

AGENDA MATERIAL

DATE 4-5-22 ITEM NO. RA 22



MEMORANDUM

Date: April 4, 2022

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

From: Jan Leshner 
Acting County Administrator

Re: **Additional Information – April 5, 2022 Board of Supervisors Meeting – Item 22; Initial Court Appearances**

The attached memorandum from Department of Justice Services Director Kate Vesely provides further information regarding Board of Supervisors Agenda Item 22 – Initial Court Appearances. Ms. Vesely details an overview of Initial Appearance processes and parameters of the proposed IGA, as well as explains the perspectives of involved parties as requested by the Board on March 15, 2022.

JKL

Attachment

c: Carmine DeBonis, Jr., Deputy County Administrator for Public Works
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer,
Health and Community Services
Kate Vesely, Director, Department of Justice Services

APR 04 22 AM 10:36 PC CLK OF BD



MEMORANDUM

Justice Services

Date: April 1, 2022

TO: Jan Leshner
Acting County Administrator

From: Kate Vesely
Director, Justice Services

RE: Initial Appearance Agreement Between Superior Court, Justice Court and Tucson City Court

At the March 15, 2022 Board of Supervisors meeting, item 20 on the regular agenda “Initial Court Appearances” pertained to an intergovernmental agreement (IGA) that would grant a 10-year extension to the practice of consolidating multiple jurisdiction’s Initial Appearance (IA) hearings into one docket, currently staffed by Tucson City Court magistrates (Agenda Item and proposed IGA extension is included as **Attachment 1**). During the meeting, Supervisor Adelita Grijalva requested additional information on this practice and the continuation of the IGA. The purpose of this memorandum is to provide an overview of the Initial Appearance (IA) process and the parameters of the proposed IGA, as well as detailing the perspectives of involved parties.

Summary

Around the period when Pima County’s jail moved to twice-daily IAs in the mid-2000s, misdemeanor and felony courts in Pima County also consolidated their judicial coverage for these hearings to a designated group of hearing officers. Currently, these dedicated hearing officers are composed entirely of Tucson City Court (TCC) magistrates, and receive an additional stipend for each hearing occurring during evenings and weekends (no stipend is provided for hearings during regular business hours). These designated judges receive specialized training on the IA process and will preside over all jurisdictions (both misdemeanor and felony) IAs during that session.

The process has been in place for at least 15 years and is viewed favorably by the bench as a more efficient use of judicial time by consolidating these hearings to one judge. However, some individuals have requested greater analysis and evaluation of the current IA process, citing linkage to the larger community discourse relating to cash bail reform, disparities in the justice system, and the length of time for the extension (10 years).

Overview of Initial Appearance Process

IA is the first hearing before a judge after an individual is arrested and booked into the Pima County Adult Detention Complex (PCADC, aka the jail). [Arizona Revised Statutes, Title 13 \(Chapter 12\)](#) and [Arizona Criminal Procedure, Rule 4](#) dictate rules and proceedings pertaining to charges that require jail booking and initial appearances before a judge (relevant statutes and procedures, as well as a description of the IA process, is included as **Attachment 2**).

Memo to J. Lesher

Re: Initial Appearance Agreement between Superior Court, Justice Court, and Tucson City Court

April 1, 2022

By statute, all individuals who are booked into PCADC must be seen by a judge (also referred to as a magistrate) within 24-hours of their booking. Some misdemeanors may be released without jail detention (examples include someone who is cited by law enforcement and released, or Pretrial Services release via the prebooking modular outside PCADC); however, all felonies are booked into the jail.

Pima County has a twice-a-day IA schedule, conducting hearings for booked individuals at 9 am and 8 pm. Prior to the IA hearing, [Pretrial Services](#) (PTS; a division of Pima County Superior Court) will interview detained individuals, complete a criminal history, and conduct a [Public Safety Assessment](#) (PSA). This statistically-validated tool assesses an individual's likelihood of appearing for court, being rearrested, and being arrested for a violent offense, if released (information on the PSA included in **Attachment 3**). This information and risk score is provided to the judge overseeing that session's IA, along with a recommendation on release conditions – if release is granted.

Domingo Corona, Director of Pretrial Services provided an overview of the function PTS provides in the IA process; advising that the role of PTS is not to recommend to the judge whether an individual should be released from custody. Rather, PTS provides information to the IA judge that if an individual is released, recommend a spectrum of release conditions that may be appropriate for that individual based on their risk assessment. In addition to providing to the IA judge a recommendation on release conditions, PTS also provides community supervision to pretrial defendants. PTS recommendations for each individual will range among the following levels:

1. Release on their own recognizance (with no pretrial supervision or financial bail), on a promise to appear for court (lowest risk);
2. Release to pretrial supervision: the individual is assigned a PTS officer who monitors their location and adherence to release conditions (which include a range of intensively such as toxicology and supervision appointments, and may also require participation in support services like behavioral health treatment or housing referrals); or,
3. Stringent conditions of release, including bail. This is utilized for individuals presenting the highest level of risk to reoffend or not appear for court. The amount of bail is set by a judge, commensurate to risk. Note: PTS does not make recommendations that an individual be held in custody without bail – this is the sole discretion of the judge.

The information provided by PTS in no way obligates a judge to follow those recommendations; however, Mr. Corona estimates that judges follow PTS's recommendations between 80 and 90 percent of the time.

Intergovernmental Agreement between Jurisdictions

Each court jurisdiction is responsible for conducting an IA within 24-hours of arrest, if held in custody. Prior to the IGA currently in place, a judge for each court would hear cases of those arrested – once daily, for all arrests within the last day. When PCADC moved to IAs twice daily (morning and evening), it also implemented the process of designating a self-selected group of judges willing to cover IAs for all arresting jurisdictions during that period.

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This modification reduced or eliminated the amount of time multiple judges would spend waiting for their IA hearings, as well as reducing the time spent in custody for detainees. Judges covering IAs during normal business hours are not provided additional remuneration; however, judges presiding over evening and week court are provided a stipend for each session (paid by Pima County).

If the IGA is not approved, TCC judges would continue to see Tucson City Court IA's but Superior Court and/or Justice Court would be required to hear felony and misdemeanor cases (for unincorporated areas of Pima County). A copy of the IGA from 2007 is included as **Attachment 4**.

Comments from Relevant Stakeholders

In the course of researching this IGA, several of our justice system leaders generously gave their time to provide knowledge on the IA process and judicial coverage, and in some instances provide recommendations or potential alternatives to the proposed item. A summary of their insights are outlined below.

Hon. Jeffrey Bergin, Presiding Judge of Pima County Superior Court

Judge Bergin is in support of the IGA as proposed.

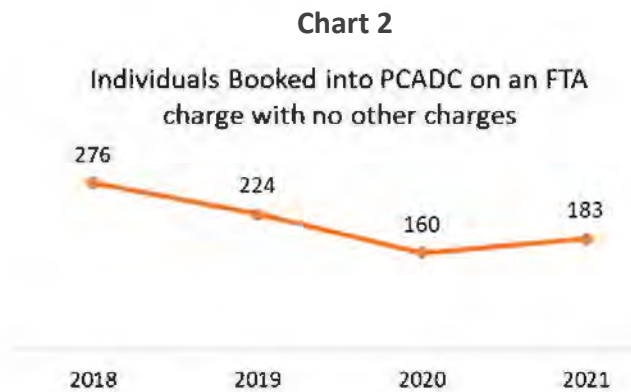
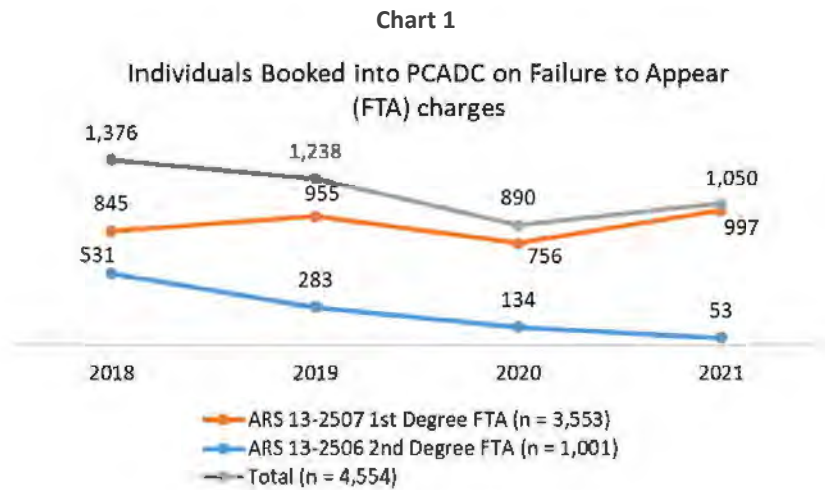
He estimates between 7,000 and 9,000 felony IAs are conducted annually, and affirms that a very high percentage of those decisions were determined properly and without controversy. Not only is having one judge a much more efficient use of a judicial officer's time, but also the support staff that must be present for these hearings as well. By consolidating all jurisdiction's IAs with one judge, it supports a more timely and well-organized hearing. Further, designating judges specifically for IAs allows for more targeted training. Each judge receives training on the IA process, and the criteria by which the judges are to make release or bail decisions. He finds no cause for concern with misdemeanor judges presiding over IAs with felony charges, and notes that many of the judges at TCC were attorneys in the felony system prior to becoming judges.

Judge Bergin also notes that it is a judge's obligation to ensure that a case proceeds forward in a timely manner, and this includes issuing warrants to precipitate that process. If it is unlikely that an individual will voluntarily appear for court, a judge also has an obligation to ensure that case can proceed – and this is likely to include imposing a bail that will promote appearance in court. He feels the main issue of concern is not the IA process, but rather the issue of the high number of Failure to Appear (FTA) charges that result in warrants and jail bookings. Judge Bergin states, "if we can attack the FTA issues, it will resolve a lot of concerns."

Please see chart below for data pertaining to FTAs from 2018 through 2021. Chart 1 represents individuals booked on FTAs in addition to other charges, and Chart 2 is individuals booked on FTA only.

Memo to J. Lesher

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April 1, 2022**



Dean Brault, Director, Public Defense Services, Pima County

Mr. Brault had no input on the proposed IGA, except to encourage the addition of a provision where – if the IA judge makes a release decision that is divergent from PTS’s recommendation – the judge go on record to articulate reasons why they have ruled in the manner they did.

Mr. Brault also noted that the successful implementation of the [Community Bond Program](#) may address many of the concerns expressed. Additional information about the Community Bond Program is included as **Attachment 5**. After Board approval in December 2020, a Request for Proposal (RFP) was released in 2021. Unfortunately, only one response was received and the applicant was deemed ineligible for application earlier this month after reviewing by outside counsel. Justice Services, Public Defense Services, and Procurement plan to re-release the RFP as quickly as possible, with an enhanced marketing program to draw greater interest from potential vendors. If the most recent RFP process is successful in selecting a qualified vendor, it is our objective to have the program implemented by the end of the year.

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Hon. Laura Conover, Pima County Attorney

Ms. Conover expressed a priority for ensuring individuals receive parity at all IA hearings, and would be in favor of measures that worked to safeguard against disparate outcomes. Placing an emphasis on data-driven decision making, she affirmed the importance of data collection and analysis and using that information to evaluate our current processes and guide any reforms.

Through this lens, Ms. Conover also advised consideration of a shorter agreement term for the IGA. A 10-year agreement may not allow for changes that should occur sooner, when research and evaluation or new best practice standards prompt reassessment of current practices.

Amelia Cramer

Ms. Cramer, retired Chief Deputy County Attorney, is not in favor of the IGA in its current format. Currently a volunteer with the NAACP Tucson Branch and Chair of their criminal justice reform subcommittee, her priority is on cash bail reform and ensuring those principles are reflected at IAs. She cited a lack of data to ensure that, on an aggregate level, TCC judges are releasing (or imposing bail) individuals equitably; and limited means for the County to have oversight/accountability for IA decisions.

Ms. Cramer supports a dramatic increase in data collection for IAs, and for felony judges to preside over felony IA hearings (feeling as though these individuals will have greater insight into felony proceedings). She also encourages an improved data linkage between the jail and the courts, to better track the individuals who do post bail and are released.

Ms. Cramer recommends the following measures:

- Eliminate the use of misdemeanor judges during felony IA hearings; alternatively, approve the IGA extension for only one year and collect robust data during this period;
- Dramatically expand the use of community supervision technology, such as ankle monitoring and phone surveillance; and
- Implement an ongoing monitoring and analysis process to ensure ongoing evaluation of the IA process.

Hon. Danelle Liwski, Associate Presiding Judge, Pima County Superior Court

Judge Liwski is in favor of the IGA extension. She expressed that she had recently audited multiple IA hearings, and felt as though the arrangement with TCC is and will continue to be a much more efficient approach to having multiple judges and court support staff present for each hearing. Further, this process aids rapid processing for individuals who are released from custody. Judge Liwski also affirmed a need to identify solutions and resources to address FTAs.

