	14	16
5	2	3	4	4	5	6	6	7	8
6	1.5	2.25	3	3	3.75	4.5	4.5	5.25	6

** FOR F2 & F3, DANGEROUS PRIOR(S) MUST BE F1, F2, OR F3, OTHERWISE SENTENCE IN CATEGORY 2 OR 3. § 13-704(D), (E)

SENTENCING EXPOSURE

[21]

DANGEROUS, REPETITIVE FELONY OFFENSES § 13-704(F)						
CLASS	2 ND DANGEROUS OFFENSE IN SAME COMPLAINT BUT DIFFERENT DATES OF OFFENSE			3 RD + DANGEROUS OFFENSE IN SAME COMPLAINT BUT DIFFERENT DATES OF OFFENSE		
	MIN. (P)	MAX.	INCREASED MAX.	MIN. (P)	MAX.	INCREASED MAX.
2	10.5	21	26.25	15.75	28	35
3	7.5	15	18.75	11.25	20	25
4	6	8	10	10	12	15
5	3	4	5	5	6	7.5
6	2.25	3	3.75	3.75	4.5	5.6

DCAC § 13-705									
	FIRST OFFENSE			ONE PREDICATE PRIOR			TWO PREDICATE PRIORS		
	MIN	P	MAX	MIN	P	MAX	MIN	P	MAX
13-705(A)		LIFE			LIFE			LIFE	
13-705(B)	LIFE/13	LIFE/20	LIFE/27	LIFE/13	LIFE/20	LIFE/27	LIFE/13	LIFE/20	LIFE/27
13-705(C)	13	20	27	23	30	37		LIFE	
13-705(D)	10	17	24	21	28	35		LIFE	
13-705(E)	5	10	15	8	15	22		N/A	
13-705(F)	2.5	5	7.5	8	15	22		N/A	

PROBATION ELIGIBLE, 12 MO. JAIL POSSIBLE AS A TERM OF PROBATION

<p>MANDATORY DOC OFFENSES DANGEROUS OFFENSES § 13-704 SECOND OR MORE OFFENSE NOT ON THE SAME OCCASION § 13-703(H)-(I) PROMOTING GANG ALLEGATION: +3 YR. [CLASS 4, 5, OR 6]; +5 YR. [CLASS 2 OR 3] § 13-709.02 DCAC (POSSIBLY FLAT & CONSECUTIVE) § 13-705 DRUGS OVER THRESHOLD (SEE EACH DRUG STATUTE) MFG. DANG. DRUG § 13-3407(F) NEW OFFENSE WHILE ON INTENSIVE PROBATION § 13-917(B) PROMOTING/ASSISTING HUMAN SMUGGLING § 13-709.06 METH (SEE BELOW)</p>	<p>OFFENSES COMMITTED WHILE OUT OF CUSTODY § 13-708 ON PROBATION OR PAROLE NEW OFFENSE: MINIMUM = PRESUMPTIVE UNDERLYING OFFENSE: PROBATION REVOKED/RESENTENCED OR REINSTATED ON PRE-CONVICTION RELEASE/TASC +2 YR. PRISON, CONSECUTIVE TO NEW OFFENSE § 13-708(D) 2 YR – FLAT NEW OFFENSE – 85%</p>
<p>METH RANGES POSS. FOR SALE; POSS. OF EQUIP./CHEMICALS; MANUFACTURING; TRANSPORT FOR SALE: (MANDATORY DOC) § 13-3407(F) 1ST OFFENSE § 13-3407(E) 5 - 10 - 15 2ND OFFENSE § 13-3407(F) 10 - 15 - 20</p>	<p>MANDATORY CONSECUTIVE SENTENCING PROBATION VIOLATION AFTER TRIAL CONVICTION §13-708(C) ESCAPE 1ST & 2ND § 13-2503(B) - 2504(B) SEX TRAFFICKING UNDER 18 w/PROSTITUTION § 13-1307(C) SOME DCAC § 13-705(M) ANY FELONY WHILE IN PRISON § 13-711(B)</p>
<p>MANDATORY FLAT TIME SERIOUS/VIOLENT/AGGRAVATED FELONY W/2 PRIOR SERIOUS/VIOLENT/AGGRAVATED FELONIES § 13-706 PRISONER ASSAULT W/INTENT TO INCITE/RIOT § 13-1207(B) SERIOUS DRUG OFFENSE § 13-3410 DCAC 1ST DEGREE § 13-705 (EXCEPT § 705(F)) DANGEROUS/DEADLY ASSAULT BY PRISONER § 13-1206 INVOLVING MINOR IN DRUG OFFENSE § 13-3409 METH FOR SALE § 13-3407</p>	<p>FOREVER PRIORS § 13-105(22) DANGEROUS OFFENSE ILLEGAL CONTROL OF CRIM. ENTERPRISE AGGRAVATED DUI DCAC MANDATORY DOC OFFENSE 3RD AND MORE PRIORS</p>

