



# for The Defense

▶ ◀ Dean Trebesch, Maricopa County Public Defender ▶ ◀

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## Suppression of Body Fluid Specimens

**By Theron Hall  
Defender Attorney – Group A**

Suppose your client refuses to take a breath test and a warrant is obtained to take a blood sample. The police call someone to the station to withdraw the sample. Does it really matter *who* withdraws the blood sample? The Arizona Legislature certainly thought so when A.R.S. §32-1456 was enacted in 1993.

medical practice under the supervision of a doctor of medicine, physician assistant or nurse practitioner and perform delegated procedures commensurate with the assistant's education and training. But, they do not diagnose, interpret, design or modify established treatment programs or perform any functions which would violate any statute applicable to the practice of medicine.

### MEDICAL ASSISTANTS

This article concerns the taking of blood samples by medical assistants. As defined in A.R.S. §32-1401(16), a medical assistant is an unlicensed person who has completed an education program approved by the Arizona Board of Medical Examiners. They assist in a

The Arizona Legislature placed strict limitations on medical assistants. Specifically, A.R.S. §32-1456(A)(1) dictates that a medical assistant can only take body fluid specimens if acting under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner. Direct supervision is defined in A.R.S. §32-1401(8). It means that:

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## Is Your Juvenile Client Really a “Chronic Felony Offender”?

**By Susan Corey  
Defender Attorney – Group A**

Oops, I did it again. When a member of the Britney Spears generation gets arrested, will he be tried in adult court as a chronic felony offender? Under *State v. Beasley*, \_\_\_ Ariz. \_\_\_, \_\_\_ P.2d \_\_\_, 2000 WL 1616825 (App. Div. 1, October 31, 2000), maybe not.

sanctions for juvenile offenders. It became effective July 21, 1997. The statute allows the state to indict children as young as fourteen, provided certain minimal requirements are met. If the state attempts to prove that the child is a chronic felony offender, however, under the new case of *State v. Beasley*, only prior convictions that were obtained on or after the effective date of the new law can be used.

The legislature enacted A.R.S. §13-501 in response to the public's demand for adult

Olander Beasley was fourteen years old and in the eighth grade when, fiddling around at

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[A] physician, physician assistant licensed pursuant to chapter 25 of this title or nurse practitioner certified pursuant to chapter 15 of this title is *within the same room or office suite* as the medical assistant in order to be available for consultation regarding those tasks the medical assistant performs pursuant to §32-1456. (Emphasis added.)

As emphasized, the medical assistant must be within the same room or office suite as a physician, physician assistant or nurse practitioner. Furthermore, the legislature deemed these restrictions so important, they made it a crime for an unsupervised medical assistant to withdraw a blood sample. Specifically, A.R.S. §32-1456(E) states:

A person who uses the title medical assistant or a related abbreviation is guilty of a class 3 misdemeanor unless that person is working as a medical assistant under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner.

Thus, if the individual who withdrew your client's blood sample is a medical assistant, and did not withdraw the blood sample with a doctor of medicine, physician assistant or nurse practitioner in the same room or office suite, a crime has been committed.

### ILLEGAL EXECUTION OF WARRANT

Intrusions into the human body, including the taking of blood samples, are searches subject to the restrictions of the Fourth Amendment. *Barlow v. Ground*, 943 F. 2d 1132, at 1137 (9<sup>th</sup> Cir. 1991) (citing *Schmerber v. California*, 384 U.S. 757, at 766-768, 86 S.Ct. 1826, 16 L.Ed. 2d 908 (1966)).

Pursuant to A.R.S. §28-1321(D)(1), the Fourth Amendment of the U.S. Constitution, and Article II, Section 8 of the Arizona State Constitution, the extraction of blood samples is permitted when a valid warrant is obtained. However, even if a valid warrant is obtained to retrieve a blood sample, constitutional restraints still govern the execution of that warrant. If the execution of the warrant is illegal, then the evidence obtained from the illegal execution is inadmissible. There is ample case law that dictates that an illegal execution of a warrant results in suppression of the evidence. Most of the relevant case law involves violations of knock and announce rules. See *State v. Cohen*, 957 P.2d 1014, 191 Ariz. 471 (Ariz. App. Div. 1 1998); *United States v. Becker*, 23 F.3d 1537 (9<sup>th</sup> Cir. 1994); *U.S. v. Zermeno*, 66 F.3d 1058 (C.A. 9 (Cal.) 1995); *U.S. v. Mendonsa*, 989 F.2d 366, (C.A. 9 (Mont.) 1993); *State v. Chagnon*, 115 Ariz. 178, 564 P.2d 401 (App. 1977); *State v. Eminowicz*, 21 Ariz. App. 417, 520 P.2d

330 (App. 1974).

Furthermore, all the *fruits* resulting from the illegally obtained evidence are likewise inadmissible. See *Wong Sun v. United States* 371 U.S. 471, 83 S.Ct. 407.

As explained above, if a medical assistant withdraws a blood sample when he or she is not under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner, a crime has been committed. This improper conduct is an illegal execution of the search warrant and all resulting evidence must be suppressed.

### “QUALIFICATION” VERSUS “ILLEGAL EXECUTION OF A WARRANT”

A.R.S. §28-1388(A) states in part that “[i]f blood is drawn under §28-1321, only a physician, a registered nurse or another qualified person may withdraw blood for the purpose of determining the alcohol concentration or drug content in the blood.”<sup>1</sup>

The state will likely argue that a medical assistant is “another qualified person” who can withdraw blood samples for DUI purposes. A medical assistant may very well be qualified to withdraw blood samples, based on his or her training and experience. But when the medical assistant is not acting under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner when the blood sample is obtained, then the execution of the warrant was illegal. Even though the medical assistant is otherwise qualified to withdraw blood samples, the legality of the search is vitiated.

Be very careful to avoid stating that a medical assistant is not *qualified* to withdraw blood samples. The First Division of the Court of Appeals recently published a memorandum decision in *State v. Meza*, 1 CA-CR 99-0926, (Ct.App. Div. 1, August 10, 2000). In *Meza*, the Court of Appeals upheld the lower court's denial of the defendant's motion to suppress the blood sample. The court also found that one particular medical assistant was “qualified” to withdraw blood samples pursuant to A.R.S. §28-1388. However, the court never mentioned A.R.S. §32-1456 (the medical assistant statute) in their opinion, and appears to have relied on the qualification issue, not illegal execution of a warrant.

After the granting of the defendant's motion to suppress the blood sample and all resulting evidence in a recent case in Maricopa County Superior Court, the Arizona Attorney General's Office motioned the Court of Appeals to publish the memorandum decision of *State v. Meza*. The Court of Appeals, however, denied this request. As of now, there is NO precedent case law regarding this issue. Nevertheless, it would be wise to read over the memorandum decision of

*State v. Meza*. And if for some reason the state makes any reference to the *State v. Meza* memorandum decision, be sure to remind them of Arizona Ethics Opinion No. 87-14, dated July 20, 1987, which prohibits such action.

### **A.R.S. §28-1388 DOES NOT CREATE AN EXCEPTION TO A.R.S. 32-1456**

The state is likely to argue that A.R.S. §28-1388 creates an exception to the strict requirements placed on a medical assistant in A.R.S. §32-1456. This argument is greatly flawed. A.R.S. §28-1388 does not contain any language that suggests unsupervised medical assistants can withdraw blood samples for criminal investigation purposes. Likewise, no such exception is enumerated in A.R.S. §32-1456.

