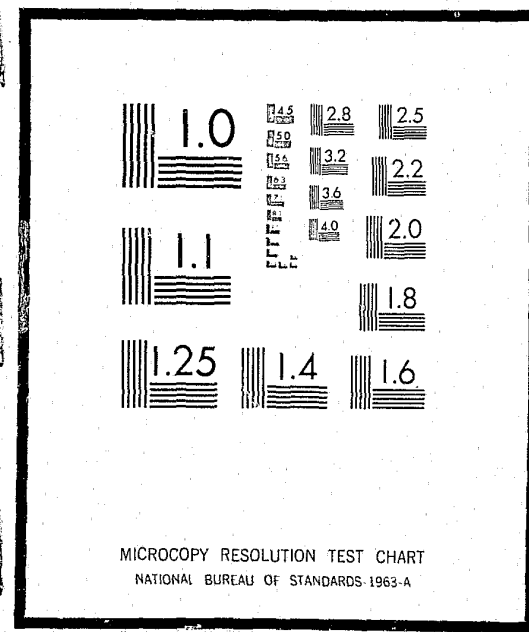


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U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
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LAW ENFORCEMENT ASSISTANCE ADMINISTRATION OFFICE OF LAW ENFORCEMENT PROGRAMS

DISCRETIONARY GRANT PROGRESS REPORT

1. Grantee: Arizona State Justice Planning Agency	4. Grant No. <u>71-106-0</u>	5. Date of Report: <input checked="" type="checkbox"/> April <input type="checkbox"/> October <input checked="" type="checkbox"/> Other
2. Implementing Subgrantee: University of Arizona	6. Grant Amt. \$40,000 \$48,529	7. Character of Report: <input type="checkbox"/> Inter <input checked="" type="checkbox"/> Final
3. Title or Character of Project: Model Criminal Code and Rules Revision Project	8. Covering Period: April 1, 1972 to July 18, 1972	

To: ☒ Cognizant Regional Office
Law Enforcement Assistance Administration

☒ State Planning Agency, State of Arizona

Submitted herewith is the grantee's progress report for the period shown above:

[Signature]
Project Director (signature)

Charles E. Ares John M. Greacen
Project Supervisor Project Director
(Typed Name and Title)

[Commence report below and add continuation pages as required.]

INTRODUCTION AND SUMMARY

This report represents the substantial completion of the project's work with respect to the Arizona rules of criminal procedure. It notes the drafting activities of the staff, consideration of the rules by the State Bar Committee and the supreme court, and the staff's involvement of other persons in the rules revision effort. It also summarizes the staff's activities with respect to code revision and attempts to evaluate the structure of the rules revision effort and the usefulness of the staff in that effort.

Instructions Appear on Reverse Side

Final Report 34672

During this reporting period, the State Bar Committee on Criminal Law and the project staff completed the "Arizona Proposed Rules of Criminal Procedure" for presentation to the Arizona supreme court and for distribution to interested members of the Bar and public, copies of which accompany this report. The document contains 39 rules and 34 forms. These rules will now be reviewed by the Bar and public, with comments to be sent to the court by the 15th of September. The committee will review the comments and submit final suggestions to the court in October, in time for the court to make its promulgation decisions during November.

A no-cost extension of the project has been sought to cover this additional time period, limited to these rules-related activities.

During the early part of 1972 the staff worked with members of the legislature, the Legislative Council, and the Arizona State Justice Planning Agency to plan for revision of Arizona's criminal code. This work resulted in a grant request to LEAA now pending before the San Francisco regional office.

An initial evaluation of the procedures used showed they were very fruitful. All parties felt a continuing sense of participation and involvement in the committee's work. No significant conclusions can be drawn from the experience of the project with respect to areas in which staff services are more or less useful in this sort of revision effort. No comprehensive rules revision can be undertaken without substantial staff assistance; the extent to which the staff plays a creative or a merely ministerial role will ultimately depend upon the nature of the staff, the committee, and the subject matter considered.

