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MEMORANDUM

TO: C.H. Huckelberry
Pima County Administrator

CC: Honorable Chair and Members
Pima County Board of Supervisors

FROM: Barbara LaWall 
Pima County Attorney

DATE: January 16, 2018

RE: FY 2018/19 Proposed Budget

I hereby submit the Fiscal Year 2018/19 proposed budget for my Office, which unfortunately reflects substantial reduction of federal, state, and local funds.

In developing this proposed FY 2018/19 budget, I have identified the resources necessary to continue to achieve the mission of my Office, which is to pursue justice, prosecute criminals, and protect the community. To achieve this mission, we: provide services to victims of crime; protect the safety of those victims and the community at large by prosecuting those who have committed crimes that harm and endanger them – targeting for prison sentences those who are violent and dangerous, as well as repetitive, chronic, and habitual offenders, while seeking alternatives to incarceration for others, including treatment, for those who are mentally ill and drug addicted; and provide excellent civil legal services to enhance ethical, effective, and efficient county government.

In determining what resources are necessary to operate my Office to achieve its mission, I have reflected on the significant financial obstacles we, like so many other criminal justice agencies, have endured during and since the Great Recession. We struggle to do more with less, while continuing to provide our mandated and necessary functions with excellence, despite diminishing funding for staff and operational expenses.

Budget Challenges This Year

As we enter 2018, even more budget reductions may be on the horizon. Over the past year, three grants on which my Office has relied have either been totally eliminated or reduced. These include: the Arrest Grant (Encourage Arrest Policies and Enforcement of Protection Orders Program); the STOP Violence Against Women Grant; and the Arizona Victims' Rights Implementation Grant.

The Arrest Grant award provided my Office with \$899,868 over three years and funded positions for four Attorneys, one Paralegal, and one Legal Secretary. The Arrest Grant provided for the central review and prosecution of all felony and misdemeanor Domestic Violence (DV) cases. The purpose of the grant was to reduce domestic/dating violence (including sexual assault and/or stalking in the context of domestic/dating violence up to and including serious physical injury and homicide and implement an Intimate Partner Lethality/Risk Assessment into Pima County's criminal justice system.

The STOP Grant helped address some ongoing and emerging systemic gaps including: (1) identifying and channeling greater resources and supports to victims who are at greatest risk due to the specific characteristics and dynamics of their offenders; (2) adequately charging and holding offenders sufficiently accountable, especially in DV cases involving the highly under-reported and all too often unrecognized crimes of sexual assault and strangulation; and (3) establishing a formal county-wide coordinated community response to domestic violence. The STOP Grant annually provided more than \$200,000 to fund positions for two Victim Advocates, one Paralegal, and one support staff, along with funding for contract services with Emerge! Center Against Domestic Abuse, and the Southern Arizona Center Against Sexual Assault (SACASA) operated by CODAC Behavioral Health.

The Arizona Attorney General Victims' Rights Implementation Grant, which historically funded six Legal Processing Support positions, has been gradually reduced annually, including a recent \$61,500 reduction. This grant funding has been critically important in providing crime victims with support and mandated notification as required by statute.

In addition to the previous budget reductions over the last ten years, regarding my Office's statutorily mandated operations funded by the General Fund Budget, the base budget has been reduced for the next fiscal year by \$69,698, resulting from the Enterprise Software Adjustment.

More than 92% of my Office's General Fund Budget is allocated to personnel, with the remaining 8% allocated to supplies and services. While that ratio may be appropriate, the overall amount of funding in my Office's budget is inadequate. Historically, I have been successful in obtaining federal and state grants to supplement the Pima County General Fund appropriation for my budget, thus enabling my Office to provide critical resources to our community. These grants have provided additional personnel, not only in support of criminal prosecution but also in the provision of crime victim services. The loss and reduction of grants, increased operational expenses, and the recent proliferation of overwhelming evidence contained in a variety of digital formats produced by law enforcement pose significant challenges and imminent threats to my ability to maintain the necessary level of victim

services for our community and to achieve systemic efficiency in the prosecution function.