Furthermore, when two or more statutes relate to the same topic, the courts must harmonize them. In *State v. Tarango* 185 Ariz. 208, 210, 914 P.2d 1300, 1302 (Div. 1, 1996), the court noted that “[w]hen reconciling two or more statutes, courts should construe and interpret them, whenever possible, in such a way as to give effect to all the statutes involved.” Harmonizing A.R.S. §32-1456 and §28-1388(A) does not appear to be difficult. A.R.S. §28-1388(A) notes that qualified people, other than doctors or nurses, can draw blood in DUI cases. A.R.S. §32-1456 dictates that it is a crime for unsupervised medical assistants to draw blood samples. If a medical assistant is directly supervised by a doctor of medicine, physician assistant or nurse practitioner when a blood sample is taken, the defense has no grounds for suppression. It is only when an unsupervised medical assistant withdraws a blood sample that this suppression issue comes into play.

The state may also try to argue that the medical assistant was “not acting as a medical assistant” when the blood sample was withdrawn. This argument does not make any sense. Can an attorney claim that he is not acting as attorney if he is paid to write a motion? When interviewing medical assistants, be sure to find out what training and experience they have. It is more than likely that they would not have a job withdrawing blood samples if they were not medical assistants.

### **PUBLIC POLICY**

The legislature had good reason to enact the strict requirements on medical assistants in A.R.S. §32-1456. Medical assistants are not licensed and do not obtain the many years of intense training acquired by doctors of medicine, physician assistants and nurse practitioners. Even though medical assistants do receive some training, they do not acquire all the necessary training to handle emergency medical situations that could arise when a blood sample is withdrawn. Direct supervision is also important so that

medical assistants can ask necessary questions and be given appropriate instructions in performing procedures. Our law simply does not allow unsupervised medical assistants to go to police stations in the middle of the night and stick needles into people.

### **CONCLUSION**

In Arizona, many law enforcement agencies employ medical assistants to withdraw blood samples in DUI and other criminal investigations. As a rule of thumb, you can be pretty certain that no doctor of medicine, physician assistant or nurse practitioner is in the same room or office suite when a blood sample is taken. In fact, in Maricopa County, many police departments tend to use the same one or two persons to withdraw blood. If you have a case involving one of these individuals, you will want to contact Theron Hall or Rebecca Potter for copies of transcripts for possible impeachment purposes.

This issue of unsupervised medical assistants and illegal execution is one that most courts have not heard. Be sure to argue that the warrant was executed illegally, rather than that the medical assistant was unqualified.

### **Endnotes**

- 1 As a reminder, the issue that we are arguing is that the search warrant was illegally executed. Nevertheless, the second sentence of A.R.S. §28-1388(A) may cause some concern. The second sentence states that:

The qualifications of the individual withdrawing the blood and the method used to withdraw the blood are not foundational prerequisites for the admissibility of a blood alcohol content determination made pursuant to this subsection.

However, in *State v. Nihiser*, 191 Ariz. 199, 202, 953 P.2d 1252, 1255, the Court of Appeals disagreed, and noted that the qualifications and the method used by the person drawing the blood are relevant and admissible.



## SAMPLE MOTION TO SUPPRESS BLOOD SAMPLE

Pursuant to the Fourth Amendment of the United States Constitution, Article II, Section 8 of the Constitution of Arizona, and the following Memorandum of Points and Authorities, the Defendant moves for the suppression of the blood sample taken from the defendant and all evidence resulting from the blood draw, which includes the results of subsequent tests of the blood sample.

### MEMORANDUM OF POINTS AND AUTHORITIES

#### FACTS

A warrant was obtained to draw a blood sample. The Police Department then contacted an individual, who is a medical assistant, for the purposes of drawing the defendant's blood sample. This individual had previously completed an approved education program to become a medical assistant. The medical assistant withdrew the defendant's blood sample at the police station. No doctor of medicine, physician assistant or nurse practitioner was in the same room or even in the police station when the blood sample was taken.

#### LAW AND ARGUMENT

As defined in A.R.S. §32-1401(16), a medical assistant is an unlicensed person who "has completed an education program approved by the board, assists in a medical practice under the supervision of a doctor of medicine, physician assistant or nurse practitioner and performs delegated procedures commensurate with the assistant's education and training but does not diagnose, interpret, design or modify established treatment programs or perform any functions which would violate any statute applicable to the practice of medicine."

In. A.R.S. §32-1456, the Arizona Legislature placed strict limitations on medical assistants. A.R.S. §32-1456(A) allows a medical assistant to take body fluid specimens only if acting under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner. There are only seven specific tasks that a medical assistant can perform when not acting under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner. These seven tasks are delineated in A.R.S. §32-1456 (C) as follows:

1. Billing and coding
2. Verifying insurance
3. Making patient appointments
4. Scheduling
5. Recording a doctor's findings in patient charts and transcribing materials in patient charts and records
6. Performing visual acuity screening as part of a routine physical
7. Taking and recording patient vital signs and medical history on medical records

It is a crime for a medical assistant to draw blood unless he or she is working as a medical assistant under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner. A.R.S. §32-1456(E) states:

A person who uses the title medical assistant or a related abbreviation is guilty of a class 3 misdemeanor unless that person is working as a medical assistant *under the direct supervision* of a doctor of medicine, physician assistant or nurse practitioner.

Direct supervision is defined by Arizona statute in A.R.S. §32-1401(8) as follows:

"Direct supervision" means that a physician, physician assistant licensed pursuant to chapter 25 of this title or nurse practitioner certified pursuant to chapter 15 of this title is within the same room or office suite as the medical assistant in order to be available for consultation regarding those tasks the medical assistant performs pursuant to § 32-1456.

"Intrusions into the human body, including the taking of blood, are searches subject to the restrictions of the Fourth Amendment." *Barlow v. Ground*, 943 F.2d 1132, at 1137 (9<sup>th</sup> Cir. 1991) (citing *Schmerber v. California*, 384 U.S. 757, at 766-768, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966)). Although the extraction of blood samples is permitted when a valid warrant is obtained,

pursuant to A.R.S. §28-1321(D)(1), the 4<sup>th</sup> Amendment, U.S. Constitution and Art. II, Section 8, Arizona State Constitution, the samples still must be seized in a lawful manner.

In this case, the actual act of taking the defendant's blood was done **illegally**. The defendant's blood sample was obtained by a medical assistant who was NOT acting under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner as required by Arizona law. In executing the warrant, a crime was committed and, therefore, the execution of the warrant was illegal.

In *State v. Cohen*, 957 P.2d 1014, 191 Ariz. 471 (App. Div. 1 1998), the trial court's suppression of evidence was upheld, due to the police officers' failure to legally execute a valid warrant. A search warrant was obtained by officers; however, the officers failed to obey Arizona's "knock and announce" statutes when they executed the warrant. The court held that this unlawful execution of the warrant warranted the suppression of the evidence obtained. Furthermore, the courts have consistently ruled that evidence obtained as a result of an illegal execution of a warrant should be suppressed. See *United States v. Becker*, 23 F.3d 1537 (9<sup>th</sup> Cir. 1994); *U.S. v. Zermeno*, 66 F.3d 1058 (C.A. 9 (Cal.) 1995); *U.S. v. Mendonsa*, 989 F.2d 366, (C.A. 9 (Mont.) 1993); *State v. Chagnon*, 115 Ariz. 178, 564 P.2d 401 (App. 1977); *State v. Eminowicz*, 21 Ariz. App. 417, 520 P.2d 330 (App. 1974).

The state may try to argue that the medical assistant is qualified to draw blood under A.R.S. §28-1388(A), which allows doctors, nurses and other qualified persons to draw blood and, therefore, blood can be drawn. But the statutes also make it illegal for medical assistants to draw blood without direct supervision of a doctor, nurse practitioner or physician assistant. When several statutes relate to the same topic, the courts must harmonize them. "When reconciling two or more statutes, courts should construe and interpret them, whenever possible, in such a way as to give effect to all the statutes involved." *State v. Tarango* 185 Ariz. 208, at 210, 914 P.2d 1300, at 1302 (Div. 1, 1996).