I. Activities Relating to the Rules of Criminal Procedure.

A. Drafting Activities of the Rules Revision Staff.

During the reporting period the staff and drafting consultant prepared 45 second and tentative drafts of the rules of criminal procedure for evaluation by the committee and the Arizona supreme court. The tentative drafts of the last 29 rules were delivered to the court on April 15, 1972. Thereafter, the staff completely reorganized the structure of the rules, completed major revisions of the first four rules dealing with commencement of criminal proceedings, of the rule on appointment of counsel (to incorporate the decision in Argersinger v. Hamlin) and of the rule on mental incompetency determinations (to incorporate Jackson v. Indiana), and made other revisions in every other rule and its supporting commentary.

In addition to its redrafting of the rules, the staff prepared an analysis of each of the supreme court's comments on the rules, and after the committee had considered the court's comments, wrote a 38 page single-spaced memorandum discussing the committee's reaction to each comment. It also prepared a detailed agenda for the joint court-committee meeting.

Finally, the staff prepared drafts and final versions of 34 proposed forms to accompany the rules in their published form.

The total output--78 drafts of rules, 68 drafts of forms and several major memoranda--represents another period of extraordinary productivity for the staff, and is again attributable to hard work and long hours expended both by the staff attorneys and the project secretaries.

B. Progress of State Bar Committee and Supreme Court Deliberations.

1. Full Committee Deliberations. The full committee met 4 times during the reporting period and an average of 13 persons attended each meeting. The committee considered 11 rules for the first time, reviewed the supreme court's comments on all 46 rules, and after meeting for a full day session with the court, made final decisions on the rules to be contained in its final report.
2. Forms Subcommittee. The 5-member forms subcommittee met once during the reporting period and considered all of the draft forms, preparing them for inclusion in the committee's final report.
3. Supreme Court Consideration. On April 15, the committee delivered the remaining 29 tentative rules to the supreme court. By May 30th, it had received the court's comments on all 46 rules. On June 16, the court and committee met in a full day joint session to discuss the court's comments and the committee's reaction to them. By the end of this reporting period the supreme court thus had an opportunity to consider the committee's written and oral presentation of all parts of the proposed rules of criminal procedure. While it made no final commitment or decision on any rule, the court's participation in the process was very helpful to the committee in pointing out the concerns and specific suggestions of the members of the court and enabling the committee to have a substantial period of time within which to persuade the court of the wisdom of its proposals.
4. Statistical Study. During the reporting period, Behavior Research Center carried out a number of additional analyses of its data on the Arizona criminal process and prepared

its final report. The staff prepared some analytical comments to be included in that report. The work and conclusions of the consultant were incorporated in many areas of the committee's work.

5. Involvement of Other Persons. The staff's major efforts during this period related to its presentations to the Arizona State Bar Convention on April 28 and to the Justice of the Peace Convention on June 10.

For the State Bar Convention the University of Arizona Radio-TV Bureau prepared two color video-tape segments--one a 30-minute production of an omnibus hearing as proposed in the new rules, the second a 7-minute model guilty plea hearing. In addition, the staff used a number of other slides and other audiovisual aids. The assistance of the Radio-TV Bureau was made possible by a donation from the Arizona State Bar Association, and was highly effective in giving the members of the Bar a feel for the committee's proposals. Each member of the State Bar attending the committee's presentation was given written materials, including feedback forms by means of which he was asked to relate to the committee his initial impressions and comments on the direction of the proposed rules. 220 persons attended this session and the committee received 87 completed feedback forms.

The presentation at the Justice of the Peace Convention included a showing of the guilty plea video-tape and a discussion of the rules which apply to the justices of the peace. Feedback forms were also distributed, but only 5 were returned by the 100 or so justices of the peace attending the convention.

The one other substantial outside contact maintained during this period was with Dr. Allan Beigel of the Southern Arizona Mental Health Clinic who continued to advise the staff concerning incompetency and insanity procedures.

II. Activities Relating to Code Revision.

On April 21, 1972, the staff sent to the president of the Arizona State Senate a draft LEAA grant request covering a proposed two or three year project to revise Arizona's criminal code. The grant request outlined in substantial detail the scope of the proposed project, the procedures to be used in carrying it out, its timetable, and the staffing and financing needed. After reviewing the

application and considering the most feasible and politically acceptable means for revising Arizona's criminal laws, the legislative leadership decided not to approve our proposal, but rather to establish its own code revision project located in the state capital in Phoenix. The staff assisted the special assistant to the president of the senate, the director of the Arizona Legislative Council, and the personnel of the Arizona State Justice Planning Agency in revising the original draft grant request for submission to LEAA by the Arizona State Legislature on its own behalf. A final draft was completed on May 11 and ultimately submitted to LEAA thereafter. It looks toward the commencement of a full-time code revision staff during the fall of 1972.