DRUG THRESHOLD AMOUNT - § 13-3401(36)	
DRUG	THRESHOLD AMOUNT
AMPHETAMINE & METHAMPHETAMINE	9 GRAMS (INCLUDING IN LIQUID SUSPENSION)
COCAINE	9 GRAMS (POWDER FORM); 750 MILLIGRAMS (ROCK FORM)
LSD	½ MILLILITER (LIQUID FORM); 50 DOSAGE UNITS (BLOTTER FORM)
MARIJUANA	2 POUNDS
PCP	4 GRAMS (POWDER FORM); 50 MILLILITERS (IN LIQUID SUSPENSION)
HEROIN	1 GRAM



Tenth Annual APDA Conference

By Jim Haas, Maricopa County Public Defender

The Tenth Annual Arizona Public Defender Association Statewide Conference was held June 20 - 22 at the Tempe Mission Palms Hotel.

Over 1,400 people attended the three-day conference, which offered 142 classes taught by 217 presenters. The conference offered up to 18 CLE hours, including up to 15 ethics hours.

At the awards luncheon, Public Defender staff and attorneys from around the state were recognized for their accomplishments and dedication to indigent representation over the past year. The honorees were:

Outstanding Administrative Professional – *Ann Woodrick*, Maricopa County Legal Defender; *Christina Wallace*, Mohave County Public Defender

Outstanding Paraprofessional – *Deborah Williams*, Yavapai County Public Defender; *Wendy Kunz*, Maricopa County Public Defender

Outstanding Performance – *Margo Cowan*, Pima County Public Defender; *Alicia Cata*, Pima County Legal Defender; *Terri Zimmerman*, Maricopa County Public Advocate

Outstanding Attorney – *Sandra Diehl*, Coconino County Public Defender; *Jennifer Roach*, Maricopa County Public Defender

“Rising Star” – *Sheena Chawla*, Pima County Public Defender; *Kyle Kinkead*, Mohave County Public Defender

Lifetime Achievement – *Michael Mussman*, Pima County Public Defender

Robert J. Hooker – *Caroline Isaacs*, Program Director, *America Friends Service Committee*

The Eleventh Annual APDA Statewide Conference is scheduled for June 26 – 28, 2013. It will celebrate the 50th anniversary of *Gideon v. Wainwright*, the landmark US Supreme Court case that guaranteed indigent people the right to appointed counsel.

Mark your calendars!



Save the Dates...



DEATH PENALTY 2012 DECEMBER 5, 6 & 7, 2012

*Presented by Federal Public Defender, Maricopa County
Public Defender, Office of the Legal Defender and Office
of Legal Advocate*

This seminar is designed to meet the Arizona Supreme Court
C.L.E. requirements for criminal defense attorneys engaged in
death penalty litigation under Arizona Rule of Criminal
Procedures 6.8

Location TBD
Phoenix, AZ

If you have questions, please contact Celeste Cogley by phone at
602-506-7711 X37569 or by email at cogleyc@mail.maricopa.gov

