

**Arizona Superior Court**

Pima County

150 West Congress, 1st Floor

Tucson, Arizona 85701


Hon. Jeffrey T. Bergin
Presiding Judge

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Memorandum**Date:** June 15, 2023**To:** Hon. Chair and Members

Pima County Board of Supervisors

From:  Hon. Jeffrey Bergin, Presiding Judge for Arizona's Superior Court In Pima County**Subject:** **Pretrial Justice Workgroup Recommendations**

The Intergovernmental Agreement between the City of Tucson, Pima County and the Superior Court has been under discussion and evaluation. One result from those discussions is that the Superior Court in Pima County created the Pretrial Justice Workgroup (Workgroup) focused on concerns raised during these discussions. The Pretrial Justice Workgroup has met regularly over the past twelve-months and recently reported its recommendations to the Presiding Judge. This memorandum outlines those recommendations that are under consideration by the Superior Court and requests an extension of the initial appearance IGA until June 30, 2024, while programs and projects are evaluated and finalized by the Court. While these recommendations include estimated expenses associated with the programs, there is no funding request being made at this time.

Pretrial Justice Workgroups

The mission of the Pretrial Justice Workgroup is:

To honor the presumption of innocence, protect community safety and well-being, and increase the efficiency of the court system. These recommendations are designed to maximize the potential for people to succeed while on pretrial release and to minimize unnecessary pretrial detention by adhering to legal and evidence-based practices across all system stakeholders.

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The Workgroup is comprised of the following members:

Superior Court Team Members

Hon. Jeffrey Bergin, *Presiding Judge*
Hon. Danelle Liwski, *Associate Presiding Judge*
Ronald Overholt, *Court Administrator*
Cassandra Urias, *Chief Deputy Court Administrator*
Domingo Corona, *Pretrial Services Director (Facilitator)*
Michelle Moore, *Pretrial Services Assistant Director*
Deanna Johnson, *Pretrial Services Assistant Director*
Sydney Bender, *Pretrial Services Administrative Program Coordinator*

Criminal Justice System Team Members

Baird Green, Tai Summers, Noelle Jensen; *Pima County Attorney*
Dean Brault, Megan Page, Sarah Kostick; *Public Defense Services*
Hon. Antonio Riojas, Hon. Wendy Million; *Tucson City Court*
Hon. Maria M. Avilez; *Sahuarita Municipal Court*
Kate Vesely, *Pima County Government*

Additional Workgroup Leadership

Kristie Wooley, *Pretrial Services Manager, Administrative Office of the Courts*
Alison Shames, *Director, Center for Effective Public Policy/Advancing Pretrial Policy & Research*
Kelvin Banks, *Senior Manager, CEPP/APPR*

The Pretrial Justice Workgroup has been meeting bi-monthly beginning in June 2022 to develop and offer suggestions on how to improve the effectiveness of the pretrial phase of the criminal justice system in Pima County. In particular, the Workgroup has focused on initial appearance decisions and outcomes, and it has discussed how conditions of release are monitored by the Pretrial Services Division.

The Workgroup has also worked to provide recommendations in accordance with the County Administrator's January 24, 2023 memorandum to the Board of Supervisors regarding initial appearances. The Workgroup's recommendations are as follows.

Data and Reporting

The data requested by the County Administrator includes monthly or quarterly reporting of bail outcomes for individuals:

- Detained preventatively and/or are unable to secure release due to a financial condition of bail;
- Arrested for misdemeanors who are detained on bail;
- Arrested for one or more violent felony charges;
- Arrested for one or more felony charges who have been released with the condition they be monitored by Pretrial Services and are re-arrested for new felony charges which occurred during the time they are supervised by Pretrial Services;

- Arrested for misdemeanors who have financial bail imposed but are unable to post their bond within 24 hours, 72 hours and within 7 days.

The County Administrator requested that the above information include racial and ethnic data breakdowns for each of the noted elements. With additional staffing and with explanations accompanying the categories, the data can be provided, including racial and ethnic breakdowns within the statistical report.