Harmonizing the two statutes in this case is not difficult because they do not conflict. One statute states that qualified people other than doctors or nurses can draw blood in DUI cases, and the other statute says that it is illegal, a crime, for medical assistants to draw blood without direct supervision. A medical assistant could draw blood for law enforcement purposes, *but only if supervised* by a doctor of medicine, nurse practitioner or physician assistant.

It makes no difference in this case whether or not the blood sample drawn was useful and resulted in a valid blood test result. The exclusionary rule does not require defendants to prove that the illegally seized evidence was somehow tainted. Defendants must simply show that the police illegally seized the evidence. It is then suppressed, regardless of whether the evidence was otherwise reliable. *Wong Sun v. United States* 371 U.S. 471, at 487-88, 83 S.Ct. 407, at 417-18 (1963). Illegally obtained evidence simply cannot constitute proof against the victim of that illegally obtained evidence. And the prohibition extends to indirect, as well as direct products of such invasions.

The legislature thought it important that medical assistants be supervised. They thought it so important that they made it a crime to perform certain activities without supervision. This is not just a technical violation. There is good reason for the requirement and these reasons are evidenced in the statute that defines what direct supervision means. If a medical assistant is supervised, he or she can ask questions regarding the work he or she is performing. Medical assistants are not licensed and receive little medical training. Our law does not allow unlicensed and unsupervised people to go to police stations in the middle of the night and stick needles into people, even people suspected of drunk driving. What would happen if the medical assistant didn't know what to use to clean the injection sight, whether he or she should use the same needle to draw blood on a second drunk driving suspect; or worse yet, what if the medical assistant hit an artery and the victim was bleeding out? The medical assistant does not have the training to professionally handle an emergency medical situation. Under supervision, the professional is there if anything should go wrong or any questions come up about the performance of the medical assistant's work. And that supervision is required by law. There is no "drunk driver exception" for medical assistants who carry out the invasive procedure of removing blood from human beings.

### CONCLUSION

The medical assistant was not directly supervised by a doctor of medicine, physician assistant or nurse practitioner when the defendant's blood sample was taken. Therefore, the blood sample was taken illegally, due to the criminal violation of 32-1456 (E). Wherefore defendant requests that the court suppress the illegally obtained blood sample and all evidence resulting from the illegal blood draw which includes the results of subsequent tests of the blood sample.

## **BULLETIN BOARD**

### **New Attorneys**

**Victoria Washington** will be returning to the Defender Attorney trial attorney staff in the Public Defender's Office, effective December 4, 2000.

### **Attorney Changes**

**Nicholas Alcock**, Defender Attorney assigned to Trial Group C in Mesa, will be leaving the office effective November 17, 2000. Mr. Alcock started with the Office as a Law Clerk in June of 1998 and was promoted to Defender Attorney in November of that year.

**Chris Doerfler**, Defender Attorney assigned to Trial Group E, has resigned his position with the Public Defender's Office, effective November 17, 2000, to enter private practice. Chris was a lead attorney with Group E.

**Ulises A. Ferragut, Jr.**, Defender Attorney assigned to Trial Group D, has resigned his position with the Public Defender's Office, effective November 24, 2000, and will go in to private practice.

**Thomas Klobas**, Defender Attorney assigned to Trial Group C in Mesa, will retire from the Public Defender's Office, effective December 1, 2000. Tom will be assisting us on a part-time basis beginning in January. Tom served the office for several years a Group D's Trial Group Supervisor and has worked for the office for 14 years.

**Rena Glitsos**, Defender Attorney and Trial Group Supervisor for Group A will be leaving the office effective December 8, 2000 and will be joining former PD Barbara Spencer in private practice. Rena joined the office in 1990, and was a trial attorney in Group D until 1995, when she was promoted to Trial Group A supervisor.

**Ted J. Crews**, Defender Attorney for Trial Group E, will leave the Public Defender's Office, effective

December 21, 2000 to join private practice.

### **New Support Staff**

**Lynn Murrieta** has been hired as a Records Processor for Trial Group C in Mesa, effective October 9, 2000.

**Jackie M. Conley**, former Public Defender employee, will return to this office as a Legal Secretary for Trial Group C, effective October 30, 2000.

**Patricia Ann Taube** is the new Legal Secretary assigned to the DUI Unit, effective October 30, 2000.

**Robert A. Kresicki** has been hired as a Defender Investigator for Trial Group C in Mesa, effective November 13, 2000. Robert served as a Pennsylvania State Trooper for almost 30 years and, since relocating to Arizona, he has been with the Maricopa County Superior Court security division.

**Anna Marie Valenzuela** has been hired for the Juvenile Division at Durango Legal Secretary position, effective December 4, 2000.

**Luisa Lechuga** has been hired for the part-time/down town floater legal secretary position, effective November 20, 2000.

**Susan Luna** has accepted a position as a legal secretary full-time/downtown floater, effective December 1, 2000.

**Magdalena Galindo** will be the new Administrative Assistant for the Durango Juvenile Division, effective December 11, 2000.

## **BULLETIN BOARD**

### **Support Staff Changes**

**Jennifer Rosiek**, Records Processor Downtown,

## Is Your Juvenile Client Really a “Chronic Felony Offender”?

*Continued from page 1*

home with a shotgun, he inadvertently blasted several pellets into his own foot. No one else was at home. One could argue that was a lesson well learned and adequately punished. But the state apparently believed the point should be hammered home officially, with paperwork, and preferably a felony conviction, even for a middle schooler.

Someone heard the shot and called the police. Olander, who was on juvenile parole, was arrested and indicted in adult court for misconduct with weapons.

Olander had a juvenile record that included two felony convictions. The first was for a burglary that occurred when he was twelve years old. The second, for aggravated assault, also occurred when he was twelve, and was obtained when he angrily shoved a room divider towards a teacher, who was not hit. These two prior felonies made the fourteen year old a chronic felony offender, alleged the state, thus allowing adult court jurisdiction under the new law.

Since the state did not initially make the chronic felony offender allegation formally in the grand jury proceedings, a motion for remand was granted. In the second grand jury proceeding, the jurisdictional basis for adult court prosecution was clarified.

The state alleged the offense was dangerous, and the offer was a class six designated felony.

A motion for hearing pursuant to §13-501, disputing adult court jurisdiction, was denied. A bench trial followed and the ensuing conviction was appealed.

In *State v. Beasley*, Division One of the Court of Appeals held that the use of Olander’s prior felony convictions was impermissible. The decision rests on a due process argument. When Olander obtained his two prior felony convictions, the state was prohibited, under A.R.S. §8-207, from using the child’s prior felony convictions in any court other than juvenile court. Section 8-207 (C) provided:

The disposition of a child in the juvenile court may not be used against the child in any case or proceeding in any court other than a juvenile court, whether before or after reaching majority, except as provided by § 28-444.

When §13-501 was enacted, the legislature also changed §8-

207 to provide that the convictions could be used in juvenile or criminal courts, thus allowing the state to use juvenile prior felonies to confer adult court jurisdiction. The state would have to retroactively apply the new provisions of §8-207 in order to prove that Olander was a chronic felony offender.

The court in *Beasley* held that a statute could be retroactively applied if the effect was merely procedural. Here, however, to retroactively apply the reworked §8-207 was to deprive the child of the benefits of the juvenile system. It had an immediate, as opposed to prospective, application. It was not merely a procedural change, but a substantive one.

The appellate court found the retroactive application of §8-207 violated Olander’s right to due process, reversed the conviction and vacated the lower court’s finding that he was a chronic felony offender.

This is a momentary issue, but an important one. The key points:

1) Look at the grand jury transcript. If the basis for the adult court jurisdiction is unclear, file a motion to remand. Defense counsel is entitled to know the basis for the jurisdiction in order to effectively dispute the issue. The prosecution’s word is not enough; it is a due process/ notice argument. A motion to remand was filed in this case for that reason.