Jury and Bench Trial Results

March 2012 – May 2012

Public Defender's Office – Trial Division

Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(s)	Counts	Result
Group 1					
3/8/2012	Smith Sain Curtis	Contes	2010-165111-001 Armed Robbery, F2	1	Jury Trial-Guilty Lesser/Fewer
4/6/2012	Schulz Hiatt	Stephens	2010-127306-001 Marijuana Violation, F6 Forgery, F4 Marijuana Violation, F5 Crim Poss of Forgery Device, F6 Drug Paraphernalia Violation, F6	1 1 1 1 1	Jury Trial-Guilty As Charged
5/4/2012	Hann Stewart Sain Meginnis Baker	Miles	2010-151248-002 Misconduct Involving Weapons, F4 Armed Robbery, F2 Burglary 1st Degree, F2 Kidnap, F2 Murder 1st Degree, F1	2 1 1 1 1	Jury Trial-Guilty Lesser/Fewer
5/7/2012	Hiatt Rankin Christiansen	Mulleneaux	2011-142416-001 Criminal Damage, F5 Disorderly Conduct, M1	1 1	Court Trial-Guilty Lesser/Fewer
5/23/2012	Hann Sain	Hoffman	2011-119307-001 Aggravated Assault, F4	1	Jury Trial-Guilty As Charged
Group 2					
3/15/2012	Alagha Munoz	Kaiser	2011-136728-001 Marijuana Violation, F6 Drug Paraphernalia Violation, F6	1 1	Court Trial-Guilty Lesser/Fewer
3/30/2012	Vandergaw Munoz Brazinskas Beal	Lynch	2011-005027-001 Narcotic Drug Violation, F4	1	Jury Trial-Guilty As Charged

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4/27/2012	Farney <i>Brazinskas</i> <i>Christiansen</i> <i>Menendez</i>	Pineda	2010-144129-001 Aband/Conceal Dead Body/Parts, F5 Murder 2nd Degree, F1	1 1	Jury Trial-Guilty As Charged
5/2/2012	Fischer <i>Brazinskas</i> <i>Munoz</i>	Thumma	2011-005622-002 Dschrng Firearm in City Limit, F6 Disorderly Conduct, F6	1 1	Jury Trial-Guilty As Charged
5/14/2012	Vandergaw <i>Munoz</i>	Mulleneaux	2011-139623-001 Drug Paraphernalia Violation, F6 Marijuana Violation, F6	1 1	Court Trial-Guilty Lesser/Fewer
Group 3					
3/28/2012	Gronski	Starr	2011-135839-001 Drug Paraphernalia-Possess/Use, F6 Marijuana-Possess/Use, F6	1 1	Court Trial-Guilty Lesser/Fewer
4/13/2012	Quesada Bublik <i>Salvato</i> <i>Del Rio</i>	Kreamer	2010-008040-001 Kidnap, F2 Aggravated Assault, F3 Armed Robbery-With Deadly Wpn, F2 Theft, F2 Theft, F3	69 5 16 3 2	Jury Trial-Guilty Lesser/Fewer
4/13/2012	Parker <i>Salvato</i> <i>Farley</i>	Brotherton	2011-101846-001 Theft, M1 Unlaw Use of Means of Transp, F5	1 1	Jury Trial-Guilty As Charged
5/21/2012	Baker <i>Yalden</i>	Miles	2010-152542-001 Marijuana Violation, F6 Dangerous Drug Violation, F4	1 1	Jury Trial-Guilty As Charged
5/25/2012	Banihashemi <i>Salvato</i> <i>Yalden</i>	Miles	2011-123043-001 Aggravated Assault, F2 Misconduct Involving Weapons, F4 Unlaw Flight From Law Enf Veh, F5	1 1 1	Jury Trial-Guilty Lesser/Fewer

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5/25/2012	Quesada Salvato Del Rio Yalden	Hoffman	2011-139844-001 Aggravated Assault, F3	2	Jury Trial-Guilty Lesser/Fewer
Group 4					
3/6/2012	Katz Verdugo Curtis	Brotherton	2011-119058-001 Trafficking in Stolen Property, F3	1	Jury Trial-Guilty As Charged
3/7/2012	Wallace Meginnis Verdugo Kunz	Bergin	2011-104753-001 Aggravated Assault, F4	1	Jury Trial-Not Guilty
4/12/2012	Tivorsak Flannagan Curtis	Thumma	2010-153957-001 Murder 2nd Degree, F1	1	Jury Trial-Guilty As Charged
4/20/2012	Wallace Verdugo Kunz	Bergin	2011-155267-001 Aggravated Assault, F3	1	Jury Trial-Guilty As Charged
5/2/2012	Stanford Verdugo Curtis	Brodman	2006-009451-001 Sexual Conduct with Minor, F2 Sexual Abuse, F3 Molestation of Child, F2	2 2 2	Jury Trial-Guilty Lesser/Fewer
5/18/2012	Tivorsak Meginnis	Mulleneaux	2011-150359-002 Drug Paraphernalia Violation, F6 Marijuana Violation, F6	1 1	Court Trial-Guilty Lesser/Fewer
5/18/2012	Kalman Flannagan	Brodman	2011-154262-001 Obst Hwy/Pub Lic Thoroughfare, M3 Resisting Arrest, F6 Fail to Obey Police Officer, M2	1 1 1	Court Trial-Guilty Lesser/Fewer