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Ron Overholt, Court Administrator, Pima County Superior Court

Mr. Overholt is in favor of the IGA extension, and notes this is a routine renewal for a process that has been in place for a significant period of time without issue. He emphasized the importance of judicial independence in all aspects of court proceedings, including IAs. There may be advocacy to have individuals released or held in custody, but historically it has been difficult to get consensus among prosecution and defense on overarching parameters for release conditions. Mr. Overholt affirms that, while parties to a proceeding may have objections to release conditions, it is critical that judicial decision-making – beginning with IAs – be free of outside influence to maintain the objectivity of the process.

Hon. Tony Riojas, Presiding Judge of Tucson City Court

Judge Riojas is in favor of the IGA extension. He is one of three judges in Arizona who train judges on presiding over IA hearings, and states that local IA practices are in line with the [Fair Justice for All Taskforce](#) principles. Judge Riojas notes that, unless the Arizona constitution is changed, setting bail will always be among the options of consideration for any judge conducting IA hearings. An individual is more likely to be assigned bail with a history of FTAs, however, the presumption in all cases is release.

Judge Riojas estimates the practice of consolidating all jurisdictions' IAs with designated judges began approximately 20 years ago. Initially, there were judges who volunteered for the assignment from multiple courts, including the Justices of the Peace and one Superior Court judge; however, today's contingent includes only TCC judges. He believes that with proper training, judges can proficiently oversee IA hearings regardless of being assigned to misdemeanor or felony courts. Generally speaking, he feels as though judges are provided with enough information to make an informed decision on release conditions and believes judges agree with PTS in approximately 85-90% of cases.

CC: Mark Napier, Assistant County Administrator
Monica Perez, Chief of Staff

ATTACHMENT 1



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: 3/15/2022

**= Mandatory, information must be provided*

Click or tap the boxes to enter text. If not applicable, indicate "N/A".

***Title:**

Twice a Day Appearances Intergovernmental Agreement (IGA)

***Introduction/Background:**

The purpose of this Agreement is to establish the Intergovernmental Agreement for Twice-a-Day initial court appearances for a period of 10 years. The agreement is for the provision for the joint participation and pro-rata sharing by the Superior Court, Justice Court, and the City Court in the initial appearance and/or misdemeanor arraignment proceedings, conducted twice-a-day, seven days a week, pursuant to the Arizona Rules of Criminal Procedure.

***Discussion:**

Intergovernmental Agreement has been reviewed and approved by Arizona Superior Court in Pima County, Tucson City Court, and Pima County Consolidated Justice Court, as well as Arizona Attorney General's Office and Pima County Attorney's Office. IGA has been submitted and approved by Tucson City Council.

***Conclusion:**

IGA approved for ten year extension providing for provision for the joint participation and pro-rata sharing by the Superior Court, Justice Court, and the City Court in the initial appearance and/or misdemeanor arraignment proceedings, conducted twice-a-day, seven days a week

***Recommendation:**

Recommend approval for a ten (10) year extension of the Intergovernmental Agreement providing for joint participation and pro-rata cost sharing by Superior Court, Justice Court, and the City Court for initial appearances and/or misdemeanor arraignments.

***Fiscal Impact:**

N/A

***Board of Supervisor District:**

1 2 3 4 5 All

YFR0122M1147CCLK0110 26

Department: Arizona Superior Court Finance

Telephone: 520-724-4218

Contact: Adam Redding

Department Director Signature:

Anna Marie Wheeler for Patricia Miller

Date:

3/11/2022

Court Administrator Signature:

DR

Date:

3/15/2022

ORIGINAL

INTERGOVERNMENTAL AGREEMENT BETWEEN THE ARIZONA SUPERIOR COURT IN PIMA COUNTY, PIMA COUNTY, PIMA COUNTY CONSOLIDATED JUSTICE COURT, AND THE CITY OF TUCSON FOR THE PROVISION OF TWICE-A-DAY INITIAL APPEARANCES

1. Background and Purpose.

- 1.1. This intergovernmental agreement ("**Agreement**") is entered into by and between Arizona Superior Court in Pima County ("**Superior Court**"), Pima County, a political subdivision of the State of Arizona ("**County**"), Pima County Consolidated Justice Court ("**Justice Court**"), and the City of Tucson ("**City**"), a municipal corporation, on behalf of the Tucson City Court ("**City Court**") and, together with the Superior Court and Justice Court, the "**Courts**").
 - 1.2. The Courts are required by Rule 4, Arizona Rules of Criminal Procedure, to provide all persons arrested within the County and the City with an initial appearance and/or misdemeanor arraignment proceedings (the "**Proceedings**") before a judge within twenty-four hours after arrest. Such Proceedings are conducted twice a day, seven days a week, including holidays.
 - 1.3. The Courts have determined that it is most efficient for them to consolidate all initial appearances and arraignments in City Court. The Proceedings will be conducted by City Court magistrates or other designated, qualified lawyers appointed by the Superior Court as special commissioners of the Superior Court. For purposes of the payment provisions of this Agreement, "Justice Court" includes the County and "City Court" includes the City.
2. **Term.** Regardless of the date it is approved and executed by the parties, this Agreement will be deemed to have been in effect as of July 15, 2021, and will continue for a period of 10 years, subject to early termination by any of the parties as provided in this Agreement.

3. Facilities.

3.1. *Location.* The Proceedings will be conducted either in Courtroom 1 of the City Court at 103 E. Alameda Street, or remotely (if required) each morning and evening, including weekends and holidays. The specific time and place for the Proceedings will be set by mutual decision of the Courts and may be adjusted as necessary during the life of this Agreement.

3.2. *Facilities.* City Court will ensure that the facilities used for the Proceedings are configured and maintained in a manner that accommodates the flow of the Proceedings and will provide access, parking, office space, and telephones for the employees of the other Courts traveling to the City Court location for the Proceedings. City Court will also provide public and media access to the Proceedings. Such access may be through virtual or remote technologies.

4. Services.

- 4.1. *Judicial Services.* City Court will provide Magistrates to conduct the Proceedings on weekday mornings. Superior Court will provide qualified judicial officers for all evening, weekend, and holiday Proceedings.
- 4.2. *Clerical Support.* City Court will provide a courtroom clerk for the weekday morning Proceedings. Justice Court will provide a courtroom clerk for evening, weekend, and holiday Proceedings. The clerks will perform their customary duties in connection with the Proceedings.
- 4.3. *Interpreting Services.* City Court will provide interpreting services for weekday morning Proceedings. Superior Court will provide interpreting services for all evening, weekend and holiday Proceedings.

5. **Costs.** The Courts will share the cost of providing judicial officers, courtroom clerks, and interpreting services for the Proceedings in proportion to each Court's share of the Proceedings, except that the cost of courtroom clerks for evening, weekend, and holiday Proceedings will be shared only between Justice Court and Superior Court.

5.1. *Cost Calculations.* The calculation of the cost of judicial, clerical, and interpreter services provided by the various Courts will be based on the rates actually paid for services provided by contractors, and on the hourly cost of salary and employee benefits for services provided by Court employees. The administrators of the Courts providing the services will review and agree upon the rates for cost calculations and adjust them from time to time as necessary.

5.2. *Case Counts; Invoices.* Justice Court will provide its case counts to Superior Court every month, and City Court will provide its case counts to Superior Court each quarter. Each quarter, the Superior Court will issue detailed invoices to the other courts for their share of the total costs, with each court credited the cost of the services it provided.

5.3. *Payment.* Any amounts owed by any Court to another Court will be paid within 30 days of the invoice.

6. **Non-Party Courts.** Other courts that send defendants through the initial arraignment court will be billed proportionately for their share of costs. The other Courts include but are not limited to the following:

Ajo Justice Court Precinct #3

Green Valley Justice Court Precinct #7

Marana Municipal Court

Oro Valley Municipal Court

Sahuarita Municipal Court

South Tucson City Court

7. **Notices.** Any notices provided by one of the Courts under this Agreement must be in writing, delivered to the Presiding Judge or Justice of the Peace of the other Courts. Case counts must be delivered to:

Arizona Superior Court in Pima County
110 W. Congress, 9th Floor
Tucson, Arizona 85701
ATTN: Finance Department

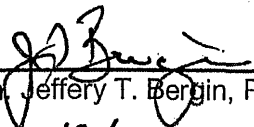
8. **Insurance.** The parties are each self-insured and each will be responsible for, and will indemnify and defend the others against liability for, its own negligent acts and omissions and the negligent acts and omissions of its employees.

9. **Termination.** This Agreement may be terminated at any time by mutual written consent or unilaterally by any party by giving not less than ninety (90) days written notice to the other parties.

10. **Conflicts of Interest.** This agreement is subject to termination for conflicts of interest as provided in A.R.S. § 38-511.


11. **Legal Jurisdiction.** Nothing in this Agreement either limits or extends the legal jurisdiction of any of the Courts.
12. **Prior Agreements.** This agreement supersedes all previous agreements regarding the same subject matter.
13. **Review of Terms.** This parties will review this Agreement annually and will amend it as they deem appropriate.
14. **Assignment.** No right or obligation under this Agreement may be assigned or delegated by any party without the prior written permission of the other parties.
15. **Applicable Law.** This Agreement is governed by the laws of the State of Arizona, and suits pertaining to this Agreement must be brought in a court of competent jurisdiction in the State of Arizona.
16. **Compliance with Law.** Parties to this Agreement will comply with all applicable City, County, State and Federal laws, ordinances, rules, regulations, and statutes in the performance of this Agreement.
17. **Non-Discrimination.** The parties will not discriminate, will prohibit any subcontractor from discriminating, against any employee, or applicant for employment, or any other person, in violation of Federal Executive Order 11246, State Executive Order 2009-09, and A.R.S. § 41-1461 *et seq.* on the basis of race, age, color, religion, sex, condition of disability, or national origin.
18. **Records Retention.** Pursuant to A.R.S. § 35-214, parties will retain, and will require all subcontractors to retain, for inspection and audit by the Administrative Office of the Court and the Arizona Auditor General, all books, accounts, reports, files and other records relating to the performance of this Agreement for a period of five years after its completion. Upon request by the AOC or the Auditor General, the parties will produce a legible copy or the original of all such records.
19. **Americans with Disabilities Act.** All parties will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
20. **Non-Appropriation.** Each payment obligation under this Agreement is conditioned upon the availability of funds that are appropriated for the payment of such obligation. If funds are not available to a party for the continuance of this Agreement, that party will promptly notify the others. No penalty will accrue to the party in the event this provision is exercised and the party will not be obligated or liable for any future payments due or for any damages as a result of the termination under this section.
21. **Entire Agreement.** This document constitutes the entire agreement between the parties and shall not be modified, amended, altered or changed except through a written amendment signed by all the parties.
22. **Copies and Counterparts.** The parties may execute this Agreement in multiple copies, each of which is an original, but all of which constitute one agreement after each party has signed such a counterpart. Any executed counterpart may be delivered by facsimile, electronic mail, or other electronic means.

ARIZONA SUPERIOR COURT IN PIMA COUNTY and PIMA COUNTY CONSOLIDATED JUSTICE COURT:



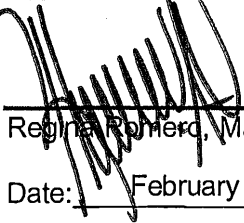
Hon. Jeffrey T. Bergin, Presiding Judge
Date: 12/13/2021

TUCSON CITY COURT:



Hon. Antonio Riojas, Presiding Judge
Date: 12/13/21

CITY OF TUCSON:

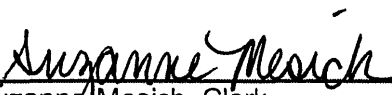


Regina Romero, Mayor
Date: February 8, 2022

PIMA COUNTY:

Sharon Bronson, Chair
Board of Supervisors
Date: _____

ATTEST:



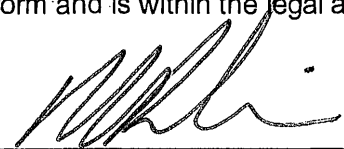
Suzanne Mesich, Clerk
Date: February 8, 2022

ATTEST:

Melissa Manriquez, Clerk of the Board

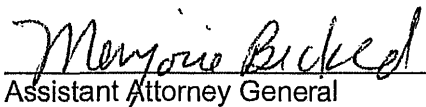
Intergovernmental Agreement Determination:

Each of the undersigned lawyers has reviewed this Agreement and has determined that it is in proper form and is within the legal authority of the party represented by the lawyer.



City Attorney

Deputy County Attorney



Assistant Attorney General

ARIZONA SUPERIOR COURT IN PIMA COUNTY and PIMA COUNTY CONSOLIDATED JUSTICE COURT:

TUCSON CITY COURT:

Hon. Jeffery T. Bergin, Presiding Judge

Date: _____

Hon. Antonio Riojas, Presiding Judge

Date: _____

CITY OF TUCSON:

PIMA COUNTY:

Regina Romero, Mayor

Date: _____

Sharon Bronson, Chair
Board of Supervisors

Date: _____

ATTEST:

ATTEST:

Roger Rudolph, Clerk

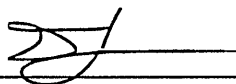
Date: _____

Melissa Manriquez, Clerk of the Board

Intergovernmental Agreement Determination:

Each of the undersigned lawyers has reviewed this Agreement and has determined that it is in proper form and is within the legal authority of the party represented by the lawyer.

