



MEMORANDUM

Date: June 15, 2018

To: The Honorable Sharon Bronson, Member
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Your Request Dated May 1, 2018 requesting the Top Three Recommended Criminal Justice Reforms from our Justice System Partners**

On May 1, 2018 you requested information from our Criminal Justice System departments and agencies. Information prior to adoption of this year's budget will occur on June 19, 2018. I requested Assistant County Administrator for Justice and Law Enforcement Wendy Petersen request each individual department or agency respond directly to your request and provide the information requested. We have compiled this information, a memorandum dated June 14, 2018 from Wendy Petersen attached, we have also attached each response from each department or agency for your information.

I am also providing this information to the Board for their information prior to the budget adoption.

CHH/mp

c: Honorable Chairman and Members of the Board
Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement



MEMORANDUM

County Administration
Justice and Law

Date: June 14, 2018

To: C. H. Huckelberry
County Administrator

From: Wendy Petersen
Assistant County Administrator
for Justice & Law Enforcement

Re: Responses from Pima County Justice System Departments to Supervisor Sharon Bronson's May 1, 2018 memorandum

This will respond to your May 3, 2018 memorandum and Supervisor Bronson's May 1, 2018 memorandum requesting the top three recommended Criminal Justice Reforms from our Justice System partners and provide those recommendations prior to the Board meeting set for **June 19, 2018**.

The memoranda also requested substantive review of the following:

1. The Pima County Attorney's Office's ("PCAO") charging and plea bargaining practices;
2. PCAO's DTAP program;
3. Philadelphia District Attorney Larry Krasner's initiatives;
4. The arrest and charging history of criminal defendants (both misdemeanor and felony); and
5. Develop a work plan to address these issues.

In the interest of time, I am providing the "Top Three" key recommendations in this memorandum prior to the Board meeting of June 19, 2018 and will address the other issues in a separate memorandum.

Having said that, I will note (and am providing attachments here) that County Attorney Barbara LaWall provided a May 21, 2018 memorandum to me addressing the DTAP question and in a May 24, 2018 memorandum discussing charging and plea bargaining practices in the PCAO.

Additionally, Dean Brault, the Director of the Public Defense Services, sent a memorandum directly to Supervisor Bronson on May 24, 2018 memorandum addressing the Larry Krasner's initiatives (copy attached).

Recommendations of Criminal Justice Reform

I have synopsised these recommendations by agency in this document and have attached the full memoranda.

Mr. C.H. Huckelberry

**Re: Responses from Pima County Justice System Departments to Supervisor Sharon Bronson's
May 1, 2018 memorandum**

June 14, 2018

Page 2

There are a few more items to note:

- The agencies in the **Public Defense Service** divided their recommendations between local reforms and state wide reforms (primarily legislative changes);
- The majority of the agencies did not respond to the request to comment on Philadelphia District Attorney Larry Krasner's direction to his lawyers. Most outlined their concerns with commenting on that memorandum;
- Adult Probation also provided additional recommendations.

Pima County Sheriff's Department:

1. Enhanced use of Electronic Monitoring
Currently, 10-20 inmates for sentenced misdemeanor inmates. Expand to include pretrial detainees and for persons sentenced to probation in lieu of jail; however, the claim is: this expansion is outside authority of PCSD.
2. Increase collaboration with behavioral health/substance use agencies
Place liaison in 9-1-1 communication centers to take calls for mental health and substance use and divert those calls to crisis response teams.
3. Pretrial and Re-Entry Services Facility at the Pima County Adult Detention Complex
Pretrial outside main jail. Projection is 300-400 fewer bookings per month.

Pima County Attorney's Office

1. Expanded use of electronic monitoring in lieu of incarcerations;
2. Consolidation of the Pima County Justice Courts and Tucson City Court;
3. Expedited disposition of felony cases pending in Superior Court;
4. Enhanced treatment and other services for all participants in diversion as well as for probationers;
5. Consideration of bail reform strategies; and
6. Development of Re-Entry and Reintegration Programs.

Tucson Police Department:

1. Pre-arrest felony deflection (Pilot begins July 1, 2018);
2. Increased diversion of the mentally ill to treatment rather than incarceration;
3. Enhanced or more robust electronic monitoring release program for felony property crime defendants.

Pima County Superior Court:

1. Adult Probation: This agency terminated the SAFE program because when inmates violated they had jail days "banked" and as a result served more jail bed days. Probation has changed its approach: now, if a probationer violates probation he is not automatically held pending initial appearance – thus saving jail bed days;

Mr. C.H. Huckelberry

**Re: Responses from Pima County Justice System Departments to Supervisor Sharon Bronson's
May 1, 2018 memorandum**

June 14, 2018

Page 3

2. Pretrial Services: PTS has experienced a high turnover rate. If PTS' role in diverting individuals from pretrial period increases, it will be vital to improve employee retention;
3. PTS expanded services may include increased behavioral health and substance screening to identify individuals suitable for specialized screening and additional release options

Adult Probation Department

1. A more robust pretrial diversion program;
2. Abandon or decrease the use of money bond;
3. Reduce the length of stay on coterminous probationers.

Director of Public Defense Services:

1. The Pima County Attorney should offer meaningful plea agreements in all non-violent/non-serious cases including categories that currently do not get plea offers such as first time residential burglaries, Aggravated DUI cases charged as a 3rd offense in 84 months, and Aggravated DUI cases with 2 historical prior felony convictions;
2. The Pima County Attorney should review each case before issuing to determine if seeking the most serious charge of filing every possible sentencing allegation is necessary to achieve a just result and not just automatically seeking the maximum potential sentence in every case; and
3. Programs to deflect drug users into treatment and not into the criminal justice system should be adopted by all law enforcement agencies in Pima County.

Public Defender's Office

1. Holding preliminary hearings on as many victim involved cases as possible – requires attorneys to be prepared and recognize weaknesses in cases;
2. Making initial appearances the sole responsibility of appointed judges who are held accountable for the county's jail population reduction goals;
3. Encourage the Pima County Attorney to spend RICO dollars on cost effective diversion and DTAP programs.

Legal Defender's Office

1. Adopt a county-wide evidence based protocol (referring to Maricopa County's Managing for Results program);
2. Discourage wide implementation of "No Plea" Policies (Claim is it forces a guilty plea to indictment or trial);
3. Eliminate Death Penalty prosecutions;
4. Make PCAO Functional

Mr. C.H. Huckelberry

**Re: Responses from Pima County Justice System Departments to Supervisor Sharon Bronson's
May 1, 2018 memorandum**

June 14, 2018

Page 4

Legal Advocate's Office

1. Reasonable Charging Decisions – oftentimes the prosecution charges the most serious crime it can. Overcharging can make for unjust results and waste money. More reasonable charging decisions will result in quicker resolutions of cases and less money spent on unjust incarceration;
2. Pleas to Determinate Sentences in Straightforward Cases – Many first time non-violent cases could be resolved more quickly with less expenditure by including in the pleas itself a determinate sentence. Court and Probation time is spent on sentencing hearings and pre-sentence reports which may not be needed if there is a determinate sentence in the plea;
3. Refrain from Filing Capital Cases - these cases are very expensive for both prosecution and defense.

Pima County Consolidated Justice Court

1. Pima County Consolidated Justice Court ("PCCJC") has actively worked to reduce warrants by conducting Saturday court on a quarterly basis and extended evening court on a monthly basis;
2. PCCJC have provided extensive outbound call and text reminders to defendants of future court hearing dates;
3. PCCJC have worked with the Pima County Attorney's office to dismiss hundreds of warrants that have been in the system for five years or more.
4. PCCJC accelerated pretrial hearings for defendants held on bond following their twice-daily initial appearance court ("2XIA") hearing. Revamping the 2XIA process may produce other positive results.

If the justice of the peace conducted their 2XIA hearings, with the presence of a prosecutor or by way of "standing plea" agreements, the majority of defendants would either be released with a new court date or their case would be disposed by plea. This provision went away when PCCJC contracted with the city to hear the 2XIA caseload.

This concept will require further exploration and analysis but should further reduce jail days, eliminate the daily pretrial conference calendar and improve time to disposition.

Additional recommendations from Adult Probation:

1. Deflect mentally ill people to treatment services (when feasible) rather than Jail;
2. Eliminate plea agreements that preclude early termination from Probation;
3. Periodically re-evaluate pretrial detainees for release.

Mr. C.H. Huckelberry

**Re: Responses from Pima County Justice System Departments to Supervisor Sharon Bronson's
May 1, 2018 memorandum**

June 14, 2018

Page 5

Initiatives already in place from Adult Probation (as part of the Safety + Justice Challenge/MacArthur Foundation)

1. Remove payment of all fines/fees from early termination eligibility;
2. Initiate Petitions to Revoke ("PTR") via summons instead of arrest, when practical;
3. Eliminate automatic holds on probationers;
4. Abandoned Project SAFE (Swift Accountable Fair Enforcement – i.e., use drugs on probation, and go straight to jail) due to lack of efficacy;
5. Require supervisor staffing prior to filing a PTR - previously, Probation Officers would frequently stack up violations before filing a PTR. Now, Probation Officer required to review violations with a supervisor to find out what was done about the violation.

Additional recommendations at the State Level from the Departments in PDS:

In addition to recommendations on how to improve Criminal Justice reform measures locally, the Departments in the Public Defense Services also made recommendations for changes at the State Level:

Dean Brault, Director of Pima County Public Defense Services:

1. Reduce the classification of possession of personal possession of dangerous or narcotic drugs to class 6 felonies and reduce marijuana possession to a class 1 misdemeanor;
2. Organize and support a voter initiative to make methamphetamine possession charges be subject to mandatory probation again and eliminate the mandatory enhanced sentencing ranges for sales cases;
3. Eliminate A.R.S. §13-703(A) which addresses multiple and non-historical prior convictions. This would make more defendants eligible for probation and give more discretion to the court (a copy of A.R.S. §13-703(A) is attached to Mr. Brault's memorandum).

Joel Feinman, Pima County Public Defender:

1. Mandating regular reporting requirements for all state prosecution agencies. Currently, criminal justice reform proposals suffer from an absence of reliable data on who is being incarcerated for what crimes, how long, and for what charges based on what facts;
2. Giving judges more say in plea bargaining. Arizona law does not allow for judges to mandate what plea agreements are offered in what cases. Giving the judiciary more power to compel non-trial dispositions would minimize costly and unnecessary trials and potentially lessen the number of people sent to prison instead of being placed on probation;
3. Rewriting tracking and sales law to mandate that defendants can only be charged with those offenses if the amount trafficked or sold is more than two grams.

Mr. C.H. Huckelberry

**Re: Responses from Pima County Justice System Departments to Supervisor Sharon Bronson's
May 1, 2018 memorandum**

June 14, 2018

Page 6

James Fullin, Pima County Legal Defender:

Proposed legislative/policy solutions -

1. Mandate probation availability for first offense non-violent crimes in the same way that Propositions 200 and 302 mandate probation (rather than incarceration) for personal possession of drugs;
2. Removal of legal barriers to exercise of judicial discretion to suspend prison sentences in favor of probation;
3. Change mandatory minimum sentencing laws to make the sentencing schematic advisory rather than mandatory, meaning incarceration on approved violent/serious/repetitive offenses at discretion of trial judge.

Kevin Burke, Pima County Legal Advocate:

1. Actual Court Discretion – Mandatory sentencing robs the court of discretion. Aggressive charging combined with mandatory prison time and extended prison ranges for priors can result in defendants serving prison time greatly disproportional to the crime.
2. Approval for 38d ¹ Law Student Interns to Appear in Court on Simpler Tasks such as Initial Appearances and Arraignments without a Supervising Attorney Present;
3. Reforming Drug Laws – After defendants have been convicted of two drug offenses they no longer are eligible for probation. Prison rarely works as treatment or deterrence for serious drug abusers. The statutes also treat addicts who sell small quantities to fund their habit or addicts who act as “go between” for an undercover officer the same as people who sell strictly for profit.

Attachments

¹ This refers to Arizona Rules of Supreme Court 38 (d) which encourages law schools to provide clinical instructions and facilitate volunteer opportunities for students.

