

# Probation Programs

## Judiciary

### Program Summary

#### **Program Overview**

Probation in Arizona may be offered by the court, as an alternative to incarceration in the Arizona Department of Corrections (ADC) system, to eligible individuals who are convicted of felonies and misdemeanors. Probation programs are administered by the Superior Courts and are divided into 5 categories: Adult Standard, Adult Intensive, Juvenile Standard, Juvenile Intensive, and Interstate Compact. These programs are jointly funded by both the state and county for the Standard and Interstate Compact categories while the state completely funds the Intensive programs. Maricopa County, however, does not receive state assistance and pays all of their probation costs.

#### **Background**

##### Eligibility

Eligibility for probation is determined by the nature of the crime committed. Adults who are convicted of first- or second-degree murder or other violent crimes that result in death or injury are not eligible for probation. All other convicted adults are eligible for probation.

##### Sentencing

All individuals that are eligible for probation are evaluated by a probation officer for their risk to the community and the individual's needs. Based on this analysis, the probation officer makes a recommendation to the court as to whether the convicted individual should be incorporated into the Standard or Intensive Probation program, or sent to an ADC facility. Based on this analysis and other available information, the court then determines what probation program, if any, is appropriate. All individuals that are sentenced to probation are subject to statutory maximum sentences as follows:

- Class 2 Felony - 7 years
- Class 3 Felony - 5 years
- Class 4 Felony - 4 years
- Class 5 or 6 Felony - 3 years
- Class 1 Misdemeanor - 3 years
- Class 2 Misdemeanor - 2 years
- Class 3 Misdemeanor - 1 year

Statute allows the court to extend the above maximums for adults convicted of driving under the influence offenses for a period of 5-10 years depending on the severity of the offense.

Adults convicted of terrorism, sexual exploitation of children, stalking, child or vulnerable adult abuse, or sexual offenses are required to be sentenced to a probation term that is not less than the sentencing maximum for the applicable class of felony or misdemeanor as listed above. At the court's discretion, the sentence for these offenses can last for as long as the convicted individual is alive.

There are no juvenile sentencing minimums. All juvenile probation terms are limited to a 1-year period unless any of the following apply:

- The juvenile is convicted of a sexual offense, the sexual exploitation of children, or a crime in which a deadly weapon was used or serious physical harm was intentionally inflicted on another person.
- A subsequent offense occurs.
- The terms of the probation are violated.
- Restitution has not been paid.
- The juvenile's parents request an extension.

All Juvenile Probation sentences terminate once the juvenile reaches the age of 18, unless the juvenile is charged as an adult for the crime.

In some circumstances, the prosecuting attorney may opt to offer enrollment in a deferred prosecution or diversion program to the charged individual. Deferred prosecution or diversion programs offer defendants who commit non-dangerous, non-serious crimes the option of participating in a treatment, counseling, and community service program that addresses their particular needs as well as requiring the payment of restitution. If completed successfully, the charges are dismissed, but if the individual fails to meet the requirements of the program the charges are reinstated and the case proceeds. In FY 2019, 8,519 adults and 7,750 juveniles were diverted from formal court proceedings. Annually, the state provides approximately \$8.6 million in General Fund monies to the counties to help fund their juvenile diversion programs. The state does not normally provide funding to adult deferred prosecution programs; the FY 2017 budget, however, included a one-time \$250,000 General Fund appropriation to the Maricopa County Attorney's deferred prosecution program. The FY 2018 budget included a one-time \$2,750,000 appropriation from Other Funds to the Arizona Criminal Justice Commission (ACJC) to be distributed proportionally to all county attorney offices except for Maricopa County to administer felony pretrial intervention programs. The FY 2020 budget included an additional one-time appropriation of \$750,000 from Other Funds to ACJC to be distributed to the Yavapai County Sheriff's Office to administer its felony pretrial intervention program.

#### Program Structure

Arizona has 2 classifications of probation: standard and intensive.

The Intensive Probation programs serve individuals who would otherwise be incarcerated, have violated their standard probation, or have been convicted of a Class 2 or 3 felony and provide more restrictions on offender's movements and direct their activities in the community. Conversely, Standard Probation programs place fewer restrictions on mobility than do Intensive Probation programs and may not have community service or work requirements. The statutory requirements for each category are included below.

#### Adult Standard

- Terms of probation are determined by the court.
- At least a \$65 monthly fee unless the probationer cannot pay the full amount.

#### Adult Intensive

- At least 20 hours of community restitution monthly.
- Must be employed, a full-time student, or actively searching for work while also performing community restitution work at least 6 days a week.
- Establish a residence at an approved location where the probationer will remain except for when engaged in approved activities.
- Payment of restitution.
- Allow the administration of drug and alcohol tests.
- At least a \$75 monthly fee unless the probationer cannot pay the full amount.
- Any other terms imposed by the court.

#### Juvenile Standard

- Terms of probation are determined by the court.