City Attorney



Deputy County Attorney

Assistant Attorney General



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
STATE GOVERNMENT DIVISION
AGENCY COUNSEL SECTION

INTERGOVERNMENTAL AGREEMENT DETERMINATION

Attorney General Contract No. ACS-KR-2021-0069 which is an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General, who has determined that it is in the proper form and is within the powers granted under the laws of the State of Arizona to those Parties to the Agreement represented by the Attorney General.

Dated this 23rd day of December, 2021.

MARK BRNOVICH
ATTORNEY GENERAL

Manjorie Becked
Assistant Attorney General

ADOPTED BY THE
MAYOR AND COUNCIL

February 8, 2022

RESOLUTION NO. 23439

RELATING TO INTERGOVERNMENTAL AGREEMENTS (IGAS); APPROVING AND AUTHORIZING THE EXECUTION OF AN IGA BETWEEN THE ARIZONA SUPERIOR COURT IN PIMA COUNTY, TUCSON CITY COURT, PIMA COUNTY CONSOLIDATED JUSTICE COURT, PIMA COUNTY, AND THE CITY OF TUCSON (CITY) REGARDING INITIAL APPEARANCES.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The IGA between the Arizona Superior Court in Pima County, Tucson City Court, Pima County Consolidated Justice Court, Pima County, and the City of Tucson regarding the consolidation of initial appearances, and sharing the costs among the courts, which is attached hereto as Exhibit A, is approved.

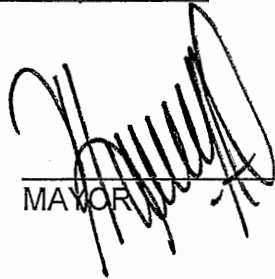
SECTION 2. The Mayor is hereby authorized and directed to execute said IGA for and on behalf of the City and the City Clerk is directed to attest the same.

SECTION 3. Upon approval and execution by all the parties, this IGA will supersede the previous version of the IGA that was approved by the Mayor & Council on October 19, 2021, as an attachment to Resolution No. 23406, and that previous version will be deemed terminated and of no further force or effect.

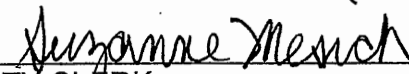
SECTION 4. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution.

SECTION 5. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this Resolution become immediately effective, an emergency is hereby declared to exist and this Resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, February 8, 2022.


MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:

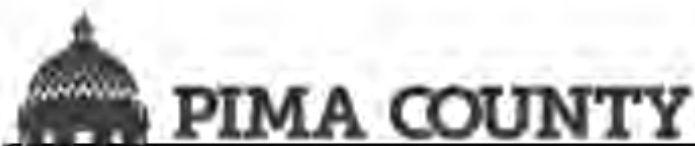

CITY ATTORNEY

REVIEWED BY:


CITY MANAGER

RN/ct
2/1/22

ATTACHMENT 2



The Court Process, Part 1

Arrest to Arraignment.

After you are arrested, you will generally be taken into custody and booked into the Pima County Jail. A Pretrial Services representative and an attorney will speak with you briefly about your situation.

Within 24 hours of your arrest, you will have an INITIAL APPEARANCE (IA). Three things will happen at the IA: The judge or magistrate (1) reviews the police's statement of PROBABLE CAUSE to arrest; (2) determines RELEASE CONDITIONS; and (3) sets the next court date.

PROBABLE CAUSE. When you appear before the judge, he or she will review the police's statement of probable cause, which is contained in paperwork called an "interim complaint." PROBABLE CAUSE is a very low standard: did the officer have reason to believe that a crime was likely committed and that you were the one who likely committed it? The probable cause statement can be as simple as two or three sentences. If the judge finds no probable cause, you will be released. If the judge finds probable cause, the magistrate will set release conditions.

RELEASE CONDITIONS. Because the judge found that an offense had likely been committed and you were likely the one who committed it, the question then becomes: can the Court trust that you will show up at your next court appearance? If the judge believes that you will show up, you will be released on your own recognizance (ROR). If the judge has some concerns about whether you will show up or whether you need supervision to make sure you show up, the magistrate may release you to Pretrial Services (PTS). PTS will have interviewed you before your IA, and will have already prepared a report that the judge has read detailing the alleged offense, how long you have lived in Tucson, who you live with, whether you have a job and how long you have been employed, your medical and mental health history, whether you will be able to stay with someone if you are released, and PTS's recommendation about whether you should be released. The judge is not required to follow the PTS release recommendation.

Instead of being released ROR or under PTS supervision, the judge may require a CASH BOND or SECURED BOND. A bond gives the Court assurance that you will show up to the next court date because if you don't show up, you will lose your bond.

A CASH BOND means that you must pay the entirety of the bond amount in cash. Once you do that, you will be released, but you still have some conditions to your release, such as appearing at your next court date.

A SECURED BOND means you can pledge property worth the bond amount rather than cash only. Many defendants and their families will visit a BAIL BONDSMAN. Bail bond companies are businesses. If the bondsman accepts you as a client, he will charge you a fee—often 10% of the bond amount, sometimes more in fugitive warrant cases. For example, if the judge orders a \$10,000 bond, 10% is \$1,000, which you or a family member has to provide to the bond company in cash. You don't get that money back—that is the cost of doing business with the bond company. In return, the bond company will place a lien on a property item that you or your family has that is worth \$10,000, and then the bond company will put up the \$10,000 to the jail. You will then be released. If you don't show up at your next court hearing, a judge can order the bond forfeited. That means that the bond company will exercise its legal rights on the property lien so it can recover its \$10,000 from you because it lost (forfeited) the \$10,000 it had given to the jail to get you released. A judge will also order a warrant for your arrest.

If you show up at all of your court dates, the bond will be returned to the person who posted the bond (if in CASH), or the bond will be exonerated (if SECURED) at the end of your case, which means the bond company should remove the lien it placed on your or your family's property.

There are many other RELEASE CONDITIONS on the reverse side of the paperwork you receive at your IA. Please make sure you understand your release conditions. For example, don't travel out of state without the Court's permission.

NEXT COURT DATE. The Arizona Constitution and the Arizona Rules of Criminal Procedure don't allow the IA judge's PROBABLE CAUSE finding to be final. Therefore, after your IA, the next court date you will receive is for a PRELIMINARY HEARING (PH). A PH is one way that the County Attorney's Office can bring formal charges against you. If you are in jail, the rules require that the PH date be set within 10 days; if you are out-of-custody, the rules require the PH to be held in 20 days. Everyone gets a PH date; however, few Pima County cases go to a PH. This is because most cases in Pima County get formally charged through the GRAND JURY process.

The difference between a PH and a GRAND JURY is that a PH looks more like a mini-trial: there is a judge, a prosecutor, a complaining witness, a defendant (you), your lawyer, and a court reporter. The prosecutor calls the witness to testify under oath. Your lawyer will cross-examine the witness. The sole purpose of the hearing is to determine PROBABLE CAUSE, not your guilt or innocence. But if you had witnesses, you could present their testimony to the judge as well. If the judge finds PROBABLE CAUSE to believe that offenses were likely committed and you likely committed them, the result is an INFORMATION.

In contrast, the GRAND JURY process has no judge, no complaining witness, no defense attorney, and no defendant. Instead, a group of about 15 people from Pima County listen to evidence the County Attorney's deputy prosecutor presents to them through a witness, usually a police officer. The grand jurors can ask legal and factual

questions. Then, they make a decision, by themselves, without the prosecutor or anyone else present, whether PROBABLE CAUSE exists to believe that offenses were likely committed and you were the one who likely committed them. Only 9 of them must agree that an offense likely was committed. The result is an INDICTMENT.

them. Only 2 of them must agree that an offense likely was committed. The result is an INDICTMENT.

Sometimes, the County Attorney's Office may decide not to pursue the case under either process, and your case will be dismissed WITHOUT PREJUDICE, and you will be released. WITHOUT PREJUDICE means that the prosecutor can re-charge you, if, for example, the police find more evidence against you. These charging decisions—whether to charge you and what to charge you with—are solely within the County Attorney's (or Attorney General's) discretion.

If the state decides to re-charge you, you will get notice in the mail to appear for your ARRAIGNMENT. Sometimes, you might just be re-arrested.

The ARRAIGNMENT happens about a week to 10 days after the PH date that was originally given to you in your release condition paperwork at your IA. The ARRAIGNMENT is the formal step in the proceedings that tells you what offenses the State is charging you with. Although in theory you could plead guilty right then and there, that is not advisable—in fact, the judge will enter a “not guilty” plea on your behalf. Also at the ARRAIGNMENT, the judge (1) asks if the INDICTMENT/ INFORMATION has your correct name, (2) gives you directions about reporting to the jail to be fingerprinted if you have not done so already and, (3) may tell you a few other things to do, like contact your attorney.

13-3898. Arrest without warrant; magistrate; complaint

A. A person who is arrested without a warrant shall without unnecessary delay be taken before the nearest or most accessible magistrate in the county in which the arrest occurs or, if the offense that the person is being arrested for was committed in another county, before either the nearest or most accessible magistrate in the county in which the arrest occurs or a magistrate in the county where the offense was committed, and a complaint shall be made before the magistrate setting forth the facts, and the basis for his statement of the facts, showing the offense for which the person was arrested.

B. Subsection A of this section does not apply if the person making the arrest is a peace officer and decides to proceed under the provisions of section 13-3903.

13-3903. Notice to appear and complaint

A. In any case in which a person is arrested for a misdemeanor offense or a petty offense, the arresting officer may release the arrested person from custody in lieu of taking the person to a law enforcement facility by use of the procedure prescribed in this section.

B. At any time after taking a person arrested for a misdemeanor offense or a petty offense to a law enforcement facility, the arresting officer, instead of taking the person to a magistrate, may release the person from further custody by use of the procedure prescribed in this section.

C. If a person is arrested for a misdemeanor offense or a petty offense and the offense is listed in section 41-1750, subsection C, the person shall not be released pursuant to this section until the person provides either a fingerprint or a two fingerprint biometric-based identifier to the arresting agency. The arresting agency shall provide to the arrested person a mandatory fingerprint compliance form that includes instructions on reporting to the arresting agency for ten-print fingerprinting, including available times and locations for reporting for ten-print fingerprinting.

D. In any case in which a person is arrested for a misdemeanor offense or a petty offense, the arresting officer may prepare in quadruplicate a written notice to appear and complaint, containing the name and address of the person, the offense charged, and the time and place where and when the person shall appear in court, provided:

1. The time specified in the notice to appear is at least five days after arrest.
2. The place specified in the notice shall be the court specified in section 13-3898.
3. The arrested person, in order to secure release as provided in this section, shall give his written promise so to appear in court by signing at least one copy of the written notice and complaint prepared by the arresting officer. The officer shall deliver a copy of the notice and complaint to the person promising to appear. Thereupon, the officer shall forthwith release the person arrested from custody.
4. The officer, as soon as practical, shall deliver the original notice and complaint to the magistrate specified therein. Thereupon, the magistrate shall promptly file the notice and complaint and enter it into the docket of the court.

E. The Arizona traffic ticket and complaint may be utilized not only for the purposes provided by Arizona supreme court rule, but to satisfy the requirements of this section.

F. If a person gives his written promise to appear in court on a designated date pursuant to this section, and thereafter fails to appear, personally or by counsel, on or before that date, the court clerk or other court staff shall file a complaint, in writing, under oath, charging the defendant with a violation of section 13-2506, subsection A, paragraph 2 and issue a warrant for the defendant's arrest.

G. If the person has not previously been arraigned, on the person's appearance in court for arraignment on the charge of violating section 13-2506, subsection A, paragraph 2, the court shall also arraign the person on the charge stated in the notice to appear and complaint for which the person had previously promised to appear.

H. This section does not affect a peace officer's authority to conduct an otherwise lawful search incident to his arrest even though the arrested person is released before being taken to the police station or before a magistrate pursuant to this section.

13-3967. Release on bailable offenses before trial; definition

A. At his appearance before a judicial officer, any person who is charged with a public offense that is bailable as a matter of right shall be ordered released pending trial on his own recognizance or on the execution of bail in an amount specified by the judicial officer.

B. In determining the method of release or the amount of bail, the judicial officer, on the basis of available information, shall take into account all of the following:

1. The views of the victim.
2. The nature and circumstances of the offense charged.
3. Whether the accused has a prior arrest or conviction for a serious offense or violent or aggravated felony as defined in section 13-706 or an offense in another state that would be a serious offense or violent or aggravated felony as defined in section 13-706 if committed in this state.
4. Evidence that the accused poses a danger to others in the community.
5. The results of a risk or lethality assessment in a domestic violence charge that is presented to the court.
6. The weight of evidence against the accused.
7. The accused's family ties, employment, financial resources, character and mental condition.
8. The results of any drug test submitted to the court.
9. Whether the accused is using any substance if its possession or use is illegal pursuant to chapter 34 of this title.
10. Whether the accused violated section 13-3407, subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01.
11. The length of residence in the community.
12. The accused's record of arrests and convictions.
13. The accused's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.
14. Whether the accused has entered or remained in the United States illegally.
15. Whether the accused's residence is in this state, in another state or outside the United States.