TABLE OF CONTENTS

RESPONSES FROM PIMA COUNTY JUSTICE SYSTEM PARTNERS

PIMA COUNTY SHERIFF’S DEPARTMENT	1
PIMA COUNTY ATTORNEY’S OFFICE.....	2
PIMA COUNTY SUPERIOR COURT	3
ADULT PROBATION	4
PIMA COUNTY PUBLIC DEFENSE SERVICES	5
DIRECTOR OF PUBLIC SERVICES	5A
PUBLIC DEFENDER.....	5B
LEGAL DEFENDER	5C
LEGAL ADVOCATE	5D
PIMA COUNTY CONSOLIDATED JUSTICE COURT	6
MAY 21, 2018 MEMORANDUM – HON. BARBARA LAWALL RE: DTAP PROGRAM.....	7
MAY 24, 2018 MEMORANDUM – HON. BARBARA LAWALL RE: PROSECUTORIAL CHARING DECISION PLEA POLICIES ON BEHALF OF THE STATE OF ARIZONA	8
MAY 24, 2018 MEMORANDUM – DIR. BRAULT RE: PHILADELPHIA DIST. ATTORNEY LARRY KRASNER’S POLICY CHANGES	9

ATTACHMENT 1



PIMA COUNTY SHERIFF'S DEPARTMENT

Mark D. Napier, Sheriff

M E M O R A N D U M

Date: May 25, 2018
To: Sheriff Mark D. Napier
From: Chief Byron Gwaltney, Corrections Bureau Commander *ByG*
Subject: Response to Supervisor Sharon Bronson's Request for Comment

On May 21, 2018, we received an email request from Ms. Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement to review and provide some feedback on a memorandum from Supervisor Sharon Bronson regarding criminal justice system budgets for FY 18/19.

The memorandum from Supervisor Bronson outlines a request that each criminal justice agency comment on identifying key issues related to criminal justice reform. Additionally, Supervisor Bronson asked for comment on an internal memorandum from the Philadelphia District Attorney to his staff regarding charging practices for specific offences.

Identifying key issues related to justice system reform

As a key partner in the Pima County Safety and Justice Challenge, the Sheriff's Department continues to engage in constructive and thoughtful dialog related to improving our local criminal justice outcomes. We continue to participate in social justice collaborative efforts as well as taking the lead in many innovative partnerships with community providers.

During our participation in various Safety and Justice Challenge working groups, there has been discussion surrounding several programs that could promote reform of our local criminal justice system. I have outlined the following three areas the Sheriff's Department intercepts other criminal justice reform efforts:

1. *Enhanced use of electronic monitoring (EM).*

Currently we manage a limited electronic monitoring program for sentenced misdemeanor inmates. This program typically manages 10-20 inmates serving sentences for misdemeanor convictions to include DUI. State Law limits us in this narrow application of the electronic monitoring. There is on-going discussion between the various Safety and Justice Challenge partners to expand this program to include pre-trial detainees. This expansion could significantly increase our program participants and provide some very limited reduction in our inmate population. Additionally, there is similar on-going discussions focusing on the use of electronic monitoring for persons sentenced to probation in lieu of jail as an enhanced sanction. Both of these expansion projects could, when combined, create a noticeable reduction in our inmate population. However, both expansion programs are outside the authority of the Sheriff's Department to implement and rest entirely with Superior Court and subordinate functions.

2. Increased collaboration with behavioral health/substance use agencies.

During several discussions at collaborative working groups, the idea of placing a behavioral health liaison at law enforcement communications centers has gained momentum. The concept involves having a liaison, specializing in triaging crisis events, assigned to 911 call centers to aid in triaging in-coming calls for service. In cases where the nature of the emergency is behavioral health or substance use related, and with no criminal activity occurring the liaison can assist by diverting the call to crisis response teams specializing in behavioral health and substance use disorder events. This concept provides enhanced expertise at our 911 call centers and allows for the deflection of some calls to more appropriate resources. Currently we are in discussions with Cenpatico Integrated Care to define a plan going forward. The City of Tucson is also exploring a parallel program.

3. Pre-Trial & Reentry Services facility at the Pima County Adult Detention Center.

Pima County is currently in the design phase of a new multi-disciplined facility to be located at the Pima County Adult Detention Center (PCADC). The new facility will house Pre-Trial Services functions outside the secured main jail buildings. This will allow for enhanced pre-trial screening of all persons brought to the PCADC. Once this function is operational, we are projecting to see 300-400 fewer bookings per month. We will also relocate all reentry services to work alongside Pre-Trial Services. Having our critical community partners and service providers co-located at the PCADC will provide greater reach-in capacity for those providers that offer needed assistance to those being released from custody. The facility will also provide short-term housing for released inmates who are homeless.

Review and comment on Philadelphia District Attorney Memorandum

The memorandum authored by the Philadelphia District Attorney outlines prosecution guidelines for drug and prostitution charges. While the Pima County Attorney has significant discretion in prosecuting defendants, there is no direct role for law enforcement in these policies; therefore, we offer no opinion or comment.

ATTACHMENT 2



Barbara LaWall
Pima County Attorney

Pima County Attorney's Office
32 N. Stone Avenue
Tucson, AZ 85701

Phone: 520-724-5600
www.pcao.pima.gov

MEMORANDUM

To: The Honorable Richard Elías, Chairman, and Members, Pima County Board of Supervisors

From: Barbara LaWall, Pima County Attorney *BL*

Date: June 11, 2018

Re: Key Issues Related to Justice Reform in Pima County

INTRODUCTION

Leaders of each of the criminal justice system agencies in Pima County have been asked, once again, to submit suggestions to improve the criminal justice system and to reduce its costs.

The first request for such suggestions came just over a year ago. I was the first agency head to respond to that request when I submitted my memorandum of April 26, 2017 on Justice System Cost-Drivers and Recommended Roadmap to Reform. I appreciate the implementation, to date, of several of the suggestions presented in that memorandum, including: continuation of the MacArthur Foundation-funded Safety + Justice Challenge to reduce the jail population; coordination of databases containing medical and mental health information for jail detainees; encouraging judges to utilize alternatives to bail for misdemeanors and to focus more on public safety when making release decisions at Initial Appearances; implementation of a Felony Drug Diversion Program; exploration of possible consolidation of the misdemeanor courts; and expansion of non-crisis services for those suffering chronic mental health, behavioral health, and substance use disorders.

As discussed in my more recent memorandum of April 25, 2018 on the topic of The Prosecution of Drug Cases in Pima County, there are additional means, not yet implemented, that may be explored as part of an effort to improve the way the criminal justice system handles those suffering from substance use disorders. In particular, we need a means to identify and provide treatment and wraparound recovery support services to those who, though not caught in possession of drugs, are arrested for misdemeanor crimes, such as shoplifting, trespassing, and misdemeanor assault, committed as a result of their drug addictions. These individuals should be given the same opportunities for treatment as those arrested for misdemeanor or minor felony crimes who are found to possess illegal drugs at the time of their arrest.

**The Honorable Richard Elías and Pima County Board of Supervisors
Key Issues Related to Justice Reform in Pima County**

June 11, 2018

Page 2

One step in this direction would be to develop a misdemeanor drug court. Another step would be to expand the use of arrest deflection programs, otherwise known as diversion by law enforcement. A third, and critically important, step would be to undertake preventive measures to get those suffering from substance use disorders into treatment and other services before they are arrested, are transported to an emergency room, or die from an overdose.

All of these criminal justice improvement efforts remain necessary. I am pleased that many of them are in the process of being implemented or are being seriously considered for implementation.

Meanwhile, given the most recent request that I identify key issues related to justice reform in advance of the Board's final adoption of the fiscal year 2018/2019 general fund budget, I will focus attention here on providing more detail with respect to several key improvements that I believe would both improve our system of justice and also would provide significant cost savings, both in the short term and in the long run. These are:

- (1) expanded use of electronic monitoring in lieu of incarceration;
- (2) consolidation of the Pima County Justice Courts and Tucson City Court;
- (3) expedited disposition of felony cases pending in Superior Court;
- (4) enhanced treatment and other services for all participants in diversion as well as for probationers;
- (5) consideration of bail reform strategies; and
- (6) development of re-entry and reintegration programs.

Some of these reforms would require changes in state legislation, while others could be implemented locally.

1. ELECTRONIC MONITORING IN LIEU OF INCARCERATION

Current technology provides low-cost, workable alternatives to bail that provide much less restrictive means by which to secure the attendance of a defendant in court. Electronic monitoring, for example, could serve as an alternative to pretrial incarceration for a poor, homeless individual who suffers from a substance use disorder and who has multiple prior failures to appear. While a monitoring device might be strapped to the defendant's arm or leg, it need not be activated unless the defendant fails to appear for the hearing. At that point, the monitor could be activated, enabling location of the defendant and deployment of an officer to bring him/her straight to the court hearing, rather than to Jail.

**The Honorable Richard Elías and Pima County Board of Supervisors
Key Issues Related to Justice Reform in Pima County**

June 11, 2018

Page 3

Recent innovations to electronic monitoring technology combined with interlock devices also could be used to shift from incarcerating most felony DUI offenders to monitoring them in the community. This would require a change in state law. Electronic monitoring, as utilized by the Pima County Sheriff's Department for misdemeanor DUI offenders, is highly effective. It employs global positioning satellite location tracking, constant two-way radio communication, and portable breathalyzer testing with a small hand-held device that can be carried by the individual being monitored 24 hours a day. With new technology, it is possible to protect public safety by monitoring the individual to ensure he does not get behind the wheel and drive drunk again.

At the same time, the individual being monitored can be free in the community, maintain a home, maintain employment, and maintain care of his/her children and family. This is a win-win-win situation. The community wins because its safety is protected. The individual wins because he/she remains out of custody in the community, able to receive substance use treatment if needed while on release from custody. And taxpayers win because it is far less expensive than incarceration.

A recent Sheriff's Department study showed its electronic monitoring program costs \$17 per day, compared with the cost of incarceration in the Jail, which was calculated last year at \$100 per day, but likely has become even greater now due to rising costs for medical services for inmates.

Note that electronic monitoring should not be over-used as has been done in some jurisdictions. We have a robust Pretrial Services Division that conducts risk assessments of all arrestees in the Jail and makes recommendations to the Court to be considered by the judge at Initial Appearance in setting the terms and conditions of release. For example, misdemeanor defendants whom judges are currently releasing on their own recognizance, without bail, without Pretrial Services supervision, and without electronic monitoring most likely will not need to have electronic monitoring imposed just because it may become more widely used.

2. CONSOLIDATION OF THE JUSTICE COURTS AND TUCSON CITY COURT

The consolidation of the Pima County Justice Courts in downtown Tucson with the Tucson City Court into one building with joint operations would significantly enhance efficiency, provide more consistent outcomes, and better address defendants who have multiple cases pending in the different courts.

**The Honorable Richard Elías and Pima County Board of Supervisors
Key Issues Related to Justice Reform in Pima County**

June 11, 2018

Page 4

I recommend maintaining and expanding the use of misdemeanor diversion (both prosecutor-led diversion and court-monitored diversion), as well as the established specialty courts, including Domestic Violence Court, Veterans Court, and Mental Health Court. I am hopeful that we will soon be able to implement the proposed Consolidated Misdemeanor Problem-Solving Court ("CMPS" or "Compass"), which will include drug treatment services in addition to mental health services for misdemeanor defendants suffering from substance use disorders. Indeed, this may serve as a pilot court consolidation project.

3. EXPEDITED DISPOSITION OF FELONY CASES IN SUPERIOR COURT

Many felony cases pending in Superior Court should be able to be disposed of far more quickly at each stage, from arrest to disposition, from conviction to sentencing, and from sentencing to release on probation or transfer to state prison. I am pleased that the County is using technical assistance provided by the MacArthur Foundation through the Safety + Justice Challenge to explore various means by which this might be accomplished.

I am hopeful that most types of felony cases (not including homicides, gang cases, child sexual abuse cases, and cases in which the defendant is undergoing restoration to competency) could be resolved at least 30-90 days earlier. For in-custody felony defendants, this would save \$3,000 to \$9,000 per defendant in Jail costs alone, not to mention further savings in other parts of the criminal justice system. Moreover, it would better protect the constitutional rights of victims, as well as defendants, to a speedy trial.

As explained in detail in my Supplemental Budget request, if my Office were able to add three Case Evaluation System (CES) prosecutors with support staff to my Charging Unit (which handles both felony charging and CES plea negotiations), we could significantly reduce caseloads in that Unit, allowing the prosecutors in the Unit the much needed time to negotiate with defense counsel with regard to pending plea offers before cases are referred to my felony trial teams. I continue to believe the cost incurred by adding these personnel would be more than offset by cost savings in other parts of the criminal justice system resulting from expedited plea negotiations.

In addition, I believe a very strong coordinated and concerted effort should be made by Superior Court judges and Public Defense Services, along with the prosecutors in my Office, to greatly reduce the number of continuances and lengths of continuances in felony cases. Too many cases, and too often in-custody cases, get unnecessarily continued or the continuances given are

**The Honorable Richard Elías and Pima County Board of Supervisors
Key Issues Related to Justice Reform in Pima County**

June 11, 2018

Page 5

needlessly long. I have witnessed felony cases continued from one trial date to another a full year later. There is no reason why a case needs a 12-month continuance. Not only does this violate the speedy trial rules of criminal procedure, it violates victims' rights to a speedy disposition as well. I was observing in court recently and when an attorney asked for a sentencing to be continued for "just a day or two" past the 30 days because the attorney would be on vacation, but the judge set the sentencing hearing on an in-custody defendant 60 days out. This cost the county an additional, and wholly unnecessary, \$3,000 in jail costs.

