MEMORANDUM

Date: May 3, 2018

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

From: C.H. Huckelberry
County Administrator

Re: **Supervisor Sharon Bronson's May 1, 2018 Memorandum Regarding Fiscal Year 2018/19 Criminal Justice System Budgets**

Attached is a memorandum from Supervisor Sharon Bronson regarding the Fiscal Year 2018/19 County criminal justice system budgets. In the second paragraph is a discussion regarding the County Attorney's Drug Treatment Alternative to Prison (DTAP) program. It would be appropriate to provide more detail on the number of individuals who participated in DTAP with specific drug charges versus those individuals with similar drug charges that did not participate. If the data provided is accurate, the program only diverts five percent of felony drug cases from prison. This is a relatively insignificant amount and should be evaluated from a cost effective prospective to the County, not the State. The State is the entity avoiding the cost of prison housing, not the County.

One Page 2 of the attached memorandum, there is a request to ask all County departments and agencies of the criminal justice system to identify key issues related to justice reform. Please ask all entities for their top three suggestions that could be implemented to reform the system.

It is also requested that each entity respond to and comment on initiatives of the Philadelphia District Attorney Larry Krasner and if these entities see any parallels or opportunities for similar strategies in Pima County.

Finally, there is a request to review arrest and charging history of criminal defendants, please include both misdemeanor and felony cases in such an analysis.

I would appreciate your follow up the requests contained in Supervisor Bronson's memorandum and the development of an appropriate work plan to address these issues.

CHH/anc

Attachment

c: The Honorable Chairman and Members, Pima County Board of Supervisors
The Honorable Kyle Bryson, Presiding Judge, Pima County Superior Court
The Honorable Mark Napier, Pima County Sheriff
The Honorable Barbara LaWall, Pima County Attorney
Joel Feinman, Pima County Public Defender
Dean Brault, Director, Public Defense Services

PIMA COUNTY

MEMORANDUM

Date: May 1, 2018

To: Chuck Huckelberry
Pima County Administrator

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

Re: FY18-19 Pima County Criminal Justice Systems Budgets

In a May 23, 2017 memorandum to Chief Deputy County Administrator, Jan Lesher, I requested that Pima County Justice and Law Enforcement Departments provide the Board of Supervisors with an assessment of their major cost drivers prior to final budget adoption on June 20, 2017. Such was provided. Directly or indirectly, the operations of Pima County's Justice and Law enforcement departments consume more than half of Pima County's general fund budget. Since the beginning of 2008 recession, other Pima County departments saw a decrease in General Fund support, while support for Justice Systems departments has remained steady or increased.

Pima County's participation in the MacArthur Foundation Safety + Justice Challenge produced some cost savings. Warrant Resolution Court is one such example. The Pima County Attorney's Office (PCAO) Drug Treatment Alternative to Prison (DTAP) program is another innovative post-conviction strategy focused on first time offenders that has reduced the jail population and recidivism. However, the capacity of this program is limited and the program has had a negligible effect on reducing costs. According to the Pima County Superior Court, in FY16-17, 2052 felony drug cases were filed in Pima County. This was 36% of all felony cases filed. The most of any type of case of case type this was in stark contrast to the 139 people participating in DTAP since its inception 2010. While innovative strategies have resulted in some decline to our pre-trial incarceration rate, we continue to criminalize poverty with our current bail policies.

Some strategies under current consideration include regional consolidation of misdemeanor courts to include a problem-solving court, expansion of non-crises intervention services for those suffering from behavioral health and substance abuse disorders, and the pending implementation of a pre-arrest felony drug diversion program by the Tucson Police Department (TPD). These should be pursued.

While recognizing that maintaining public safety is paramount, based on provided data and regardless of the possession amount, non-violent misdemeanor and felony drug arrests and prosecutions appear to on the rise and to be major system cost drivers. Current data seems to suggest that the PCAO continues to have the highest trial rate among Arizona's fifteen counties and often brings multiple charges against individuals not guilty of violent crimes, sexual assault, or felons in possession of a weapon rather than charging lower gradations for non-violent offenses. Some have argued that the high trial rate might be related to the nature and type of plea bargains offered to the accused. I respectfully request that an analysis of both the charging and plea bargain practices of the PCAO be undertaken to determine if such is the case.