Although this staff will not be used for code revision, as contemplated in the current LEAA grant, the staff has completed its responsibilities for planning and helping to establish a full code revision program for the state of Arizona.

III. Evaluation.

A. Evaluation of the Procedure Used.

At an early date the staff and committee determined to follow a course of maximum involvement of the Arizona supreme court in its activities. It decided to present draft rules to the court as they were completed, seeking to solicit the court's comments and suggestions with respect to each rule rather than preparing an entire set of rules for presentation to the court in a lump at the end of the project.

Although this process resulted in some confusion for the court in the early stages when it had no knowledge of the committee's plans for the remainder of the rules, the ultimate result was highly satisfactory. The committee benefited greatly from the court's comments on the rules, and in a practical sense, the committee, aware of the goals and attitudes of the individual members of the court, was able to present its rule proposals in a better light. At the strong suggestion of the staff, the court and committee held a joint session in the court's chambers after the court had finished its consideration of the tentative drafts of all 46 rules and after the committee had in turn reviewed the court's comments on them. The oral session, focusing on those matters of major concern to the committee, was extremely fruitful and resulted in a number of substantial changes by the committee in the draft rules, and greater acceptance by the members of the court of a number of proposals, the purposes of which they had previously been unaware. In sum, the project staff is convinced that the best rules result from the most open and complete discussion by the persons interested in them.

The committee has also attempted from the beginning to involve law enforcement, judges, justices of the peace and members of the public in its work. Although a small number of prosecutors became disgruntled with the process, ceasing to attend meetings, and ultimately dissenting from the committee's final report, the committee's efforts have been very successful in establishing a favorable public reception for its proposals. The membership of the State Bar and the state judiciary have been informed of and involved in the project's progress. The press has also been aware of and, to a substantial extent, sympathetic to the committee's activities.

B. Evaluation of the Role and Performance of the Rules Revision Staff.

1. The Adequacy of the Staff Resources. The staff began at an early date to include in each of its rule drafts extensive commentary explaining the rule, any changes from current procedures, and changes from previous drafts. With each succeeding draft, the nature of the commentary changed. The ultimate comments are meant to support the committee's position and to clarify matters considered of insufficient importance to merit inclusion in the text of the rules. The extent of the commentary imposed a substantial additional burden on the staff. However, it greatly benefited the entire project in two ways. First, it established a sense of professional excellence which set a tone for the committee's deliberations and encouraged the participation of committee members. Second, in writing out the reasons supporting the rules, the staff members became aware of many additional factors bearing on the wisdom and feasibility of rule proposals which they would not otherwise have seen.

Ultimately, however, the workload involved must realistically be considered monumental for the staff size and project time involved. Additional rules revision projects which encompass a wholesale revision of a state's criminal procedural system, in the depth undertaken by this committee and staff, should either have a staff larger than 3 attorneys or a time period longer than 10 months within which to complete its task.

2. The Role of Staff and Committee. The LEAA grant requires that some evaluation be made of the effectiveness of a research and drafting staff in various substantive areas of the rules. Appendix I includes a crude count of the major changes suggested in the rules, the source of the suggested change, and the ultimate result. From this the

reader can attempt to ascertain some pattern of the areas in which a staff's suggestions are more or less likely to be accepted. However, this sort of listing is far too gross to capture the subtleties of the issues presented, the many reversals of position of committee and staff members, and the dynamics of the relationship between the committee and the court.

As an overall matter, though, the listing shows that the staff played a far more creative role than the committee. The staff suggested 115 major changes; the committee suggested 12. This is quite common in committee and staff work. Although one would expect the committee members to provide the major new ideas and the staff to do the ministerial drafting work, in many cases the roles are reversed. The staff, able to devote considerable time to sustained thought, comes up with the innovative suggestions; the committee members act as a sounding board and as a community of experienced judgment, sifting and honing the staff's suggestions into a consistent and feasible whole.