4. ENHANCED SERVICES FOR PROBATIONERS AND PARTICIPANTS IN DIVERSION

The Drug Treatment Alternative to Prison (DTAP) program serves as a unique model in providing the full spectrum of treatment and wraparound recovery support services needed by those suffering from substance use disorders who are addicted to heroin, methamphetamines, cocaine, and other narcotic and dangerous drugs. The full spectrum of wraparound services includes: residential drug treatment, intensive out-patient drug treatment, medication assisted treatment, trauma-informed treatment, transitional housing, transportation assistance (bus passes and bicycles), case management, counseling, peer support, resume writing assistance, budgeting assistance, job training and job placement, dental care, optometry, tattoo removal, life skills education, medical services, and the full spectrum of psychological and psychiatric services for those with co-occurring mental health conditions. We need to continue the DTAP program with this full panoply of services.

In addition, we need to ensure that all probationers participating in standard felony Drug Court have access to and are provided all the treatment and support services they need. Moreover, we need to ensure that all those on court-monitored diversion and probation in the misdemeanor problem-solving courts – including Mental Health Court, Veterans Court, and Domestic Violence Court – likewise have access to all the treatment and support services they need. Finally, we need to ensure that all participants in prosecutor-led Felony Drug Diversion and misdemeanor diversion programs have the same access to the full panoply of treatment and support services they need, as well.

Evidence-based research demonstrates that providing these much-needed wraparound services reduces recidivism, thereby leading to long-term cost savings in the criminal justice system, as well as the health care system.

5. CONSIDERATION OF BAIL REFORM STRATEGIES

We should explore possible bail reform strategies to decrease the use of jail, increase the fairness of the justice system, and better protect the public safety of the community. Accomplishing this would take both legislative and court rule changes.

Money bail unjustly punishes some people who cannot afford to pay for their pre-trial release. Those who remain in custody pre-trial are overwhelmingly poor, homeless, and are over-represented from racial and ethnic minorities. Money bail often criminalizes poverty and often fails to adequately protect public safety.

Under the current bail system in Arizona, a large number of non-violent pretrial defendants charged only with misdemeanor offenses remain in custody, often for a long time, pending disposition of their cases because they are unable, due to poverty, to put up even a small amount of bail money.

In contrast, a number of serious offenders, dangerous and/or violent pretrial defendants, who pose a serious threat to public safety, who have financial resources are capable of posting high dollar bail amounts to secure their release from custody pending disposition of their cases. There have been numerous instances where these seriously dangerous, violent individuals have committed a subsequent offense while on release.

We should explore reforms whereby the judicial determination with regard to the terms and conditions of a defendant's release from pretrial custody following arrest is made on the basis of protecting public safety. However, any reform of the current system must be a thoughtful and carefully considered reform. It cannot be drawn up in a hasty, thoughtless manner that disregards victims' rights or endangers public safety. We cannot ignore the Constitutional rights of crime victims to be notified, to be informed, and to have the opportunity to be heard before an accused defendant can be released from jail.

Several states have recently enacted bail reform measures. For example, New Mexico and New Jersey adopted forms of bail reform and after the fact discovered significant unintended consequences. In New Mexico, violent and property crimes are on the rise, and New Jersey has discovered its bail reform is financially unsustainable and administratively challenging.

**The Honorable Richard Elías and Pima County Board of Supervisors
Key Issues Related to Justice Reform in Pima County**

June 11, 2018

Page 7

In both of these states, a suspect's risk of re-offending and of returning to court, are largely decided by computer generated algorithms. This experiment has shown that informed judicial decisions require human knowledge and experience, particularly including empathy for crime victims. Bipartisan efforts in both states are now endeavoring to repeal the damage their hasty and ill-formed decisions have caused.

6. DEVELOPMENT OF RE-ENTRY AND REINTEGRATION PROGRAMS

In considering how to reform and improve the criminal justice system, we must develop and implement better programs to help people released from jail or prison transition back into their communities and avoid future contact with the criminal justice system. Re-entry programs are crucial to building safer neighborhoods.

Designing and implementing a Re-Entry Reintegration Court Program, which would make use of a wide range of intensive case management and re-entry community-based services, such as drug and mental health treatment, financial assistance for basic needs such as housing, clothing, food, transportation, and offer long-term support with educational, vocational, and legal services, as well as strict judicial supervision (similar to drug court and DTAP) would assist those re-entering the community from jail and prison to successfully navigate the return to life at home. This could be accomplished utilizing the local faith community and other volunteers to help support program participants. Re-entry courts in other jurisdictions have helped to dramatically reduce recidivism and re-conviction rates.

CONCLUSION

I share the concern of the Board of Supervisors and County Administrator regarding the need for fiscal responsibility, budgetary savings, and improvement of the criminal justice system. Indeed, these types of concerns have always guided my efforts.

I am proud of my achievements over the past two decades as County Attorney in being fiscally responsible and performing my mandated Constitutional duties efficiently and effectively, despite recessionary budget cuts, and a continuing stagnant budget, while also implementing numerous criminal justice reforms that benefit criminal defendants, assist victims, prevent crime, *and* save taxpayer dollars.

**The Honorable Richard Elías and Pima County Board of Supervisors
Key Issues Related to Justice Reform in Pima County**

June 11, 2018

Page 8

As Pima County Attorney my primary mission is to keep this community safe by holding criminals accountable, helping victims of crime, preventing crime, and protecting the community. I pride myself on being an out-of-the-box criminal justice reformer and an elected official willing to take risks in creating new and innovative programs. However, I remain mindful that proposed reforms must not be driven solely by a cost-benefit analysis, but rather primarily by a concern for justice and public safety.

Through a number of wide-ranging innovative programs described below, my Office has cultivated strong community connections, and my outstanding staff and volunteers work closely with local communities to make Pima County a safer place to live and work.

As a by-product, these programs have also provided Pima County with significant savings over the years by diverting defendants from prosecution, by detecting and preventing crime, and by utilizing the volunteer services of hundreds of community volunteers.

In the Juvenile Justice area, I created the School Multi-Agency Response Teams (SMART), which assist 55 middle and high schools in preventing and detecting crime and providing special services to juveniles identified as being at risk of criminal activity or victimization.

The award-winning 22 Community Justice Boards, composed of more than 100 community volunteers, offer a restorative justice diversion alternative to prosecution for more than 400 juveniles annually who are arrested for misdemeanors and low-level, non-violent felony offenses.

The ACT Now Truancy enforcement program has been augmented by the implementation of several community-based Truancy Boards. Local schools identify chronic truants, and the Truancy Boards work with the students and their parents/guardians to address the underlying causes of the truancy. They get the students back in school and thus divert them from becoming involved in the criminal justice system as an offender, or as a victim, and increase their chances for future success.

Through these efforts, as well as additional innovations led by Juvenile Court, including the important Juvenile Detention Alternative Initiative (JDAI) in which my Office actively participated, we have successfully reduced the incidence of juvenile crime in Pima County and dramatically reduced the number of juveniles in local detention. Our Juvenile Detention Center used to house nearly 400 juveniles at any given time, but it now houses fewer than 40.

**The Honorable Richard Elías and Pima County Board of Supervisors
Key Issues Related to Justice Reform in Pima County**

June 11, 2018

Page 9

Nearly all unintentional shooting deaths involving children occur as a result of unsecured firearms in the home. These become cases which are adjudicated by my Office in the juvenile system. In an effort to decrease accidental shooting injuries and deaths, and to prevent the need for these adjudications, I created two programs: Communities Addressing Responsible Gun Ownership (CARGO), an educational program teaching the importance of safe gun storage, and the Lock-Up-Your-Gun Campaign in conjunction with more than 160 physicians, hospitals, and health clinics to distribute free gunlocks to the community. To date, we have distributed more than 80,000 gunlocks. If only one death has been prevented, and one minor prevented from being criminally charged, this program has been successful.

The number one Bad Check Program in the nation resides in the Pima County Attorney's Office. In the twenty years since I implemented this diversion program, it has successfully diverted from prosecution writers of more than 133,000 bad checks, thus providing untold financial savings to Pima County. Additionally, the Bad Check Program has provided more than \$14 million in restitution to local victim merchants and individuals for losses they incurred from receiving bad checks. Prosecution of these tens of thousands of bad check writers would have been extremely costly to Pima County and a significant burden to the criminal justice system.

In addition to the Bad Check Program, my other Adult Diversion programs have removed many hundreds of cases each year from prosecution, thus saving criminal justice costs throughout the system. The types of misdemeanor cases diverted include underage possession of alcohol (over 18, but under 21), criminal damage, domestic violence, false reporting, falsification of license, shoplifting, threats, tobacco sales to minors, possession of drug paraphernalia, and possession of marijuana. Those charged by law enforcement with these misdemeanor crimes who enroll in my Adult Diversion Program participate in classes and meetings for which they pay a fee or do community service in lieu of payment. Upon successful completion, the charges against them are dropped. My new Felony Drug Diversion Program has also been very successful so far.

As described in detail in my April 25, 2018 memo on The Prosecution of Drug Cases in Pima County, my Office has been leading the way in criminal justice reform with regard to drug prosecution and diversion. As noted in that memorandum, I have done everything within my legal discretion as a prosecutor to ensure that those suffering from addiction who do not pose any public safety threat should have an opportunity to remain in the community and receive treatment through the Drug Court, Drug Treatment Alternative to Prison

**The Honorable Richard Elías and Pima County Board of Supervisors
Key Issues Related to Justice Reform in Pima County**

June 11, 2018

Page 10

(DTAP), and misdemeanor and felony drug diversion programs. This is a highly unique prosecution effort not replicated in any other Arizona prosecutor's office. My efforts have included obtaining numerous federal and state grants worth millions of dollars brought into Pima County to cover the costs of treatment and wraparound recovery support services for criminal defendants suffering from substance use disorders and mental illness.

I am exceedingly proud to have implemented all these criminal justice improvements and more. And I am pleased to be invited to advise the Board of Supervisors with regard to additional, system-wide efforts that might be undertaken in Pima County to continue to improve our criminal justice system in a fiscally-responsible manner.

cc: C.H. Huckelberry, County Administrator
The Honorable Kyle Bryson, Presiding Judge, Pima County Superior Court
The Honorable Mark Napier, Pima County Sheriff
Wendy Petersen, Assistant County Administrator for Justice and Law
Enforcement
Dean Brault, Director, Public Defense Services
Amelia Craig Cramer, Chief Deputy County Attorney
Thomas Weaver, Chief Criminal Deputy

ATTACHMENT 3

Arizona Superior Court
Pima County
110 West Congress
Tucson, Arizona 85701

HON. KYLE A. BRYSON
PRESIDING JUDGE
DIVISION 5

JENNIFER THORSON
LAW CLERK

(520) 724-4215
FAX 724-3596

MARIANN DAVIDSON
JUDICIAL ADMINISTRATIVE ASSISTANT

MEMORANDUM

TO: Wendy Petersen, Assistant County Administrator

FROM: Hon. Kyle Bryson, Presiding Judge, Superior Court

RE: Criminal Justice Systems Budgets

DATE: June 12, 2018

KAB

In a May 1, 2018 memo to County Administrator Chuck Huckelberry, District 3 Supervisor Sharon Bronson asked that all county departments and agencies involved in the criminal justice system identify key issues related to reform and provide three suggestions to effect changes. In the view of the Court, the main drivers of expenses to the criminal justice system relate to the very activities that bring cases to the courts. The Court cannot comment on either the County Attorney's filing or charging policies, or on Public Defense Services agencies' strategies. Doing so could create the appearance of a lack of impartiality, potentially upsetting the delicate balance the Court must always maintain. Certainly, the Court has a healthy respect for both the County Attorney's office and all agencies associated with Pima County Public Defense Services. Thus, the Court looks inward to address its own participation in the process to determine what it can do, if anything, to lessen overall expenses to the criminal justice system in Pima County.

When looking inward, the analysis begins with the judges who bear the responsibility of making detention-related decisions. Each judicial officer is an independent trier of fact, bound by the Constitution, and by statutes, guidelines and rules. As such, the Court continues to work to afford judges with as much information as possible at all stages of all criminal cases, from beginning to end, so judges may make evidence-based decisions. On a broader level, the Court continues to provide judges with ongoing education and training on topics related to pretrial detention, the sentencing of those convicted of crimes, and victims' rights, along with substantive law and procedural rule updates.