2) Check the date of the child’s prior felony convictions. If the basis for the adult court jurisdiction is that the child is a chronic felony offender, under *Beasley*, the convictions must have been obtained on or after July 21, 1997.

3) The records must be examined carefully. Juvenile records contain both a summary of referrals and a list of actual convictions. Sometimes a referral is not filed or is dismissed. Make sure the alleged conviction is truly a felony conviction.

Included in this newsletter on the following pages are the *Beasley* Motion for Hearing pursuant to §13-501 and the Reply to the State’s Response, which clarifies the differences between the argument made and an *ex post facto* argument.



## SAMPLE MOTION FOR HEARING PURSUANT TO A.R.S. §13-501(E)

The defendant moves the court to hold a hearing as required by A.R.S. §13-501(E) and remand this case to juvenile court.

### MEMORANDUM OF POINTS AND AUTHORITIES

On May 28, 1998, Olander Beasley is alleged to have accidentally discharged a shotgun into his own foot. He was originally indicted by a grand jury for the offense of misconduct with weapons, a class four felony, in June of 1998. In the original grand jury transcript, there was no indication under newly created jurisdictional statute A.R.S. §13-501, upon which basis the county attorney was relying to charge the fourteen year old eighth grade student in adult court. Defense counsel filed a motion to remand that was granted by this court. Despite counsel's efforts to convince the county attorney's office to file the offense in juvenile court, Olander was again indicted in adult court. In the second grand jury proceeding, the county attorney presented evidence attempting to confer jurisdiction upon the adult court by virtue of Olander's two prior felony adjudications. The officer testified that Olander was previously convicted of burglary and aggravated assault, which would have been felonies if Olander was an adult. Both convictions were the result of Olander's conscious decision, after consulting with his attorney, to take a plea and admit to each offense. Neither case was tried. The date of plea on the burglary was November 22, 1996, and the date of sentencing for that offense was January 6, 1997. The date of the admission and plea on the aggravated assault charge was July 3, 1996, and the date of sentencing was August 5, 1996.

On the dates the child entered the pleas and was sentenced, the child relied on certain statutory promises. One of those promises, in A.R.S. §8-207(C), read:

The disposition of a child in the juvenile court **may not be used against the child in any case or proceeding in any court** other than a juvenile court, whether before or after reaching majority, except as provided by §28-244. (Emphasis added.)

On July 21, 1997, new statutory provisions relating to juvenile jurisdiction became effective. Among those provisions was the newly created jurisdictional statute, A.R.S. §13-501, allowing complaints against juvenile offenders to be made directly in adult court, without first holding a transfer hearing, if certain conditions were met. The pertinent provision in this case is that the child be a chronic felony offender, defined as one who has two or more prior and separate felony offenses that would constitute historical priors if the child were an adult. Correspondingly, and necessarily, A.R.S. §8-207(C), now A.R.S. §8-207(B), was also amended, to provide:

The disposition of a juvenile in the juvenile court may not be used against the juvenile in any case or proceeding **other than a criminal or juvenile case** in any court, whether before or after reaching majority, except as provided by § 13-2921.01 or §§ 28-3304, 28-3306 and 28-3320. {Emphasis added.}

The changes in the statute predate the commission of the alleged offense that is the subject of the indictment in this case. However, the dates of the juvenile's prior convictions, upon which the state relies to establish jurisdiction, both predate the change in the law. At the time of the child's convictions, the law **absolutely prohibited** the use of the juvenile's prior felony convictions in any court.

A.R.S. §501(E) requires the court to hold a hearing to determine whether the child is a chronic felony offender, if so requested by the child. If the court determines that the child is not a chronic felony offender, the court must transfer the child to the juvenile system.

### ARGUMENT

The child's prior offenses cannot be used to establish him as a chronic felony offender because they predate a substantive change in the law.

A. The statute cannot be retroactively applied.

Arizona statutorily prohibits retroactive application of a statute unless it is expressly declared to be retroactive. A.R.S. §§ 1-244, 1-105. Case law precludes the retroactive application of substantive provisions. In *State v. Gonzales*, 141 Ariz. 512, 687

P.2d 1267 (1984), the court held, "[u]nless a statute provides otherwise, it will not govern events that occurred before its effective date." *Gonzales*, at 513. (See also *State v. Edwards*, 136 Ariz. 177, 665 P.2d 59 (1983), wherein the court applied, as the law of the case, a recently repealed statute, because it was in effect at the time of the offense; *State v. Coconino County Superior Court*, 139 Ariz. 422, 678 P.2d 1386 (1984), wherein the Arizona Supreme Court applied the previously repealed insanity statute to the case; *State v. La Ponsie*, 136 Ariz. 73, 664 P.2d 223 (1982), wherein the court precluded the application of a recently enacted good faith exception statute on the ground that the statute was not retroactive.)

The law in effect at the time the child admitted to the offenses and gave up his right to a trial on the charges, promised that the conviction could not be used against the child in any way. In order to use the child's prior history to establish his chronic felony offender status, the state must retroactively apply the newly modified provisions of A.R.S. §8-207(B). There is no provision in the statute allowing for the retroactive application of its provisions. Thus, it cannot be done. The state may not use a child's convictions to establish chronic felony offender status if the convictions predate the change in A.R.S. §8-207(B).

B. The Legislature created a substantive right when it prohibited the use of the juvenile's prior history in any court, that legislatively created right cannot be arbitrarily abrogated, and the child has a right to rely on its promised protection.

In *Wolff v. McDonnell*, 418 U.S. 539 (1974), the U.S. Supreme Court precluded the arbitrary abrogation of a prisoner's good time credits, holding:

[T]he prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment "liberty" to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated. ..We think a person's liberty is equally protected, even when the liberty itself is a statutory creation of the State. The touchstone of due process is protection of the individual against arbitrary action of government. *Wolff* at 557-8.

In *Irvine v. Salt Lake County*, 785 P.2d 411 (Utah 1989), the court refused to retroactively apply a statute granting governmental immunity, enacted after a claim originated, holding:

It is well established that a statute or an amendment...will not be applied retroactively to deprive a party of substantive rights or to impose on a party a greater liability. *Irvine*, at 412.

Here, the state was not required to extend those protections to the juvenile, but it elected to do so. The new statute clearly exposes Olander to greater liability. Having created the right and inviting the juvenile to rely on it, the state cannot now arbitrarily abrogate it.

It is a substantive law that was amended. This was no mere procedural change. In *Allen v. Fisher*, 118 Ariz. 95, 574 P.2d 1314 (1978), the Court of Appeals defined a substantive law, holding "[I]t is generally agreed that a substantive law **creates, defines and regulates** rights..." *Allen*, at 1315. Here, A.R.S. §8-207 **created, defined and regulated** the use that could be made of a child's record. The statute created a substantive right of protection that the child justifiably relied upon. The state cannot arbitrarily destroy that substantive right.

#### CONCLUSION

WHEREFORE, for all the foregoing reasons, the child respectfully requests that the court conduct a hearing under the provisions of §13-501(E), find that the state cannot establish the juvenile as a chronic felony offender, and remand the case to juvenile court.