Systems are complex. Acknowledging that, I am asking that Pima County Criminal Justice System departments and agencies identify key issues related to justice reform that can be resolved locally and provide direction to the Board of Supervisors as to major reforms to the system that require action from the Governor and Legislature prior to final budget adoption on June 19, 2018.

I am also requesting that all participants in the Justice Coordinating Council review the policy memo dated February 15, 2018 from Philadelphia District Attorney Larry Krasner that was provided at the JCC meeting of April 26, 2018 and provide comments as to whether or not Pima County should pursue a similar strategy in reducing system costs. It would be useful to have responses prior to the next JCC on July 26. 2018.

Criminal Justice is a system and systems should be integrated to optimize the use of resource thus producing the best possible outcomes. Actions by either local enforcement agencies or the PCAO impact the remaining departments and agencies in the system. Both local law enforcement agencies and PCAO have discretion as it relates arrest and charging. For instance, Arizona statutory and case law grants the PCAO almost unlimited discretion over how cases are charged and what plea agreements are offered, Mandatory minimum sentencing also grants the PCAO wide-ranging discretion over whether defendants are sentenced to prison or probation and over the length of their imprisonment.

In your FY18-19 budget proposal, you recommend the formation Justice Commission, comprised of outside respected experts in criminal justice reform. Should the Board act to approve this recommendation upon final budget adoption, I respectfully suggest that this commission be immediately tasked with reviewing the arrest and charging history and policies of local Pima County law enforcement agencies and the PCOA and make recommendations for change that reduce costs and improve community outcomes while ensuring public safety.

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

Enclosures:1

NEW POLICIES ANNOUNCED FEBRUARY 15, 2018

These policies are an effort to end mass incarceration and bring balance back to sentencing. All policies are presumptive, not mandatory requirements. Where extraordinary circumstances suggest that an exception is appropriate, specific supervisory approval must be obtained. Wherever the term "supervisory approval" is used, it means that:

(1) An Assistant District Attorney must obtain approval of the unit's supervisor, and

(2) The supervisor must then obtain approval from the District Attorney, or in his absence, the approval of First Assistant Carolyn Temin or Robert Listenbee

(3) Bona fide verbal approvals and disapprovals are sufficient and must be noted in the case file, including the date of approval and identity of the requesting Assistant District Attorney and the supervisor who obtained approval or disapproval from the District Attorney.

DECLINE CERTAIN CHARGES

1. Do not charge possession of marijuana (cannabis) regardless of weight.

2. Do not charge any of the offenses relating to paraphernalia or buying from a person (BFP) where the drug involved is marijuana.

3. Do not charge prostitution cases against sex workers where a person who has been arrested has two, one or no prostitution convictions. Withdraw all pending cases in these categories that would be declined for charging under this policy.

4. Individuals who have three or more prostitution convictions will be charged with prostitution and immediately referred to DAWN Court.

CHARGE LOWER GRADATIONS FOR CERTAIN OFFENSES

Rationale: summary gradation greatly reduces pre-trial incarceration rates as no bail is required and the shorter time required for hearings expedites Municipal Court and Common Pleas dockets.

1. Charge and dispose of Retail Theft cases as summary offenses unless the value of the item (s) stolen in a particular case exceeds $500.00 or where the defendant has a very long history of theft and retail theft convictions.

2. You must seek supervisory approval to charge and dispose of retail theft cases at misdemeanor or felony levels.

3. Remember, that a summary conviction permits a sentence of 90 days incarceration, fines of up to $250, and full restitution. These penalties are sufficient to hold a retail thief accountable.

