

**ARIZONA PROSECUTING ATTORNEYS'
ADVISORY COUNCIL**

JANUARY 27, 2012 COUNCIL MEETING

AGENDA ITEM COVER SHEET

AGENDA ITEM #: IX

SUBJECT: Failure to Appear Warrant Issue

TYPE OF ACTION REQUESTED:

- Formal Action / Motion
- Information Only
- Other

ATTACHMENT(s):

- Yes
- No



FAILURE TO APPEAR – (13-2506, 13-2507) WARRANT ISSUE PAPER

Problem Statement:

There are over 200,000 Failure to Appear charges in the criminal history database that **do not** have a disposition attached to the record. (13-2506 – class 1 misdemeanor, 13-2507 – class 5 felony, 13-3904 – class 2 misdemeanor)

For the purpose of this issue paper – attention is given to requesting assistance in addressing the violations 13-2506 and 13-2507 only. Action is being taken separately for the 13-3904 offenses with the Administrative Office of the Courts (AOC).

The warrant history for a person failing to appear before the court provides critical information as predictors of behavior that are factors in determining release conditions and sentencing dispositions. Judicial Officers, Superior Court pre-trial services, probation and the U.S. Pretrial Services have stated the importance of this information. This critical data requires that the state collect and maintain this information and allow it to be viewable by in-state and out-of-state criminal justice agencies.

The current process dictates that a court can issue a Rule Warrant for someone failing to appear under the AZ Rules of Criminal Procedure 3.1 **if the Prosecutor is not going to file and pursue 13-2506 or 13-2507 FTA charges.** Our inquiries with city and county prosecutor offices indicate the majority **do not file FTA charges.** Since FTA charges can only be initiated by the Prosecutor, the Rule Warrant procedure was put in place to provide the court with a mechanism to bring the person back before the court.

The Arizona Attorney General has declared rule warrants are civil warrants and CAN NOT appear in the criminal history repository. The Rule Warrant is placed in ACIC/NCIC and once a Rule Warrant is served it is “closed”/removed from the law enforcement system (DPS) and there is no historical record of these warrants and arrests in the DPS database.

Note: AOC is conducting a study for development of a warrant repository and results expected within 1-2 years on analysis– but agencies need resolution to issues immediately to address process & open disposition records.

Issue #1

As the tables at the end of this memo indicate, many of FTA charges appear in the ACCH (AZ Computerized Criminal History) system – maintained by DPS as a new arrest under 13-2506 (misdemeanor), 13-2507 (felony) for failure to appear offenses.

Currently, there is confusion and inconsistent practices for the issuing of warrants, arrest and printing of offenses, filing of charges and dispositioning of FTA violations. When a person fails to appear, the court issues a “bench” warrant and notes the person FTA on the following charges (which are listed on the warrant). **Special Note – warrants typically do not list the title 13 codes for FTA – but do note person failed to appear for an underlying offense.**

LE – Process Issue: Law Enforcement agencies will either book or not book on FTA warrants. Policies pertaining to who will be booked on FTA charges vary greatly and process is directed by policy within each law enforcement agency. If they choose to book – they will process a number of ways:

- Book and fingerprint under the FTA charge codes (13-2506 or 13-2507)
 - Problem – CA has not filed charge for FTA 13-2506 or 13-2507 - which is standard practice around the state for county and city prosecutors
 - LE must pick a statute code for FTA (13-2506, 13-2507) if they want to arrest for FTA
 - Book and fingerprint under the underlying charges that they failed to appear on
 - Problem – creates duplicate charges in the criminal history database because person had already been printed on underlying offense (or LE should be verifying that fact) – but failed to appear in court
 - Book and print on FTA & underlying charges & each count – creating numerous duplicates in the criminal history database (example: law enforcement will book for 10 failure to appears and for 10 counts of offense – when information on warrant indicates FTA for underlying offenses – 10 counts of forgery)
- OR
- Law enforcement will choose not to print at all, arrest the person on warrant and take them to county jail – which then leads to jail processing same as any of the above

Inconsistencies exist currently with requirements for prints from 41-1750 and AZAFIS policy 6.00

Prosecutors – Process Issue: Prosecutors (county and municipal) for the most part, typically do not file FTA charges (13-2506 or 13-2507)

- Prosecutors are not part of the process for dispositioning FTA charges that have been printed by law enforcement as a result of a bench warrant because they did not initiate the charge. Process remains with law enforcement booking and printing under charge codes for FTA and sending disposition form directly to the court since the court issued the warrant. Court cannot disposition the FTA since it is the prosecutor that must decide on filing of the charge. (Criminal Rule of Procedure 3.1.a)

Court – Process Issue: Courts cannot file FTA charges (13-2506 & 13-2507) on individual that has failed to appear in their court. Mechanism for the court is to issue Rule Warrant – to bring the person before the court

- Court needs a way to be able to see historical information regarding the number of times a person has failed to appear – yet currently no mechanism in place to track this activity through the Rule Warrant process
- Court is satisfied with procedure of law enforcement booking/printing under FTA charge codes because it provides them the historical information for FTA – even though charges are not filed by the prosecutor – charges then remain open on the criminal history record – never to be addressed
- Court warrants vary in format depending on jurisdiction and law enforcement must try to locate and interpret information of each form presented – need ONE standardized form – mandated by the Supreme Court – and ONE standardized process for law enforcement with booking/printing
- Court cannot disposition the FTA charge(13-2506 & 13-2507) – since no charge was filed by the prosecutor – it cannot be addressed in the minute entry to dismiss

Needing Resolution – ONE procedure needs to be set for agencies to follow concerning arrest, booking/printing, filing of charges, final dispositions and information retained in criminal history repository.