The experience of this project would suggest that persons planning similar projects focus their attention on the structures and procedures used in committee deliberation rather than the subject matters on which the staff does research. Here, the staff attempted to give committee members a substantial period of lead time to prepare for committee meetings and to mull over staff suggestions. The committee considered each of its decisions as tentative, subject to change upon later reconsideration. Some suggestions which appeared infeasible at an early point later showed more promise. Although this procedure resulted in considerable rehashing of subjects in some areas, the ultimate result was a number of sound changes. The issues presented in rules such as pretrial discovery are quite complex; the final answers are far from intuitive.

3. Performance of Staff Members. As can readily be seen from the volume of work completed in the 10 months of full staff operation, every staff member contributed freely of his time and talents. A factor which was increasingly clear to the staff members themselves toward the completion of the project was the great importance and usefulness of experience in this sort of endeavor. Each draft became clearer and substantially better. The later rules tackled by the staff were completed in far less time and with far less effort than the earlier rules.

C. Areas of Potential Future Problems.

The one area the staff considers a potential source of additional difficulty is the problem of late guilty pleas. The report of Behavior Research Center, the statistical consultant, showed that in Arizona it takes essentially the same period of time to dispose of a criminal case by plea bargain and by trial. Late pleas disrupt court calendaring, and waste the time of judges, jurors and witnesses.

The committee had substantial difficulty in dealing with this problem. The committee members realized the irony of the statistics and that the system would benefit if guilty pleas resulted not only in a saving of court time but also in quicker disposition of the case and its removal from the court's docket and calendar. However, they also felt that in many cases guilty pleas cannot be forced or rushed, that the overall interests of the system are served by encouraging pleas at any stage, and that delay in entry of a plea may be advantageous to the defendant in terms of providing him an additional opportunity to rehabilitate himself prior to sentencing.

In addition, they could find no acceptable solution to the late plea problem. They rejected a number of staff proposals--to establish a cut-off point for entry of a guilty plea, to require that guilty pleas be made prior to the date set for trial, to allow a judge in his discretion to refuse to accept a guilty plea not timely tendered, and to impose sanctions on attorneys who fail to timely discuss a plea bargain. The committee concluded that each of these suggestions was unworkable in practice and, in addition, could be counter-productive if it resulted in additional trials in cases where the parties desired to enter a plea.

The approach finally adopted is to maximize the points during the process at which the parties can consider pleas--at the preliminary hearing, at the arraignment, at the time of the prosecution's disclosures, at the time of the defense disclosures at the conference among counsel, and at the omnibus hearing--and to maximize the amount of information available to both parties early in the case on which a knowing and intelligent plea can be negotiated. These provisions may go far toward solving the problem; however, the staff is concerned that some additional measures may be required at some future date.

APPENDIX I. SOURCES OF AND HISTORY OF PROPOSALS

FOR MAJOR CHANGES IN

THE ARIZONA RULES OF CRIMINAL PROCEDURE

This appendix lists the subjects of most of the major changes suggested in Arizona's criminal procedures during the committee's deliberations. It shows the source of each suggestion and whether or not it was ultimately adopted or rejected. Many of the ideas put forward by the staff originated elsewhere--from the literature or from judges, attorneys or law enforcement officers in Arizona. The staff agrees with most of the committee's actions, including rejection of some of its proposals. Therefore, this list does not reflect the ultimate views of the staff on the issues involved; it is intended only to attempt to identify areas where staff input is particularly valuable or useless. The history extends only to the draft rules published by the committee, not to ultimate action of the Arizona Supreme Court, which has not taken place as of the time of this report.