Pretrial Services, a long-standing, robust department of the Court, has been bolstered and supported by MacArthur grant funds, as well as by the County. In fact, some 17 positions have been added to PTS

since the County was awarded the grant. Unfortunately, due to a combination of factors, PTS management has struggled with employee retention during the grant period. As a result, this elevated turnover rate has required the division to place a larger focus on recruitment and training, instead of an expansion of screening services. Should turnover rates remain consistent, the division may be forced to offer limited screening at the new modular facility at the Pima County Adult Detention Center. If PTS's role in diverting individuals from incarceration during the pretrial period increases, it will be vital to improve employee retention and potentially increase the division's scope through the addition of additional staffing. Examples of an expansion of services may include increased behavioral health and substance screening, to identify individuals who may be suitable for specialized supervision, and developing additional release options, which may include evidence-based strategies utilizing supportive technology. As mentioned above, groundwork has been laid to move a portion of PTS operations to an outbuilding on PCAD grounds, which would greatly increase the opportunity for more PTS-involved release strategies pre- and post-booking. To ensure PTS maintains its high level of impact and remains capable of incorporating new programs and services, attracting and retaining a talented and skilled staff will be necessary.

Adult Probation plays an active role in reducing costs related to the criminal justice system, as well. Like PTS, APS has a long-standing tradition of innovation. For example, most recently, Chief Probation Officer David Sanders studied the department's SAFE program, and upon thorough review, recommended it be terminated. Those probationers participating in the SAFE program had jail bed days "banked" and if they violated probation, they automatically served incrementally increasing days in jail for subsequent violations, even technical violations. Now, if a probation officer determines a probationer has violated the terms of probation, the probationer is brought before a judge for disposition, but is not automatically held pending initial appearance. The probationer may be summoned, when appropriate, to appear before an Initial Appearance judge. That judge then has the option of releasing the probationer, pending disposition, when the circumstances warrant release. This saves jail bed days. Many years ago, APS ended automatic revocations of those suspected of violating probation; officers now exercise discretion and manage issues on a case-by-case basis, once again presumably saving jail bed days. They use a two-prong approach to address regressive behavior. They take a hand-on approach, and work to address not just the particular incident that led to the contact, but to work with the probationer to correct the underlying behavior long-term. It should be noted an APS faces the same employee retention dilemma PTS has been experiencing. This is an issue which must also be addressed for APS to be able to maintain its level of excellent service and preservation of public safety.

In sum, the Court does not control the volume of cases that it is asked to process. At most, the Court has the ability to manage the cases that are brought to it, and in doing so is dedicated to the timely, fair and efficient administration of justice under law. To meet this end, the Court will continue to embrace innovative, evidence-based practices to better serve the community as a whole. The Court will continue to provide education and training to its judges, Pretrial Services will continue to provide information to judges so decisions may be made based on the best evidence available at that time, and Adult Probation will continue to work with probationers on a personal level, avoiding automatic incarceration and, when possible, finding alternatives when and where possible and appropriate, while maintaining public safety.

ATTACHMENT 4

June 8, 2018

Adult Probation Department Initiatives (MacArthur Grant):

Remove payment of all fines/fees from early term eligibility	Done
Initiate PTRs via summons v. arrest, when practical	Done
Eliminate automatic holds on probationers	Done
Abandon Project SAFE as lacking efficacy	Done
Require supervisor staffing prior to filing a PTR	Done

Strategies with Potential for the Future (priorities in bold):

- A more robust pretrial diversion program**
- Abandon or decrease use of money bonds**
- Reduce the length of stay on coterminous probationers**
- Deflect the mentally ill when feasible (services rather than jail)
- Eliminate plea agreements that preclude early termination from probation
- Periodically reevaluate pretrial detainees for release

Prosecutorial Policies in Philadelphia:

Do not charge marijuana crimes, regardless of weight:	No comment
Charge lesser included offenses	No comment
Increase Re-Entry Programs	No Information
More lenient plea offers	Some potential
Costs of incarceration at sentencing	Will become rote
Short probation "tails" or no "tails"	Agree
Shorter probation sentences	Agree
Short sentence, if any, for technical violation(s)	Agree

ATTACHMENT 5

ATTACHMENT 5A



PUBLIC DEFENSE SERVICES

MEMORANDUM

To: The Honorable Chairman and Members
Pima County Board of Supervisors and
C.H. Huckelberry, County Administrator

Date: May 24, 2018

From: Dean Brault
PDS Director

Re: **Top Three Suggestions for Justice Reform in Pima County**

The Arizona criminal code is full of “get tough on crime” provisions that give an immense amount of power to prosecuting agencies. The County Attorney uses the leverage created by Arizona’s statutes to negotiate pleas in most cases. Sometimes pleas are completely meaningless, sometimes they are phenomenally good deals, but usually they are somewhere in between. The County Attorney does not make plea offers in all cases. It is exceptionally rare for prosecutorial agencies in the United States to have policies to not to offer plea agreements in entire categories of crimes.

While it makes sense not to offer plea agreements in some serious cases, the County Attorney has several categories of non-dangerous cases where pleas are not offered. The County Attorney prominently discusses her policy of not offering pleas in these cases in election years, thus making it appear that politics is driving policy.

The County Attorney’s office justifies doing this in some cases by needing “full accountability” from defendants and for “empowerment” of victims, thus, “transforming them into survivors.” Refusing to offer plea agreements does not make defendants less accountable than those who plead guilty. A person is actually more accountable when admitting guilt. Furthermore, victims are not empowered by the County Attorney forcing cases to trial. The County Attorney alone always holds the power to offer a plea or not, and frequently ignores the wishes of victims, especially when they ask for leniency. Going to trial also has absolutely nothing to do with “transforming” a victim into a “survivor.”

One policy of the County Attorney is to never plead a residential burglary to anything less than a residential burglary. This leads to wildly disparate results. Clients with priors are usually offered plea agreements that meaningfully reduces the sentence. Clients who have never been in trouble before do not get pleas and will have nothing to lose by going to trial. The County Attorney may claim that they offer pleas in these cases, but these pleas are usually to the indictment with the State essentially only agreeing not allege any aggravating circumstances that would permit the court to impose a sentence greater than the presumptive term. The reality is that there often are no real aggravating circumstances, and even if there are, such clients are almost always going to be placed on probation and even if it is revoked, are rarely ever going to get a sentence worse than the presumptive term in prison. This results in many fist offense residential burglary charges going to trial unnecessarily.

Aggravated Driving Under the Influence charges when the client has been convicted of 2 prior DUIs within the last 7 years is another such category. These charges may range from first felony offenses, which carry a 4 month term in prison before probation eligibility, all the way up to ones with two or more valid historical prior felony convictions which mandate between 6 and 15 years in prison. Aggravated DUI cases where the defendant's license is suspended carry the exact same punishment, but are routinely resolved with meaningful plea agreements. Most people charged with such DUI cases are willing to take any meaningful plea agreement. The County Attorney continually refuses to deviate from this policy. Plea agreements are also difficult if not impossible to negotiate in DUI cases where the defendant has two historical prior felony convictions and faces a presumptive term of 10 years in prison, even for a first felony DUI conviction.

Unnecessary trials raise costs. They take time and effort to prepare, which means attorneys and staff can handle fewer cases. Testing of evidence, conducting interviews, retaining witnesses that may need transportation and lodging, and funding investigators and transcriptionists all make trials cost more. Both the prosecution and defense incur these costs. Jury trials also increase the demand on the court system. Costs are also incurred by the public. The jury selection process takes all day for from 50 to 150 people per trial. Being selected as a trial juror can take from days to weeks, which not only impacts jurors time, but also entitles them to compensation for their time away from work on longer trials.

The closer a case gets to trial, the more of these expenses are incurred. These costs are compounded when a defendant is being held in jail awaiting trial. On average, it costs over \$95 per day to incarcerate a defendant in the Pima County Jail. Policies that preclude plea agreements in certain categories result in cases taking longer to resolve and often unnecessarily going to trial, both of which increase costs. Cases in these categories are frustrating and lots of time and energy go into attempting to resolve them without a trial.

One area where the County Attorney exercises discretion in aggressively prosecuting is retail theft. Many of these defendants are non-dangerous offenders with mental health and substance abuse problems. When they have any criminal history, they are often charged with felonies and face many years in prison if they are convicted. If a person shoplifts an item from a store, it is a misdemeanor. If that person then pawns that item, it is a class 2 felony. If that person shoplifts multiple times, the third or more shoplifting charge can be charged as a class 4 felony. If instead of stealing an item by walking out of the store, the person changes the price tag, the County Attorney will charge it as organized retail theft, a class 4 felony, computer tampering, a class 3 felony, and fraudulent scheme and artifice, a class 2 felony. Not every person who commits a retail theft will be aggressively prosecuted, but many are. The choice of how cases are charged, what pleas are offered, and which defendants will not be offered a plea and prosecuted to the fullest extent of the law vary widely.

The County Attorney's policies regarding drug cases is another cost driver. Most people charged with personal possession of drug charges get multiple opportunities at probation. While use of recreational drugs is illegal and thus can involve the criminal justice system, the deeper problem is rooted in behavioral health. I applaud the direction law enforcement is headed with drug use in their intent to deflect drug users to treatment in lieu of criminal prosecution.

I believe that such efforts, even if not immediately successful at getting all participants clean, will significantly help reduce drug use and therefore reduce related crimes over time. Many addicts are unsuccessful on their first attempt to get clean, but eventually, many succeed.

Another significant volume of cases and associated costs are drug sales cases. One of the most frustrating policies is the County Attorney's eagerness to prosecute to the fullest extent possible the lowest level "drug dealers." These "drug dealers" are desperate addicts who are often homeless. Undercover police officers canvass poor parts of town asking people to help them find either heroin or methamphetamine. These defendants take the officer to their dealer. Officers give them marked money, they go buy the drugs, and then return to deliver them. The defendant expects to get either a small amount of the drugs, or a few dollars. Despite the fact that these defendants are not the actual dealers, they are treated the same and are thus guilty of a class 2 felony for their role in any such drug deal. What is even more egregious is that officers often do not make an arrest then. They wait a while and go back to the same person to do the same thing again, and again. This has two purposes. First, is that this creates multiple offenses, making the defendant ineligible for probation under Arizona law. Second, is to increase the aggregate weight of the drugs, which often raised the total amount to be over a listed threshold, again making the defendant ineligible for probation. Not only has the County Attorney done nothing to stop the police from waiting to arrest people after multiple offenses, they encourage it by prosecuting every offense and using every sentencing enhancement allegation available to give them immense leverage over people living from dose to dose.

Another cost driver is the voter initiative in 2011 that removed methamphetamine from the statute requiring mandatory probation in drug possession cases and to impose a large amount of mandatory prison time in sales cases. This initiative was endorsed by prosecutors who misled voters by arguing that judges wanted and needed more options in methamphetamine cases. While that initiative did give judges more ability to give jail time to people convicted of meth possession, it also now made any such person with any prior conviction ineligible for probation. This initiative also gave more power to prosecutors by eliminating mandatory probation for first and second time methamphetamine convictions.

Methamphetamine sales cases involving up to a moderate quantity of meth were formerly eligible for probation. That voter initiative made the minimum amount of prison 5 flat years for any sale or transfer of meth, regardless of how small the amount.

This initiative has done nothing to deter people from selling meth. The County Attorney routinely uses this statute as leverage to send some people to prison that need drug treatment.

Another area where prosecutors have wide latitude is in using old prior felony convictions, which, at a minimum, make people ineligible for probation. Arizona statutes provides that most first time offenders are eligible for probation. Exceptions to probation availability exist for all dangerous nature offenses, most sexual offenses, Dangerous Crimes Against Children charges, theft offenses over \$100,000, and methamphetamine sales of any quantity. Felony DUI cases require a minimum of 4 months in prison before probation is available. Arizona Revised Statute §13-703(A) also denies probation for first time offenders if they commit two or more offenses that are consolidated for trial. This means that while probation would be available for their first offense, prison is required for any subsequent offense.

Furthermore, if three or more offenses are consolidated, the person will be treated as if they had a valid historical prior felony conviction, which essentially doubles the prison sentence of the first time offense range. This subsection also states that anyone who has ever been convicted of a felony offense, regardless how minor or how long ago, will be sentenced to prison for any second or subsequent offense.

This does not mean that everyone who commits an offense listed in the exceptions will get sentenced to prison. Many first offenders who face mandatory prison time are offered probation available pleas. Some, however, are not. What is offered, if anything at all, is entirely up to the discretion of the County Attorney or Attorney General.

