



MEMORANDUM

Date: May 22, 2013

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

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to be "CH Huckelberry", is written over the printed name and title.

Re: **Early Case Disposition Pilot Program**

There are efficiencies to be had when criminal cases are resolved in a timely manner.

Defendants do not have to remain so long in pretrial custody, which saves jail costs and allows the defendant to return to the community under probation supervision more quickly. Caseloads are freed up so both defense attorneys and prosecutors can focus on more complex cases. Fewer court hearings are needed. Law enforcement resources are not tied up in discovery interviews or court appearances. In addition, attorneys and judges do not have to invest considerable time in a case only to have it eventually reach a plea agreement at a later date.

The Pima County Attorney's Office in November 2012 proposed an innovative "fast-track" pilot program that has the potential to offer far quicker resolutions – possibly in as few as 17 days – for noncomplex felony cases that meet defined criteria. Since that initial proposal, the Arizona Superior Court in Pima County has been working on a monthly basis in collaboration with the Pima County Attorney's Office, the Public Defender's Office, the Legal Defender's Office and the Office of Court-Appointed Counsel to craft a strong model that promotes efficiency yet protects ethical obligations and constitutional rights to fair process and equal treatment under the law.

Although models vary, programs with a similar focus are already in place in several Arizona counties, including Cochise, Maricopa, Yavapai and Pinal.

Eligibility for Early Case Disposition Program

To date, the working group has operated under the presumption that only those noncomplex cases without victims would be eligible for recommendation to the program on a pilot basis. While not an all-inclusive list, such cases may include:

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- Drug possession for personal use or sale involving lower and mid-level drug amounts;
- Sale or transfer of drugs;
- Marijuana transportation and possession for sale;
- Escape from correctional facility;
- Possessing prison contraband;
- Felony fleeing; and
- Prohibited possessor.

At any given time, approximately 170 felony defendants charged with these offenses have cases that have been pending more than 180 days in Superior Court. In the six months between January and June 2012, the Pima County Attorney's Office indicted approximately 725 defendants on the charges listed above. The County Attorney anticipates between 120 and 150 defendants could likely be referred for quicker resolution each month.

Structure of the Program

Although the details of the pilot are still in development and while there may be some additional flexibility required in some cases, once cases are identified as appropriate for early disposition, the Pima County Attorney's Office would offer beneficial plea agreements to defendants within one week of arrest. Defendants who enter the program must waive their right to a preliminary hearing within 10 days, with an early disposition hearing scheduled for 10 days after the Initial Appearance. The County Attorney would be required to provide disclosure to the defendant almost immediately of the information they have available at that time, although drug lab results, for example, may not be ready. In addition, there may be some additional time allotted for those cases in which there is a conflict of interest, requiring the Legal Defender or the Office of Court Appointed Counsel to represent the defendant, rather than the Public Defender. The Public Defender is expected to be appointed to represent defendants in most cases.

The program is built upon a "first offer, best offer" approach to promote a quick resolution. A defendant may either accept a plea offer at the hearing or request a one-week continuance. Plea offers are available for a limited time; and once a plea offer expires, it will not be reoffered.

If the defendant rejects the offer, the case will proceed through the regular judicial course. The program's success is contingent on, among other things, the County Attorney's ability to follow through with its commitment to provide disclosure on a timely basis and to provide truly advantageous plea deals.

Protection of Defendant Rights

The judicial system is based on the premise that justice will be meted out fairly under the purview of an impartial judge who ensures the protection of constitutionally-guaranteed rights. The compressed timeframe as envisioned in this pilot, which contemplates an incarcerated defendant entering a guilty plea within as little as 17 days of arrest, means the defendant will forego the traditional process of conducting research and developing mitigation. It also places increased pressure on attorneys, who must advise clients on whether a plea offer is in their best interest, given appropriate investigation and study of a case. The working group is working toward ensuring integrity of the process and identifying a successful resolution of those constitutional concerns.

There is agreement that if such a program is implemented, cases must be selected carefully and be restricted only to those in which the material facts are clear cut. Only experienced attorneys should be assigned to fast-track-eligible cases. Discussions are underway about how to ensure a defendant will not be penalized in those rare cases in which a plea is rejected for legal or ethical reasons such as insufficient or untimely disclosure or the mental incompetence of a defendant.

Funding Issues

A program of this nature does not require Board of Supervisors action to be implemented, although there may be some budget considerations. The program hinges on the participation of the Superior Court, which likely will have to establish a half-day calendar once or twice a week to accommodate the pleas in the cases. It is anticipated at this time that the current part-time hearing officer position may become a full-time position, with additional duties, including the Early Case Disposition Court, added to job responsibilities.

Cost Savings

Efforts to calculate a projected cost savings have not been fruitful to date, since existing cases vary in complexity and duration, making it difficult to ascertain an average cost. It is similarly problematic to ask counties with existing programs to share any cost savings, given that wide variances in structure. In Cochise County, for example, far more cases go through the program than are envisioned in the initial proposal, although it is conceivable that if a pilot program in Pima County is adopted and proves successful, then additional types of cases may be added.

Aside from potentially more favorable dispositions for a limited group of defendants, the County Attorney's office also has suggested that swifter assignment and implementation

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of sanctions for defendants who have committed crimes has been shown to reduce recidivism, sometimes even more than greater sanctions.

The program should, over time, offer many opportunities for reduced costs. The Sheriff's Department spends more than \$90 per day for each inmate housed at the Adult Detention Center. Also, the average cost of transporting an inmate to court is roughly \$3, which can add up quickly when compounded over time and which does not take into account the cost of maintaining custody and control while they are at court. These costs would be significantly reduced in those cases where resolution is reached in less than 30 days.

Prosecutors will not have to bring simple cases to the grand jury.

Proponents of the program anticipate they will be in a stronger position to analyze any cost benefits after the pilot program has been in place for six months to a year. Revisions to the operations of the program may also be considered at that time, depending on the ability of the program to meet performance measures.

Summary

This is a complex proposal that provides an opportunity to streamline court processes and provide cost savings. Since there is no single model that appears to work in all communities, such a program must be crafted in a thoughtful manner, which is why the working group has been diligently working toward solutions and pushing through logistical challenges. The implementation of a limited, controlled pilot program will allow for a deeper evaluation of whether the process can achieve the expected and desired results and whether it can be expanded.

I appreciate the County Attorney proposing such a program. I believe if successfully implemented, it will provide significant cost savings for the County's criminal justice system, including the County Attorney and Public Defender, as well as the courts. Any cost savings that arise as a result of this program will be reinvested in the County criminal justice system.

CHH/mjk

c: **The Honorable Sarah Simmons, Presiding Judge, Superior Court**
 The Honorable Barbara LaWall, Pima County Attorney
 The Honorable Clarence Dupnik, Pima County Sheriff
 Lori Lefferts, Public Defender
 Robert Hirsh, Director, Office of Court Appointed Counsel