#### Juvenile Intensive

- The Probationer must participate in at least one of the following, if approved by the court or probation officer, for at least 32 hours per week: school, a treatment program, employment, supervised community restitution work, or an activity that improves the juvenile's prosocial skill development including enhancing the juvenile's relationship with their family.
- Payment of restitution and other fees.
- Stays in residence unless involved in an activity that is required as part of their probation or in the direct company of a parent or guardian.

- Must allow the administration of drug and alcohol tests as directed.
- Any other terms imposed by the court.

Beyond these statutory requirements, the courts are given discretion in terms of what a probationer must accomplish to complete their sentence. This can include community service, mobility restrictions, GPS monitoring, restitution, driver's license revocation, drug testing or other requirements.

#### Interstate Compact

Individuals who are sentenced to probation in Arizona and move to other states or individuals that are sentenced to probation in other states and move to Arizona are subject to the Interstate Compact program which provides a multi-state framework for handling probationers across state lines. All probationers that are subject to the Interstate Compact must abide by their new state's probation standards in addition to any special stipulations that their probation sentence may have carried.

#### Staffing

The Superior Court hires probation and surveillance officers to monitor probationers. In order to ensure the effective monitoring of probationers, statute limits the caseload that an officer can oversee as detailed below:

- Adult Standard - 1 probation officer to 65 probationers.
- Adult Intensive - 1 probation and 1 surveillance officer to 25 probationers or 1 probation and 2 surveillance officers to 40 probationers.
- Juvenile Standard - 1 probation officer to 35 probationers.
- Juvenile Intensive - 1 probation team to 25 probationers.

Statute allows counties to waive the Adult Intensive statutory ratios if the caseload of a probation officer is not more than 15 probationers and visual contact with each probationer is required at least once a week. County probation departments also hire supervisors and support staff to oversee and assist probation and surveillance officers. Typically, 1 supervisor and 2 support staff are hired for every 10 probation officers.

The probation and surveillance officers subject to these ratios are known as case-carrying officers and only handle probationers that have committed a felony. Individuals that have committed a misdemeanor are placed on unsupervised probation and their casework may be handled by either probation or surveillance officers or other staff such as supervisors or support staff.

#### **Program Funding**

The cost of probation programs is shared by the state and county. The state and county jointly fund the Standard Probation programs while the state pays for all of the Intensive Probation programs. Maricopa County, however, does not receive state funding for its probation programs and is entirely self-funded.

#### State Funding

The state appropriated \$47.3 million to county probation departments in FY 2021. This amount includes \$39.0 million from the General Fund, \$6.0 million from the Judicial Collection Enhancement Fund (JCEF), \$1.8 million from the Criminal Justice Enhancement Fund (CJEF), and \$500,200 from the Drug Treatment and Education Fund (DTEF). *Table 1* displays the FY 2021 appropriations by line item and fund source.

Monies appropriated to the standard and intensive line items are used for the salary and the Employee Related Expenditures for probation and surveillance officers, supervisors and support staff in all counties except Maricopa. The Interstate Compact line item provides funding for the administration of the Interstate Compact in Pima and Yavapai Counties, which are the only counties with enough Interstate Compact participants to allow for dedicated staff. All other counties, except Maricopa County, that have Interstate Compact participants receive state monies for this purpose within the relevant probation category. Funding for adult probationers requiring enhanced supervision, monitoring, and programming is included in the Community Punishment Program line item. In addition to these amounts, the Administrative Office of the Courts (AOC) also expends other General Fund and JCEF monies from their Centralized Service line item for the payment of county probation costs that are paid centrally by the state. Examples of these costs include training, motor vehicle costs, and GPS vendor payments.

Statute requires that a majority of the monies provided by the state to county probation departments be used for salaries and related expenditures. In FY 2020, \$42,090,000 of the \$47,612,800 in state appropriations was utilized for salaries and benefits.

<u>Line Item</u>	<u>General Fund</u>	<u>JCEF</u>	<u>CJEF</u>	<u>DTEF</u>	<u>Total</u>
Adult Standard	\$16,281,400	\$3,774,100	\$ 0	\$ 0	\$20,055,500
Adult Intensive	9,993,700	1,535,200	0	0	11,528,900
Juvenile Standard	3,524,700	150,000	0	0	3,674,700
Juvenile Intensive	5,635,500	0	0	0	5,635,500
Interstate Compact	381,000	92,800	0	0	473,800
Community Punishment	0	0	1,810,100	500,200	2,310,300
Centralized Service Payments	3,155,600	449,900	0	0	3,605,500
<b>Total</b>	<b>\$38,971,900</b>	<b>\$6,002,000</b>	<b>\$1,810,100</b>	<b>\$500,200</b>	<b>\$47,284,200</b>

An annual General Appropriation Act footnote makes receipt of state monies by county probation departments contingent on the maintenance of FY 2004 county probation expenditure levels and dictates that state monies are not intended to supplant county dollars for probation programs.

#### County Funding

Counties are responsible for all of the costs of the Standard Probation programs not already covered by state or federal monies. To help fund their probation programs, counties assess fines and other fees. These fees vary by county and by the ability of an individual to pay.