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Jury and Bench Trial Results

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Public Defender's Office – Trial Division

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5/24/2012	Wallace <i>Verdugo</i>	Garcia	2011-006559-001 Hindering Prosecution 1st Deg, F5	1	Jury Trial-Guilty As Charged
Group 5					
3/8/2012	Glass-Hess	Passamonte	2011-125677-001 Burglary 3rd Degree, F4	1	Jury Trial-Guilty As Charged
3/16/2012	Jackson Fridde <i>O'Farrell</i> <i>Thompson</i> <i>Ralston</i> <i>Chappell</i>	Bergin	2010-161441-001 Murder 2nd Degree, F1	1	Jury Trial-Guilty As Charged
3/27/2012	Baker <i>Romani</i> <i>Falle</i>	Kaiser	2011-139282-001 Aggravated Assault, F4	1	Jury Trial-Not Guilty
4/20/2012	Lachemann	Brodman	2011-130578-001 Child/Vul Adult Abuse-Intent, F4	1	Jury Trial-Guilty Lesser/Fewer
5/15/2012	Demarse <i>Thompson</i>	Svoboda	2011-157073-002 Drug Paraphernalia Violation, F6 Marijuana Violation, F6	1 1	Court Trial-Guilty Lesser/Fewer
Group 6					
3/2/2012	Sheperd <i>Souther</i> <i>Farrell</i>	Miles	2010-161387-001 Aggravated Assault, F3	1	Jury Trial-Guilty As Charged
5/7/2012	Delatorre Teel <i>O'Farrell</i> <i>Godinez</i> <i>Farrell</i> <i>Johnson</i>	Reinstein	2010-006085-001 Aggravated Assault, F3 Murder 2nd Degree, F2, Attempt to Commit Murder 2nd Degree, F1	3 2 1	Jury Trial-Guilty As Charged

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Jury and Bench Trial Results

March 2012 – May 2012

Public Defender's Office – Trial Division

Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(s)	Counts	Result
5/16/2012	Steinfeld <i>Godinez</i>	Gottsfeld	2011-145358-001 Child/Vul Adult Abuse-Crim Neg, F6	1	Jury Trial-Not Guilty
5/29/2012	Fritz <i>Godinez</i> <i>Springer</i>	Bergin	2011-005789-001 Custodial Interference, F4	3	Jury Trial-Guilty As Charged
Capital					
3/29/2012	Kirchler <i>Springer</i>	Stephens	2011-007436-001 Sexual Abuse, F3 Sexual Conduct with Minor, F3, Attempt to Commit Aggravated Assault, F6	2 1 1	Jury Trial-Guilty Lesser/Fewer
4/6/2012	Kirchler <i>O'Farrell</i> <i>Springer</i>	Kreamer	2011-132690-001 Aggravated Assault, F4 Aggravated Assault, F3	1 2	Jury Trial-Guilty As Charged
Criminal Mental Health					
3/28/2012	Wray <i>Jarrell</i>	Martin	2011-104422-001 Aggravated Assault, F4	1	Court Trial-Guilty But Insane
RCC					
4/2/2012	Griffin	Williams	2012-102273-001 Interfer w/Judicial Proceeding, M1	1	Jury Trial-Guilty As Charged
4/12/2012	Robinson <i>Thompson</i> <i>Farley</i>	Bergin	2011-126657-001 Assault-Touched to Injure, M3 Sexual Abuse, F5	1 1	Jury Trial-Guilty As Charged
4/20/2012	Primack	Macbeth	2011-162807-001 Interfer w/Judicial Proceeding, M1	1	Court Trial-Guilty As Charged
Training					
4/3/2012	Roth	Kreamer	2011-136384-001 Marijuana Violation, F6	1	Court Trial-Not Guilty

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Jury and Bench Trial Results