Issue #2

As a results of engaging in the practice of filing bench warrants as criminal charges but not actually filing the charge itself, there are hundreds of thousands of 13-2506 and 13-2507 FTA violations that cannot be disposed.

- Clerk of the Court or Municipal courts cannot disposition the FTA charges (13-2506 & 13-2507) because technically the violations were never filed by the prosecutor.
- The prosecutors do not feel it is appropriate to disposition them as no – file because the prosecutor never received the charge to review for filing. The primarily – issue is that prosecutor has no idea that the FTAs are in need of dispositions since FTA information often goes directly from law enforcement to courts.
- Law Enforcement agencies do not think it is proper for them to disposition as a “not-referred” violation since they acted on the warrant and must choose a FTA violation code to print and book the individual on the warrant.
- Statistics indicate many courts are not submitting dispositions on the 13-3904 violations.

Needing Resolution – A decision as to how to handle the existing FTA charges currently sitting in the repository and/or county attorney and courts – to code in the most efficient and expeditious way possible while meeting everyone’s needs for coding them in a way that does not allow for misinterpretation as to an agency’s activities.

To assist – DPS would like to request Prosecutors to review the FTA records in their jurisdiction and submit final disposition information for any violations that would be considered a No-File. To assist, DPS will provide a CD for each Prosecutor Office to review and disposition OR the Prosecutor Office can elect to provide a written authorization for DPS to use a “blanket” disposition such as Charge Not Filed for all outstanding FTA charges under your jurisdiction. Prosecutors can designate date perimeters in the event offices do utilize the FTA charges and want to clean-up past records (example – blanket No File disposition can be placed on all FTA offenses outstanding from 1999 to 2009).

FTA Arrest Charge and Disposition Data by County 2000-June 2009						
County	Number of FTA Arrest Charges	% of Charges Missing a Disposition	% of Charges Not Filed	% of Charges Resulting in Court Dismissal	% of Charges Not Referred	% of Charges Leading to Conviction*
Apache	1,943	36.0%	19.6%	15.6%	0.1%	28.7%
Cochise	9,322	50.0%	12.0%	12.9%	0.3%	24.8%
Coconino	19,987	49.7%	23.4%	6.9%	0.0%	19.8%
Gila	3,720	35.0%	47.6%	7.2%	0.0%	10.2%
Graham	133	16.5%	0.8%	22.6%	0.0%	60.2%
Greenlee	392	34.2%	15.1%	26.5%	0.0%	24.2%
La Paz	2,073	51.3%	14.0%	13.0%	0.0%	21.2%
Maricopa	291,166	33.2%	35.7%	21.8%	0.2%	9.1%
Mohave	14,618	45.1%	12.4%	13.4%	0.1%	28.9%
Navajo	7,953	58.5%	8.0%	10.1%	0.0%	23.1%
Pima	180,756	35.9%	2.6%	48.6%	0.0%	12.9%
Pinal	26,140	35.0%	18.3%	13.5%	0.0%	33.1%
Santa Cruz	6,598	33.5%	38.1%	17.8%	0.2%	10.3%
Yavapai	9,731	39.0%	15.3%	22.8%	0.1%	22.6%
Yuma	7,378	28.2%	2.3%	12.9%	0.0%	56.4%
Other	33,213	54.0%	9.2%	21.5%	0.4%	14.7%
TOTAL	615,123	36.7%	21.3%	28.1%	0.1%	13.7%

FTA Arrest Charge and Disposition Data by County and Charge Type 2000-June 2009						
County	13-2506		13-2507		13-3904	
	Number of FTA Arrest Charges	% of Charges Missing a Disposition	Number of FTA Arrest Charges	% of Charges Missing a Disposition	Number of FTA Arrest Charges	% of Charges Missing a Disposition
Apache	969	30.9%	781	44.0%	193	29.0%
Cochise	5,974	47.8%	1,292	60.1%	2,056	50.3%
Coconino	13,161	57.8%	3,686	38.1%	3,140	29.4%
Gila	1,657	39.8%	1,488	28.3%	575	38.3%
Graham	18	11.1%	38	42.1%	77	5.2%
Greenlee	135	43.7%	46	34.8%	211	28.0%
La Paz	552	43.8%	687	64.3%	834	45.6%
Maricopa	161,304	30.7%	58,144	63.9%	71,718	13.9%
Mohave	8,446	42.6%	2,739	56.6%	3,433	42.1%
Navajo	4,449	60.8%	1,061	63.4%	2,443	52.0%
Pima	93,387	35.7%	7,127	26.4%	80,242	37.0%
Pinal	17,873	34.0%	3,736	40.0%	4,531	34.7%
Santa Cruz	4,884	31.8%	1,518	39.5%	196	30.6%
Yavapai	6,067	42.1%	1,815	41.4%	1,849	26.6%
Yuma	4,530	31.5%	84	53.6%	2,764	22.0%
Other	19,721	50.3%	5,760	71.5%	7,732	50.7%
TOTAL	343,127	35.7%	90,002	57.4%	181,994	28.4%