C. If a judicial officer orders the release of a defendant who is charged with a felony either on his own recognizance or on bail, the judicial officer shall condition the defendant's release on the defendant's good behavior while so released. On a showing of probable cause that the defendant committed any offense during the period of release, a judicial officer may revoke the defendant's release pursuant to section 13-3968.

D. After providing notice to the victim pursuant to section 13-4406, a judicial officer may impose any of the following conditions on a person who is released on his own recognizance or on bail:

1. Place the person in the custody of a designated person or organization agreeing to supervise him.
2. Place restrictions on the person's travel, associates or place of abode during the period of release.

3. Require the deposit with the clerk of the court of cash or other security, such deposit to be returned on the performance of the conditions of release.

4. Prohibit the person from possessing any deadly weapon or engaging in certain described activities or indulging in intoxicating liquors or certain drugs.

5. Require the person to report regularly to and remain under the supervision of an officer of the court.

6. Impose any other conditions deemed reasonably necessary to assure appearance as required including a condition requiring that the person return to custody after specified hours.

E. In addition to any of the conditions a judicial officer may impose pursuant to subsection D of this section, the judicial officer shall impose both of the following conditions on a person who is charged with a felony violation of chapter 14 or 35.1 of this title and who is released on his own recognizance or on bail:

1. Electronic monitoring where available.

2. A condition prohibiting the person from having any contact with the victim.

F. The judicial officer who authorizes the release of the person charged on his own recognizance or on bail shall do all of the following:

1. Issue an appropriate order containing statements of the conditions imposed.

2. Inform the person of the penalties that apply to any violation of the conditions of release.

3. Advise the person that a warrant for his arrest may be issued immediately on any violation of the conditions of release, including the failure to submit to deoxyribonucleic acid testing ordered pursuant to paragraph 4 of this subsection.

4. If the person is charged with a felony or misdemeanor offense listed in section 13-610, subsection O, paragraph 3 and is summoned to appear, order the person to report within five days to the law enforcement agency that arrested the person or to the agency's designee and submit a sufficient sample of buccal cells or other bodily substances for deoxyribonucleic acid testing and extraction. If a person does not comply with an order issued pursuant to this paragraph, the court shall revoke the person's release.

G. At any time after providing notice to the victim pursuant to section 13-4406, the judicial officer who orders the release of a person on any condition specified in this section or the court in which a prosecution is pending may amend the order to employ additional or different conditions of release, including either an increase or reduction in the amount of bail. On application, the defendant shall be entitled to have the conditions of release reviewed by the judicial officer who imposed them or by the court in which the prosecution is pending. Reasonable notice of the application shall be given to the county attorney and the victim.

H. Any information that is stated or offered in connection with any order pursuant to this section need not conform to the rules pertaining to admissibility of evidence in a court of law.

I. This section does not prevent the disposition of any case or class of cases by forfeiture of bail or collateral security if such disposition is authorized by the court.

J. A judicial officer who orders the release of a juvenile who has been transferred to the criminal division of the superior court pursuant to section 8-327 or who has been charged as an adult pursuant to section 13-501 shall notify the appropriate school district on the release of the juvenile from custody.

K. For the purposes of this section and section 13-3968, "judicial officer" means any person or court authorized pursuant to the constitution or laws of this state to bail or otherwise release a person before trial or sentencing or pending appeal.

WESTLAW Arizona Court Rules[Home](#) [Table of Contents](#)**Rule 4.1. Procedure upon Arrest**
Arizona Revised Statutes Annotated
Rules of Criminal Procedure
Effective: January 1, 2022Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
II. Preliminary Proceedings
Rule 4. Initial Appearance (Refs & Annos)

Effective: January 1, 2022

16A A.R.S. Rules Crim.Proc., Rule 4.1

Rule 4.1. Procedure upon Arrest[Currentness](#)

(a) Prompt Appearance Before a Magistrate. An arrested person must be promptly taken before a magistrate for an initial appearance. At the initial appearance, the magistrate will advise the arrested person of those matters set forth in Rule 4.2. If the initial appearance does not occur within 24 hours after arrest, the arrested person must be immediately released from custody. If a misdemeanor warrant states the amount of a deposit, cash, unsecured, or secured appearance bond as provided in Rule 3.2(a)(3), and the arrested person has posted the bond prior to the initial appearance, the arrested person must be promptly released from custody.

(b) On Arrest Without a Warrant. A person arrested without a warrant must be taken before the nearest or most accessible magistrate either in the county of arrest or in the county where the offense was committed. A complaint, if not already filed, must be promptly prepared and filed. If a complaint is not filed within 48 hours after the initial appearance before the magistrate, the arrested person must be immediately released from custody and any pending preliminary hearing dates must be vacated.

(c) On Arrest with a Warrant.

(1) *Arrest in the County of Issuance.* A person arrested in the county where the warrant was issued must be taken before the magistrate who issued the warrant for an initial appearance. If the magistrate is absent or unable to act, the arrested person must be taken to the nearest or most accessible magistrate in the same county.

(2) *Arrest in Another County.* If a person is arrested in a county other than the one where the warrant was issued, the person must be taken before the nearest or most accessible magistrate in the county of arrest or in the county where the offense was committed. If eligible for release as a matter of right, the person must then be released under Rule 7.2. If not released immediately, the arrested person must be taken to the issuing magistrate in the county where the warrant originated, or, if that magistrate is absent or unable to act, before the nearest or most accessible magistrate in the county where the warrant originated.

(d) Assurance of Availability of Magistrate and the Setting of a Time for Initial Appearance. Each presiding judge must make a magistrate available every day of the week to hold the initial appearances required under Rule 4.1(a). The presiding judge also must set at least one fixed time each day for conducting initial appearances, and notify local law enforcement agencies of the fixed time(s).

(e) Sample for DNA Testing; Proof of Compliance. If the arresting authority is required to secure a sample of buccal cells or other bodily substances for DNA testing under A.R.S. § 13-610(K), it must provide proof of compliance to the court before the initial appearance.

Credits

Added Aug. 31, 2017, effective Jan. 1, 2018. Amended Aug. 26, 2020, effective Jan. 1, 2021; amended on an emergency basis Aug. 25, 2021, effective Sept. 29, 2021, adopted on a permanent basis effective Jan. 1, 2022.

16A A. R. S. Rules Crim. Proc., Rule 4.1, AZ ST RCRP Rule 4.1

State Court Rules are current with amendments received and effective through 3/1/22. The Code of Judicial Administration is current with amendments received through 3/1/22.

END OF DOCUMENT



[Home](#) [Table of Contents](#)

Rule 4.2. Initial Appearance
Arizona Revised Statutes Annotated
Rules of Criminal Procedure

Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
II. Preliminary Proceedings
Rule 4. Initial Appearance (Refs & Annos)

16A A.R.S. Rules Crim.Proc., Rule 4.2

Rule 4.2. Initial Appearance

[Currentness](#)

(a) Generally. At an initial appearance, the magistrate must:

- (1) determine the defendant's true name and address and, if necessary, amend the formal charges to correct the name and instruct the person to promptly notify the court of any change of address;
- (2) inform the defendant of the charges and, if available, provide the person with a copy of the complaint, information, or indictment;
- (3) inform the defendant of the right to counsel and the right to remain silent;
- (4) determine whether there is probable cause for purposes of release from custody, and, if no probable cause is found, immediately release the person from custody;
- (5) appoint counsel if the defendant requests and is eligible for appointed counsel under Rule 6;
- (6) permit and consider any victim's oral or written comments concerning the defendant's possible release and conditions of release;
- (7) unless the magistrate determines under (a)(8) that release on bail is prohibited, determine the conditions of release under Rule 7.2(a);
- (8) determine whether probable cause exists to believe:
 - (A) the defendant committed a capital offense or any felony offense committed while the person was on pretrial release for a separate felony charge; or
 - (B) the defendant committed a felony for which release on bail is prohibited because the defendant poses a substantial danger and no conditions of release will reasonably assure the safety of the victim, any other person, or the community based on the considerations provided in Rule 7.2(b)(3);
- (9) if the court determines that the defendant is not eligible for bail based on a determination under (a)(8)(A) or (B), schedule a bail eligibility hearing in superior court as required under Rule 7.2(b)(4);
- (10) order a summoned defendant to be 10-print fingerprinted no later than 20 calendar days by the appropriate law enforcement agency at a designated time and place if:
 - (A) the defendant is charged with a felony offense, a violation of A.R.S. §§ 13-1401 et seq. or A.R.S. §§ 28-1301 et seq., or a domestic violence offense as defined in A.R.S. § 13-3601; and
 - (B) the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number; and
- (11) order the arresting agency to secure a sample of buccal cells or other bodily substances for DNA testing if:
 - (A) the defendant is in-custody and was arrested for an offense listed in A.R.S. § 13-610(O)(3); and
 - (B) the court has not received proof of compliance with A.R.S. § 13-610(K).

(b) Felonies Charged by Complaint. If a defendant is charged in a complaint with a felony, in addition to following the procedures in (a), the magistrate must:

- (1) inform the defendant of the right to a preliminary hearing and the procedures by which that right may be waived; and
- (2) unless waived, set the time for a preliminary hearing under Rule 5.1.

(c) Combining an Initial Appearance with an Arraignment. If the defendant is charged with a misdemeanor or indicted for a felony and defense counsel is present or the defendant waives the presence of counsel, the magistrate may arraign a defendant under Rule 14 during an initial appearance under (a). If, however, the magistrate lacks jurisdiction to try the offense, the magistrate may not arraign the defendant and must instead transfer the case to the proper court for arraignment. If the court finds that delaying the defendant's arraignment is indispensable to the interests of justice, the court when setting a date for the continued arraignment must provide sufficient notice to victims under Rule 39(b)(2).

Credits

Added Aug. 31, 2017, effective Jan. 1, 2018. Amended Sept. 28, 2017, effective April 2, 2018. Amended on an emergency basis June 8, 2018, effective July 1, 2018, adopted on a permanent basis Dec. 13, 2018.

16A A. R. S. Rules Crim. Proc., Rule 4.2, AZ ST RCRP Rule 4.2

State Court Rules are current with amendments received and effective through 3/1/22. The Code of Judicial Administration is current with amendments received through 3/1/22.

END OF DOCUMENT

WESTLAW Arizona Court Rules[Home](#) [Table of Contents](#)**Rule 4.3. Initial Appearance Masters**
Arizona Revised Statutes Annotated
Rules of Criminal ProcedureArizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
II. Preliminary Proceedings
Rule 4. Initial Appearance (Refs & Annos)16A A.R.S. Rules Crim.Proc., Rule 4.3
Formerly cited as AZ ST RCRP Rule 1.7**Rule 4.3. Initial Appearance Masters**[Currentness](#)

(a) Appointment. A county's presiding judge may appoint one or more masters to conduct initial appearances under Rule 4. Masters under this rule have a one-year term and may be reappointed for additional terms.

(b) Compensation. The presiding judge will set masters' compensation, which will be paid from any available funding source the presiding judge identifies.

(c) Qualifications and Training. The presiding judge will determine whether an individual has sufficient education and work experience to conduct initial appearances as a master under this rule. Masters do not need to be members of the State Bar of Arizona. Before assignment, a master must successfully complete relevant training regarding the law, procedures, and judicial conduct. Masters must receive annual training concerning changes in relevant statutes, rules, and case law.

(d) Authority and Assignment. The master's authority is limited to conducting initial appearances. Presiding judges may assign masters only if no justice of the peace, magistrate, or judge pro tempore is reasonably available to conduct initial appearances.

Credits

Added Aug. 31, 2017, effective Jan. 1, 2018.

16A A. R. S. Rules Crim. Proc., Rule 4.3, AZ ST RCRP Rule 4.3

State Court Rules are current with amendments received and effective through 3/1/22. The Code of Judicial Administration is current with amendments received through 3/1/22.

END OF DOCUMENT

Ariz. R. Crim. P. 7.4

Rule 7.4 - Procedure

(a)Initial Appearance. At an initial appearance, the court must determine bail eligibility and the conditions for release. If the court decides that the defendant is eligible for release, the court must issue an order containing the conditions of release. The order must inform the defendant of the conditions and possible consequences for violating a condition, and that the court may immediately issue a warrant for the defendant's arrest if there is a violation.

(b)Bail Eligibility Hearing.

(1)Right to Secure Witnesses, Cross-Examine, and Review Witness Statements. At a bail eligibility hearing, each party has the right to secure the attendance of witnesses, cross-examine any witness who testifies, and to review any previous written statement by the witness before cross-examination.

(2)Victims. Notwithstanding the time limits of Rule 39(g)(1), a victim must be afforded the rights provided in Rule 39(g).