Arizona has the 7th highest rate of incarceration of all 50 states and the District of Columbia. https://en.wikipedia.org/wiki/List_of_U.S._states_by_incarceration_and_correctional_supervision_rate. Arizona's rate of incarceration is not being caused by higher crime rates. Arizona cities fall well below the median national crime rate for cities. https://en.wikipedia.org/wiki/List_of_United_States_cities_by_crime_rate. This illustrates that Arizona's criminal justice system has problems. These problems can be corrected.

This discussion of factors that impact how criminal defendants are treated and how much it costs to prosecute and punish them illustrates my top issues for criminal justice reform at the local and statewide level. The issues that I believe can be locally addressed are:

1. The County Attorney should offer meaningful plea agreements in all non-violent/non-serious cases including categories that currently do not get plea offers such as first time residential burglaries, Aggravated DUI cases charged as a 3rd offenses in 84 months, and Aggravated DUI cases with 2 historical prior felony convictions.
2. The County Attorney should review each case before issuing to determine if seeking the most serious charge or filing every possible sentencing allegation is necessary to achieve a just result and not just automatically seeking the maximum potential sentence in every case.
3. Programs to deflect drug users into treatment and not into the criminal justice system should be adopted by all law enforcement agencies in Pima County.

The issues that could be addressed at the State level are:

1. Reduce the classification of possession of personal possession of dangerous or narcotic drugs to class 6 felonies and reduce marijuana possession to a class 1 misdemeanor. There is no reason defendants, regardless of how many prior convictions they have should ever be exposed to a 6-15 year term in prison for personal possession of drugs. A maximum range for drug possession of 2.25 to 5.75 years in prison is more than sufficient punishment.
2. Organize and support a voter initiative to make methamphetamine possession charges be subject to mandatory probation again and eliminate the mandatory enhanced sentencing ranges for sales cases.
3. Eliminate A.R.S. §13-703(A) which addresses multiple and non-historical prior convictions. This would make more defendants eligible for probation and give more discretion to the court. Judges would have an ample range of consequences under the remaining criminal statutes and are not required to grant probation just because it is available. They can also easily make sentences consecutive, if appropriate.

I have attached memos from Joel Feinman, the Pima County Public Defender, James Fullin, the Pima County Legal Defender, and Kevin Burke, the Pima County Legal Advocate that also provide suggested local and state-wide criminal justice reform ideas. I believe that all of these ideas are worthy of discussion.

I look forward to working with the Justice Coordinating Council to develop meaningful criminal justice reform that will continue to protect our community while more efficiently serving the interests of justice.

cc: Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement
Honorable Kyle Bryson, Presiding Superior Court Judge
Barbara LaWall, Pima County Attorney
Amelia Cramer, Chief Deputy County Attorney
Thomas Weaver, Chief Criminal Deputy

VIEW DOCUMENT

13-703. Repetitive offenders: sentencing

A. If a person is convicted of multiple felony offenses that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions, the person shall be sentenced as a first time felony offender pursuant to section 13-702 for the first offense, as a category one repetitive offender for the second offense, and as a category two repetitive offender for the third and subsequent offenses.

B. Except as provided in section 13-704 or 13-705, a person shall be sentenced as a category two repetitive offender if the person is at least eighteen years of age or has been tried as an adult and stands convicted of a felony and has one historical prior felony conviction.

C. Except as provided in section 13-704 or 13-705, a person shall be sentenced as a category three repetitive offender if the person is at least eighteen years of age or has been tried as an adult and stands convicted of a felony and has two or more historical prior felony convictions.

D. The presumptive term set by this section may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E.

E. If a person is sentenced as a category one repetitive offender pursuant to subsection A of this section and if at least two aggravating circumstances listed in section 13-701, subsection D apply or at least two mitigating circumstances listed in section 13-701, subsection E apply, the court may impose a mitigated or aggravated sentence pursuant to subsection H of this section.

F. If a person is sentenced as a category two repetitive offender pursuant to subsection A or B of this section and if at least two aggravating circumstances listed in section 13-701, subsection D apply or at least two mitigating circumstances listed in section 13-701, subsection E apply, the court may impose a mitigated or aggravated sentence pursuant to subsection I of this section.

G. If a person is sentenced as a category three repetitive offender pursuant to subsection C of this section and at least two aggravating circumstances listed in section 13-701, subsection D or at least two mitigating circumstances listed in section 13-701, subsection E apply, the court may impose a mitigated or aggravated sentence pursuant to subsection J of this section.

Class 2 3 years 4 years 5 years 10 years 12.5 years

Class 3 2 years 2.5 years 3.5 years 7 years 8.75 years

Class 4 1 year 1.5 years 2.5 years 3 years 3.75 years

Class 5 .5 years .75 years 1.5 years 2 years 2.5 years

Class 6 .25 years .5 years 1 year 1.5 years 2 years

I. A category two repetitive offender shall be sentenced within the following ranges:

Felony Mitigated Minimum Presumptive Maximum Aggravated

Class 2 4.5 years 6 years 9.25 years 18.5 years 23 years

Class 3 3.25 years 4.5 years 6.5 years 13 years 16.25 years

Class 4 2.25 years 3 years 4.5 years 6 years 7.5 years

Class 5 1 year 1.5 years 2.25 years 3 years 3.75 years

Class 6 .75 years 1 year 1.75 years 2.25 years 2.75 years

J. A category three repetitive offender shall be sentenced within the following ranges:

Felony Mitigated Minimum Presumptive Maximum Aggravated

Class 2 10.5 years 14 years 15.75 years 28 years 35 years

Class 3 7.5 years 10 years 11.25 years 20 years 25 years

Class 4 6 years 8 years 10 years 12 years 15 years

Class 5 3 years 4 years 5 years 6 years 7.5 years

Class 6 2.25 years 3 years 3.75 years 4.5 years 5.75 years

subsection D, paragraph 11 shall be found to be true by the court, or mitigation of the crime are found to be true by the court, on any evidence or information introduced or submitted to the court or the trier of fact before sentencing or any evidence presented at trial, and factual findings and reasons in support of these findings are set forth on the record at the time of sentencing.

L. Convictions for two or more offenses committed on the same occasion shall be counted as only one conviction for the purposes of subsections B and C of this section.

M. A person who has been convicted in any court outside the jurisdiction of this state of an offense that was punishable by that jurisdiction as a felony is subject to this section. A person who has been convicted as an adult of an offense punishable as a felony under the provisions of any prior code in this state or the jurisdiction in which the offense was committed is subject to this section. A person who has been convicted of a felony weapons possession violation in any court outside the jurisdiction of this state that would not be punishable as a felony under the laws of this state is not subject to this section.

N. The penalties prescribed by this section shall be substituted for the penalties otherwise authorized by law if an allegation of prior conviction is charged in the indictment or information and admitted or found by the court. The release provisions prescribed by this section shall not be substituted for any penalties required by the substantive offense or a provision of law that specifies a later release or completion of the sentence imposed before release. The court shall allow the allegation of a prior conviction at any time before the date the case is actually tried unless the allegation is filed fewer than twenty days before the case is actually tried and the court finds on the record that the person was in fact prejudiced by the untimely filing and states the reasons for these findings. If the allegation of a prior conviction is filed, the state must make available to the person a copy of any material or information obtained concerning the prior conviction. The charge of previous conviction shall not be read to the jury. For the purposes of this subsection, "substantive offense" means the felony offense that the trier of fact found beyond a reasonable doubt the person committed. Substantive offense does not include allegations that, if proven, would enhance the sentence of imprisonment or fine to which the person otherwise would be subject.

O. A person who is sentenced pursuant to this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis, except as specifically authorized by section 31-233, subsection A or B, until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

P. The court shall inform all of the parties before sentencing occurs of its intent to impose an aggravated or mitigated sentence pursuant to subsection H, I or J of this section. If the court fails to inform the parties, a party waives its right to be informed unless the party timely objects at the time of sentencing.

ATTACHMENT 5B



MEMORANDUM

OFFICE OF THE PIMA COUNTY PUBLIC DEFENDER

Date: May 17, 2018

To: Dean Brault, Public Defense Services Director

From:  Joel Feinman, Pima County Public Defender

Subject: Proposed criminal justice reform measures

Dear Mr. Brault:

On May 9, you requested I provide you with three criminal justice reform ideas that can be implemented by Pima County, and three that can be implemented at the state level. Below are those ideas, and a brief justification for each. Please let me know if you have any additional questions or concerns.

I. County-driven criminal justice reform proposals.

- a. Holding preliminary hearings on as many victim-involved cases as possible. This will save money and shorten the time to disposition by requiring prosecutors and defense attorneys to prepare their cases before indictment, and observe in real-time the strengths and weaknesses of their evidence as it is tested under direct and cross-examination.
- b. Making initial appearances the sole responsibility of appointed judges who understand and are held accountable to the county's jail population reduction goals. While it is important to preserve judicial discretion, Pima County can reduce its jail population and save money by ensuring that appointed judges, who serve at the pleasure of the Tucson City Council or the Pima County Board of Supervisors, only set appropriate bond amounts on appropriate cases.
- c. Encouraging the Pima County Attorney to spend RICO dollars on diversion programs and DTAP. The County Attorney's diversion programs help enrollees get sober, and are far more cost-effective than prison. If enrollment in these programs is limited by state funding, the Pima County Attorney can help preserve and expand these programs by investing RICO money in them.

II. State-driven criminal justice reform proposals.

- a. Mandating regular reporting requirements for all state prosecution agencies. Currently, criminal justice reform proposals suffer from an absence of reliable data on who is being incarcerated for what crimes, for how long, and for what charges based on what facts. A statewide, mandatory, public reporting regime - much like the one recently passed into law in Florida¹ - would allow for better and more cost-effective decision making on criminal justice reform.
- b. Giving judges more say in plea bargaining. Currently, Arizona law does not allow for judges to mandate what plea agreements are offered in what cases. Giving the judiciary more power to compel non-trial dispositions would minimize costly and unnecessary trials, and potentially lessen the number of people sent to prison instead of being placed on probation.
- c. Rewriting tracking & sales law to mandate that defendants can only be charged with those offenses if the amount trafficked or sold is more than two grams. Under the current drug laws, hundreds if not thousands of people are sent to prison for “trafficking” and “selling” *de minimis* amounts of drugs – often less than one gram. By only allowing defendants accused of trafficking or selling more than two grams of illegal drugs to be charged with a more serious offense than personal possession, far fewer people will serve costly prison sentences for very small-scale drug crimes.

¹ <https://www.bna.com/new-florida-law-n57982090782/>

ATTACHMENT 5C

MEMORANDUM

To: Dean Brault, Director
Public Defense Services

Date: May 24, 2018

From: James Fullin
Legal Defender



Subject: Proposed Criminal Justice Reform Measures

Introduction

The biggest driver of criminal justice system costs is the cost of incarceration. Other significant cost drivers are the operational budgets for law enforcement, courts, prosecution and defense.

In Arizona, counties cover the costs of jail, which is used for pre-trial detention and jail sentences. The state pays for prison sentences (felony sentences). While this division may provide perverse incentives for a county or state (in an effort to shift rather than reduce costs), this memo will examine limiting all incarceration.

Should we reduce incarceration rates, or would such a move threaten public safety? Do current incarceration rates work to achieve a safer community? The newest and most comprehensive studies are showing that maximizing the number of felony prosecutions, felony convictions, and long prison sentences is not a smart or cost-effective approach to reducing crime and making communities safer:

The Brennan Center's recent report, *What Caused the Crime Decline?*, examines 14 theories for the nation's dramatic crime decline since 1990. After a rigorous empirical analysis, it finds, among other things, that **increased incarceration played a limited role in the crime drop**. Specifically, incarceration accounted for approximately 5 percent (potentially ranging from 0 to 10 percent) of the crime drop in the 1990s, and **accounted for essentially zero percent of the crime decline since 2000**.

(*Emphasis added*). Nicole Fortier, Lauren-Brooke Eisen, *New Findings on Crime and Incarceration: How These Findings Relate to Legislation in Your State* (February 27, 2015); Roeder, Oliver K., Lauren-Brooke Eisen, Julia Bowling, Joseph E. Stiglitz, and Inimai M. Chettiar, *What Caused the Crime Decline?*, Available at SSRN 2566965 (2015); *See also*, Travis, Jeremy, Bruce Western, and Steve Redburn, eds., *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Academies Press, 2014; Chettiar, Inimai M., Lauren-Brooke Eisen, Nicole Fortier, and Timothy Ross, *Reforming Funding to Reduce Mass Incarceration*, Available at SSRN 2370524 (2013).]