March 2012 – May 2012

Public Defender's Office – Trial Division

Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(s)	Counts	Result
5/31/2012	Roth	Miles	2011-123216-001 Agg DUI-Lic Susp/Rev for DUI, F4 Marijuana Violation, F6 Drug Paraphernalia Violation, F6	2 1 1	Jury Trial-Guilty As Charged
Vehicular					
3/16/2012	Potter Moss Jarrell	Svoboda	2010-006448-001 Aggravated DUI, F4	4	Jury Trial-Guilty As Charged
3/23/2012	Marner Moss Jarrell Baker	Svoboda	2010-158436-001 Agg DUI-Lic Susp/Rev for DUI, F4 Drug Paraphernalia Violation, F6 Dangerous Drug Violation, F4	2 1 1	Jury Trial-Guilty Lesser/Fewer
4/2/2012	Rodak	Svoboda	2007-168443-001 Aggravated DUI, F6	3	Jury Trial-Guilty Lesser/Fewer
4/19/2012	Rosell Falle Chappell	Bailey	2010-160471-001 Burglary Tools Possession, F6 Burglary 3rd Degree, F4	1 1	Jury Trial-Guilty As Charged
4/19/2012	Conter Moss Jarrell Baker	Miller	2011-128710-001 Agg DUI-Lic Susp/Rev for DUI, F4	2	Jury Trial-Not Guilty
5/8/2012	Gosselin Moss	Svoboda	2011-101583-001 Agg DUI-Lic Susp/Rev for DUI, F4 Aggravated DUI-Third DUI, F4	2 2	Jury Trial-Guilty Lesser/Fewer
5/30/2012	Gosselin Moss	Bernstein	2011-030414-001 Agg DUI-Lic Susp/Rev for DUI, F4	2	Jury Trial-Guilty As Charged

Jury and Bench Trial Results

March 2012 – May 2012

Legal Advocate's Office – Trial Division

Closed Date*	Attorney <i>Investigator</i> <i>Paralegal</i> <i>Mitigation</i>	Judge	CR Number and Charge(S)	Counts	Result
3/9/2012	Orozco	Martin	2011-132936-001 Misconduct Involving Weapons, F4	1	Court Trial-Guilty As Charged
5/11/2012	Koestner	McMurdie	2011-007840-001 Murder 1st Degree, F1	1	Jury Trial-Guilty As Charged
5/11/2012	Koestner	McMurdie	2011-007840-001 Kidnap, F2 Burglary 2nd Degree, F3 Theft, M1 Tampering With a Witness, F6	1 1 1 1	Jury Trial-Guilty As Charged

Legal Advocate's Office – Dependency

Last Day of Trial	Attorney <i>CWS</i>	Judge	Case Number and Type	Result	Bench Or Jury Trial
3/5/2012	Hatfield <i>Peters</i>	Grant	JD12667 Dependency	Dependency Found	Bench
3/27/2012	Konkol <i>Nations</i>	Mahoney	JD18561 Severance	Severance Granted	Bench
4/4/2012	Hatfield <i>Peters</i>	Hartsell	JD20318 Change of Custody Motion	Change of Custody Denied	Bench
4/7/2012	Hatfield <i>Peters</i>	Hicks	JD18583 Severance	Severance Found	Bench
4/18/2012	Christian <i>Christensen</i>	Aceto	JD504030 Severance	Severance Found	Bench
4/27/2012	Christian <i>Christensen</i>	Thompson	JD508944 Severance	Severance Granted	Bench

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Jury and Bench Trial Results

March 2012 – May 2012

Legal Advocate's Office – Dependency

Last Day of Trial	Attorney <i>CWS</i>	Judge	Case Number and Type	Result	Bench Or Jury Trial
5/10/2012	Konkol Nations	Mahoney	JD21232 Dependency	Dependency Found	Bench
5/24/2012	Konkol Nations	McNally	JD21366 Dependency	Dependency Found	Bench
5/29/2012	Konkol Nations	Gentry-Lewis	JD18582 Dependency	Dependency Found	Bench
5/30/2012	Konkol Nations	Anderson	JD19088 Guardianship & Severance	2 Children - Guardianship; 3 Children Severed	Bench