(3)Admissibility. Evidence is admissible at the hearing only if it is material to whether, and under what conditions, to release the defendant on bail and whether probable cause exists to hold the defendant for trial on each charge. Rules or objections calling for the exclusion of evidence are inapplicable at a bail eligibility hearing.

(c)Later Review of Conditions.

(1)Generally. On motion or on its own, a court may reexamine bail eligibility or the conditions of release if the case is transferred to a different court, if a motion alleges the existence of material facts not previously presented to the court, or, if not previously raised under this provision, the defendant is unable to post bond due to the defendant's financial condition.

(2)Motion Requirements and Hearing. The court may modify the conditions of release only after giving the parties an opportunity to respond to the proposed modification. A motion to reexamine the conditions of release must comply with victims' rights requirements provided in Rule 39.

(3)Eligibility for Bail. If the motion is by the State and involves a defendant previously held eligible for bail at the initial appearance, it need not allege new material facts. The court must hold a hearing on the record as soon as practicable, but no later than 7 days after the motion's filing.

(d)Evidence. A court may base a release determination under this rule on evidence that is not admissible under the Arizona Rules of Evidence.

(e)Defendant's Bail Status. If the court makes the findings required under Rule 7.2(b)(1) or (b)(2) to deny bail, the court must order the defendant held without bail until further order. If not, the court must order the defendant released on bail under Rule 7.2(a).

(f)Review of Conditions of Release for Misdemeanors. No later than 10 days after arraignment, the court must determine whether to amend the conditions of release for any defendant held in custody on bond for a misdemeanor.

(g)Appointment of Counsel. The court must appoint counsel in any case in which the defendant is eligible for the appointment of counsel under Rule 6.1(b).

Ariz. R. Crim. P. 7.4

Added August 31, 2017, effective January 1, 2018. Amended Sept. 28, 2017, effective April 2, 2018; amended August 27, 2019, effective January 1, 2020 ; amended August 30, 2021, effective January 1, 2022.

COMMENT

Rule 7.4(d). The rule's intent is to assure that a defendant will not spend more time in jail based on an inability to post bond than the defendant would spend after completing a sentence imposed for the charge, and to ensure that no defendant becomes lost in the system. The court should document its review of the case file.

HISTORICAL AND STATUTORY NOTES

Former Rule 7.4, relating to procedure, was abrogated effective January 1, 2018.

ATTACHMENT 3

Public Safety Assessment: How It Works

The Public Safety Assessment (PSA) is an actuarial assessment that uses nine factors to predict three pretrial outcomes: Failure to Appear (FTA), New Criminal Arrest (NCA), and New Violent Criminal Arrest (NVCA). Use of the PSA, in combination with other pretrial improvements, is associated with improved pretrial outcomes. The PSA does not replace judicial discretion. The PSA provides judicial officers with research-based information that they weigh, along with other information, to make more informed pretrial decisions.

PSA Factors and Pretrial Outcomes

This table shows the nine factors used by the PSA and which factors are used to predict each outcome.

PSA FACTORS AND PRETRIAL OUTCOMES			
PSA FACTOR	FTA	NCA	NVCA
1. Age at current arrest		✓	
2. Current violent offense			✓
2A. Current violent offense and 20 years old or younger			✓
3. Pending charge at the time of the arrest	✓	✓	✓
4. Prior misdemeanor conviction		✓	
5. Prior felony conviction		✓	
5A. Prior conviction (misdemeanor or felony)	✓		✓
6. Prior violent conviction		✓	✓
7. Prior failure to appear in the past 2 years	✓	✓	
8. Prior failure to appear older than 2 years	✓		
9. Prior sentence to incarceration		✓	

Factor Weights

To calculate the scores, each PSA factor is weighted and assigned different points according to the strength of its relationship with the specific pretrial outcome. At the end of the assessment, the points for each pretrial outcome are totaled. The total points assigned to FTA and NCA are then converted to two separate scales ranging from 1 to 6. Lower scores indicate a greater likelihood of pretrial success. The points assigned to NVCA are converted to a scaled score and then to the presence or absence of a “violence flag.”

The following series of tables show how the PSA assigns points to the factors for each outcome and then converts them to scaled scores or a violence flag.

Failure to Appear (FTA)

FTA refers to a person missing a pretrial court hearing and the court, in response, issuing a warrant, capias, or other similar response.

The PSA converts the total number of FTA points to a final, scaled score ranging from 1 to 6.

Failure to Appear: Points			Failure to Appear: Scaled Score	
PSA FACTOR	RESPONSE	POINTS	TOTAL FTA POINTS	SCALED FTA SCORE
Pending charge at the time of the arrest	No	0	0	1
	Yes	1	1	2
Prior conviction (misdemeanor or felony)	No	0	2	3
	Yes	1	3 or 4	4
Prior failure to appear in the past 2 years	No	0	5 or 6	5
	Yes, just 1	2	7	6
	Yes, 2 or more	4		
Prior failure to appear older than 2 years	No	0		
	Yes	1		

New Criminal Arrest (NCA)

NCA refers to a person being arrested while on pretrial release. It includes both a custodial arrest and an arrest by citation or summons.

The PSA converts the total number of NCA points to a final, scaled score ranging from 1 to 6.

New Criminal Arrest Points			New Criminal Arrest: Scaled Score	
PSA FACTOR	RESPONSE	POINTS	TOTAL NCA POINTS	SCALED NCA SCORE
Age at current arrest	23 or older	0	0	1
	22 or younger	2	1 or 2	2
Pending charge at the time of the arrest	No	0	3 or 4	3
	Yes	3	5 or 6	4
Prior misdemeanor conviction	No	0	7 or 8	5
	Yes	1	9 to 13	6
Prior felony conviction	No	0		
	Yes	1		
Prior violent conviction	No	0		
	Yes, 1 or 2	1		
	Yes, 3 or more	2		
Prior failure to appear in the past 2 years	0	0		
	Yes, just 1	1		
	Yes, 2 or more	2		
Prior sentence to incarceration	No	0		
	Yes	2		

New Violent Criminal Arrest (NVCA)

NVCA refers to a person being arrested for a violent offense while on pretrial release. It includes both a custodial arrest and an arrest by citation or summons.

The PSA converts the total number of NVCA points to a scaled score and then to a “violence flag.”

New Violent Criminal Arrest: Points		
PSA FACTOR	RESPONSE	POINTS
Current violent offense	No	0
	Yes	2
Current violent offense and 20 years old or younger	No	0
	Yes	1
Pending charge at the time of the arrest	No	0
	Yes	1
Prior conviction (misdemeanor or felony)	No	0
	Yes	1
Prior violent conviction	No	0
	Yes, 1 or 2	1
	Yes, 3 or more	2

New Violent Criminal Arrest Violence Flag	
TOTAL NVCA POINTS	SCALED NVCA SCORE (VIOLENCE FLAG)
0 or 1	1 (NO)
2	2 (NO)
3	3 (NO)
4	4 (YES)
5	5 (YES)
6 or 7	6 (YES)

Advancing Pretrial Policy and Research (APPR) is committed to fair, just, effective pretrial practices, every day throughout the nation. To learn more about APPR, pretrial justice, and the PSA, visit advancingpretrial.org.

ATTACHMENT 4

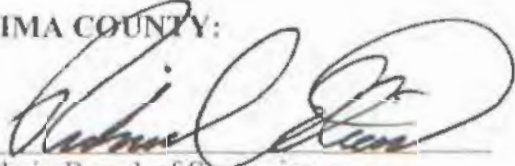
RESOLUTION OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA APPROVING AND AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN PIMA COUNTY AND THE CITY OF TUCSON FOR THE PROVISION OF TWICE-A-DAY INITIAL APPEARANCES.

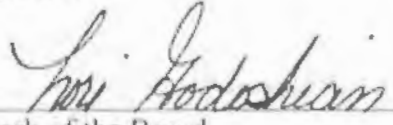
Whereas, it is cost efficient and in the best interest of the public to enter into an Intergovernmental Agreement with the City of Tucson for the provision of twice-a-day initial appearances.

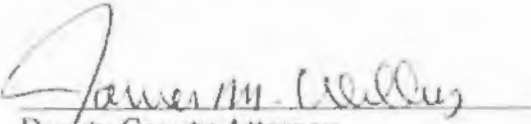
NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA, THAT the Intergovernmental Agreement between Pima County and the City of Tucson for the provision of twice-a-day initial appearances is hereby approved.

BE IT FURTHER RESOLVED THAT the Chair of the Board is authorized to sign the contract and any documents necessary to its execution.

PASSED AND ADOPTED ON OCT 16 2007

PIMA COUNTY:

Chair, Board of Supervisors

ATTEST:

Clerk of the Board


Deputy County Attorney

INTERGOVERNMENTAL AGREEMENT
 BETWEEN THE ARIZONA SUPERIOR COURT IN PIMA COUNTY, on all
 PIMA COUNTY CONSOLIDATED JUSTICE COURT, and
 THE CITY OF TUCSON, AND
 PIMA COUNTY FOR
 THE PROVISION OF TWICE-A-DAY INITIAL APPEARANCES

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between Arizona Superior Court In Pima County (Superior Court), Pima County Consolidated Justice Court (Justice Court), City of Tucson (City), a municipal corporation, on behalf of the Tucson City Court (City Court), and Pima County (County).

WHEREAS, in addition to their duty and authority in state statute or city charter, the Superior Court, Justice Court and City Court are required by, Rule 4, Arizona Rules of Criminal Procedure, to provide all persons arrested within the County and the City with an initial appearance and/or misdemeanor arraignment before a judge within twenty-four hours after the arrest and;

WHEREAS, it is most efficient and expeditious for the Superior Court, Justice Court and City Court to jointly consolidate the criminal proceeding necessary or as required by law.

NOW, THEREFORE, the Superior Court, Justice Court, City Court, and County, pursuant to the provisions of ARS 11-951 et seq., and in consideration of the covenants and conditions set forth in the following, to ensure their faithful performance, do mutually agree as follows:

ARTICLE 1. PURPOSE

The purpose of this agreement is to provide for the joint participation and pro-rata cost sharing by the Superior Court, Justice Court, and City Court in the initial appearance and/or misdemeanor arraignment proceedings, conducted twice-a-day, seven days a week, pursuant to the Arizona Rules of Criminal Procedure. Such proceedings will be conducted at the Pima County Jail each morning and evening, including weekends and holidays. The specific time for the proceedings will be set by mutual decision of those involved and may be adjusted as necessary during the life of this agreement.

ARTICLE 2. TERM OF AGREEMENT

This agreement will be in effect for a period of one year with an option to renew it for up to five years unless a party timely objects or seeks to terminate the agreement pursuant to Article 9 of this agreement. The initial term of the agreement shall begin July 1, 2007 or on the date of filing in the office of the secretary of state, and shall remain in effect through June 30, 2008.

EX A TO RESOLUTION NO. 20755

CITY OF TUCSON CONTRACT NO. 0072-08

ARTICLE 3. OBLIGATIONS OF THE CITY COURT

- A. SECURITY: The Tucson Police Department shall provide security at the Mission Road facility for all morning sessions.
- B. JUDICIAL SERVICES: The City Court shall provide regular City Court Magistrates or other designate, qualified attorneys appointed by the Superior Court as Special Commissioners of the Superior Court, to conduct joint Justice Court, City Court and Superior Court initial appearances and/or arraignment proceedings during the weekday morning sessions.
- C. CLERICAL SUPPORT: The City Court shall provide a courtroom clerk during initial appearances and/or arraignment proceedings, who shall complete the paperwork resulting from those proceedings as required by that court.
- D. INTERPRETING SERVICES: The City Court shall provide interpreting services for all morning proceedings.

ARTICLE 4. OBLIGATIONS OF THE COUNTY

- A. FACILITIES & SECURITY: The County shall provide courtrooms at the Sheriff's Mission Road and Silverlake jail Facilities to conduct joint misdemeanor arraignments and misdemeanor and felony initial appearance proceedings at an agreed upon time every morning and evening, weekends and holidays included. The County shall insure proper jail facilities and management are maintained to match the flow of the court proceedings. The County shall provide access, parking, security, office space, and telephones for the employees traveling to the jail locations for court events. The County will also ensure public and media access to or viewing of the court proceedings conducted at either courtroom.

ARTICLE 5. OBLIGATIONS OF THE COURTS

- A. JUDICIAL SERVICES: The Superior Court shall provide qualified judicial officers for every evening, weekend, and holiday proceeding.
- B. CLERICAL SUPPORT: Justice Court shall provide a courtroom clerk during initial appearances and/or arraignment proceedings, who shall complete the paperwork resulting from the initial appearances and/or arraignment proceedings as required by the Superior Court and the Justice Court.
- C. INTERPRETING SERVICES: The Superior Court shall provide interpreting services for all evening, weekend and holiday initial appearance and/or arraignment sessions.

ARTICLE 6. PAYMENT

The parties agree that each will share in certain common costs of the proceedings in proportion to each court's share of the cases appearing at the daily hearings. For each fiscal year of this agreement, the proportionate shares shall be based on the prior fiscal year's breakdown, by court, of cases going through the initial arraignment court.

