

- How many individuals come for initial appearances each month on charges of violent felony crimes committed while they were on pretrial release for earlier violent felony crimes?
- What is the racial and ethnic breakdown with respect to the individuals referenced in response to the aforementioned questions?

In addition, we suggested that the Board should require the Superior Court and its Pretrial Division, along with the Sheriff, to provide a proposal to the Board of Supervisors as part of their 2023-24 budget submittals for the implementation of a pretrial electronic monitoring system as an alternative to pretrial incarceration in the jail, including a cost-benefit analysis.

You heard comments from us and from criminal justice system leaders and discussed the proposed renewal of the 10-year IGA for IA Judges at multiple Board meetings over several months, ultimately voting to approve the proposed IGA for only one year and with substantive modifications along the lines of those we had suggested.

However, at the very next meeting, on May 17th, you reconsidered and withdrew your approval of the IGA for IA Judges. There is no IGA in place at this time, which appears to mean that the courts are operating in a manner lacking legal authorization.

At that Board meeting where you withdrew approval of the IGA, you did so at the request of Presiding Superior Court Judge Jeffrey Bergin based upon his promise that he would confer with other criminal justice agency leaders, including the County Attorney, Director of Public Defense Services, Tucson Police Chief, and Sheriff, and then would bring back to you a modified proposed IGA for IA Judges to address the concerns expressed by the NAACP and others (including the County Attorney, Director of Public Defense Services, and Tucson Police Chief), as well as by a majority of members of the Board, and that he would do so within “a few months.”

It has now been eight months, yet no revised IGA for IA Judges has been presented by Judge Bergin to the Board for your consideration. Judge Bergin did not keep his promise to you.

Judge Bergin and Associate Presiding Superior Court Judge Danelle Liwski instead have now written a letter to Vice Chair Grijalva dated December 21, 2022 in which the Superior Court has announced its creation of three work groups or subcommittees including representatives from the Pima County Attorney’s Office, Public Defense Services, Tucson City Court, and Pima County Government to work on a Release Conditions Matrix and Decision Tree, Electronic Monitoring/New Supervision Options, and Data and Reporting. Although it was delayed, this is a very positive development, which we are pleased to see.

Judges Bergin and Liwski stated in their letter that they expect to receive recommendations from the work groups within the second quarter of the 2023 calendar year and that the Superior Court will thereafter consider and implement all feasible recommendations.

In the meantime, Judges Bergin and Liwski on behalf of the Superior Court have asked the Board of Supervisors to renew the existing IGA for Initial Appearance (IA) Judges for one year, but without any modifications - reneging on Judge Bergin’s previous commitment to present to you a modified version of the IGA for your review and approval.

Judges Bergin and Liwski in their letter describe the IGA for IA Judges as something that merely serves to “document resource sharing in the performance of Initial Appearances” by the Courts.

This description of the IGA by Judges Bergin and Liwski is misleading in downplaying the reason why the Board of Supervisors is involved. The IGA for IA Judges is a legal contract between Pima

County and the City of Tucson to which the Pima County Superior Court and Tucson City Court are signatories as approvers; it is not merely the Superior Court's documentation of its own operations in collaboration with the Tucson City Court. The role of the Board of Supervisors in approving the IGA for IA Judges is not merely ceremonial, it is substantial.

The IGA for IA Judges does two very important things: first, it provides legal authorization by the Board of Supervisors for Pima County and the City of Tucson to share resources, including the physical facilities, technology, and supplies owned by the County and used by IA Judges, as well as the payment by Pima County for City personnel involved in handling IAs, including judges; and, second, it provides legal authorization by the Pima County Board of Supervisors for City Magistrates to serve as judges pro tem of the Superior Court allowing them to handle felony IAs. In the absence of Board of Supervisors approval, a City Magistrate cannot serve as a Superior Court judge pro tem and thus cannot handle felony IAs, because all felony proceedings are required by law to be handled by Superior Court judges.

There is no commitment in the letter from Judges Bergin and Liwski that the City Magistrates handling IAs will have any felony trial experience whatsoever, and a number of those City Magistrates handling felony IAs lack felony trial experience.

Nor is there any commitment from Judges Bergin and Liwski that they will devise and implement a means by which to publicly report data regarding the imposition of bail nor that they will collaborate with the Sheriff to publicly report such data.

Additionally, there is no commitment in the letter from Judges Bergin and Liwski that they will include leaders from the Tucson Police Department and Pima County Sheriff's Department in their working groups.

Indeed, there is not even any commitment in the letter from Judges Bergin and Liwski that, after the one-year extension of the existing IGA for IA Judges they will bring back to the Board of Supervisors a new, revised IGA for IA Judges that addresses the concerns we have raised regarding the need to have judges handling felony IAs be experienced with felony trials so as to be better equipped to protect the public and the need to gather and report data on the ways in which money bail is operating in Pima County to incarcerate nonviolent people based on poverty, resulting in increased recidivism and unnecessary taxpayer costs, unnecessary trauma to those jailed pretrial, as well as injustice and racial and ethnic disparities.