## SAMPLE REPLY TO STATE'S RESPONSE TO THE DEFENDANT'S REQUEST FOR HEARING PURSUANT TO A.R.S. 13-501

### MEMORANDUM OF POINTS AND AUTHORITIES

The state misconstrues the argument when it contends that *In Re Shane B.*, 276 Ariz. Adv. Rptr. 11, 979 P.2d 1014

(1999) applies to the facts of this case. In that case, the child entered a plea agreement on two offenses that occurred prior to the change in the law. Though the court, at disposition, did not intend to penalize the child with the provisions of the new law, it did apply the new law insofar as it required that the child be given a warning as a first time felony offender. The court found that the actions of the court did not violate the *ex post facto* provisions of the U.S. and Arizona Constitutions. That is not the argument advanced before this court. The argument here is not *ex post facto*; it is statutory construction. Unlike *In Re Shane B.* and *State v. Yellowmexican*, 142 Ariz. 205, 688 P.2d 1097 (1984), the argument is not whether the change in the law increases the punishment for offenses that were committed before the change in the law; the issue is whether A.R.S. §8-207 can be retroactively applied, and whether the original version of §8-207(C) created a vested right that cannot be arbitrarily abrogated. Those issues were not addressed in the holding of *In Re Shane B.*

In *Saucedo v. Superior Court*, 190 Ariz. 226, 946 P.2d 908 (1997), the issue before the court was whether the newly enacted automatic transfer provisions of A.R.S. §13-501 applied to offenses committed before the effective date of the act. The court held that they did not; that an application of the statute depriving the child of even the opportunity of being retained in juvenile court was a violation of the *ex post facto* provisions of the Arizona and U.S. Constitutions.

The defense is not advancing that argument. Here, the date of the offense postdates the change in the law; *ex post facto* provisions are not applicable. However, to use Olander's previous felony convictions against him to establish his chronic felony offender status requires that the court wholly ignore the provisions of A.R.S. §8-207(C) as it existed at the time of his convictions and retroactively apply the provisions of A.R.S. §8-207(B). Retroactive application of the law is statutorily impermissible. Any convictions that predate the change in the statute cannot be used.

In *State v. Levitt*, 155 Ariz. 446, 747 P.2d 607 (1987), the Court of Appeals for Division Two had an opportunity to interpret the provisions of A.R.S. §8-207(C), just after it had been amended. The court noted that, while the juvenile's prior felony record could still be provided to courts for informal consideration during sentencing, other uses of the record were prohibited. It held:

[T]he amendment by implication clarifies the prohibition against subsequent "use" of the juvenile court disposition to prescribe treatment as a prior conviction. Thus, while traffic violations by a juvenile may be "used" to determine whether or not to suspend or revoke his license, they may not otherwise be "used" in other proceedings. *Levitt* at 609.

It could not be more clear. The use of the child's juvenile record in traffic court is specifically provided for in the statute. Consistent with the juvenile court's emphasis on rehabilitation, which has now been replaced by a more punishment-oriented approach, other uses of the child's record were strictly prohibited. The court in *Levitt* did not limit its prohibition to sentencing enhancements; it used much broader language, interpreting the statute in sweeping terms and absolutely precluding the "use" of the child's priors in other "proceedings."

*Levitt* was decided in 1987. It is presumed that the legislature knew of the court's interpretation of the statute. Had the legislature seen the need to allow for the retroactive application of A.R.S. §8-207(B), it could have done so. It did not. The statute clearly prohibits the use of the child's prior convictions other than in juvenile court. The amendment to the statute is not retroactive. The convictions cannot be used against the child in any other case or proceeding.

Nor can the state arbitrarily remove a legislatively provided protection. The child relied on the statutory protection when he entered pleas of guilty. At the time the child entered his plea, clients were not advised that felony convictions could be detrimental to them at a later date; that was not what the law provided. The fact that the offense was a felony may not even have been included in the minute entry advising of the disposition of the offense. That the offense was a felony was not the matter of most significance. The focus was not on punishment; it was on rehabilitation and assistance. Having created this atmosphere, designed in every respect to assist and rehabilitate the juvenile, and having promised that the conviction would not be used for any purpose except in the juvenile court, the court cannot now arbitrarily remove that legislatively created protection.

WHEREFORE, for all the foregoing reasons, the child urges the court to preclude the use of his two prior felony convictions to establish him as a chronic felony offender, and remand the case to juvenile court.

## “Model Court” Update: One Attorney’s Perspective

**By Virginia Matté**  
**Deputy Legal Defender**

“Model Court” was implemented over one year ago – first at the Southeast Facility (it seems that Mesa always takes the point) and later at the Durango facility of the Juvenile Court. The espoused purpose was to comply with the Federal Adoptions and Safe Families Act (ASFA) to move dependency cases more quickly through the court system and establish “permanency” for children within one year after the child was removed from his or her home. Several requirements were to be implemented to make the new “model” work smoothly in order to comply with federal law: to reach an early resolution of the dependency question and to move the case quickly toward permanency (family reunification, severance and adoption, or guardianship). However, as with most best-laid plans, it has not always worked as contemplated.

### The Theory

Prior to the “preliminary protective conference/hearing” (usually referred to as the “PP5”), it was anticipated that the child and the parents would meet with the Child Protective Services (CPS) caseworker to discuss the reason for the filing of the dependency petition. If the child is removed from the home, at least one visit between parent and child is supposed to occur prior to the PP5. Additionally, the child and/or parents are to receive a psychological “assessment” to determine the need for further psychological services, e.g., a full-scale psychological evaluation, counseling and the like. A case plan is developed that spells out the “tasks” that the parents need to achieve family reunification.

The “preliminary protective conference,” and the “preliminary protective hearing” which follows approximately 45 minutes after the conference, is held five to seven days after the child is removed from its home. When the child is removed, the CPS caseworker who removes the child provides notice to the parents of the date and time of the PP5. Assuming that the parents appear at the PP5, those involved with the case meet to discuss whether the parents will accept service and waive the statutory formalities of service. They also decide whether the Indian Child Welfare Act (ICWA) applies, evaluate services available for the family, temporary custody of the child, and the ultimate question of dependency. Under the “model,” these individuals are supposed to include the parents, CPS investigator, the CPS ongoing case manager, the assistant attorney general representing CPS, attorneys/guardians ad

litem assigned to represent the parents and/or children, interested family members or close friends, and a representative from Value Options. If the ICWA applies, a representative of the child’s tribe is included, as well as, a facilitator hired by the court to proctor the conference. Although the statute contemplates that interested family members or close friends of the parents are entitled to attend the conference, in reality, this does not always occur. Many times one of the parties will object to someone being present during the conference, and that person will be excluded.

Again, assuming that the parents appear, the interested parties appear before a judicial officer approximately 45 minutes after the time scheduled for the conference, and the court enters orders consistent with the agreement or non-agreement of the parties. Counsel and/or guardians ad litem heretofore merely “assigned,” are now officially appointed to represent the parents and children. If the parents contest temporary custody, a “five-day hearing” is held to determine temporary custody of the child. If the parents do not contest temporary custody, but contest the issue of dependency, the court sets a mediation and pre-trial conference. If the parents submit or stipulate to a finding of dependency, the court makes a finding of dependency and, with the agreement of the parties, may proceed at that time to the disposition hearing or schedule the disposition for 30 days from the finding of dependency. At the disposition hearing, the court will set a “report and review” hearing six months from the disposition and an initial permanency hearing one year from the date the child was removed from the home.

If the parents do not appear at the PP5, the initial dependency hearing already scheduled will take place, and the case proceeds as it did prior to the implementation of “model court.”

*All of the above assumes that the dependency petition is filed by CPS and that ICWA does not apply. At this time, only CPS petitions proceed under the model court scheme. Private petitions filed by relatives, the child’s guardian ad litem in a related delinquency matter, or other interested parties are not subject to the model court requirements. However, it is this writer’s understanding that private petitions will soon come under the model court scheme, and once again, the Southeast Facility will take the point. The ramifications of ICWA and its impact on the model court procedure will be discussed below.*

### The Practice

While the theory may be laudable, in practice, it has not always worked the way it was envisioned.

The Office of Legal Defender is assigned to represent at least one parent (usually the “custodial” parent) in every dependency case, even if the parent’s whereabouts are unknown. This means that one of eight attorneys (three assigned to Mesa and five assigned to Durango) appears at every PP5. In many cases, this is a wasted trip because the parent’s whereabouts are unknown and this fact was known prior to the hearing. As of late September 2000, over 100 model court cases had been filed in Mesa. The number filed at Durango was significantly higher.