The common costs to be shared shall be: payments made by the Superior Court to judicial officers for evening, weekend and holiday sessions; costs borne by the City Court to provide magistrates to cover the weekday morning sessions; payments made by the Superior Court to interpreters for attendance at each evening, weekend and holiday sessions; costs borne by the City Court to provide interpreting services at weekday morning sessions. It should be noted that the costs borne by the City Court for the provision of clerical support services will not be considered in the allocation of common costs and therefore, will not be shared with any other agency. Further, the cost of clerical services provided by the Justice Court will be shared solely with the Superior Court. Each quarter, the Superior Court shall issue detailed invoices to the other parties for their shares of the total costs, making adjustments for the expenses as outlined in A, B and C below.

- A. The Superior Court's share of the total cost shall be reduced by the amounts it has paid for judicial officers and interpreting services to cover evening, weekend and holiday sessions. If those costs exceed the Superior Court's share of the total costs based on caseload proportion, the other court partners shall reimburse the difference to the Superior Court at the end of each quarter.
- B. The City Court's share of the total cost shall be reduced by the amounts it has paid for the provision of magistrates and interpreting services to cover the weekday morning sessions.
- C. The Justice Court's share shall be reduced by the amounts it has paid for the provision of clerical support at evening, weekend and holiday sessions. As this clerical support is related solely to County cases, this cost will be shared only with Superior Court.

All parties represent that they have within their respective budgets sufficient funds or other resources to discharge their obligations as set forth in this Agreement.

ARTICLE 7. POTENTIAL FINANCIAL SUPPORT FROM OTHER COURT USERS

Because other county courts are sending or may send defendants through the initial arraignment court and that work has a resource impact on the process, such courts may be asked to support the process financially. In the combined discretion of the Justice Court and the Superior Court, with the approval of the Superior Court Presiding Judge, a cost of performing such functions may be constructed and payment for those services negotiated with each of those courts. Such payments shall not affect the sharing of costs as described in Article 6, except that the cases from non-party courts shall not be considered in the calculation of proportionate caseloads.

ARTICLE 8. SELF INSURANCE

The parties acknowledge that they are self-insured and that each shall be responsible for their own acts and omissions.

ARTICLE 9. TERMINATION

This agreement may be terminated at any time by mutual written consent or by any party's giving not less than ninety (90) days written notice to the other parties. This agreement is subject to the provision of ARS 38-511.

ARTICLE 10. LEGAL JURISDICTION

Nothing in this agreement shall be construed as either limiting or extending the legal jurisdiction of either the Superior Court, Justice Court or City Court.

ARTICLE 11. PRIOR AGREEMENTS

This agreement supersedes all previous agreements regarding the same subject matter.

ARTICLE 12. RENEWAL

This agreement shall be reviewed annually and may be amended as agreed upon by the parties as referenced in Article 2.

ARTICLE 13. ARBITRATION

This agreement is subject to arbitration to the extent required by ARS 12-1518, ARS 12-133, and Rule 3.9 Pima County Superior Court Local Rule.

ARTICLE 14. ASSIGNMENT

No right or interest in this Agreement shall be assigned by either party without prior written permission. No delegation of any duty shall be made without prior written permission of the COURT.

ARTICLE 15. APPLICABLE LAW

This agreement shall be governed by the laws of the State of Arizona, and suits pertaining to this agreement may be brought only in the courts in the State of Arizona.

Parties to this agreement shall comply with all City, County, State and Federal laws, ordinances, rules, regulations, and statutes which may be applicable to this Agreement.

ARTICLE 16. NON-DISCRIMINATION

Parties shall not discriminate, and shall require that any subcontractor not discriminate, against any employee, or applicant for employment, in violation of Federal Executive Order 11246 and State Executive Order No. 99-4 and A.R.S. §41-1461 et seq. , in the provision of program services on the basis of race, age, creed, color, religion, sex, condition of disability, or national origin.

ARTICLE 17. AMERICANS WITH DISABILITIES ACT

All parties shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

ARTICLE 18. NON-APPROPRIATIONS

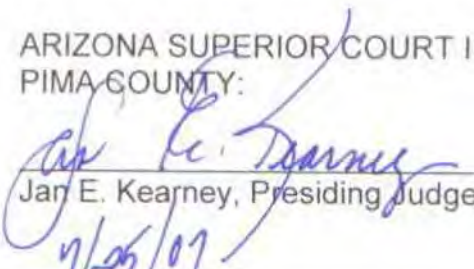
Each payment obligation created is conditioned upon the availability of funds which are appropriated for the payment of such an obligation. If funds are not available for the continuance of the contract services, the contract period for the services may be terminated by any of the parties at the end of the period for which funds are available. Any party shall notify the other at the earliest possible time which services will or may be affected by a shortage of funds. No penalty shall accrue to the party in the event this provision is exercised, and shall not be obligated or liable for any future payments due or for any damages as a result of the termination under this section. This provision shall not be construed so as to permit the party to terminate this agreement or any service in order to acquire a similar service from another party.

ARTICLE 19. ENTIRE AGREEMENT

This document constitutes the entire agreement between the parties and shall not be modified, amended, altered or changed except through a written amendment signed by all the parties.

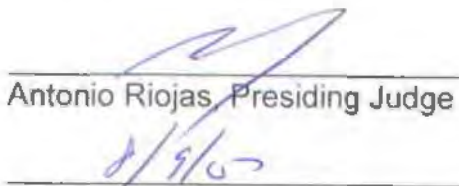
IN WITNESS THEREOF, all parties have affixed their signatures to this agreement on the date written below.

ARIZONA SUPERIOR COURT IN
PIMA COUNTY:


Jan E. Kearney, Presiding Judge

7/25/07
Date

TUCSON CITY COURT:


Antonio Riojas, Presiding Judge

8/9/07
Date

PIMA COUNTY JUSTICE COURTS:

[Signature]
Jack Peyton, Assoc. Presiding Judge

Date

8/1/07

APPROVED AS TO FORM:

[Signature]
Deputy County Attorney

Date

July 30, 2007

PIMA COUNTY:

[Signature]
Chair, Board of Supervisors

Date

OCT 16 2007

ATTEST:

[Signature]
Lori Godoshian, Clerk of the Board

Date

OCT 16 2007

CITY OF TUCSON:

[Signature]
Robert Walkup, Mayor

PRO-TEMPORE

Date

September 5, 2007

COUNTERSIGNED- ATTEST:

[Signature]
City Clerk

Date

September 5, 2007

APPROVED BY:

[Signature]
City Attorney

Date

P-13-07



Terry Goddard
Attorney General

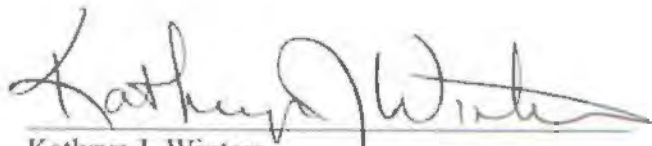
Office of the Attorney General
State of Arizona

INTERGOVERNMENTAL AGREEMENT DETERMINATION

The Intergovernmental Agreement For The Provision of Twice-A-Day Initial Appearances, which is an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General, who has determined that it is in the proper form and is within the powers granted under the laws of the State of Arizona to those Parties to the Agreement represented by the Attorney General.

Dated this 10th day of July, 2007.

TERRY GODDARD
The Attorney General


Kathryn J. Winters
Assistant Attorney General

ATTACHMENT 5



MEMORANDUM

Date: August 24, 2020

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

From: C.H. Huckelberry
County Administrator *CHH*

Re: **Community Bond Program**

I am attaching a report prepared by Public Defense Services Director Dean Brault, including a memorandum from Farhang & Medcoff, PLLC regarding Permissibility of Pima County's Funding of a Non-Profit Bonding Agency. The report discusses the possibility of the County implementing a Community Bond Program (CBP) to help reduce the number of individuals who are held in the Adult Detention Complex because of the inability to pay for a bond or cash bail.

I understand that some in the reform community prefer a system that eliminates cash bail or bonds all together. Such is desirable but not permitted because of current Arizona law. Reform and/or modification to Arizona Law will have to occur by approval of the legislature and governor. Until that time occurs, the CBP may be a reasonable substitute.

It should also be noted that the Criminal Justice Reform Advisory Commission has ranked as one of its top reform priorities, the elimination of cash bail or bonding.

CHH/lab

Attachment

c: Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement
Dean Brault, Director, Public Defense Services

Safely Reducing the Jail Population Using Pre-trial Risk Assessments and a Community Bond Program



By Dean Brault



August 2020

Contents

List of Abbreviations	2
Abstract.....	3
Statement of the Problem	3
Background	4
Initial Proposal	4
Data Analysis.....	5
Modified Proposal Adjusting Supervision and Including Misdemeanors	9
Solution	11
Conclusion.....	13
Attachment 1 (Farhang and Medcoff Memo).....	14

List of Abbreviations

ADCRR	Arizona Department of Corrections Rehabilitation and Reentry
COR	Conditions of Release
IA	Initial Appearance
PCAO	Pima County Attorney's Office
PDS	Public Defense Services
PSA	Public Safety Assessment
PTS	Pre-Trial Services
RFP	Request for Proposal
ROR	Release on Own Recognizance

Abstract

The vast majority of inmates at the Pima County Adult Detention Complex are held pending resolution of a criminal case. At initial appearances, Pretrial Services makes recommendations of Conditions of Release to the court for each defendant on felony cases. Those recommendations are followed about 86% of the time in Pima County. Data from 2017 shows that almost one in 10 defendants are held on a bond despite a recommendation for release from Pretrial Services. Over 76% of these defendants were subsequently released while their case was pending, but only after spending days, weeks or months in jail. This paper proposes funding a Community Bond Program as a solution that will stabilize the lives of these defendants by releasing them quickly, which will prevent tens of thousands of unnecessary days in jail and the millions of dollars of related expenses every year.

Statement of the Problem

Individuals who are incarcerated pre-trial are mostly confined not because they were denied bail or were a flight risk or a were a danger to the public, but rather because they could not muster the financial resources needed to secure their freedom¹. An individual's inability to afford monetary bail is not an indicator of that individual's guilt, an accurate predictor of the risk of danger that individual poses to others, or an indicator of whether that individual will show up for a scheduled court proceeding. The incarceration of individuals who cannot afford money bail without meaningful consideration of other alternatives is a violation of due process and equal protection.

Individuals who are incarcerated pre-trial are more likely to plead guilty, be convicted of a felony, receive longer sentences, and be offered less attractive plea agreements². Indigent defendants who cannot post a cash bond are especially prone to losing employment, housing, vehicles, and even their children without adequate community support and resources, even if jailed for a relatively short period of time³.

Evidence-based pre-trial assessment of a defendant's likelihood to appear in court and remain arrest-free while awaiting trial can increase successful pre-trial release outcomes and diminish racial disparities without imposing unnecessary financial conditions, impairing the judicial process, or jeopardizing public safety⁴. Despite these facts, the court often does not follow recommendations for release utilizing evidence-based pre-trial assessments and holds many defendants on bonds that they cannot afford.

¹ Reaves, Brian A., U.S. Dep't of Justice, *Felony Defendants in Large Urban Counties*, 2009, at 15 (2013).

² Lowenkamp, Christopher T., et al., *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* (2013); Phillips, Mary T., N.Y. City Criminal Justice Agency, *A Decade of Bail Research in New York City*, 115-17 (2012).

³ *Pretrial Justice: How Much does it cost?*, 2 (Pretrial Justice Inst. 2017); Melissa S. Kearney et al., *Ten Economic Facts about Crime and Incarceration in the United States*, THE HAMILTON PROJECT 13 (2014).

⁴ Arifuku, Isama, National Council on Crime & Delinquency, *Racial Disparities at Pretrial and Sentencing and the Effect of Pretrial Services Programs* (2013).

Background

Pretrial Services (PTS) is a division of the Pima County Superior Court that screens defendants at the Pima County Adult Detention Complex and makes recommendations to the Tucson City Court Magistrates who conduct initial appearances (IAs) and set conditions of release (COR). IAs happen at 9 a.m. and 8 p.m. every day of the year. Data has consistently shown that in Pima County the agreement rate between PTS's recommendation and the court's COR is approximately 86%.

Defendants who cannot post their bond remain in jail until their charges are dismissed, their case is resolved, or the court modifies their COR which requires defense counsel to file a motion and a hearing. Such motions are usually heard four weeks or more after the arrest. Even a short time in jail can have profound impacts on the lives of defendants with pending cases, all of whom are constitutionally presumed to be innocent. Indigent defendants who cannot post their bond can lose their job, their housing, their vehicle, as well as their children if they do not have adequate financial or community support. These impacts are especially frustrating in cases where the pre-trial assessment suggests the defendant may be successfully released on personal recognizance or be supervised, and yet the court set a bond. Most of these defendants are ultimately released, but only after being in custody for several days, weeks, or months.

Initial Proposal

In June of 2018, staff at Public Defense Services (PDS) approached me with an idea to reduce the population of the Pima County Adult Detention Complex. The idea was that Pima County could reduce its jail population by posting bonds for any individuals that received a release recommendation from PTS.