Over the last decade, I have reduced my Office's General Fund supplies and services budget and completely eliminated the capital budget to accommodate the dramatic budget cuts that had to be implemented during the Great Recession. The elimination of then-vacant positions that was necessary to absorb various cost increases has severely strained my staff, and there is no ability to further reduce my Office's General Fund budget to absorb any additional cost increases. Nevertheless, operational expenses continue to increase. With the loss of grants and increased demands for services, my Office is not in a position to absorb any additional expenses, and it is necessary that I now submit four supplemental budget requests.

Supplemental Budget Requests

Digital Evidence Processing

As I mentioned last year, an area of growing and significant concern for my Office is the increasing levels of technical services and personnel necessary to process the overwhelmingly high volume and variety of electronic and digital evidence.

My Office is experiencing data and information overload as the result of digital audio and video recordings provided to us by law enforcement agencies, private businesses, and community residents who are witnesses, victims, and perpetrators of crimes. This evidence comes primarily from body worn cameras, tablet devices used by inmates at the Pima County Adult Detention Facility, private security cameras used by retail businesses, and cell phones used by victims, other witnesses, and perpetrators of crimes. The sheer volume of this evidence has inundated and overwhelmed my office. We require additional funding both for staffing and software in order to process this greatly increased volume of digital evidence. We must review all the evidence in each criminal case. In many cases, digital recordings constituting evidence, must be redacted to remove confidential information, such as a victim's address, prior to disclosure to defense counsel. Moreover, if a public records request is made for a digital recording, a separate redaction may have to be undertaken prior to release of the recording.

Several law enforcement agencies, most notably the Tucson Police Department, have begun to outfit their officers with body worn cameras. They have trained their officers to turn the body worn cameras (BWC) on during all incidents. This provides a huge quantity of video recordings, often from multiple officers recording for hours, in addition to law enforcement vehicle cameras, which also provide audio and video recordings of incidents. Each audio and video recording associated with a criminal case must be reviewed by my staff to determine what, if any, evidence it contains. The Tucson Police

Department now utilizes 400 BWC and is expected to receive grant funding for another 197 BWC, which will further exacerbate the strain on our resources.

Last year, the Jail piloted, and then transitioned to full implementation, a program of providing electronic tablets (iPads) to its inmates. The tablets are capable of making phone calls and sending text messages and emails. Inmates and their families pay for the services, so they do not impose a financial burden on the Jail. However, the vast quantity of recorded information generated through these devices has exponentially increased the workload for my staff members who review the monitored and recorded communications of Jail inmates. Previously, inmates were limited in the number and length of calls they could make. We had sufficient staffing to review all those inmate calls for evidentiary purposes. Both inculpatory and exculpatory information was revealed in the recordings of those calls. Now, our staffing level is woefully inadequate to keep up with the vast number of recorded calls, texts, and emails generated by Jail inmates.

More and more retail establishments, including convenience stores, department stores, and electronics stores, as well as private citizens have installed and are using security cameras. Recordings taken from these cameras can be used as evidence in law enforcement investigations and in criminal prosecutions of retail thefts, robberies, and assaults that take place at these businesses and residences. As with body worn camera footage, each retail establishment recording must be reviewed to determine what evidence it contains, and it must be disclosed to defense counsel. If a public records request is made for the recording, it must be separately reviewed for necessary redactions, then redacted, and subsequently produced. Again, these review and redaction processes significantly increase the amount of time necessary for my staff to complete this work. Because different retailers and citizens use a wide range of video formats, and there is no universal format, we require the appropriate software to review and redact each type of video format. Axon has software that can do all types. So, for efficiency purposes, we have had to acquire the license to use Axon software.

Both BWC footage and retail/resident video footage must be reviewed in real time and must be both downloaded and re-uploaded (following redaction) in real time. This uses significant staff labor and is extremely inefficient. Software and hardware enhancements are needed to expedite the downloading and uploading processes. Increased staffing is necessary in order to review and redact the footage.

