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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.

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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.

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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.

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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

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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.

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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.

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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.

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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

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(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