In researching the feasibility of this idea, I first noted that it is possible for an agency to use secured bonds, which do not require the movement of money, if licensed as a professional bondsman per Rule 7.1(h) of the Arizona Rules of Criminal Procedure. This is required if the agency concurrently posts five or more secured bonds.

I then explored the possibility of Pima County creating a professional bonding agency. After weeks of research, I concluded that Pima County does have the legal capacity to create a department that could become a surety and employ professional bondsmen. My original proposal was to create such a department that would hire employees who would become professional bondsmen. They would contract with defendants and then post a bond in all cases where PTS recommended release and the court set a bond, excluding homicide, sex, and child exploitation cases and cases with a bond over a set amount. Defendants with a hold from any jurisdiction would also be excluded. My proposal for the bond amount limit was \$30,000, which would cover the vast majority of cases and prevent the court from moderately increasing the

bond amounts in order to further detention. The \$30,000 limit would also exclude cases with charges sufficiently serious that would warrant a bond exceeding that amount.

Based on my experience reviewing PTS reports when assigning cases, my knowledge of when Motions to Modify Conditions of Release are typically heard, and the frequency of those motions being successful, I initially estimated that this plan would save more than 20,000 jail bed days per year. Given the known cost of second and subsequent jail bed days, this initial estimate showed potential savings of approximately \$2,000,000 per year. I also confirmed that there would be no risk of the County losing the bonds that are posted because all bond forfeitures are ultimately deposited into the County's general fund. While researching other community bond foundations, I learned that no other jurisdiction has a program similar to this proposal.

On June 22, 2018, I presented this idea to Chuck Huckelberry, Pima County Administrator, at a meeting with the Criminal Justice Reform Unit. On July 2, 2018, I followed up with a memorandum to the County Administrator, outlining the details of this proposal and suggesting the appointment of outside counsel to advise on its feasibility. On July 10, 2018, I met with many of the relevant stakeholders. At that meeting, the group expressed interest in the project, but believed that a non-profit it should administer it. At that meeting, then Deputy County Administrator Tom Burke disagreed that outside counsel was necessary and indicated he would obtain legal advice from the Civil Division of the Pima County Attorney's Office (PCAO). At that meeting, Pima County Superior Court Administrator Ron Overholt approved of a data request I made to quantify the actual impact of such a program.

At a meeting on August 24, 2018 to follow up on the progress of this proposal, I learned that the PCAO had declared that they did have a conflict of interest. On October 3, 2018, Andy Flagg, Chief Civil Deputy of the PCAO, indicated in an email that to obtain outside counsel, a request was first needed to be made for the PCAO to review the project. Once the PCAO received the request, he confirmed that it would then be referred to outside counsel because he confirmed that a conflict did exist. Assistant County Administrator Wendy Petersen began exploring the proper procedure to obtain outside counsel.

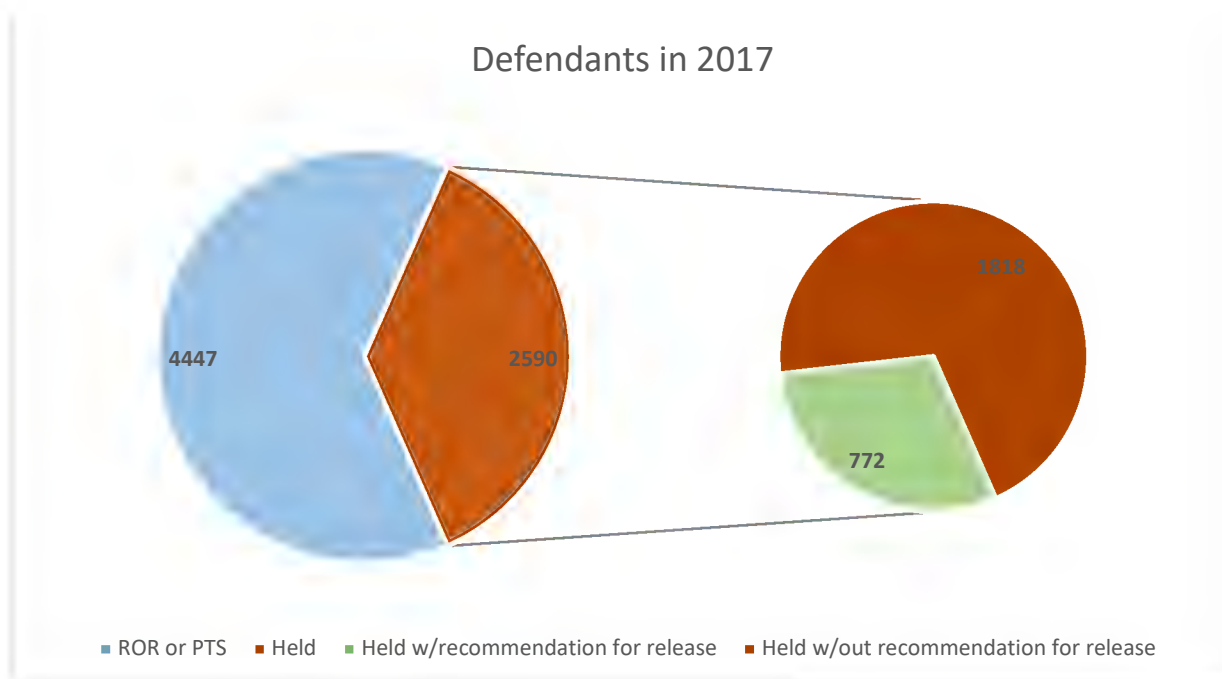
Data Analysis

In the following months, PDS obtained data from PTS for the calendar year of 2017 to calculate the impact of this proposal to fund a non-profit community bond agency. Multiple queries needed to be run to obtain the necessary data. It then took several months to process the data to avoid making improper assumptions to ensure accurate results.

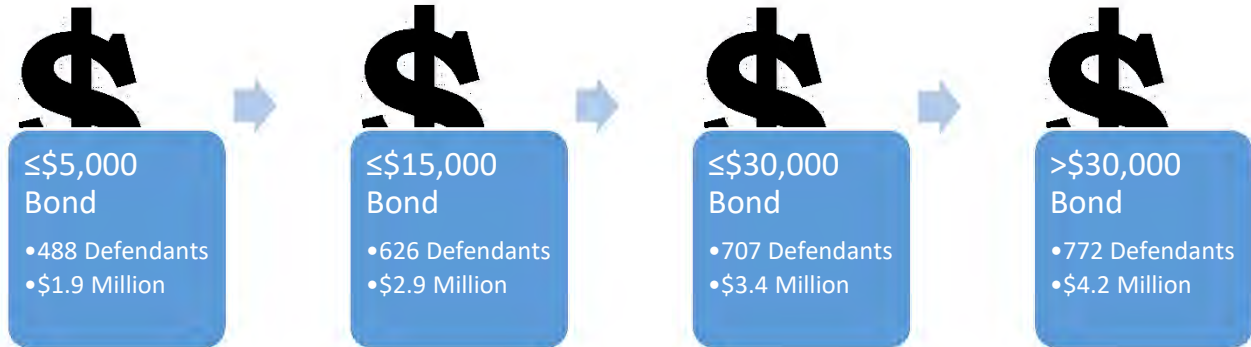
On February 27, 2019, I sent an email to Assistant County Administrator Wendy Petersen and Deputy County Administrator Tom Burke with final numbers of the impact a Community Bond

Program would have had on the 2017 calendar year for their review. On March 13, 2019, I met with Mr. Burke, who accepted the validity of the data after reviewing the results.

PDS analyzed the data released by PTS to determine the exact number of days that defendants who would be eligible to participate in the Community Bond Program actually spend in jail before being removed from the jail in any manner. The PTS data indicated that in calendar year 2017, there was a total of 7,037 defendants. Of these, 4,447 were Released on Recognizance (ROR) or to the third-party custody of PTS and 2,590 were held in custody. There were 772 people held on bond despite a PTS recommendation for release, which comprised 11.0% of the total number of defendants who had an initial appearance that year. Of those held on bond with a recommendation for release, 29.5% of those cases were dismissed prior to indictment.



We analyzed this data to identify cases that had a PTS recommendation for release that had bonds set at \$5,000 or less, \$15,000 or less, \$30,000 or less, and over \$30,000. The number of people released that year under a Community Bond Program with those limits would have been 488, 626, 707 and 772, respectively. Jail bed day savings on those cases would have been collectively, 19,420, 28,709, 34,124 and 41,962, respectively. Using the current rate that the jail charges agencies other than Pima County for second and subsequent days of incarceration, these jail bed days would represent collective savings of \$1,937,922, \$2,864,871, \$3,405,234 and \$4,187,388, respectively. The jail population would have decreased by 2.9%, 4.4%, 5.2%, and 6.4%, respectively. The average number of days these defendants spent in jail after the day of their initial appearance was 39.8, 45.9, 48.3 and 54.4, respectively.



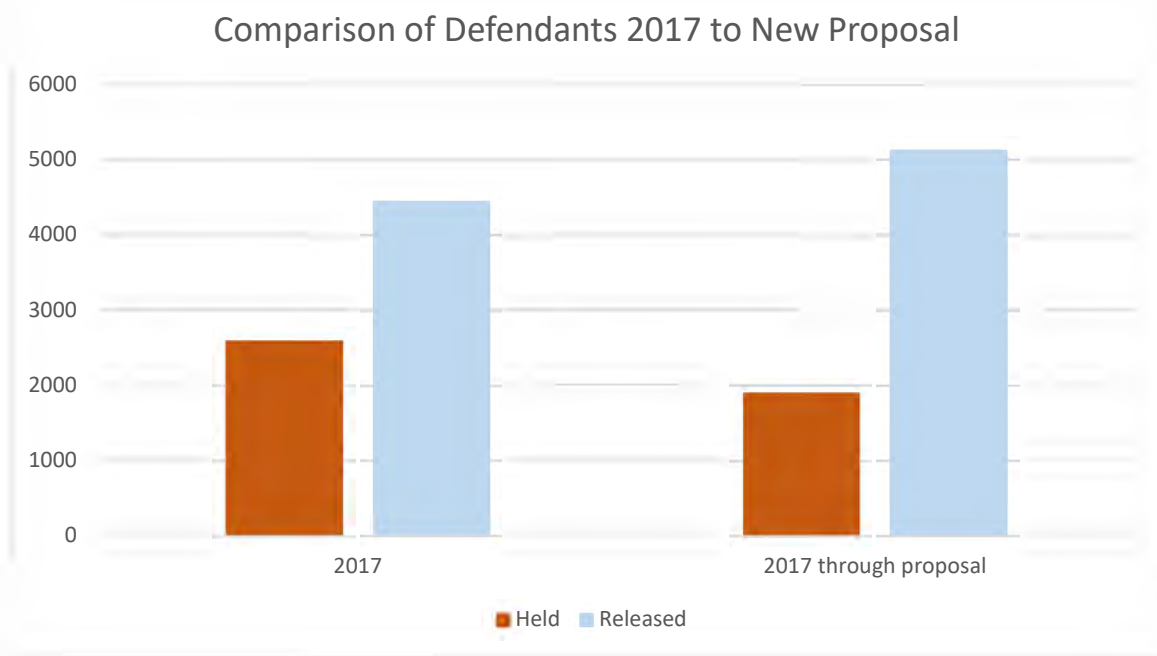
Analysis of the 2017 PTS data showed that of the 772 defendants who were held on a bond despite a recommendation by PTS for release, 228 had their charges dismissed pre-indictment, of which 130 did not post the bond that was set and 98 did post their bond. There were 214 defendants who were indicted that posted their bond at some point. There were 141 defendants who were indicted and filed a Motion to Modify Conditions of Release that was granted by the court. The data also showed that there was a total of 189 defendants who either never filed a Motion to Modify Conditions of Release, or that motion was denied. Of this total, there were 161 that had bonds set at \$30,000 or less that initially appeared to meet the proposed requirements of the Community Bond Program.

Because this number seemed to be higher than expected, I subsequently researched every eligible case where no motion was filed or one was not granted. I discovered that seven of these cases would not meet the requirements of the program due to the type of charges. Another six would have been excluded because of existing holds placed on the defendant. There were also six cases that were erroneously included in this category because they were released after posting a bond or having a Motion to Modify Conditions of Release granted, and for some reason were not properly identified. This reduced the number of defendants eligible for the program who did not file a successful Motion to Modify Conditions of Release from 161 to 142.

These new figures would reduce the total number of defendants released under this program from 707 to 694. This reduction of 1.8% would impact the calculation of the number of bed days and the associated estimated savings. This would still result in a savings of approximately 33,497 bed days at an estimated cost of \$3,342,620 under the proposed conditions. The original calculation of bed days saved was 34,124 with a calculated cost of \$3,405,234.

The 694 defendants that would have been released under this program would constitute a 26.8% reduction in the total number of defendants who were ordered to be held in the jail at initial appearances. These defendants who would be eligible for this program represent 9.9% of the

total number of defendants in 2017 who had an initial appearance on felony charges in Pima County. Analysis of this data also showed that the overall success rate of Motions to Modify Conditions of Release on these cases was 93.0%, which confirmed anecdotal evidence that the vast majority of defendants with recommendations for release are getting released after seeing a Superior Court judge.