In all cases where the parents’ location is known, they have met with the CPS investigator prior to the PP5. However, according to one Mesa attorney, none of the parents had been evaluated prior to the PP5.

Early on in the program, many parents had been evaluated prior to the PP5. But as the program progressed at Durango, not all parents were evaluated by Value Options, Arizona Behavioral Services (ABS). One Durango attorney opined that perhaps approximately 20% of the parents had been evaluated. Most of the children though had been seen by these providers. However, counseling is generally not in place for either the parents or children.

When model court was first implemented, this writer had *one case* where a representative of Value Options appeared at the PP5. Since then, Value Options has been conspicuous by its absence.

The ongoing CPS case manager is supposed to be identified and be present at the PP5. One Mesa attorney reports that the ongoing case manager is identified and present at the PP5 in 90% of his cases. At Durango, the ongoing case manager is identified and may or may not be present in only 20% to 40% of the cases. In most of the cases, however, the investigator has no idea who the ongoing case manager is or to which CPS unit the case will be assigned.

Only a small percentage (roughly 1% to 5%) of the cases proceeds to a 5-day hearing where the parents contest temporary custody of the child. Complete settlement of all issues, including services, and the ultimate question of dependency is accomplished in approximately 20% of the cases. Of the remaining 80%, settlement is frequently accomplished at the mediation.

Between 15% and 40% of parents fail to appear at the PP5. If a parent to whom the Office of Legal Defender has been

assigned fails to appear, the general policy is to request that the office not be appointed at the preliminary protective hearing, subject to later appointment if the parent subsequently appears and requests counsel. Naturally, there are exceptions to this general policy. The office may request appointment even if the parent is not present, if the parent has a known address, has spoken with the CPS investigator or our office and expressed a willingness to work toward reunification. Additionally, the office may request appointment if the parent indicated to CPS that he/she intended to appear for the PP5 but, for some reason, was unable to get to court. Some attorneys may also request appointment if there is a warrant out for the parent’s arrest and the assigned attorney believes that the parent may need the advice of counsel sometime in the proceedings. The office will also request appointment if we are already representing the parent in an ongoing case, and a supplemental petition is filed on another child.

### The Impact of ICWA

When the Arizona Legislature enacted the statutes regarding the preliminary protective conference/hearing, it failed to consider the impact of ICWA and its requirements. ICWA is a federal law that takes precedence over conflicting state law.

Of the cases assigned to the Office of Legal Defender, approximately 10% are ICWA cases. The ICWA statutes do not address or contemplate the PP5 procedure and certainly do not contemplate that any hearing can occur before proper notice under ICWA has been given to the parent, Indian custodian, or the child’s tribe. As a matter of fact, the Act specifically forbids it. Under ICWA, no hearing in an involuntary proceeding concerning custody of an Indian child can occur until at least ten days after the parent, Indian custodian, or child’s tribe has been served personally or by registered mail. The parent, Indian custodian, or the child’s tribe is entitled to an additional twenty days to prepare for the hearing. There is no provision in the Act for a parent to accept and/or waive service, nor does the Act permit service by publication. If the parent cannot be found or the child’s tribe ascertained, service is made on the Bureau of Indian Affairs.

No parent, Indian custodian, or Indian tribe of whom this writer is aware has been properly served by the PP5 hearing. In many cases, the child’s tribe may have been ascertained by CPS, but proper notice is impossible. In addition, depending on the tribe, it is impossible for the tribe to determine by the PP5 whether the child is a member or eligible for membership so that ICWA applies. Consequently, *the PP5 cannot take place in ICWA cases*. According to an attorney who represents a local tribe, if the tribe has knowledge of the PP5 (usually, but not always, the result of a phone call by the CPS worker), he and the tribal social worker appear, primarily to

explain to the facilitator and the judge that the PP5 cannot take place. When the tribe has no knowledge that a PP5 is occurring, much of his work involves undoing actions that were taken at the PP5 in violation of ICWA.

One of the first questions now asked at the PP5 is whether ICWA applies. If the CPS investigator has asked the proper questions of the parents prior to the child's removal, the answer to this question is already known, and the dependency petition states that the Act either does or does not apply. If, however, the proper questions are not asked, and it is determined at the PP5 that ICWA in fact either does *or may* apply, the only issues that can be addressed at the conference are the child's connection with a specific Indian tribe or tribes and perhaps the services contemplated for the family.

If the case is subject to the Act, the initial dependency hearing (commonly referred to as the "21-day hearing") must proceed as scheduled to allow proper service on the parents, the Indian custodian, and the child's tribe. Consequently, in ICWA cases, it can safely be said that the PP5 is generally a waste of time.

### Conclusion

From the above analysis, it appears that the "model court" scheme has not worked in all respects as it was expected to work. Value Options representatives are rarely at the PP5; the parents have seldom been evaluated prior to the PP5; the parents many times do not appear, thereby requiring attorneys to come to court where little or nothing is accomplished; and the ongoing case managers either do not appear or are unknown.

However, in those cases where the parents do appear, much is accomplished. In non-ICWA cases, the parents accept and waive service, discuss and/or agree to services, and, in some cases, stipulate or submit to the dependency, thereby saving everyone including the court a great deal of time.

It will be interesting to see how the model court system impacts the "private" petitions. In this writer's experience, these petitions are sometimes filed by well meaning relatives who are unhappy with the way the child is being cared for by the parents. The care of the child may be appropriate but "different" from the way the relatives believe care should be given. These private petitioners do not understand the law regarding dependencies, and the state does not agree with all private petitions. Many are dismissed early on in the case.

Dependency petitions filed by the child's guardian ad litem appointed in a related delinquency case usually allege that the child's parents are unwilling to have the child returned home, or the child is in need of services that the "delinquency side" of the court cannot provide. In many of the latter type of

cases, the state disagrees with the petition, and the disagreement is based on funding: the delinquency side either cannot provide the appropriate placement, e.g., a locked facility, or cannot pay for it, and CPS refuses to pay for it. In these cases, the court may order the cost to be split. However, in many of the cases in the first category, one attorney's opinion is that CPS is simply unwilling to have another case added to their caseload, and, not knowing all of the facts, after a cursory visit with the parents, decide that "family preservation" will cure all, and no dependency exists. At this point, a PP5, with its opportunity for judicial involvement, may provide a real opportunity to ensure proper services to the child and the family are in place.

In the case of petitions filed by relatives, hopefully, the preliminary protective conference will serve as a vehicle where the relatives who filed the petition, CPS representatives, the parents, their attorneys, and the attorney/guardian ad litem for the child can all meet and resolve the issues that caused the filing of the petition. If the petition is filed by the child's guardian ad litem, an early resolution of the placement or funding problem can be achieved. If this is accomplished, the model court system will be a great benefit to families and the court.



## ARIZONA ADVANCE REPORTS

By Terry Adams  
Defender Attorney – Appeals



*State v. Jorgenson (Hughes)*  
332 Ariz. Adv. Rep. 3 (SC, 9/29/00)

The defendant was convicted of first degree murder in spite of overwhelming evidence of insanity. He appealed and the Supreme Court found that the conviction was found to be not based on evidence but on intentional prosecutorial misconduct and the trial court erred in failing to grant a mistrial and reversed the conviction. *State v. Hughes*, 193 Ariz. 72, 969 P.2d 1184 (1998). On remand, the defendant moved for dismissal raising double jeopardy as a bar to retrial. The trial court agreed and the state took this special action. The Supreme Court found that double jeopardy bars retrial after intentional prosecutorial misconduct results in a mistrial. The fact that the original trial court erred by failing to grant a mistrial and there was a verdict reached is of no consequence and the defendant here was entitled to dismissal with prejudice.