There is a growing evidence that convicting more people of felonies and sending more people to prison for longer sentences is actually counter-productive:

- Overuse of incarceration leads to ineffectiveness. Incarceration has diminishing returns as a crime-control policy. When prison is used judiciously, incarceration is reserved for the highest-risk offenders, therefore increased incarceration helps reduce crime. At today's historically high levels of incarceration, correctional facilities are filled with low-level and non-violent prisoners. Further increases in incarceration have steadily decreased crime control benefits, as the individuals imprisoned pose less of a public safety risk. We are now well past the point of diminishing returns of incarceration on crime control.
- Incarceration can cause individuals to commit more crimes upon release. When people who commit less serious crimes enter prison, they are often living in unsafe or unsanitary prison conditions and surrounded by other prisoners who have committed more serious and violent offenses. These factors make re-entry into the community difficult and increase the likelihood that an individual will commit crimes upon release. The trouble many former prisoners have finding employment, and the legal and social stigmas they face, can lead to recidivism and fuel a cycle of incarceration.
- Incarceration does not serve as an effective deterrent to crime. Empirical studies indicate that longer sentences have minimal or no benefit on whether offenders or potential offenders commit crimes.

(Emphasis added). Nicole Fortier, Lauren-Brooke Eisen, *New Findings on Crime and Incarceration: How These Findings Relate to Legislation in Your State* (February 27, 2015).

Between 2008 and 2013, New York, New Jersey, and California all reduced their prison populations, reduced the number of persons subjected to felony prosecution, felony conviction, and prison, while at the same time reducing their crime rates:

Key findings:

- New York and New Jersey led the nation by reducing their prison populations by 26% between 1999 and 2012, while the nationwide state prison population increased by 10%.
- California downsized its prison population by 23% between 2006 and 2012. During this period, the nationwide state prison population decreased by just 1%.
- **During their periods of decarceration, violent crime rates fell at a greater rate in these three states than they did nationwide.** Between 1999-2012, New York and New Jersey's violent crime rate fell by 31% and 30%, respectively, while the national rate decreased by 26%. Between 2006-2012, California's violent crime rate drop of 21% exceeded the national decline of 19%.

(Emphasis added). Mauer, Marc, Nazgol Ghandnoosh, and Sentencing Project, *Fewer Prisoners, Less Crime: A Tale of Three States* (2014).

Suggested statewide changes to incarcerate only those offenders who present a public safety risk

An alarmingly high number of prison sentences are for non-violent offenses and failure to complete probation. Proposed legislative solutions or prosecutorial policy solutions to this problem include:

1. Mandate probation availability for first offense non-violent crimes in the same way that Propositions 200 and 302 mandate probation (rather than incarceration) for personal possession of drugs.
2. Removal of legal barriers to exercise of judicial discretion to suspend prison sentences in favor of probation; i.e. no such thing as “mandatory prison” except for certain delineated offenses?
3. Change mandatory minimum sentencing laws to make the sentencing schematic advisory rather than mandatory, meaning incarceration on approved violent/serious/repetitive offenses at discretion of trial judge. Just as in the federal system, judges could be mandated to make findings and conclusions to explain when a “deviation” from the sentencing range is appropriate.

These proposals would shift power from the executive branch back to the judicial branch—to judges rather than prosecutors.

Suggestions for Pima County

1. Adoption of a county-wide evidence-based protocol

Maricopa County has implemented an evidence-based protocol called Managing for Results (MFR) that focusses decision making on measurable results for community safety. See, URL <https://www.maricopa.gov/576/Managing-for-Results>. It is described as “...a comprehensive and integrated management system that focuses on achieving results for the customer and makes it possible for departments to demonstrate accountability to the taxpayers of Maricopa County.” The Maricopa County Strategic Plan for 2015-2018 specially includes the following result-oriented goals for the criminal justice system:

Strategic Priority: SAFE COMMUNITIES - Maricopa County will support safe communities and neighborhoods by providing access to a timely, integrated, and cost-effective smart justice system.

Strategic Goal: By end of FY 2018, public safety is enhanced by reducing the number of adult probationers convicted of a new felony offense to 8% or lower.

Strategic Goal: By end of FY 2018, the overall rate of juvenile recidivism is 20% or less.

Strategic Goal: By end of FY 2017, 90% of Cradles to Crayons youth with petitions filed have permanency established within 365 days of the petition filing.
Strategic Goal: By the end of FY 2016, for moderate to high risk Seriously Mentally Ill (SMI) offenders, decrease the recidivism rate by at least 5 percentage points by providing them with continuity of appropriate treatment and services during and after incarceration. Continue to reduce the recidivism rates for moderate-to-high risk SMI offenders through 2020 in amounts based upon results achieved in 2016.

County Indicators:

Violent Crime Rate • Property Crime Rate • Average length of pre-trial stay in County jail • Number of persons with mental health issues (Rule 11 finding)

Maricopa County Strategic Plan FY 2015-2018, at URL

<https://www.maricopa.gov/DocumentCenter/View/2365/County-Strategic-Plan-Summary-PDF>.

Contrasted with the Managing For Results approach in adopted Maricopa County, the Pima County Attorney has usually justified its long-standing practices by references to rampant crime: “Pima County continues to maintain one of the higher crime rates per 100,000 population in the nation, with a crime index of 5,292 exceeding both Maricopa County (3,736) and the state of Arizona (3,653).” Memorandum From Barbara LaWall, to C.H. Huckelberry, dated January 20, 2015, at p.3, paragraph 1. This year, the County Attorney posited that her office “targets violent and dangerous criminals for aggressive prosecution to protect public safety.”

Rather than accepting the crime rate or anti-crime emotional appeal justifications at face value, Pima County criminal justice stakeholders should try to agree to implement evidence-based best practices to reduce incarceration. Fortunately, Pima County experienced the same national trend in reduced felony arrests:

Total arrests in Pima County **declined** each year from 2009 to 2012, running counter to the trend in felony filings and cases presented for prosecution. There were 57,098 arrests of adults in Pima County in 2009, compared with 39,681 adult arrests in 2012, according to the Arizona Department of Public Safety’s Crime in Arizona reports. *Id.*, at p.5.

Despite the decline in felony arrests, the Pima County Attorney exercised its discretion to prosecute more arrestees on felony charges:

Felony cases filed in Superior Court have increased significantly over the last four years, from 4,860 in 2009-10 to 5,702 in 2012-13, according to court records. See, Memorandum From Barbara LaWall, to C.H. Huckelberry, dated January 20, 2015, at p.5.

In the face of a nationwide drop in felony arrests, many communities have filed fewer felony cases, secured fewer felony convictions, and sent fewer people to prison. Those cost-effective

measures, in turn, have correlated to a reduction in crime rates and increase in community safety. Mauer, Marc, Nazgol Ghandnoosh, and Sentencing Project, *Fewer Prisoners, Less Crime: A Tale of Three States* (2014).

So, a likely explanation for why “Pima County continues to maintain one of the higher crime rates per 100,000 population in the nation” is that the practice of pursuing the highest possible number of felony prosecutions and convictions, along with long prison sentences, has fueled a continuous cycle of recidivism and incarceration.

MFR could change the culture of the Pima County Attorney’s Office through engagement and adoption of shared, county-wide goals and evidence-based practices, principles, and methods.

Prosecutors generally believe that their job is to enforce the laws enacted by the legislature—that is, they try to charge and convict people whenever law enforcement agencies bring cases they feel are strong enough to pursue/obtain conviction regardless of broader goals and objectives of a local criminal justice system that is managed for results (MFR). By explicitly adopting a county-wide policy of Managing for Results (MFR), the culture and incentives of the County Attorney could be changed to result in greater efficiency and better results for community safety.

For example, performance measures within the County Attorney’s Office and within local law enforcement agencies should not be based upon number of arrests, number of indictments, number of trials, number of convictions, number of people sentenced to prison terms, the length of those prison sentences, or the amount of restitution ordered against and/or secured from persons convicted. This data is important to collect. However, as noted above, if these are the performance measures that drive the Pima County’s justice system, the end result will be divorced from more desirable results, such as reduction in crime rates, increased community safety, reduction in recidivism, and cost savings.

MFR could be a framework to agree to further measures to reduce crime, recidivism, and incarceration.

By investing in youth/children and by expansively providing preventative services such as access to employment and housing assistance programs, health care and behavioral health services (including increased in-patient services for people suffering addiction and/or people in mental health crisis), the criminal justice system is likely to encounter fewer people in crisis. Programs designed and chosen for results should be implemented for the purpose of achieving the desired, measurable result. Actual results would be measured over time. Progress toward results can in turn inform resource allocation decisions. Goals and progress could then be meaningfully communicated to stake holders, employees and the public, who could then assess our progress.

Engaging the PCAO in evidence-based dialogue and work toward restructuring the Pima County criminal justice system to better achieve measurable goals over time in reducing crime rate, increasing public safety, and reducing recidivism.

2. Discourage Wide Implementation of No Plea Policies

Too often, PCAO seeks to get as much incarceration time as possible (also known as “targeting violent and dangerous criminals”). To be sure, this is within the ambit of prosecutorial discretion. And the County Attorney is correct that the way to get as much incarceration time as possible under current law is to not offer plea bargains, thereby forcing the defense to trial or to a “plead (guilty) to the Indictment” where no benefit is conferred as an inducement to plead guilty. That way, the judge is sentencing the defendant under the statutorily highest range possible. However, the prevalence of “no plea” cases in Pima County is a cost driver that may not be producing the desired results.

Taking cases to trial unnecessarily is a cynical tactic because it does not put trust in the judiciary to impose a just sentence under a plea. Pima County Superior Court judges are highly vetted, as we have a merit selection process before appointment by the Governor. But under the current laws, Arizona prosecutors have more power than judges. After all, the prosecutor has influence over what charges to bring or pursue, whether any plea will be offered, and if so, what sentencing range the plea will contemplate. The judge only decides the sentence within the range allowed by the prosecutor.

The prevalence of “No Plea” cases is a longstanding tradition in Pima County. It is also a rarity across the nation. Almost every other jurisdiction in the country offers “plea bargains” in almost every case. Most telling, despite these decades-long practices, there has been no noticeable improvement in the crime rate or living conditions in Pima County.

Eliminate Death Penalty Prosecutions

The death penalty is well known to be a boondoggle.

4. Make PCAO functional

Currently, prosecutors either issue cases or try cases. Regardless of assignment, caseloads are quite high, and many deputy county attorneys and staff appear overwhelmed. Fewer case filings could reduce this strain, as could additional resources. High caseloads affect the ability of the prosecutor to make plea offers, set up pretrial interviews and engage in meaningful negotiation. Currently, completion of Rule 15 pretrial interviews and responses to other discovery demands are not handled efficiently.

For years, office turmoil and mismanagement has led to high rates of turnover.

Conclusion

Going forward, Pima County should follow other parts of the nation that have successfully reduced system costs without risk to community safety. Ideas for reforms in criminal justice should be chosen, implemented, and evaluated over time using principles and methods of evidence-based practices.

ATTACHMENT 5D



PUBLIC DEFENSE SERVICES

MEMORANDUM

To: Dean Brault
Director, Public Defense Services

Date: May 24, 2018

From: Kevin Burke *KB*
Legal Advocate

Re: **Justice Reform Memorandum**

INTRODUCTION:

This memorandum is in response to Sharon Bronson's May 1, 2018 request for Pima County Criminal Justice System departments to identify key issues related to justice reform on both the local and State level. The following suggested reforms would both save money for the county and produce more just results.

LOCAL REFORMS:

1. Reasonable Charging Decisions

Often times the prosecution charges a defendant with the most serious crime it can, even in situations where the class of the felony and the name of the crime suggest something much more serious than the actions of the defendant. Writing a couple of bad checks becomes a lofty class two felony fraudulent scheme; middling a \$40 drug deal for an undercover in the hopes to get a small piece to feed a drug addiction becomes a lofty class two felony drug sales; putting a cellphone in a purse or under a jacket magically transforms a simple shoplifting into a much more serious class four felony organized retail theft. The list goes on.

The irony is that many people will support the passage of these types of broad statutes because they believe that the prosecuting agencies will use their prosecutorial discretion to charge the crime that most fits the defendant's actions rather than the most serious crime that could possibly be charged. Overcharging can make for unjust results as well as waste money. More time and resources are required to resolve serious charges. More reasonable charging decisions will result in quicker resolution of cases and less money spent on unjust incarceration disproportionate to the defendant's actions.

2. Pleas to Determinate Sentences in Straightforward Cases

In Pima County, pleas almost always include a range of options for the judge. For instance, a plea can be to a class 3 felony first time range with probation as an option. This means that the judge can sentence the defendant to as little as 2 years, as much as 8 years, or the judge can suspend the sentence and place the defendant on probation. This makes sense in cases where the issues, aggravation, and mitigation are involved and the judge needs to weigh a lot of information to make a just decision.