With the ubiquity of cell phones containing emails, texts, social media posts, photos, videos, and other data, more and more law enforcement investigations involve the retrieval of such data from the cell phones of witnesses, victims, and perpetrators of crimes. Those data then must be reviewed for evidentiary

purposes, disclosed to defense counsel, and produced in response to public records requests after appropriate redactions are made. This, too, demands an increasing amount of staff time in my office.

In order to deal with the high volume of electronic evidence being presented by law enforcement agencies to my Office, I am seeking a supplemental budget package to fund five support staff positions and associated specialized computer hardware and software totaling \$253,667.

Charging Unit Staffing

I continue to evaluate and implement opportunities to streamline our operations to manage our workload with fewer positions, as has been necessitated by past budget reductions, and to find ways to improve the efficiency of the criminal justice system throughout Pima County to reduce system costs overall.

For example, I established a new Felony Charging Unit, which provides an opportunity to dispose of many cases earlier in the process. I am seeking supplemental funding to expand the centralized Felony Charging Unit in order to expedite the resolution of felony cases. At present, approximately 50-60% of all felony cases presented by law enforcement agencies are charged and prosecuted. Of those, approximately half are negotiated to plea agreements by the prosecutors in the Felony Charging Unit, without those cases ever being assigned to trial teams. We believe more felony cases might be negotiated to plea agreements sooner by the prosecutors in the Felony Charging Unit if there were more prosecutors in that Unit, providing them with sufficient time to negotiate in person or by telephone with defense counsel.

Since we consolidated the issuing/charging function for most felony cases into the single, centralized Charging Unit five years ago, a full 55% of our cases have been disposed of via plea agreements without ever having been assigned to a trial team. (Previously, only 34% of our cases were disposed of via plea agreements before being assigned to a trial team.) In other words, the number of felony cases disposed of utilizing our Case Evaluation System (CES), has increased 62% as a result of the consolidation of the issuing function into the central Charging Unit. Ultimately, approximately 95% of all felony cases are resolved via plea agreements.

The time to disposition of felony cases is a significant cost driver of the criminal justice system. The faster we can negotiate the plea agreement with defense counsel in cases that can be resolved in that fashion, the shorter the time to disposition of those 95% of felony cases resolved, producing cost savings to the criminal justice system.

The Charging Unit is able to present plea offers to defense counsel in most felony cases by the time of the Arraignment (10 days following arrest for in-custody defendants and 20 days following arrest for out-of-custody defendants). We ask that the defendant accept the plea at or before the Case Management Conference (30 days following the Arraignment).

Nevertheless, the time to disposition of felony cases has been growing. A longer time to disposition of cases means more court hearings and more costs for indigent defense, the courts, and jail costs for in-custody defendants.

The reason for the increase in the time to disposition is that most pleas are not entered by the time of the Case Management Conference. One reason for this is that our Felony Charging Unit prosecutors are booked with issuing appointments with the various law enforcement agencies/detectives all day long and do not have sufficient time to respond via telephone or in person to defense attorneys who make counter-offers to the original plea offer or who seek to confer regarding case details prior to advising their client whether to accept a pending plea offer. The primary form of communication they do have time to engage in is via email after business hours, which does not lend itself to back-and-forth conversations involving complicated exchanges of information and the type of questions and responses to questions necessary for successful negotiations in many cases.

I have only five prosecutors in my centralized Charging Unit, plus two other CES charging prosecutors in my Special Victims Bureau who specialize in sexual assault, child abuse, and domestic violence cases. I cannot afford to transfer prosecutors from my felony trial teams to the Charging Unit, because the felony trial team caseloads remain extremely high. Meanwhile, law enforcement presented these five Charging Unit prosecutors with approximately 11,100 felony cases in 2017, of which they issued approximately 6,400, leaving them precious little time to confer with defense attorneys for plea negotiations.

My Office has only 50 felony prosecutors who handle more than 99% of all felony cases in Pima County. (The remaining 1% of felony cases are prosecuted by the Tucson Office of the Arizona Attorney General's Office.) While the Board has provided funding to offset the loss of grant positions, we have not received funding to increase the number of felony prosecutors in more than a decade. The felony Trial prosecutors continually carry caseloads averaging over 60 cases each. The Felony Charging Unit prosecutors are handling in excess of 1,200 cases per year presented to my office from local law enforcement.