All adults that are sentenced to probation are required to pay a monthly supervision fee. The fee is statutorily required to be at least \$65 for adults on standard probation and at least \$75 for those in the Intensive program. Of the monies collected from these supervision fees, 70% is deposited into the Victim Compensation and Assistance Fund and the remaining 30% is deposited into the county Adult Probation Services Fund. If the individual is convicted of a dangerous crime against children and is classified as a high-risk offender, the court will mandate the use of monitoring equipment for the offender. To cover the cost of monitoring, the court may impose a fee which is deposited into the respective county's Adult Probation Services Fund. In FY 2020, non-Maricopa Counties expended \$5,042,600 in fee revenue to support their adult probation programs.

Any other county, state, or federal money received for adult probation is deposited into the respective county's Adult Probation Services Fund. In FY 2020, non-Maricopa Counties expended \$18,344,700 in county funds to support their adult probation programs, which, when coupled with fee revenue expenditures, brings FY 2020 total non-Maricopa County adult probation spending from county sources to \$23,387,300.

Juvenile probationers are assessed a fee of at least \$50, which is deposited into the county Juvenile Probation Fund. Other juvenile probation monies are also deposited into the fund including state and Federal Funds. In FY 2020, non-Maricopa County probation departments expended \$594,400 in fee revenue and \$13,299,600 from other county sources for total FY 2020 juvenile probation county spending of \$13,894,000.

A General Appropriation Act footnote requires the Administrative Office of the Courts (AOC) to report on the number of probation officers by category and the county probation expenditures by fund source. In the most recent report, the AOC reported a total of 431.1 case-carrying probation officers across all categories in FY 2020. Expenditures from selected fund sources for non-Maricopa County probation departments was \$82.6 million in FY 2020. *Table 2* provides further detail on probation officers and expenditures.

	<u>Adult Standard</u>	<u>Adult Intensive</u>	<u>Juvenile Standard</u>	<u>Juvenile Intensive</u>	<u>Total</u>
<b>Probation Officers</b>					
Case Carrying Positions	251.5	93.0	48.7	37.9	431.1
Non-Case Carrying Positions	<u>340.0</u>	<u>58.7</u>	<u>311.9</u>	<u>26.1</u>	<u>736.7</u>
<b>Total Filled Positions</b>	<b>591.5</b>	<b>151.7</b>	<b>360.6</b>	<b>64.0</b>	<b>1,167.8</b>
<b>County Probation Expenditures</b>					
State General Fund	\$16,408,700 <sup>1/</sup>	\$10,418,600	\$3,410,400	\$5,635,200	\$35,872,900
Other State Funds	2,649,200	1,077,600	0	0	3,726,800
County Funding	21,144,500	0	15,347,800	0	36,492,300
Probation Fees	<u>5,926,600</u>	<u>0</u>	<u>593,300</u>	<u>0</u>	<u>6,519,900</u>
<b>Total Expenditures</b>	<b>\$46,129,000</b>	<b>\$11,496,200</b>	<b>\$19,351,500</b>	<b>\$5,635,200</b>	<b>\$82,611,900<sup>2/</sup></b>
<sup>1/</sup> Includes the Adult Standard Probation and Interstate Compact line item appropriations.					
<sup>2/</sup> Represents the amount expended by the counties from all sources, including current and prior years' monies received from the state.					

### Caseloads

In reporting probation caseloads, the AOC counts certain probationers as more than 1 case. For example, adult probationers charged with crimes against children are counted as 3 cases. As a result, reported probation counts do not represent actual headcounts. Beginning January 1, 2020, the Courts also included the pre-release population in their caseloads. The pre-release population is defined as an inmate who will be released from prison directly into probation supervision within 90 days. The time inmates spend in probation supervision post-release is commonly known as a "probation tail."

Caseloads for all probation categories were in a general decline prior to FY 2015. However, the Adult Standard category has experienced growth in the past 5 years which has offset flat caseloads or continued declines in the other 3 probation categories. As a result, total caseloads have increased from 18,329 in FY 2015 to 19,307 in FY 2020. *Table 3* provides further details on Non-Maricopa County probation caseloads for FY 2015 – FY 2020. As noted in the preceding paragraph, in FY 2020 the Courts started counting probation caseloads differently. As a result, the FY 2020 figure below is not directly comparable to prior years.

<u>Probation Category</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020</u>
Adult Standard	14,985	15,484	16,047	16,187	16,215	16,325
Adult Intensive	1,280	1,291	1,211	1,149	1,255	1,293
Juvenile Standard	1,607	1,475	1,483	1,506	1,439	1,386
Juvenile Intensive	<u>457</u>	<u>429</u>	<u>398</u>	<u>414</u>	<u>374</u>	<u>303</u>
<b>Total</b>	<b>18,329</b>	<b>18,679</b>	<b>19,139</b>	<b>19,256</b>	<b>19,283</b>	<b>19,307</b>