<u>CHANGE SUGGESTED</u>	<u>Suggested by</u>	<u>History</u>
Use of preliminary hearing for high misdemeanors	Committee	Accepted
Notice of supervening indictment instead of warrant	Committee	Accepted
Preference of summons over warrant	Staff	Accepted
Removal of criterion of dangerousness for issuance of summons	Staff	Accepted
Requiring a person summoned to appear at the police station for fingerprinting and mug shot	Staff	Accepted
Requiring a person arrested without warrant to be taken before a magistrate within no more than 24 hours	Staff	Accepted
Extending the time within which a magistrate may hold a preliminary hearing	Staff	Rejected
Requiring written waiver of preliminary hearing	Staff	Accepted

<u>CHANGE SUGGESTED</u>	<u>Suggested by</u>	<u>History</u>
Requiring a defendant to make an offer of proof at a preliminary hearing before presenting evidence	Staff	Accepted
Inapplicability of suppression motions in the preliminary hearing	Staff	Accepted
Liberal amendment of complaint at preliminary hearing	Staff	Rejected
Admissibility of hearsay	Staff	Accepted
Review of the preliminary hearing in the superior court	Staff	Accepted
Immediate transmittal of the preliminary hearing record by the magistrate	Staff	Accepted
Expansion of the right to appointed counsel	Staff	Accepted (Only after <u>Argersinger</u>)
Appointment of other defense services	Staff	Accepted
Method of appointment of counsel	Staff	Rejected
Requiring a notice of appearance by every attorney	Committee	Accepted
Counsel's duty of continuing representation throughout the case	Staff	Accepted
Stringent limitations on withdrawal by counsel	Staff	Accepted
Standard for determining indigency	Staff	Accepted
Use of a compensation panel to determine reasonable compensation	Staff	Rejected
Preference for release on own recognizance	Staff	Accepted
Use of bail questionnaire	Staff	Accepted
Review of initial bail determination within 48 hours	Staff	Accepted

<u>CHANGE SUGGESTED</u>	<u>Suggested by</u>	<u>History</u>
Transfer of bond to charge prosecuted by indictment	Committee	Accepted
Simplification of forfeiture procedures	Staff	Accepted
Revocation for violation of condition of release	Committee	Accepted
Establishment of time limits within which all cases must be brought to trial	Staff	Accepted
Procedures for prisoners to demand speedy trial	Staff	Accepted
Stringent limitations on the availability of continuances	Staff	Accepted
Mandatory dismissal for violation of the speedy trial requirements	Staff	Accepted
Procedure for appointing mental experts	Staff	Accepted
Limitations on commitment for mental examination	Staff	Accepted
Provisions governing mental expert reports and confidentiality	Staff	Accepted
Disposition of defendants found incompetent to stand trial	Staff	Accepted
Dismissal of charges pending against persons found incompetent to stand trial	Staff	Accepted
Appearance of an accused before a grand jury--waiver of privilege against self-incrimination	Staff	Accepted
Challenge to grand jury proceedings in superior court	Staff	Accepted
Liberal joinder and severance	Staff	Accepted
Liberal amendment of the charging document in the superior court	Staff	Rejected

<u>CHANGE SUGGESTED</u>	<u>Suggested by</u>	<u>History</u>
Provisions for pretrial diversion of criminal cases	Staff	Accepted
Abolishing the traditional superior court arraignment	Staff	Rejected
Waiver of defendant's presence at the arraignment	Committee	Accepted
Overall theory of discovery	Staff	Accepted
Discovery without written motion or request	Staff	Accepted
Staged rather than simultaneous prosecution and defense disclosures	Staff	Accepted
Disclosure of rebuttal witnesses	Staff	Accepted
Prosecution disclosures in general	Staff	Accepted
Defense disclosures in general	Staff	Accepted
Notice of defenses by defendant	Committee	Accepted
Depositions	Staff	Accepted
Definition of witness statements	Staff	Accepted
Definition of work product	Staff	Accepted
Definition of informants	Committee	Accepted
Provision for protective orders	Staff	Accepted
Procedure for obtaining protective or excision orders	Staff	Rejected
Sanctions for violation of discovery	Staff	Accepted
Establishment of uniform pretrial motion cut-off date	Staff	Accepted
Defendant's duty to allege facts in support of suppression motions	Staff	Accepted
Requiring a pre-omnibus hearing conference among counsel	Staff	Accepted