By contrast, the three public defense offices – the Public Defender, Legal Defender, and Legal Advocate – have 72 felony defense attorneys who handle

80% of the felony cases in Pima County. (The remaining 20% of felony cases are defended by Court Appointed Counsel (15%) and private attorneys (5%).) The number of felony cases per year per felony public defense attorney is 71.¹

One consequence of having an inadequate number of felony prosecutors is delay in disposition of cases. For defendants who are in custody in the Pima County Jail while their cases are pending resolution, the delay in the time to disposition of their cases is particularly expensive. As you may be aware, a large percentage of the Jail population is made up of felony pre-trial detainees.

Adding prosecutors to our Felony Charging Unit, which should facilitate expediting resolution of the pending felony cases, should result in some savings at the Jail and in other parts of the criminal justice system that would offset the personnel costs incurred. I am seeking \$353,529 in supplemental funding for three attorney and two support staff positions to add to my Charging Unit.

I anticipate the entire cost for these positions will be offset by savings through reduced jail bed days of pre-trial felony defendants. Indeed, I estimate the savings just for Jail bed days will be on the order of \$450,000 or more. (This does not include other savings that would be realized as a result of expediting case disposition.). This rough estimate of cost savings is calculated as follows:

Data for the past two calendar years reflects the following number of days following felony Arraignment to entry of the Plea Agreement:

30 days or less - 11%
31-60 days - 25-30%
61-90 days 17-20%
91-120 days - 11%

Generally, there is a Case Management Conference 30 days following Arraignment. If the plea is not entered by time of the first Case Management Conference, then typically there is another Case Management Conference scheduled 60 days following the Arraignment and so on. So, cases generally reach plea agreements at 30 day intervals.

Jail bed days for pre-trial felony defendants cost approximately \$100 per day or \$3,000 per person every 30 days.

Each felony case that reaches entry of the Plea Agreement 30 days earlier, therefore would save approximately \$3,000 in Jail costs (not including

¹ The foregoing numbers do not include the prosecutors and assistant public defenders who are assigned to handle juvenile and misdemeanor cases or appeals.

transportation costs and other criminal justice system costs for the court, prosecution, and indigent defense counsel).

Chief Byron Gwaltney provided a snapshot of the Jail population as of December 21, 2017, showing a total of 1,339 Felony Pre-Trial Detainees on that date. If 15% of those felony defendants' cases could be expedited by 30 days, that would result in approximately 200 cases that could be pled 30 days earlier. Thus, 200 inmates x \$3,000 in Jail costs for the month would yield a savings of \$600,000 per year. Indeed, if only 12% of their cases could be expedited by 30 days, that would result in approximately 160 cases that could be pled 30 days earlier. Thus, 160 inmates x \$3,000 in Jail costs for the month would yield a savings of \$480,000 per year.

Adding three prosecutors plus support staff to the Charging Unit is anticipated to result in the ability to plead 12-15% of felony cases 30 days earlier, for a cost savings of between \$480,000 and \$600,000 per year.

Victim Advocates' Overtime Compensation

Another supplemental request involves our Victim Advocate classification which was reviewed under the Fair Labor Standards Act and determined by the Pima County Human Resources Department not to meet the job duties test to remain an exempt classification. As such, our Victim Advocates became hourly employees in November 2016, which has resulted in increased costs related to additional payments for overtime necessary for staff Victim Advocates to perform essential duties. Victim Advocates provide victim services 24/7/365 for all crime victims in felony and juvenile cases. My Office meets this demand by leveraging our resources with a ratio of one staff member to five volunteers, utilizing 173 trained community members who provide crisis advocacy services to crime victims on a voluntary basis. These trained volunteers contributed 23,162 hours last fiscal year, gifting Pima County with \$446,563 in donated victim services. During FY 2015/16, volunteers provided 7,474 services to 1,820 victims (1,270 crisis victims on-scene and 550 victims in court or in the office). Even with the support of trained volunteers, our overtime expenditures associated with Victim Advocates has increased as I warned would occur during my budget submission last fiscal year. Based on calculations from a calendar year of overtime and associated employee-related expenses, I am seeking an adjustment of \$120,884 to our budget to offset the additional costs associated with this change in Victim Advocates to non-exempt classification, which is necessary to provide victim services 24/7/365 during FY 2018/19.