As noted in our October 1, 2022 letter to the Board of Supervisors, it is our understanding that the Courts are currently operating in a manner that contravenes Arizona law by continuing their shared operations for IAs without a valid IGA in place and having City Magistrates handle felony IAs without Board approval. The Courts should be upholding and enforcing the law, not violating it.

We support and applaud the belated efforts that Judges Bergin and Liwski have now initiated to have multi-agency work groups focus upon how IAs and pretrial supervision, including bail, are handled. However, we believe those work groups should be expanded to include Tucson Police Chief Chad Kasmar or his designee, as well as Pima County Sheriff Chris Nanos or his designee.

Additionally, we believe it is important for the Board of Supervisors *not* to renew the existing IGA for IA Judges for one year without any modifications.

We continue to believe that the Board should make minor modifications to the existing IGA for IA Judges prior to renewing it for one year. Given Judge Bergin's refusal to participate in drafting a modified IGA for IA Judges to be approved for one year, we urge the Board to direct the

County Administrator to take the lead in doing so. We believe she can accomplish this, in collaboration with all the parties, and bring it back to the Board in March 2023 for approval.

Therefore, as noted in our October 1, 2022 letter, and for all the additional reasons stated in this letter, we respectfully request that the Board of Supervisors take action to make and vote to approve the following three motions (A, B, and C) - which we have modified to accommodate the Court's request for an extra year, but only with regards to item C, in response to the information provided in the letter from Judges Bergin and Liwski:

A. Motion to direct the County Administrator and County Attorney to take the lead in drafting a proposed modified IGA for IA Judges to be presented within 60 days to the Board of Supervisors to be approved for one year, including as part of this motion the following six specific directives:

1. Directing the Pima County Attorney to draft a proposed new IGA for IA judges to be shared with the Pima County Administrator within 30 days;
2. Directing that the Pima County Attorney include as provisions within the proposed new IGA for IA judges at least the following:
 - *a requirement that judges handling felony IAs must be Superior Court Judges or, if they are City Magistrates or Justices of the Peace then they must have a minimum of four years of experience (as judges or lawyers) with felony trials;
 - *a requirement for daily data collection by the courts regarding bail;
 - *a requirement for monthly reporting of data regarding bail to the County Administrator and Board of Supervisors; and
 - *a requirement that these data include, at a minimum: the number of individuals detained on bail; the number of those arrested for misdemeanors only who are detained on bail; the number of those arrested for violent felonies; the number arrested for violent felonies who are released pretrial and re-arrested for the commission of new violent felonies; the number of those arrested for misdemeanors only who have bail imposed but are unable to pay it within 24 hours, the number unable to pay bail within 72 hours, and the number unable to pay bail within 7 days; the length of stay of those unable to pay bail after 72 hours; and the racial and ethnic breakdown for each of these data points;
3. Directing the Pima County Administrator to review the draft proposed new IGA for IA Judges prepared by the Pima County Attorney;
4. Directing the Pima County Administrator to share the draft proposed new IGA for IA Judges with the Presiding Superior Court Judge and the Sheriff, and seek their input;
5. Directing the Pima County Administrator to seek input from the Tucson City Manager, Tucson Police Chief, and Presiding Tucson City Court Magistrate regarding the draft proposed new IGA for IA Judges; and
6. Directing the Pima County Administrator - after obtaining all of that input and making any modifications to the County Attorney's original draft IGA that the County Administrator deems appropriate and that are approved as to form by the County Attorney - to present a recommended new IGA for IA Judges to this Pima

County Board of Supervisors within 30 days after receiving the original draft from the County Attorney.

B. Motion to direct the Pima County Administrator to include in her 2023-24 budget proposed appropriations of funding to the Sheriff's Department and the Pima County Superior Court as necessary for them to collect and report the foregoing data.

C. Motion to direct the Pima County Administrator to inform the Pima County Superior Court and the Sheriff that they are requested by the Board of Supervisors to submit as part of their 2024-25 budget documents a supplemental budget request for implementation of a pretrial electronic monitoring system, including a cost-benefit analysis.

Thank you for your ongoing and gracious consideration.

Sincerely,

Dr. Cheree Meeks, President

Amelia Craig Cramer, Vice President
Criminal Justice Committee Chair

Cc: Hon. Jeffrey Bergin, Presiding Judge, Pima County Superior Court
Hon. Danelle Liwski, Associate Presiding Judge, Pima County Superior Court
Ms. Jan Leshner, Pima County Administrator
Hon. Laura Conover, Pima County Attorney
Mr. Dean Brault, Director, Public Defense Services
Sheriff Chris Nanos
Chief Chad Kasmar, Tucson Police Department
Ms. Kate Vesely, Director, Pima County Justice Services
Hon. Tony Riojas, Presiding Tucson City Court Magistrate
Hon. Regina Romero, Mayor, City of Tucson
Mr. Mike Ortega, Tucson City Manager
Mr. Mike Rankin, Tucson City Attorney
Ms. Mary Trejo, Tucson Public Defender