<u>CHANGE SUGGESTED</u>	<u>Suggested by</u>	<u>History</u>
Scope and function of omnibus hearing	Staff	Accepted
Oral motion practice at omnibus hearing	Staff	Accepted
Limitations on taking of evidence at omnibus hearings	Staff	Accepted
Regulation and standardization of stipulations	Staff	Rejected
Interlocutory review by special action	Staff	Accepted
Special prosecution interlocutory appeal right	Staff	Accepted
Elimination of certified question	Committee	Accepted
Discretionary pretrial conference	Staff	Accepted
Introduction of no contest plea	Committee	Accepted
Codification of plea acceptance procedures	Staff	Accepted
Notice of other consequences of felony conviction to defendant pleading guilty	Staff	Rejected
Inclusion of policy statement supporting the legitimacy of plea bargains	Staff	Rejected
Including sentencing terms in plea agreements	Staff	Accepted
Use of written agreement to memorialize plea bargain	Staff	Accepted
Defendant's right to withdraw a plea if a sentencing term thereof is rejected by the court	Staff	Accepted
Defendant's right to appeal previously denied suppression motions after entering a plea of guilty	Staff	Rejected

<u>CHANGE SUGGESTED</u>	<u>Suggested by</u>	<u>History</u>
Various proposals for forcing parties to enter guilty pleas well before the date set for trial	Staff	Rejected
Defendant's right to waive jury trial without concurrence of court or prosecutor	Staff	Rejected
Procedures for choosing alternate jurors	Staff	Accepted
Use of juror questionnaire	Staff	Accepted
Formula for determining the number of peremptory challenges	Staff	Rejected
Conduct of <u>voir dire</u> examination by court	Staff	Accepted
General provisions for preparation of jurors and notetaking	Staff	Accepted
Admissibility of prior recorded testimony	Staff	Accepted
Liberal juror dispersal procedures	Staff	Accepted
Standards for judging motion for judgment of acquittal	Staff	Rejected
Sending written copies of the instructions to the jury	Staff	Accepted
General theory of post-trial motions	Staff	Accepted
Time of motion for new trial	Staff	Rejected
Use of juror evidence to impeach verdict	Staff	Accepted
Grounds for motion to vacate judgment	Staff	Accepted
Time for motion to vacate judgment	Staff	Accepted
Relationship of post-trial motions and appeal	Staff	Accepted

<u>CHANGE SUGGESTED</u>	<u>Suggested by</u>	<u>History</u>
Procedure on insanity verdict	Staff	Rejected
Motion for modification of sentence	Staff	Accepted
Structure of sentencing procedure	Staff	Rejected
Disclosure of presentence report	Staff	Accepted
Automatic appeal of death sentence	Staff	Accepted
Imposing conditions for probation	Staff	Accepted
Modification of conditions of probation	Staff	Accepted
Early termination of probation	Committee	Accepted
Nature of revocation proceedings	Staff	Accepted
Admissions of violation of probation conditions	Staff	Accepted
Destruction of records held by superior court clerks	Staff	Accepted
Disposition of evidence held by law enforcement agencies	Staff	Accepted
Confidentiality and expungement of arrest records	Staff	Rejected
Procedure for restoring civil rights	Staff	Accepted
Appeal from non-record court	Staff	Accepted
Automatic stay of jail sentence on appeal	Staff	Accepted
Structure of the appeal procedure	Staff	Accepted
Use of appellate memorandum instead of full brief, without permission of court	Committee	Accepted
Time limits on appellate filings	Staff	Accepted
Preparation of record	Staff	Accepted

<u>CHANGE SUGGESTED</u>	<u>Suggested by</u>	<u>History</u>
Perfection of appeal and its effect	Staff	Accepted
Making oral argument discretionary	Staff	Accepted
Use of summary appellate opinions	Staff	Accepted
Scope of post-conviction remedy	Staff	Accepted
Review on newly discovered evidence	Staff	Rejected
Delayed appeal as part of post-conviction procedure	Staff	Accepted
Preclusion of remedy by post-conviction relief	Staff	Accepted
Appointment of counsel for post-conviction proceeding	Staff	Rejected
Procedure of post-conviction proceeding	Staff	Rejected
Criminal contempt	Staff	Accepted
Alternative form of subpoena	Staff	Accepted
Specifications for motions in criminal cases	Staff	Accepted
Notice of disposition of criminal cases to law enforcement officials	Staff	Accepted

END

7. 10/15/1964