Contingency to Ensure Adequate Victim Services Staffing

In addition to providing crisis advocacy to victims of felony crimes at crime scenes 24 hours a day 365 days a year, the Victim Services Division also provides court advocacy to victims of felony crimes, as well as misdemeanor

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victims of domestic violence. Moreover, the Victim Services Division administers the Victim Compensation Program.

Through a well-orchestrated scheduling operation, we provide staff back-up for all volunteer shifts, thereby ensuring that all calls for service can be responded to in a timely fashion.

Moreover, the County Attorney's Office stretches the county funding allocated to our Victim Services Program by seeking and obtaining as much grant funding as possible to pay for our staff victim advocates.

This year, through the federal Victims of Crime Act (VOCA) grant program, we obtained funding for salaries and benefits for 10 FTEs, including three Assistant Advocate positions that were previously funded through a grant from the Arizona Criminal Justice Commission (ACJC), and seven Victim Advocate positions previously funded by VOCA, as well as professional training programs. The award runs from the federal fiscal year that started last October through September 30, 2020. This grant will help us sustain our ongoing efforts in the Victim Services Division.

Unfortunately, we failed to obtain Federal Government funding of the STOP grant that we had hoped would continue to pay for two staff Victim Advocate positions required to sustain our ongoing Victim Services Program and to ensure coverage with crime-scene advocacy for all victims of intimate partner DV who are at elevated risk or high risk for serious physical injury or death, including victims in misdemeanor cases who screen in at elevated or high risk to suffer future extreme violence.

We are in the process of seeking private grant funding for these two Victim Advocate staff positions. We have submitted applications to more than a dozen private foundations as part of a coalition in which our Office has taken the lead and is collaborating with Emerge! Center Against Domestic Abuse and with the Tucson Police Department, the Pima County Sheriff's Department, and Southern Arizona Legal Aid to reduce the lethality, harm, and incidence of domestic violence cases in Pima County.

But, because do not know whether we will be successful in obtaining any private grant funding, we are seeking a contingent supplemental budget allocation to cover the costs of these two Victim Advocate positions totaling \$106,126.

Overall Budget Situation

As I have done over the past two decades, I continue to look at ways to improve the criminal justice system to the extent my Office has the authority and resources to do so and I am proud of the efficiencies I have implemented over

the years. As noted above, and as previously reported, I recently consolidated my CES attorneys into a centralized Felony Charging Unit, expanded the use of automation, and utilized victim advocate volunteers to significantly enhance efficiency.

Moreover, I have devoted significant efforts recently to expand diversion opportunities for non-violent, non-dangerous criminal defendants. Expansion of my longstanding diversion programs, including Adult Misdemeanor Diversion, the Bad Check Program, and the juvenile Community Justice Boards, which are operated by only a handful of staff along with many dozens of volunteers, has resulted in far fewer cases being processed through the criminal justice system. While these programs cost money to operate from my Office (some of which is paid for with anti-racketeering funds seized from criminal enterprises), they have been demonstrated to reduce recidivism. These diversion programs thus reduce the number of future cases that otherwise would have to be handled by my Office and the other criminal justice agencies, resulting in long-term savings.

I am pleased to have obtained an appropriation from the State Legislature in late 2017 that has enabled me to commence a new Felony Drug Diversion Program to afford adults charged with a felony for the first time for possession for personal use of narcotic drugs or dangerous drugs (methamphetamines, heroin, cocaine, and the like) the opportunity to undergo treatment in lieu of prosecution. The first participants were able to enter this new Felony Drug Diversion Program in November 2017. I am hopeful that this program will prove to be a success.