Pretrial Services can coordinate the reporting in the above categories for defendants with felony charges. To increase the Division's capacity to report on defendants with misdemeanor charges, it is estimated that associated expenses will amount to **\$146,240.64**. Addendum A, Funding Estimate A. This \$146,240.64 funding estimate would support the addition of three staff members: a statistical officer and two clerks. These added staff members will help with data recording for misdemeanor case outcomes from court records. The Workgroup recommends the first year of data expansion in this area be in recording and reporting on cases from Tucson City Court and Pima County Justice Court. This is the area of highest priority regarding budgetary needs. Quarterly reporting is recommended to allow for a substantive quality control review of the data.

Electronic Monitoring

The Workgroup has made preliminary recommendations regarding the use of Electronic or Location Monitoring (EM). This is a complicated topic due to statutory constraints and the uncertainty of EM monitoring's effectiveness with particular charge types. Accordingly, the Workgroup's evaluation of EM is ongoing. Nevertheless, Felony Domestic Violence has been identified as an initial target population for EM use. Public safety concerns and the low percentage of released defendants with these charge types were primary considerations. Also, there is some data, yet to be fully explored, that suggests EM may be effective in monitoring the Felony Domestic Violence defendant population.

ARS §13-3967 (E) (1) is an important consideration when presenting programming costs for Electronic Monitoring. This law states that if EM is available, it **must** be imposed for any "person who is charged with a felony violation of chapter 14 (sexual offenses¹) or 35.1 (sexual exploitation of children) of this title and who is released on his own recognizance or on bail." Approximately 180 defendants are currently released and pending one or more felony charges under the noted chapters. Consistent with this statute, Pima County will be required to provide EM for those cases before adding the felony domestic violence population. As such, the Workgroup estimates the combined EM population at initial implementation will amount to approximately 350 pretrial defendants. Monitoring this population will require programming costs equaling approximately \$100 per month, per defendant. Also, the recommended caseload ratio for monitoring EM pretrial defendants will be 30 defendants for each assigned pretrial officer. This will require a team of at least an additional twelve pretrial officers, and two team supervisors. Addendum A, Funding Estimate C outlines the total projected annual program costs amounting to **\$1,234,600.80**.

¹ Sexual offenses includes any of five charges: 1. Indecent Exposure – (ARS 13-402), 2. Public Sexual Indecency – (ARS 13-403), 3. Sexual Abuse – (ARS 13-1404), 4. Sexual Conduct with a minor – (ARS 13-1405), 5. Sexual Assault – (ARS 13-1406), 6. Molestation of a Child – (13-1410).

The Workgroup felt it best to add law enforcement to the conversation after the Workgroup identified a preliminary program's requirements. Law enforcement will be invited and should contribute to future discussions now that a framework is in place. For example, law enforcement input is important when considering how the county will respond to a notice of defendant misconduct or violation, particularly in cases involving felony domestic violence charges. The recommended next step is to develop an EM policy in conjunction with a system to respond to reports of defendant misconduct. Because this program's cost will exceed one-million dollars, further evaluation is critical and highly recommended by the Justice Workgroup.

Pretrial Services Monitoring and Supervision

The Workgroup also considered the need for increasing the scope of Pretrial Services Monitoring and Supervision. Judges and Prosecutors are willing to rely less on financial bonds if Pretrial Services Monitoring and Supervision is more robust. A **\$575,780.40** funding estimate reflects the combined options discussed by the Justice Workgroup. Addendum A, Funding Estimate B. This includes adopting a standard caseload ratio of 85 defendants for each assigned pretrial services officer. While this ratio is higher than the statutorily required caseload ratio for Adult Probation, the Workgroup anticipates the higher ratio will still allow more robust pretrial supervision of defendants when compared to the current caseload ratio of 125 defendants for each assigned pretrial officer.