4. In all cases, seek full restitution.

DIVERT MORE

All attorneys are directed to approach diversion and re-entry with greater flexibility and an eye toward achieving accountability and justice while avoiding convictions where appropriate. For example:

1. An otherwise law-abiding, responsible gun owner who is arrested because he does not have a permit to carry a firearm may apply for individualized consideration for diversion.

2. An otherwise law-abiding, first DUI (driving under the influence) defendant who has no driver's license (regardless of whether or not that defendant's immigration status interferes with obtaining a license under Pa. law) may apply for individualized consideration for diversion with a requirement of efforts to overcome license impediments where possible as an aspect of any diversionary program.

3. A defendant charged with marijuana (cannabis) delivery or PWID (Possession with the Intent to Deliver) may apply for diversion.

   This is not a comprehensive list.

INCREASE PARTICIPATION IN RE-ENTRY PROGRAMS

In general, some effective re-entry programs have failed to attract more candidates due to rewards and incentives of the program that are minor compared with the major effort required of re-entering Philadelphians. Effective re-entry programs prevent crime and should apply to more re-entering Philadelphians. ADAs and staff involved in re-entry are directed to discuss and formulate suggestions to improve this situation by May 1, 2018.

PLEA OFFERS

Note: This policy does not apply to Homicides, Violent Crimes, Sexual Assault Crimes, Felon in Possession of a Weapon (6105), and Economic Crimes with a loss of $50,000 dollars or more or cases involving attacks on the integrity of the judicial process (e.g. false reports to police, perjury, obstruction of the administration of justice, witness intimidation, etc. All of these cases require supervisor approval as stated above.

1. Make plea offers below the bottom end of the mitigated range of the PA Sentencing Guidelines for most crimes.

2. Where an Individual ADA believes an offer below the bottom end of the mitigated range is too low due to specific factors, that ADA must seek supervisory approval of a higher offer.

3. Where the applicable sentencing guidelines range is between 0 and 24 months, ADAs should seek more house arrest, probationary, and alternative sentences in appropriate cases.

SENTENCING

AT SENTENCING, STATE ON THE RECORD THE BENEFITS AND COSTS OF THE SENTENCE YOU ARE RECOMMENDING

The United States has the highest rate of incarceration in the world. It has increased 500% over a few decades. Pennsylvania and Philadelphia have been incarcerating at an even higher rate than comparable U.S. states and cities for decades--a 700% increase over the same few decades in Pennsylvania; and Philadelphia in recent years has been the most incarcerated of the 10 largest cities. Yet Pennsylvania and Philadelphia are not safer as a result, due to wasting resources in corrections rather than investing in other measures that reduce crime. Pennsylvania's and Philadelphia's over-incarceration have bankrupted investment in policing, public education, medical treatment of addiction, job training and economic development---which prevent crime more effectively than money invested in corrections. Over-incarceration also tears the fabric of defendants' familial and work relationships that tend to rehabilitate defendants who are open to rehabilitation and thereby prevent crime. As a result, a return to lower rates of incarceration for those defendants who do not require lengthy sentences is necessary in order to shift resources to crime prevention. Ultimately, the highest goal of sentencing must be to seek justice for society as a whole (the Commonwealth includes victims, witnesses, defendants, and those not directly involved in an individual case) while effectively preventing crimes in the future via methods that work. Each case, each defendant, and each sentence is unique and requires your careful consideration.

At sentencing, ADAs must state on the record their reasoning for requesting a particular sentence, and must state the unique benefits and costs of the sentence (e.g. consider where applicable the safety benefits, impact on victims, interruption of defendants' connections to family, employment, needed public benefits, and the actual financial cost of incarceration). In each case, place the financial cost of incarceration on the record as part of your explanation of the sentence recommended.

In talking about the financial cost to the taxpayer, use the following, arguably low, but much-repeated cost of:

$42,000.00 per year to incarcerate one person ($3,500 per month or $115.00 per day).

The actual cost (including pension and other benefits to correctional employees, health care for incarcerated individuals, etc.) arguably is close to $60,000.00 per year to incarcerate one person in the Philadelphia County prison system.