However, the increased efficiencies and monetary savings gained through consolidation of operations, innovation in charging and pleading cases, specialized diversion programs, as well as automation, and the use of volunteers can be quickly offset when law enforcement agencies present more cases to my Office for review. While we have successfully battled this headwind of limited financial and human resources to date, we are at a critical breaking point where further increased demand for our criminal prosecution and victim services, combined with the loss of prosecution and victim service related grants, will jeopardize our ability to efficiently deliver these services.

Last Fiscal Year, my Office's Criminal Division reviewed a record number of more than 11,100 felony criminal cases presented by 30 different federal, state, and local law enforcement agencies throughout Pima County. In particular, the Tucson Police Department (TPD) and the Pima County Sheriff's Department presented more cases than the previous year, with TPD responsible for 59.7% of all felony cases presented by law enforcement for review. All local law enforcement agencies report that they are actively recruiting, training, and deploying more officers throughout Pima County. As

a result, we anticipate an additional increase in our workload over the next year, which will be a challenge for my Office to handle with our current allocated General Fund resources.

My ability to successfully adjust and realign operations based on ever-changing demands is reflected in the many significant accomplishments achieved by my Office. For example, while yearly criminal case filings continue to increase to slightly over 6,400 filings, so have the number of cases disposed. In fact, last year, my Office again increased the number of disposed cases involving more than 5,700 felony criminal defendants, the second highest during any one year over the last decade. This represents an increase of more than 11% in total dispositions over the last decade. Challenging our progress is the unduly high caseloads carried by our felony prosecutors currently averaging over 65 cases per attorney at any point in time. This compares with an average public defender caseload of 27 cases and legal defender caseload of 30 cases per attorney at any point in time.

Economic indicators seem to reflect a more positive outlook for our financial future, and we must continue, above all, to focus on employees who have worked hard over the past several years while struggling with financial hardships. In their struggle to make ends meet, I continue to observe many employees in my Office working second and third jobs. This is not a healthy situation for these employees. I am deeply concerned about the challenges they face. Unfortunately, many employees, desperate for an increase in income are tempted to leave and do so in response to heavy workloads and reduced staff levels associated with the overall loss of funding and our inability to hire skilled and experienced replacement staff. In particular, felony attorney caseloads are still unacceptably high, and challenges in hiring skilled and experienced support staff, as a result of turnover, is a challenge to my Office's ability to implement even more efficient measures that would benefit the criminal justice system. Ongoing failure to increase compensation for our employees to market levels is occurring and will undoubtedly continue to result in the loss of more of our most talented employees.

Similar to most service-oriented operations, the vast majority of funding my Office receives is directly allocated to personnel. The nature of the work we do requires highly trained and experienced employees. Talented and experienced men and women are crucial to the success of this Office as we work to protect and serve the community. We cannot continue to succeed in this work without adequate, appropriately compensated, and well-trained personnel.

The movement of employees through their respective salary ranges is critical to the retention of skilled employees, provides an opportunity to hire employees with relevant experience, and provides incentive for applicants to

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accept the entry level salary, knowing they can obtain raises over time. The 2016 Arizona County Government Salary and Benefit Survey by Arizona Association of Counties reviewed the salaries of several classifications used by my Office. In every case the average salary of employees within each classification was significantly below the median salary. I again urge you and the Board of Supervisors to approve and fund an employee compensation plan for FY 2018/19.

The foundation of my Office budget reflects the amazing contributions and accomplishments attributable to the dedicated and hard working employees of this Office. Attached is a brief list of significant accomplishments for the past year that demonstrate the judicious use of limited financial resources while emphasizing the revenues and cost savings generated for Pima County.

With the ongoing commitment and support provided to my Office by the Board of Supervisors and County Administration, we continue to be among the best prosecution and government civil law offices in Arizona and across the country. While we are efficient and provide a variety of quality services, I am concerned about our ability to maintain these services if compensation for our employees is not increased.

I remain committed to fiscal responsibility. I am proud of my record of running an efficient office, and thanks to the efforts of my hard working staff, to come in under-budget every year. I will do my best to maintain that record.

Attachment