Additionally, the future funding estimate may include the new integration of peer navigators to work with defendants. Peer navigators can be particularly effective working with defendants because they have first-hand experience with substance abuse and may have been formerly incarcerated. These shared experiences with the defendant population gives rise to positive interactions. The Workgroup's recommendation also includes adding a victim liaison for cases involving domestic violence. Given the \$575,780.40 funding estimated, the Workgroup recommends a phased implementation taking place over a period of 2 to 3 years.

The Superior Court recognizes that between 2015 and 2020, the County funded fifteen new positions for the Pretrial Division in conjunction with efforts associated with the MacArthur Foundation Safety and Justice Challenge Grant. Importantly, nine of these positions were dedicated to support the pre-booking release program as well as the expansion of misdemeanor bail recommendations to domestic violence cases in the municipal courts. Five positions were utilized to promote increased interaction with community services through behavioral health and substance use screening, including the support and staffing of the County's Jail Population Review Committee. Additionally, the average daily caseload at the onset of the Safety and Justice Challenge grant planning effort was approximately 850 defendants. As of today, the same caseload has more than doubled to 1,790 defendants. Accordingly, the fifteen newly funded positions are fully engaged in effective pretrial tasks. Those positions do not have capacity to assist with increasing the pretrial services monitoring and supervision outlined above.

Bail Decisions and Outcomes

In addition to the above funding estimates, the Workgroup recommends the implementation of a series of decision trees, to provide a guide for how bail decisions are made when defendants are screened for release. The Workgroup supports the revision of the Pretrial Services' Decision-Making Framework, to move towards a

Release Conditions Matrix. This Matrix will better represent the role and purpose of the Pretrial Risk Assessment and Recommendation in how bail decisions are made in Pima County. Among the recommendations presented by the Workgroup is the formation of a Bail Quality Assurance Program. The Bail Quality Assurance Program is a standing committee of stakeholders whose purpose will be to discuss data outcomes, including those requested by the County Administrator, and to discuss system improvements in the pretrial phase of the criminal justice system.

The Workgroup recommends the Bail Quality Assurance Program include Court appointed representatives from the Superior Court, Tucson City Court, a rural or non-metropolitan municipal court, Public Defense Services, The County Attorney's Office, a victim advocacy group, law enforcement, and a public member with lived justice experience.

Conclusion

The Workgroup members, through hard work and a commitment to improving our justice system have produced thoroughly researched and evidence-based recommendations. Even with the strength of these recommendations, additional time is needed to implement and evaluate the programs. The Court requests an extension of the initial appearance IGA until June 30, 2024, during which time work will continue towards making these recommendations realities.

Addendum A: Pretrial Justice Workgroup Funding Estimates

Pretrial Services

Ranked by Recommended Priority Level

Funding Estimate A - Priority 1

Data Expansion – Misdemeanor Case Outcomes	Position (No.)	Estimated Costs
Year 1	PTS Reception/Clerk (2) Salary + ERE (\$44,226.00)	88,452.00
Year 1	PTS Statistical Information Officer	57,788.64
Total Cost		146,240.64

Funding Estimate B - Priority 2

Pretrial Supervision Caseload Increase & Peer Navigation (Implementation Phase)	Position (No.)	Estimated Costs
Year 2	Pretrial Services Officer (5) Salary + ERE (\$56,160.00)	280,800.00
	Pretrial Services Supervisor	70,340.40
Year 1	PTS Peer Navigator (3) Est. Salary + ERE (\$56,160.00)	168,480.00
Year 1	Victim Liaison (new job class required)	56,160.00
Total Cost		575,780.40

Funding Estimate C - Priority 3

Electronic Monitoring (Implementation Phase)	Position (No.)	Estimated Costs
Years 2 and 3	Pretrial Services Officer (12) Salary + ERE (\$56,160.00) 30 to 1 Standard Caseload Size	673,920.00
Years 2 and 3	Pretrial Services Supervisor (2) Salary + ERE (70,340.40)	140,680.80
Years 2 and 3	EM Programming Costs 100 per month/350 defendants a day	420,000.00
Total Cost		1,234,600.80