FACTS YOU SHOULD KNOW AND CONSIDER IN MAKING YOUR RECOMMENDATION

1. The actual cost (including pension and other benefits to correctional employees, health care for incarcerated individuals, etc.) arguably is close to $60,000 now to incarcerate one person for a year in Philadelphia County prison system. ($5,000 per month at $164.00 per day).

2. As of March 1, 2018, Philadelphia County incarcerates approximately 6,000 people at a total annual cost of around $360 Million per year.

3. The cost of one year of unnecessary incarceration (at $42,000.00 - $60,000.00) is in the range of the cost of one year's salary for a beginning teacher, police officer, fire fighter, social worker, Assistant District Attorney, or addiction counselor. You may use these comparisons on the record.

4. The average family's total income in Philadelphia in 2017 was approximately $41,000.00—which paid their housing, food, utilities, transportation, clothing, educational expense and taxes.

EXAMPLES OF HOW THIS INFORMATION CAN BE USED AT SENTENCING

1. If you are seeking a sentence of 3 years incarceration, state on the record that the cost to the taxpayer will be $126,000.00 (3 x $42,000.00) if not more and explain why you believe that cost is justified.

2. In a very serious matter, where for example, 25 years incarceration are sought and is appropriate, state on the record that the cost to the taxpayer is $1,050,000.00 (25 x $42,000.00) if not more and explain why you believe that cost is justified.

3. When recommending a sentence of probation, compare the cost of incarceration to the cost of probation [need to insert the cost of probation per year]. Emphasize the positive rehabilitative factors of a probationary sentence such as permitting the defendant to continue working and paying taxes, permitting the continuation of family life, education and community inclusion.

REQUEST SHORTER PROBATION TAILS (I.E. CONSECUTIVE PERIOD OF PROBATION) OR NO PROBATION TAIL AFTER A SENTENCE OF INCARCERATION.

Criminological studies show that most violations of probation occur within the first 12 months. Assuming that a defendant is violation free for 12 months, any remaining probation is simply excess baggage requiring unnecessary expenditure of funds for supervision. In addition, County Probation is overwhelmed with more than 44,000 supervisees, which makes supervising people who are more likely to commit serious crimes more difficult. There is no reason to assume a probationary tail must be two years or more in every single case. Carefully evaluate what, if any, probationary tail is appropriate upon completion of a sentence of incarceration.

REQUEST SHORTER PROBATIONARY SENTENCES WHERE NO SENTENCE OF INCARCERATION IS SOUGHT.

Criminological studies confirm that longer probationary periods often result in more failures than shorter ones where those studies have controlled for offense and criminal record. In addition, County Probation is overwhelmed with more than 44,000 supervisees, which makes supervising people who are more likely to commit serious crimes more difficult.

REQUEST NO MORE THAN A 6-MONTH VOP SENTENCE FOR A TECHNICAL VIOLATION WITHOUT SUPERVISORY APPROVAL

In many technical violation cases, no additional incarceration should be sought and no revocation is necessary. However, where the technical violation(s) calls for a more serious consequence, do not seek more than 6-12 months' incarceration unless you have approval from the District Attorney via your supervisor.

SUPERVISORY REQUEST NO MORE THAN A 2-YEAR VOP SENTENCE FOR A DIRECT VIOLATION WITHOUT APPROVAL

Every direct violation presents the opportunity for two sentencings (one on the old matter and one on the new matter) that take into account the fact of the defendant's commission of a new crime while under supervision. Obviously, commission of a new crime while under supervision is a factor tending to increase the sentence on the new matter. Therefore, ordinarily it is not necessary to seek a sentence of longer than 2-4 years for a direct VOP. However, where special factors arise, you may seek approval from the District Attorney via your supervisor to seek a lengthier direct VOP sentence.

REQUEST THAT THERE BE NO VIOLATION OF PROBATION OR PAROLE DUE TO A POSITIVE DRUG TEST FOR USE OF MARIJUANA (CANNABIS) OR DUE TO POSSESSION OF CANNABIS WITHOUT SUPERVISORY APPROVAL