*State v. Miranda*  
332 Ariz. Adv. Rep. 32 (CA 1, 9/28/00)

The defendant was convicted of disorderly conduct after being charged with aggravated assault. The sole question here is whether or not disorderly is a lesser included offense of aggravated assault in light of *State v. Cutright* 2 P.3d 657 (App. 1999) which held that it is not. A different panel of judges here refused to follow *Cutright* because the Supreme Court determined that disorderly is a lesser in *State v. Angle*, 149 Ariz. 478, 720 P. 2d 79 (1986). The court found that it is bound by decisions of the Supreme Court, and because the elements for disorderly and aggravated assault have not been changed by the legislature *Angle* is still controlling.

has resigned from her position at the Public Defender's Office Records Division, effective October 18, 2000.

**Matt Elm** was promoted to Records Processor effective November 13, 2000. Matt was the Office Aide for Administration.

**Jennifer Doerfler**, Transcriptionist (telecommuter), has resigned her position with the Public Defender's Office, effective November 17, 2000.

**Cindy Rodriguez**, Client Services Assistant, has resigned her position with the Public Defender's Office, effective November 24, 2000.

**Keri Ann Spear**, Legal Secretary assigned to Juvenile at Durango, is transferring to the Clerk of the Court effective Monday, November 27, 2000.

**Michael Kay**, Legal Assistant for Trial Group D, has resigned from the Public Defender's Office, effective December 15, 2000.

The Office of the Maricopa County Public Defender

Presents

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## OCTOBER 2000 JURY AND BENCH TRIALS

### GROUP A

Dates: Start–Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
9/28	<b>Shah</b>	Tolby	Lindquest	CR00-01953MI Assault/M1	Dismissed day of trial	Bench
10/2-10/3	<b>Green</b>	Schwartz	Gadow	CR99-14781 Sexual Assault/F2 Kidnapping/F2 Sexual Abuse/F5	Guilty	Jury
10/25-10/26	<b>Green</b>	Jarrett	Fish	CR00-10049 Theft of Means of Transportation/F3 Possession of Burglary Tools/F6 PODP/F6; PODD/F4 Agg. Assault/F3D	Guilty all counts except Agg. Assault/F3D Guilty of Disorderly Con- duct/6D	Jury
10/26-10/30	<b>Valverde</b>	McVey	Clarke	CR00-01095 Child Abuse/F4	Guilty	Jury
10/30-10/30	<b>Looney Jaichner</b>	Schwartz	Forness	CR98-17866 Taking Identity	Dismissed day of trial w/o prejudice	Jury

### GROUP B

Dates: Start–Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
10/2	<b>Aslamy</b>	Guzman	Toftoy	CR99-02045MI IJP	Dismissed without preju- dice day of trial	Bench
10/3	<b>Taradash Munoz</b>	Hilliard	Martinez	CR 99-11560 Felony Murder, Burglary Kidnapping, Aggrvated Assault	Guilty on all counts	Jury
10/11 –10/12	<b>Aslamy / Bublik King</b>	Jarrett	Musto	CR00-009965 Forgery, F4	Not Guilty	Jury
10/16 - 10/23	<b>Lopez</b>	Hilliard	Green	CR 97-07908 Promoting Prison Contraband, F2 w/ 2 priors	Guilty	Jury
10/17	<b>Dewitt</b>	Gastellum	Younglove	CR99-01481                      CR00-00924 CR00-00630 IJP x 3	Guilty	Bench
10/17	<b>Dewitt</b>	Gastellum	Younglove	CR00-006600 Theft, Misd	Not Guilty	Bench
10/17	<b>Lopez</b>	Hilliard	Davidon	CR 2000-008256 4 cts Forgery, F4 4 cts Tampering Public Record, F6 Bribery Public Servant/Party Officer, F4	Dismissed without preju- dice day of trial	Jury
10/18 – 10/19	<b>Mitchell / Bublik</b>	McClennen	Morton	CR00-004505 Agg DUI	Guilty	Jury
10/19	<b>Primack</b>	Hilliard	Baldwin	CR00-009984 Assault by a prisoner with Bodily Fluids, F6	Dismissed day of trial	Jury
10/23	<b>Navazo</b>	Guzman	Younglove	MCR00-01558 Interference w/ Judicial Process	Guilty	Bench

## OCTOBER 2000 JURY AND BENCH TRIALS

### GROUP C

Dates: Start–Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
10/2	<b>L. Moore</b>	Keppel	Brame	CR2000-091812 Theft Means Transportation/F3N	Dismissed without prejudice day of trial	Jury
10/2 – 10/4	<b>Shoemaker</b>	Fenzel	Holtry	CR2000-092586 Agg DUI/F4N	Not Guilty	Jury
10/2	<b>Antonson Thomas</b>	Oberbillig	Rosales	CR2000-091396 Interf w/jud proc/M1N Unlaw Use of Trans/F5N Crim Tres 1 <sup>st</sup> Deg/F6N Crim Damage/F6N	Pled day of trial	Jury
10/3 – 10/5	<b>Davis Nermyr</b>	Oberbillig	Andersen	CR1999-092612 Agg Assault/F3N	Not Guilty	Jury
10/4 – 10/11	<b>Bond Goody Klosinski</b>	Fenzel	Jennings	CR1999-094695 Kidnap/F2D 3 Cts: Sexual Assault/F2D Burglary 2 <sup>nd</sup> Deg/F3N Agg Assault/F4N Sex Abuse over 15/F5N	Guilty all counts	Jury
10/10 – 10/17	<b>Walker Klopp-Bryant Thomas</b>	Keppel	O'Neill	CR1996-093949 Sex Cond w/Minor under 15/F2DCAC 4 Cts: Child Molest/F2DCAC	1 Ct Child Molest-dismissed; 2 Cts Child Molest – Not Guilty; 1 Ct Sex Cond w/Minor; 1 Ct Child Molest – Guilty	Jury
10/10 – 10/16	<b>Little Ramos</b>	Willrich	Udall	CR2000-091564 Agg Battery/F3D	Not Guilty	Jury
10/10	<b>Antonson</b>	Oberbillig	Brenneman	CR2000-091238 Agg Assault/F6N	Dismissed with prejudice day of trial	Jury
10/18 – 10/23	<b>Zazueta</b>	Fenzel	Standish	CR2000-092974 2 Cts: Agg DUI/F4N	Guilty	Jury
10/19 – 10/23	<b>Dennis Beatty Moncada</b>	Gottsfeld	McCoy	CR2000-092894 2 Cts: Agg DUI/F4N	Guilty	Jury
10/21	<b>L. Moore Thomas</b>	Barker	Weinberg	CR2000-091460 2 Cts: Agg DUI/F4N POM/F6N PODD/F4N	Dismissed w/o prejudice day of trial	Jury
10/23	<b>Antonson</b>	Barker	Doane	CR2000-092572 Dang Drug Vio/F2N PODP/F6N	Pled day of trial	Jury
10/24	<b>Klopp-Bryant</b>	Keppel	Brame	CR2000-091506 Burg on non-resid/F4N Theft/F6N	Dismissed with prejudice day of trial	Jury
10/24	<b>Little Rossi</b>	Barker	Brame	CR2000-093953 Burg 2 <sup>nd</sup> Deg/F3N Theft/F5N	Dismissed day of trial	Jury
10/25 – 10/26	<b>Bond</b>	Oberbillig	Hudson	CR2000-092259 POM/F6N PODD/F4N	Guilty	Jury
10/26	<b>Pettycrew</b>	Mulder	Brooks	TR00-00904 Dr w/Sus Lic/M1N 2 Cts: Susp. Lic/M1N Vio Park Rules/M2N	Not Guilty on all, except Guilty of Violating Park Rules	Jury
10/30	<b>Antonson</b>	Willrich	Doane	CR2000-092473 2 Cts: Marij Vio/F2N	Pled day of trial	Jury
10/30	<b>Bond</b>	Jarrett	Arnwine	CR2000-092674 PODD/F4N	Not Guilty	Jury