But many first-time non-violent cases could be resolved more quickly with less expenditure by including in the plea itself a determinate sentence. It may take time and continuances to convince a client to take a plea in which the likely outcome is probation but the defendant's attorney and judge also tell the client that it is possible that the client will receive 8 years in prison. In addition, court and probation time is spent on sentencing hearings and pre-sentence reports, which may not be needed if there is a determinate sentence in the plea.

3. Refrain from Filing Capital Cases

Capital cases are very expensive for both the prosecution and defense and therefore deplete county funds that can be better spent on more positive programs. Now that the mandated sentence in Arizona for premeditated first degree murder is natural life (life in prison without parole), there is little justification that capital punishment is needed.

STATE REFORMS:

1. Actual Court Discretion

While some judges may complain that my second suggestion of negotiating pleas with determinate sentences in straightforward cases takes away the court's discretion, the real issue that robs the courts of discretion is mandatory sentencing. Aggressive charging (see Local Reform 1 above) combined with mandatory prison time and extended prison ranges for priors can result in a defendant looking at prison time greatly disproportional to the crime (e.g. 10.5-35 years for a drug addict middling a drug deal for the third time). Mandatory consecutive sentences for separate counts can also result in sentences that give the court no real discretion at all. Viewing 10 images of child pornography is subject to 10-24 years per count, mandatory consecutive, so a total of 100-240 years in prison. While the judge has a range of 140 years to choose from, in the end any possible sentence is a life sentence.

Whether to offer a fair plea is completely in the hands of the prosecutor. Therefore, some defendants are forced to go to trial, which both takes up court time and can result in sentences disproportionate to the defendant's actions. Also, because judges have no real discretion in some cases, they are stuck with the sentencing range mandated by the charges, even if the particular facts show that it is disproportionate. This can result in innocent defendants having to choose between risking life in prison and accepting a probation available plea that the prosecution offered because they know their case is weak.

Several other states allow the Court the power to deviate from the sentencing guidelines if the court states on the record the reasons the departure is just. The courts can use this power in Settlement Conferences to help encourage non-trial dispositions in appropriate cases, thereby resolving cases that otherwise may go to trial. Without court discretion, the courts are essentially powerless during Settlement Conferences. Allowing judges real discretion will help resolve cases more quickly and result in more just sentencing by letting a neutral party decide on the appropriate sentence rather than leaving it in the control of the prosecutor.

2. Approval for 38d Law Student Interns to Appear in Court on Simpler Tasks such as Initial Appearances and Arraignments without a Supervising Attorney Present

Some court hearings are important but relatively straightforward. Presently, 38d law student interns can only appear in court if there is a supervising attorney present in the court with them. Perhaps there could be a change that allows law student interns to appear on certain matters without the supervising attorney present in the room if the student has completed an Arizona Bar approved training. This would free up licensed attorneys to spend more time on the more complex aspects of their practice.

3. Reforming the drug laws

Our criminal justice system is bogged down in drug offenses. After defendants have been convicted of two drug offences they no longer are probation eligible. A person with a serious drug addiction can often relapse on their first and second attempt to stop using drugs. And prison rarely works as treatment or deterrence for serious drug abusers. The statutes also treat addicts who sell small quantities to fund their habit or even addicts who middle a deal for an undercover officer the same as people who sell strictly for profit. They are also not eligible for treatment under the current statutes. As stated before, these defendants could be looking at 10.5 to 35 years in prison, which is much more expensive than another chance at treatment. While Proposition 200 was a step in the right direction, there needs to be a much greater move towards treatment and away from the present punitive approach.

cc: Barbara LaWall, Pima County Attorney
Amelia Cramer, Chief Deputy County Attorney
Thomas Weaver, Chief Criminal Deputy
Honorable Kyle Bryson, Presiding Superior Court Judge
Wendy Peterson, Assistant County Administrator for Justice and Law Enforcement

ATTACHMENT 6



MEMORANDUM

To: Wendy Petersen, Deputy County Administrator

From: Lisa Royal, Justice Court Administrator

Date: June 11, 2018

Re: Response to Supervisor Bronson's Request for Comment

On May 23, 2018, you forwarded Supervisor Bronson's request asking all Pima County criminal justice departments to identify three suggestions to reform the criminal justice system as well to comment on the reform initiatives enacted by the Philadelphia District Attorney.

As you are aware, the justice court has actively worked to reduce warrants by conducting Saturday court on a quarterly basis and extended evening court on a monthly basis. We provide extensive outbound call and text reminders to defendants of future court hearing dates and have worked with the County Attorney's office to dismiss hundreds of warrants that have been in the system for five years or more. Also, we accelerated pretrial hearings for defendants held on bond following their twice-daily initial appearance court (2XIA) hearing. These initiatives have had a positive impact on reducing jail days and reducing costs.

It is difficult for the court to enact additional reform initiatives since we are not the drivers of the system. However, revamping the 2XIA process may produce other positive results. Currently, City Court magistrates perform initial appearance hearings twice daily at the Minimum Security Facility for all defendants booked into the Pima County jail. Magistrates preside over 2XIA hearings under an MOU entered into approximately 15 years ago between Superior, Justice, and City Court. The cost-effectiveness of the 2XIA process has not been reviewed since its inception. Pima County Consolidated Justice Court is financially obligated for approximately \$80,000 per year to cover the cost of the City Court magistrates.

A review of the justice court defendants seen at 2XIA revealed that each week approximately 50-60 defendants are held on bond. These defendants are scheduled for a pretrial conference before a justice of the peace (JP) the following day. At the pretrial hearing about 95% of the defendants are released, and of these defendants approximately 40% enter into a plea agreement.

If the JPs conducted their own 2XIA hearings, with the presence of a prosecutor or by way of "standing plea" agreements, the majority of defendants would either be released from jail immediately with a new court date or their case would be disposed by plea. In 2010, the Pima County Attorney's Office authorized the JP's to offer certain "standing plea" agreements at 2XIA court. Cases that qualified for standing pleas most commonly had charges of Criminal Traffic other than DUI, Title 4 violations, False Reporting, Marijuana Possession, and Possession of Drug Paraphernalia cases. This provision went away when the justice court contracted with the city to hear the 2XIA caseload.

This concept will require further exploration and analysis, as well as coordination with our criminal justice partners, but would further reduce jail days, eliminate the daily pretrial conference calendar and improve time to disposition.

As the third branch of government we have a duty to be neutral and impartial. Consequently, we will abstain from commenting on the reform initiatives enacted by the Philadelphia District Attorney.

PC: Hon. Adam Watters, Presiding Judge

ATTACHMENT 7



Barbara LaWall
Pima County Attorney

Pima County Attorney's Office
32 N. Stone Avenue, #1400
Tucson, AZ 85701

Phone: 520-724-5600
www.pcao.pima.gov

MEMORANDUM

To: Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement

From: Barbara LaWall, Pima County Attorney 

Date: May 21, 2018

Re: The DTAP Program

I write to respond to your May 15, 2018 request for information attaching the May 3, 2018 memorandum to you from the County Administrator and the May 1, 2018 memorandum to him from Supervisor Bronson.

I must begin by noting that the May 1, 2018 memorandum from District 3 Supervisor Bronson to the County Administrator contains inaccurate information regarding the Drug Treatment Alternative to Prison (DTAP) Program:

First, the DTAP Program is not "focused on first-time offenders." On the contrary, as explained at length in my April 25, 2018 memorandum on The Prosecution of Drug Cases in Pima County, DTAP is for those who have been convicted multiple times of drug possession offenses who would, per state law, in the absence of the Program, be mandatorily sentenced to prison upon conviction at trial.

Second, the total number of participants in DTAP since it first accepted enrollment is 295 participants (not 139 as Supervisor Bronson misstated). The program has grown 250% in size since inception in 2010, in terms of the number of new participants accepted each year. It also has been expanded multiple times in terms of the types of crimes serving as the predicate for eligibility. We now accept not only those charged with repeat felony drug possession, but also some small drug sales, and some property offenses as well, which represents a population not reflected in drug case statistics.

Third, enrollment commenced in January 2011 (not 2010 as suggested by Supervisor Bronson) after I obtained two, large federal grants at the end of calendar year 2010 that enabled establishment of DTAP.

Fourth, the cost savings realized by the DTAP Program that inure to the benefit of Pima County taxpayers in several ways are far from “negligible.” Indeed, they have been quantified in the multiple millions of dollars. These savings include the following:

- (1) reduced jail, prosecution, defense, and court costs saved by expediting the disposition of cases;
- (2) reduced costs to local taxpayers that are paid into the state system that runs the Department of Corrections;
- (3) reduced costs to local taxpayers for criminal justice system costs that would result from the higher recidivism rate of those defendants sent to prison. (All DTAP participants have a serious substance addiction, and data reveal that an average of about 95% would relapse on drugs after release if sent to prison, and they are likely to return from prison to Pima County);
- (4) reduced costs that otherwise would be incurred through emergency room visits for overdoses; and
- (5) numerous other social costs to the local community, including but not limited to the secondary effects on participants’ families/children, income lost to the family due to that family member being incarcerated not to mention the psychological impact on the children of having an incarcerated parent.

Participants in the DTAP program also generate revenue because they are employed and are contributing taxes to the city, county, and state (likely a small amount; however these are also individuals who will be less likely to rely on the community resources upon return from prison). Quantification of just the first two of these five types of cost savings has been calculated by independent researchers whose reports are publicly available on my office website. The most recent cost-benefit study shows that the average savings for just these two types of cost savings is more than \$17,000 per participant. Expediting disposition, including combining the plea and sentencing hearings, which saves approximately 30 Pima County Jail bed days for most DTAP participants, represents a significant portion of this savings. Last year, DTAP took in 63 new participants, representing a savings of more than \$1 million for them alone - on just those first two types of cost savings.

We recently undertook a calculation of the number of local misdemeanor and felony arrests and associated Pima County Jail stays that the first 60 successful DTAP Program graduates experienced prior to being arrested on the charges that led to them entering the DTAP Program. We found that the number of Pima County Jail bed days for this population totaled 3,734 for felony arrests and 3,431 for misdemeanor arrests, for a grand total of 7,165 Jail bed days. This is

because, prior to entering the DTAP Program, every single one of these individuals had been serial recidivists. We are informed by the Sheriff's Department that the cost of incarceration in the Jail is approximately \$100 per day. At that rate, the total cost for local incarceration for these individuals was \$716,500 prior to their arrest that led to entry into the DTAP Program. Since these individuals successfully graduated from the three-year DTAP Program and ceased recidivating, they have had zero arrests and zero bed days in the Pima County Jail. This demonstrates a significant savings in Jail bed days alone realized as a result of stopping these individuals who had been serial recidivists from continuing to engage in criminal activity. This does not include any of the other associated local cost savings, including law enforcement call-outs, law enforcement transports to Jail, law enforcement transports to court, costs for detectives, judges, judicial assistants, court reporters, prosecutors and their support staff, defense attorneys and their support staff, and the other direct costs associated with each arrest. (Nor does it include any of the other, indirect savings in emergency room visits, child welfare costs, etc., much less the cost savings to state taxpayers for prison bed days.)

I also note that the DTAP program has brought Pima County positive national attention. We have been listed in a publication by the federal Substance Abuse and Mental Health Services Administration as a model for best practices (<https://store.samhsa.gov/product/Guidelines-for-Successful-Transition-of-People-with-Mental-or-Substance-Use-Disorders-from-Jail-and-Prison-Implementation-Guide/SMA16-4998>).

Other communities around the country are looking to our program as a model for care and reform. Moreover, the U.S. District Court for the District of Arizona recently visited our Pima County DTAP Program and indicated it intends to establish a similar program. Indeed, the MacArthur Foundation noted the DTAP program as one of the reasons it had confidence in the ability of Pima County to succeed with a Safety + Justice Challenge grant.

On behalf of the County Administrator, you ask for the number of individuals with specific drug charges who participated in DTAP as compared to those with similar drug charges who did not participate. Over the six and a half years that the DTAP Program has been in operation, only six defendants have ever rejected the offer to participate in the DTAP Program. All others (98%) have agreed to participate and have accepted the DTAP plea agreement offered to them.

During the first three years of operation of the DTAP Program, there was a cap on the number of participants that could be accepted into the Program due to

grant funding limitations. The first year, federal grant funding allowed for only 20 participants. The second and third years, federal grant funding allowed for only 30 participants. Eligible defendants were offered the DTAP Program on a first-come, first-served basis during those first three years. There has been no such cap in subsequent years.

With the second round of federal grants, combined with the adoption of the federal Affordable Care Act effective in January 2014, and Medicaid expansion in Arizona (which expanded AHCCCS eligibility), as well as two appropriations from the State Legislature since 2014, all eligible defendants have been offered the DTAP Program and have been able to participate. Should current funding be sustained, we will continue to be able to accept all eligible defendants into the DTAP Program.