Jury and Bench Trial Results

March 2012 – May 2012

Legal Defender's Office – Trial Division

Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(S)	Counts	Result
3/26/2012	Lane <i>Otero</i>	Contes	2011-136817-002 Burglary 3rd Degree, F4 Dangerous Drug Violation, F4	1 1	Jury Trial-Guilty As Charged
3/26/2012	Amiri <i>McReynolds</i>	Brotherton	2011-138211-001 Dangerous Drug Violation, F4	1	Jury Trial-Guilty As Charged
4/17/2012	Abernethy <i>Hill</i>	Passamonte	2009-006949-001 Kidnap, F2 Aggravated Assault, F3 Resisting Arrest, F6 Marijuana Violation, F6	1 1 1 1	Jury Trial-Guilty Lesser/Fewer
3/9/2012	Dailey	Woodburn	2011-006678-001 Theft, F3 Fraud Scheme/Practice-Conceal, F5 False Stmt To Obtain Benefits, F6	1 1 31	Jury Trial-Guilty Lesser/Fewer

Legal Defender's Office – Dependency

Last Day of Trial	Attorney Case Manager	Judge	Case Number and Type	Result	Bench Or Jury Trial
3/1/2012	Ross	Hicks	JD17972 Severance Trial	Severance Granted	Bench
3/12/2012	Kolbe	Lee	JD508508 Dependency Trial	Dependency Found	Bench
3/6/2012	Kolbe	Ishikawa	JD509631 Dependency Trial	Dependency Found	Bench
3/6/2012	Ross	Hicks	JD17951 Severance Trial	Severance Dismissed	Bench
3/9/2012	Kolbe	Thompson	JD509626 Dependency Trial	Dependency Found	Bench
3/9/2012	Ross	Hicks	JD17219 Severance Trial	Severance Granted	Bench
3/14/2012	Kolbe	Ishikawa	JD509670 Dependency Trial	Dependency Found	Bench

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Legal Defender's Office – Dependency					
Last Day of Trial	Attorney Case Manager	Judge	Case Number and Type	Result	Bench Or Jury Trial
3/22/2012	Kolbe	Ishikawa	JD509698 Dependency Trial	Dependency Found	Bench
3/28/2012	Kolbe	Kongable	JD508073 Severance Trial	Severance Granted	Bench
3/30/2012	Kolbe	Ishikawa	JD509650 Dependency Trial	Dependency Found	Bench
4/3/2012	Ross	Hicks	JD20752 Dependency Trial	Dependency Found	Bench
4/10/2012	Dyer	Thompson	JD504919 Severance Trial	Severance Granted	Bench
4/10/2012	Ross	Hicks	JD19879 Severance Trial	Severance Granted	Bench
4/17/2012	Kolbe	Ishikawa	JD509671 Dependency Trial	Dependency Found	Bench
4/26/2012	Ross	Hicks	JD10079 Dependency Trial	Dependency Found	Bench
4/27/2012	Dyer	Ishikawa	JD508944 Severance Trial	Severance Granted	Bench
4/27/2012	Sanders	Sinclair	JD19843 Severance Trial	Severance Granted	Bench
5/1/2012	Ripa	Anderson	JD21206 Dependency Trial	Dependency Found	Bench
5/8/2012	Kolbe	Ishikawa	JD509818 Dependency Trial	Dependency Found	Bench
5/11/2012	Sanders	Sinclair	JD19351 Severance Trial	Severance Granted	Bench
5/15/2012	Fritz	Hicks	JD10206 Dependency Trial	Dependency Dismissed	Bench
5/23/2012	Ripa	Grant	JD18484 Severance Trial	Severance Granted	Bench
5/25/2012	Dyer	Thompson	JD509852 Dependency Trial	Dependency Found	Bench

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3/26/2012	Amiri <i>McReynolds</i>	Brotherton	2011-138211-001 Dangerous Drug Violation, F4	1	Jury Trial-Guilty As Charged
4/17/2012	Abernethy <i>Hill</i>	Passamonte	2009-006949-001 Kidnap, F2 Aggravated Assault, F3 Resisting Arrest, F6 Marijuana Violation, F6	1 1 1 1	Jury Trial-Guilty Lesser/Fewer
3/9/2012	Dailey	Woodburn	2011-006678-001 Theft, F3 Fraud Scheme/Practice-Conceal, F5 False Stmt To Obtain Benefits, F6	1 1 31	Jury Trial-Guilty Lesser/Fewer



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Maricopa County
Public Defender's Office
620 West Jackson, Ste. 4015
Phoenix, AZ 85003
Tel: 602 506 7711
Fax: 602 372 8902
pdinfo@mail.maricopa.gov

for The Defense

for The Defense is the 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.