## OCTOBER 2000 JURY AND BENCH TRIALS

### GROUP D

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
10/2	<b>Huls</b> Souther	Hall	Simpson	CR 2000-001301 Theft, F5	Plead to Misd.	Jury
10/4-10/16	<b>Schreck</b> Bradley	Fenzel	Kuhl	CR 2000-09062 Poss of Narc Drg, F4 Unlawful flight pur law Veh, F5	Not Guilty Guilty	Jury
10/9-10/19	<b>Dwyer</b>	Gerst	Eaves	CR 2000-05775 Frd. Schms/Artif, F2 Theft, F3; 2 Ct. Forgery, F4	Not Guilty	Jury
10/11	<b>Berko / Falduto</b>	Cole	Horn	CR 99-12597 3 Cts. Of sexual conduct w/minor, F2, 1 Ct. Kidnap, F2, 1 Ct. Sex abuse under	Plead to 1 Ct. child molesta- tion, F2 and Ct. 2 & 3 attempt sexual conduct w/minor	Jury
10/16	<b>Lerman</b>	Gutierrez		CR 00-01187A-MI Assault	Dismissed	Bench
10/16	<b>Stazzone</b>	Gottsfeld	Musto	CR 2000-10589 Theft of Transp, F3 2 Ct. Unlawful flight, F5	Defendant pled day of trial	Jury
10/16-10/17	<b>Schreck</b> O'Farrell	Ballinger	Simpson	CR99-16635 2 Ct Agg Dui-Under Infl Drg, F3 Assault, M1	Guilty	Jury
10/17-10/18	<b>Billar</b>	Ballinger	Adelman	CR 2000-08613 Forgery; F4; Misconduct Inv. Weap, F4	Guilty	Jury
10/17-10/24	<b>Martin / Grant</b> Bowman	Sheldon	Charnell	CR 96-11216 Murder 2, F1	Guilty	Jury
10/24-10/26	<b>Varcoe</b>	Fenzel	Amiri	CR 2000-009774 Burglary, F3	Guilty	Jury
10/31	<b>Billar</b>	Gerst	Duax	CR 2000-10005 Child Molest, f2; Sex Abuse Under 15, F3; Agg. Asslt, F6	Dismissed before trial	Jury
10/31	<b>Berko</b>	Gerst	Altman	CR 99-04734 Child Abuse, F2	Dismissed	Jury

### OFFICE OF THE LEGAL DEFENDER

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
10/4-10/5	<b>Allen</b> Apple	Fenzel	Aubuchon	CR99-92266 Child Abuse and Dangerous Crimes Against Children, F2	Guilty Lesser included Reckless Child Abuse, F3	Jury
10/5-10/5	<b>Curry</b> Otero	Myers	Mayer	CR00-01934 Marijuana-Possess/Grow/Process, F6 Possess Drug Paraphernalia, F6	Not Guilty	Bench
10/11-10/19	<b>Cleary</b> De Santiago	McVey	Myers	CR99-14489 2° Degree Murder, F1D 2° Attempted Murder, F2D	Not Guilty	Jury
10/12-10/17	<b>Parzych</b> Abernethy De Santiago Rubio Williams	Barker	Perry	CR99-93327 1° Murder, F1 Attempted Armed Robbery, F2D 1° Burglary, F2 Dangerous 2cts. Aggravated Assault, F3D	Not Guilty	Jury
10/23-10/30	<b>Patton</b>	Ballinger	Adleman	CR00-00679 Drive by Shooting, F2D Attempted Armed Robbery, F3D Car Theft, F3 Unlawful Flight, F5	Guilty	Jury

## OCTOBER 2000 JURY AND BENCH TRIALS

### GRUPE

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
10/2 - 10/3	<b>Brown</b>	Reinstein	Duffy	CR00-05622 PODD F/S/F2 Misc. Inv. Weapon/F4	Hung on PODD Guilty of Misc Inv Weapon	Jury
10/3 - 10/6	<b>Hanson</b>	Cole	Boyle	CR00-08517 Forgery/F4	Guilty	Jury
10/3 - 10/4	<b>Goldstein</b> Gotsch	Wotruba	Simpson	CR00-05772 Burglary/F4 Resist. Arrst./F6	Guilty	Jury
10/5 - 10/6	<b>Goldstein</b> Reilly	Hall	Boyle	CR00-07594 Theft of Means of Transp./F3	Not Guilty	Jury
10/5 - 10/13	<b>Van Wert</b>	McClennan	McKessy	CR99-11025 Money Laundering/F3	Not Guilty	Jury
10/10 - 10/13	<b>Hanson</b>	Padish	Pierce	CR00-01073 Misc. Inv. Weapon/F4 POM/F6	Guilty	Jury
10/10 - 10/11	<b>Flynn</b>	Mangum	Mayer	CR00-01507 Theft of Vehicle, F3	Guilty	Jury
10/11	<b>Walker</b>	Hall	Adams	CR00-02995 Drive by Shooting/F2D 2 Cts. Agg. Asslt./F3D	Dismissed without prejudice day of trial	Jury
10/11	<b>Roskosz</b>	Hall	Blumenreich	CR00-08737 Resist. Arrest/F6 Agg. Asslt./F6	Dismissed with prejudice	Jury
10/16/00	<b>Klapper</b>	Hall	Pierce	CR 00-08711 Theft/F5	Not Guilty	Bench
10/16	<b>Hanson</b>	Araneta	Rueter	CR00-00213 2 Cts. Forgery/F4	1 Ct. Dismissed; 1 Ct. Plead to C1Misd. day of trial	Jury
10/16	<b>Richelsoph</b>	Araneta	Newell	CR00-06242 2 Cts. Burglary/F4	Dismissed day of trial	Jury
10/24 - 10/25	<b>Walker</b>	Jones	Hanlon	CR00-05780 Theft/F6	Guilty	Jury
10/30 - 11/2	<b>Richelsoph</b>	Araneta	Hanlon	CR00-12080 Resist. Arrst./F6	Guilty	Jury

### DUI UNIT

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
10/19-10/24	<b>Timmer</b>	Keppel	Mueller	CR2000-002969 Agg Dui w/ 1 prior	Jury hung 6-2 for not guilty	Jury

### COMPLEX CRIMES UNIT

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
10/25-10/31	<b>Bevilaqua</b> <b>Berko</b> Salvato <i>Rlvera</i>	Gottsfeld	Levy	CR2000-11108B Murder - Premeditated and/or Felony F1 Attempted Armed Robbery F2D Aggravated Assault F3D Robbery F4D Felony Flight F4D	Guilty of Felony Murder. Guilty of all other counts.	Jury

## GUIDELINES FOR SUBMISSION OF ARTICLE FOR

Articles should be submitted by the 5<sup>th</sup> of each month.

### Page Setup Guidelines



- ◆ 1 Inch Margin – Left, Right, Top, Bottom
- ◆ CG Times 10 Point Font
- ◆ Single Space with Full Paragraph Justification
- ◆ Leave a blank line between each paragraph (as opposed to indenting the first line of a new paragraph)
- ◆ Quotes should be indented only .5 inches on the left and right
- ◆ Do not use section breaks, page breaks or dual column
- ◆ Do not be concerned with widow/orphan control as page breaks will change in newsletter format
- ◆ Include citations within text of article (as opposed to using endnotes/footnote)
- ◆ Use italics when citing legal authority (as opposed to underlining)

These settings will differ from those that would normally be used in formatting a paper. Because articles need to be formatted for newsletter publishing, any formatting other than the specifications set forth above will need to be removed. Removing formatting can be a time intensive process so please follow these guidelines in submitting any articles. If you will use the article for publication or presentation elsewhere and want to format the article for that purpose, please save your article for submission to *for The Defense* as a separate document prior to applying any additional formatting. Thank you for your cooperation.

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