You also inquire on behalf of the County Administrator whether the suggestion in the County Administrator's memo that the DTAP Program diverts five percent of felony drug cases from prison is accurate. I do not know where this percentage comes from nor how it was calculated.

The DTAP Program is available to divert from prison all defendants who meet the eligibility criteria, as is explained in my April 25, 2018 memorandum.

Those who are not diverted from prison via the DTAP Program are only those who are not eligible for the Program. This includes defendants charged with lesser offenses, including felony drug possession for the first time who receive Felony Drug Diversion through which they have the charges against them dismissed. It also includes defendants charged with felony drug possession for the second and third times who are eligible for and receive Probation upon conviction. They would not have been sentenced to prison, so they are not eligible for DTAP. Moreover, it includes defendants who are ineligible for the DTAP Program because they committed more serious felony offenses who will be sentenced to prison if convicted of the drug charges against them involving international drug trafficking, bulk transportation of drugs, and drug dealing, including to children in schools and parks. Finally, it includes defendants who might have been eligible for the DTAP Program based upon their drug charges, but were rendered ineligible due to their involvement in other, additional criminal activities rendering them unsuitable, including: additional, concurrent felony charges (for homicide, sexual assault, domestic violence, weapons offenses, etc.); prior felony convictions (for violent offenses, sex offenses, or weapons offenses); or, on rare occasions, confidential intelligence provided by law enforcement officers indicating that they are the subject of an ongoing

Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement

May 21, 2018

Page 5

criminal conspiracy investigation in which they are believed to be playing a significant role in more serious felony crimes, such as narcotics trafficking, weapons trafficking, home invasions, and the like.

Should you have further questions about the DTAP Program, I encourage you to meet with my Chief Deputy, Amelia Cramer, and my Director of Specialty Court Initiatives, Kate Lawson.

Cc: The Honorable Kyle Bryson, Presiding Superior Court Judge
C.H. Huckelberry, County Administrator
David Sanders, Chief Probation Officer
Dean Brault, Public Defense Services Director
Amelia Cramer, Chief Deputy County Attorney
Thomas Weaver, Chief Criminal Deputy
Kate Lawson, Director of Specialty Court Initiatives

ATTACHMENT 8



Barbara LaWall
Pima County Attorney

Pima County Attorney's Office
32 N. Stone Avenue, #1400
Tucson, AZ 85701

Phone: 520-724-5600
www.pcao.pima.gov

MEMORANDUM

To: Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement

From: Barbara LaWall, Pima County Attorney

Date: May 24, 2018

Re: Prosecutorial Charging Decisions and Plea Policies on Behalf of the State of Arizona

Supervisor Bronson has asked the County Administrator to have you assist him in analyzing my prosecutorial charging and plea policies. I must, respectfully, decline to participate with this endeavor as presented, because it would conflict with my legal and ethical obligations to the State of Arizona and would violate my oath of office.

Charging Decisions

Arizona state law sets forth many legal obligations of the County Attorney, the first among them being to serve as the public prosecutor in the county on behalf of the State of Arizona. This state law mandates that the County Attorney *shall* conduct all prosecutions *on behalf of the State* for all public offenses and institute criminal proceedings when the County Attorney has information that the offenses have been committed. A.R.S. § 11-532(A)(1) & (2). In other words, the County Attorney's primary duty is to prosecute crime when evidence shows that a person has committed a crime. The State of Arizona, not Pima County, is the County Attorney's client in criminal cases.

The County Attorney is obligated to be licensed to practice law in the State of Arizona and to be in good standing with the State Bar, which requires adherence to the Ethical Rules for lawyers promulgated by the Arizona Supreme Court. Those Ethical Rules provide that a lawyer must act with reasonable diligence in representing a client. As the prosecutor for the State, the County Attorney is obligated to act with diligence – taking whatever lawful and ethical measures are required to vindicate the State's cause in prosecuting criminal cases to enforce State laws. Rule 42, Arizona Rules of the Arizona Supreme Court, Ethical Rule (ER) 1.3.

The County Attorney must diligently enforce State criminal laws, regardless of her opinion with regard to the propriety of those laws. The Ethical Rules provide

Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement

May 24, 2018

Page 2

that a lawyer's representation of a client does not constitute an endorsement of the client's political, economic, social, or moral views or activities. ER 1.2(b). Accordingly, whether the County Attorney agrees with Arizona's criminal statutes or not, she is obligated to enforce them diligently in her role as prosecutor for the State.

As explained in my April 25, 2018 memorandum, prosecutorial charging decisions are *legal* decisions made on behalf of the State of Arizona in accordance with the foregoing legal and ethical obligations. My deputies and I have taken an oath to faithfully and impartially uphold and defend the laws of the State of Arizona. When law enforcement officers make an arrest or present evidence to my Office seeking an indictment, we must review the evidence in light of the state law and make a *legal* determination whether to proceed with prosecution. Such legal charging decisions are not policy judgments; they are legal opinions. Charging decisions are subject to judicial review by the Arizona courts; they are not subject to review by the county board of supervisors or county administration or any other county agency.

Plea Policies

Prosecutors are afforded discretion under state law to offer and enter into plea agreements. Plea agreements are subject – upon acceptance by the defendant – to judicial review. This judicial review is to determine that there is a factual basis demonstrating that the accused committed the crime(s) to which he or she pleads guilty and that after receiving advice of defense counsel the defendant is entering into the plea agreement knowingly and voluntarily, waiving the right to a jury trial.

Prosecutorial discretion with regards to plea agreements is to be exercised by prosecutors *with* input from the victim(s), as well as law enforcement, but *without* undue influence from any outside individual or entity. Neither the judicial nor legislative branches of government may interfere with this executive function that has been delegated by the State to its prosecutors. County government may not interfere with a prosecutor's representation of the State of Arizona in this regard.

For these reasons, it would be inappropriate for a member of the Board of Supervisors or county administration to attempt to interfere with or exert undue influence upon me and my deputies with regard to our representation of the State of Arizona in connection with our prosecutorial function.

Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement

May 24, 2018

Page 3

Data Regarding Misdemeanor and Felony Arrests and Charges

Finally, there is a request by a member of the Board of Supervisors for the County Administrator to review arrest and charging data involving misdemeanor and felony defendants. These data are available in public records – both in individual case files and in aggregate reports.

Each law enforcement agency maintains records of all its arrests and misdemeanor citations. There are approximately 30 law enforcement agencies that make arrests and issue citations in Pima County. However, most of the arrests and citations are generated by the Tucson Police Department and the Pima County Sheriff's Department. The Sheriff's Department maintains records not only of its arrests and citations, but also of all law enforcement agencies' arrest bookings into the Adult Detention Center. The Arizona Superior Court in and for Pima County, the various Pima County Justice Courts, and municipal courts, including Tucson City Court, as well as Marana, Oro Valley, and Sahuarita Town Courts and South Tucson City Court, all maintain records of charges filed with them.

My Office maintains records of felony cases we prosecute in Superior Court and misdemeanor cases we prosecute in the Justice Courts. The Arizona Attorney General likewise maintains records of the felony and misdemeanor cases it prosecutes in Superior Court and other courts. In addition, each of the City and Town Attorneys maintains records of the misdemeanor cases they have prosecuted in their municipal courts.

Through my Office's participation in the Safety + Justice Challenge over the past four years, my Office has consistently made available such records as we have regarding the cases we prosecute. Should additional records now be requested, we will, of course, cooperate in making them available.

cc: The Hon. Kyle Bryson, Presiding Judge Pima County Superior Court
Sheriff Mark Napier
The Honorable Adam Watters, Presiding Justice of the Peace, Pima
County Justice Courts
C.H. Huckelberry, Pima County Administrator
Amelia Craig Cramer, Chief Deputy County Attorney
Thomas Weaver, Chief Criminal Deputy

ATTACHMENT 9



PUBLIC DEFENSE SERVICES

MEMORANDUM

To: Sharon Bronson
District 3 Supervisor
Pima County Board of Supervisors

Date: May 24, 2018

From: Dean Brault
PDS Director

Subject: Philadelphia District Attorney Larry Krasner's Policy Changes

In your May 1, 2018 memorandum to Chuck Huckelberry, you requested that all participants in the Justice Coordinating Council provide input on whether or not Pima County should pursue policies similar to those implemented by Philadelphia District Attorney Larry Krasner in his February 15, 2018 memo. The short answer is that we can and should do the things that do not happen here already. All of the policies outlined in that memo, however, are entirely under the control of the County Attorney and to a far lesser extent, the Arizona Attorney General. I will address each section in Mr. Krasner's memo in order.

The directives in the first section titled, "DECLINE CERTAIN CHARGES" could be adopted in Pima County. Items 1 and 2 dealing with marijuana possession, purchase, and paraphernalia could be adopted by the County Attorney's Office. Marijuana possession and paraphernalia are usually, but not always, charged and resolved as misdemeanors. The County Attorney could do more and elect to not prosecute marijuana charges at all. Numbers 3 and 4 dealing with prostitution are an example of discretionary charging. Just because it is possible to charge a higher-level offense for prostitution cases involving prior convictions, does not mean that it is required. Prostitution charges in Pima County as are usually resolved at the misdemeanor level, thus not making this specific example a significant issue. This principle, however, could extend other areas where exercising better discretion in charging could have a significant impact.

The principles in the second section titled, "CHARGE LOWER GRADATIONS FOR CERTAIN OFFENSES" could also be adopted in Pima County. Prosecutors should exercise discretion in how offenses are charged. That discretion should not be to always charge the most serious offense that could fit the facts of the case. Item 1 is a prime example that illustrates different approaches. Philadelphia's approach in this example is to use discretion to charge retail theft offense as what would be a class 2 misdemeanor in Arizona. Retail thefts are routinely charged by the County Attorney as class 4 felonies. Depending on the circumstances, they are often also charged as class 2 fraudulent schemes and/or computer tampering. Shoplifting charges with shoplifting priors are also often charged as class 4 felonies. The County Attorney could easily adopt a similar approach.

The section titled, "DIVERT MORE" contains one policy that is possible. Item one regarding carrying a weapon without a permit is inapplicable because Arizona does not require permits to carry weapons, whether concealed or not. The second item regarding diversion for DUI cases

is precluded by Arizona law. The third item regarding diversion for marijuana distribution is possible. The diversion program recently established by the County Attorney's Office could certainly be expanded to marijuana distribution and related offenses.

The section titled, "INCREASE PARTICIPATION IN RE-ENTRY PROGRAMS" is not an issue. The County Attorney's Office is already an active collaborator in most aspects of the criminal justice system in Pima County. The memo's directive for prosecutors to discuss and formulate suggestions to improve re-entry programs is a task already undertaken as illustrated by the County Attorney's participation in programs like the Safety and Justice Challenge.

The section titled, "PLEA OFFERS" is another area where the general principles could be adopted. Item 1 regarding offers below the mitigated range mirrors my first suggestion for local criminal justice reform in my memorandum of May 24, 2018. That suggestion is for the County Attorney to make meaningful plea agreements in all non-dangerous cases. Item 2 of Mr. Krasner's memo appears to require supervisor approval to offer a plea agreement that contains exposure any harsher than the mitigated sentence. The County Attorney's Office currently takes, if anything, the opposite approach. Permission to offer better plea agreements (or any plea at all in some cases) usually requires supervisor approval. Prosecutors often cite the lack of discretion as a reason for leaving the County Attorney's Office.

The section titled, "SENTENCING" also contains ideas that could be implemented by the County Attorney's Office. The section requiring a statement at sentencing of what the cost of incarceration is for the requested sentence and why that is warranted could be adopted by the County Attorney. The cost of incarceration is already being provided in appropriate cases by defense attorneys in Public Defense Services. Deputy County Attorneys almost always make sentencing recommendations. They usually ask for no less than the presumptive sentence in prison cases. In cases where probation is available, they nonetheless sometimes request prison sentences. In cases where probation is likely, instead of recommending probation, they will state, "if the court is inclined to place the defendant on probation, the state recommends no less than..." followed by a minimum period of probation or certain requested conditions. These are practices could be changed by the County Attorney, should there be any desire for such systemic change.

The only principle mentioned in Mr. Krasner's memo that is out of the control of the County Attorney is noting the cost of incarceration at sentencings. That information is already being provided in select cases by Public Defenders, Legal Defenders, and Legal Advocates. All of the other applicable principles outlined in that memo could be adopted by the Pima County Attorney's Office. All of those policies would result in cost savings. They would also lead to a more fair and reasonable criminal justice system that is equally effective.

cc: The Honorable Chairman and Members, Pima County Board of Supervisors
C. H. Huckelberry, County Administrator
Barbara LaWall, Pima County Attorney
Amelia Cramer, Chief Deputy County Attorney
Members, Justice Coordinating Council