




MEMORANDUM

Date: June 16, 2017

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **OpEd Submitted to the *Arizona Daily Star* Regarding Criminalizing Poverty**

Attached is an OpEd I submitted to the *Arizona Daily Star* regarding criminalizing poverty.

The Board of Supervisors has expressed interest in reforming the criminal justice system, and I agree it is past time to do so. There are innumerable examples of inequitable and discriminatory treatment in the criminal justice system. While I can cite specific cases, such would be inappropriate in a public document.

I do believe it is appropriate to expect and request that our various County-funded criminal justice system entities operate under a theme that emphasizes fairness, equity and justice no matter an individual's race, ethnicity, sexual preference or income. Unfortunately, in all of our measures associated with social justice, income is largely left out of the equation. My OpEd highlights that, for a simple traffic violation, we criminalize those who cannot afford to pay towing, vehicle storage, recovery and other fees.

In addition, recently, a Superior Court case was brought to my attention where a defendant who admittedly had numerous misdemeanor violations, shoplifted two video game controllers valued at \$22.50 each and was subsequently sentenced to seven years in prison. Reported also is an Arizona real estate investor who received a sentence of only five years in prison for defrauding investors of \$70 million in a real estate "Ponzi" scheme. Where is the equity and justice in comparing these two cases?

Significant criminal justice reform is necessary at the federal, state and local levels. I hope we continue to emphasize the need for such and act locally to lead the sorely needed policy discussions on criminal justice reform.

CHH/anc
Attachment

c: The Honorable Kyle Bryson, Presiding Judge, Superior Court
The Honorable Barbara LaWall, Pima County Attorney
The Honorable Mark Napier, Pima County Sheriff
Ellen Wheeler, Assistant County Administrator
Lori Lefferts, Director, Public Defense Services

Change is long overdue for the criminal justice system. Too many of our laws and policies have come to unfairly burden those with the least financial resources. One set of laws that is especially unfair to the public and costly to the justice system relates to driving on a suspended license. The laws that combine to produce particularly harsh outcomes for our community:

Suspend a driver's license if a fine or installment payment is not paid when due, even in cases involving only traffic offenses. (A.R.S. 28-1601)

Make a first offense for driving with a suspended license a criminal offense, regardless of the reason for the suspension. (ARS 28-3516)

Require law enforcement officers to impound a vehicle for a mandatory 30 days if they determine the driving privileges of the driver were suspended. (A.R.S. 28-3511)

These laws raise the stakes for everyone -- for the County by needlessly increasing incarceration costs; for individuals who lose their driving privileges because they can't afford to pay a traffic fine and then get arrested when they drive to work; and for families whose breadwinners may lose both their vehicle and their job because of these harsh laws. Such policies -- multiplying fines and fees, mandatorily impounding vehicles for 30 days, and subjecting individuals to incarceration for what was originally a traffic, civil or minor criminal offense -- perpetuate a cycle of poverty and despair for many of our citizens.

The tow truck industry and impound yards are the only ones who benefit from such mandatory impoundment laws. A 30-day impound can result in over \$600 in impound and storage fees, and that's on top of the original fines and fees. Some people are forced to waive their rights to their vehicles because they can't afford the fees to get them back. But that doesn't necessarily solve the problem, because the Department of Motor Vehicles charges the owner a \$500 "abandonment fee" if the car isn't claimed and the impound lot declares it abandoned. This fee can also hinder reinstatement of driver's licenses.

Such mandatory impoundment for driving with a suspended license makes no sense given that even impaired-driving laws allow alternatives to impoundment (e.g., a spouse can get the car and drive it home). Simply changing the verbiage of the statute from "shall" to "may" would allow officers the discretion to turn the car over to a family member in appropriate situations.

Courts and law enforcement officers need more options to evaluate each situation and implement an alternative. The Arizona Supreme Court agrees. In March 2016, Chief Justice Scott Bales established the Supreme Court Task Force on Fair Justice for All. The goals of the task force were to recommend alternatives to excessive financial sanctions that only serve to foster a cycle of poverty and fill jail cells. The Task Force report recommends legislative changes that would give courts more discretion regarding fine amounts and community service alternatives to help people get "whole again" while still holding them accountable for their actions.

As we move forward with our local criminal justice reform efforts through our participation with the MacArthur Foundation's Safety and Justice Challenge, these legislative issues need to be addressed. In most cases, people fail to pay fines because they simply can't afford it. Piling on more fees and penalties and impounding cars are not going to help. This may seem like a small

price to pay for breaking the law, but consider that this cycle probably began with a civil traffic offense. Is this what our community wants? Is this what the law intended?

It's time to fix this broken statutory scheme. Driver's license suspensions should be a last resort, rather than an automatic penalty for falling behind on court payment plans. And law enforcement should have discretion to avoid impoundment of vehicles for driving with a suspended license when other reasonable alternatives exist.

It is time we stop criminalizing poverty.