Further analysis of this group of 142 defendants who did not file a Motion to Modify Condition of Release showed that 10 of them had their charges dismissed post-indictment. It also showed that only 1.1% of the total number of defendants in 2017 would have been released under the program and then need to go back into custody after being sentenced to the Arizona Department of Corrections Rehabilitation and Reentry (ADCRR). Despite the fact that defendants who are sentenced to ADCRR and get credit for the time they serve, the County is required to pay for any pre-sentence incarceration. It is also important to note that defendants get community supervision credit of one day of every seven days of their sentence once they are sentenced to ADCRR. Defendants do not earn such credit for pre-sentence incarceration, which means that defendants who get sentenced to ADCRR ultimately spend more time in custody if they have been incarcerated pre-trial.

After the initial analysis of this data, on May 2, 2019, the County Administrator requested that the Board of Supervisors appoint outside counsel. Pima County appointed the law firm of Farhang and Medcoff as outside counsel to provide a legal analysis of the permissibility of funding a non-profit bonding agency. On July 2, 2019, Kristen Wendler, a partner at Farhang and Medcoff, drafted a memorandum concluding that this program is not prohibited by current federal and state law. See Attachment 1.

Modified Proposal Adjusting Supervision and Including Misdemeanors

Since July 10, 2018, the plan was for the agency administering the Community Bond Program to supervise all the defendants released under that program. The intent was to have PTS share their standards of supervision with the non-profit agency, who would attempt to mirror the level of supervision of PTS. I frequently discussed this program with Domingo Corona, the Director of Pretrial Services, and encouraged him to explore the idea of PTS providing the supervision of the program participants.

On May 5, 2020, Domingo Corona notified me that Pima County Superior Court Administration had agreed that Pretrial Services could perform the supervision portion of the Community Bond Program. The non-profit would still be the agency running the program, but the contract that participants would sign with them would be to follow the conditions of release established by PTS.

Having PTS conduct the supervision was a significant development that has many advantages. First, it will mean that the program has lower expenses. The non-profit will only need funding for a director and a very small staff to get the contracts with the participants reviewed, signed, and processed instead of needing additional staff to perform the supervision of the participants. The County could incur a minimal expense for additional PTS staff if needed because of a higher than expected the number of program participants. This modification would also create a consistent and uniform level of supervision, which will strengthen the data collected when measuring performance and effectiveness. It will also be neutral regarding judicial decision making, which could have been impacted if there was any actual or perceived differential in the quality of supervision.

In meetings with Procurement, I learned that we cannot limit a Request for Proposal (RFP) to be available to only non-profit agencies. However, given that there will be no opportunity to profit from administering this program, the reality is that only non-profits are likely to respond to the RFP. The conditions in the RFP would be tailored to prioritize the organizational structure of a non-profit that serves our community. Nonetheless, I have and will refer to the community bond agency as the non-profit for simplicity. It is also worth noting that, as part of the RFP process, PDS cannot be the administrator of the program because of a conflict of interest, hence my suggestion that Grants Management and Innovation administer the program. It is also possible to select another department of the County.

On June 22, 2020, I was asked by the County Administrator to address the impact of the Community Bond Program on the misdemeanor population at the jail. The Community Bond Program, as originally proposed, would have no impact on the misdemeanor population because it requires the use of PTS reports that are based on Public Safety Assessment (PSA) scores and other structured factors used by PTS to arrive at a release recommendation. Notwithstanding that, I explored potential changes to the program where misdemeanors could be included.

On June 25, 2020 I met with Ron Overholt, the Pima County Superior Court Administrator, and Domingo Corona and Michelle Moore from PTS where we discussed options that could make the Community Bond Program applicable to misdemeanor cases.

On misdemeanor cases, by administrative order, PTS now releases many defendants charged with misdemeanors prior to booking into the jail. On the misdemeanor cases that are booked into the jail, PTS does not calculate a PSA score or draft the same kind of report as generated for felonies. On these misdemeanors, PTS currently only provides a report to the court that makes a recommendation for or against Release on Recognizance (ROR), which includes recommended conditions, any status, any holds, and identifies the current charges.

There are several types of misdemeanor cases that are ineligible for pre-booking release. Defendants charged with Domestic Violence are statutorily required to be seen by a judge at an initial appearance. Some defendants with prior failure(s) to appear after having been released pre-booking will be seen by a judge. Cases where a misdemeanor court issues a suggested bond of \$999, which is a signal that the court issuing the warrant wants to set stricter conditions of release that will secure the defendant's presence in court, will always be seen by a judge. Defendants who are unwilling or unable to interact with PTS are also ineligible for pre-booking release.

PTS had been exploring for some time the possibility of using the PSA and filing reports on misdemeanor cases. PTS is now interested in making that transition, which would then allow misdemeanor cases to be included in the Community Bond Program.

Currently, for multiple reasons, PTS does not provide supervision for any misdemeanor cases. I propose that the program requirement that all defendants released under the program be supervised by PTS be changed to all defendants be supervised at the release level recommended by PTS. This proposal would also have the benefit of eliminating over-supervision in felony cases, which would have happened in some cases under the initial proposal. This would also prevent additional days in jail for defendants who would prefer to wait to post their bond in order to not be required to report to PTS.

Because PTS does not provide supervision on misdemeanor cases, their recommendation would continue to only be either ROR or No ROR on misdemeanor cases. There would be no loop hole that would result in having misdemeanor defendants be supervised by PTS, and hence no excessive strain on the supervision resources of PTS. This proposal would also increase the number of felony defendants who are ROR, which would decrease the stress on PTS supervision staffing. This would also eliminate the criticisms that this program would lead to any over-supervision as expressed by local and national community bond organizations.

On June 26, 2020, I drafted a memorandum to the County Administrator addressing the impact of the Community Bond Program on the misdemeanor population as originally proposed. I included the proposed change to use the supervision level recommended by PTS, which would address over-supervision and allow the program to include misdemeanor cases.

Solution

Pima County can fund an organization to operate a Community Bond Program. That organization would offer, at no charge, to bond out any defendant who was held on a bond of \$30,000 or less when Pretrial Services recommended release on any case except those with homicide, sex, or child exploitation charges or if the defendant has a hold from any jurisdiction. The defendant would agree to be released on whatever conditions of release were recommended by Pretrial Services.

The organization, which would almost certainly be a non-profit, would likely create a sub-entity that would act as the community bonding agency. They could rely on the parent non-profit for organizational structure and support. The director and other relevant employees would need to take the course offered by the Arizona Department of Insurance in order to be certified as a professional bondsman. There is a \$166 fee to register and the agency would be required to post a \$10,000 bond with the State of Arizona. A Memorandum of Understanding would need to be executed between the non-profit and the Superior Court establishing that the non-profit would post the bonds in eligible cases where the defendant signed the contract and that PTS would provide the supervision for those defendants where they recommended release to PTS.

The assets necessary to secure any bonds posted would be a grant of funds that, by contract with the non-profit, could only be used to cover any bond forfeitures or to post cash bonds for program participants. The RFP would require strict accounting protocols and regular reporting.

Part of the proposal would fund a separate operational account to cover the expenses of the director and employees who administer the contracts with participants. This expense, as stated earlier, will be much smaller without needing to staff to supervise defendants given that PTS will be supervising them.

The contract with the non-profit and the participants would be relatively simple. In exchange for posting the bond for individuals who have a bond set of \$30,000 or less, who are not charged with homicide, sex, or child exploitation charges, and who does not have any kind of hold on them, the participant would agree to abide by whatever conditions of release that were recommended by PTS.

The method of administering these contracts would be for the non-profit to have staff located in the lower level of the jail to work with PTS and jail staff to identify those eligible for participation in this program at initial appearances. Mark Napier, the Pima County Sheriff, has indicated that the non-profit agency will have access to the clients in the lower level. This will greatly expedite releases and reduce the number of defendants being fully booked into the jail.

The Clerk of the Superior Court will facilitate the processing of the bonding agency credentials for the non-profit's employees.

The way professional bonding agencies operate is that when posting secured bonds, no money is actually transferred at the time a bond is posted. With proper credentials issued by the Clerk of the Court, the department at the jail that processes the posting of bonds accepts forms that avow that the agency has the funds to cover the bond in the event of a forfeiture. The paperwork or electronic document is accepted and the defendant is released.

In the event that the defendant fails to appear at court, the judge makes a referral for the forfeiture of the bond. A different judge then makes a determination of whether the defendant failed to appear, considers any reasons for the failure to appear, and then orders that either none, part, or all of the bond posted be forfeited. The bonding agency is then responsible for depositing whatever amount forfeited with the Superior Court. The Superior Court then deposits those funds with the County, which then places them into the general fund. If the defendant appears at all of their hearings, when the case is resolved, the bond is exonerated and that obligation to cover that bond amount is removed.

The benefits of using a bonding agency are that the process is faster and has far fewer administrative costs to the jail and the Superior Court. This project could be accomplished with only posting cash, but the process would be somewhat slower and involve a larger amount of funding to be distributed to the Community Bond Program.

The process detailed above covers secured bonds, which apply to almost all bonds set. Judges, however, have the ability to set "cash-only" bonds. If a judge sets such a bond, the bond must be posted using cash or a cashier's check. The Pima County Jail utilizes a system with professional bonding agencies that allows them to remotely post both secured and cash-only bonds. That system securely links the bank account of the professional bonding agency to the account of the Pima County Jail.

If the system is unavailable or ineffective for some reason, there is an alternative available to address cash-only cases. The Community Bond Program could maintain a supply of cashier's checks in various denominations made payable to the Pima County Adult Detention Complex along with a supply of cash and coins sufficient to post to the exact cent any bond set because the jail will only accept the exact amount of a bond set by a judge. With access to the lower level, a safe would be installed there. Otherwise, the new PTS building would be an alternative location. The cashier's checks would be replaced approximately every 80 days due to expiration dates. This process will ensure rapid releases and not be subject to bank operational hours.

The plan for the RFP is to fund the non-profit's bond fund with a set amount of funding. The mechanism for maintaining that fund would be to have a floor amount, that if reached, would trigger the County distributing an additional set amount. There would also be a ceiling amount where that same set amount would be sent back to the County if the exoneration of cash bonds

increased the balance above that set amount. The transfer of these funds to the Community Bond Program is contingent on bonds being forfeited and the Superior Court continuing to refer Community Bond Program cases for forfeiture, which may be deemed an administrative waste of time given the mechanism of this program.

Since there would be no loss of any money on bonds that are forfeited under this program and the operational expenses would be relatively small, initiation of a Community Bond Program is likely to save Pima County a substantial amount of money. It would meaningfully reduce the population of the jail by saving an average of 48.3 days in jail, which is just short of 7 weeks, per participant.

Conclusion

With approval from the Pima County Board of Supervisors, Pima County can generate a Request for Proposal to establish a Community Bond Program that would rely on an evidence-based pre-trial assessment of a defendant's likelihood to appear in court and remain arrest-free while awaiting trial and diminish racial disparities without imposing unnecessary financial conditions, impairing the judicial process, or jeopardizing public safety. This program would not result in any defendants being subject to an increased level of supervision. It would apply to both felony and misdemeanor cases. The creation of a Community Bonding Program would save Pima County money. More importantly, it would also improve the lives of defendants who would otherwise be unnecessarily incarcerated in jail.



Board of Supervisors Memorandum

December 1, 2020

Community Bond Program

Background

Attached is a November 4, 2020, report prepared by Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement discussing the possibility of the County implementing a Community Bond Program (CBP) to help reduce the number of individuals who are held in the Adult Detention Complex because of the inability to pay for a bond or cash bail.

I understand that some in the reform community prefer a system that eliminates cash bail or bonds all together. Such is desirable but not permitted because of current Arizona law. Reform and/or modification to Arizona Law will have to occur by approval of the legislature and governor. The elimination of Cash Bond is one of Pima County's 2021 Legislative Proposals. Until that cash bond is eliminated, the CBP may be a reasonable substitute.

It should also be noted that the Criminal Justice Reform Advisory Commission has ranked as one of its top reform priorities, the elimination of cash bail or bonding. At its most recent meeting on November 12, 2020, the Advisory Commission unanimously supported the creation of this bond program.

Recommendation

I recommend the Board approve the proposed Community Bond Program.

Sincerely,

A handwritten signature in black ink, appearing to read "C.H. Huckelberry".

C.H. Huckelberry
County Administrator

CHH/dr – November 18, 2020

Attachment

c: Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement
Dean Brault, Director, Public Defense Services



MEMORANDUM

Criminal Justice Reform Unit

Date: November 4, 2020

To: C. H. Huckelberry
County Administrator

From: Wendy Petersen
Assistant County Administrator

Re: **Public Defense Services' Community Bond Program Proposal**

Public Defense Services Director, Dean Brault, is proposing a Pima County Community Bond Program that he has been working on for several years. After researching community bond organizations across the country and obtaining a legal opinion on whether or not a county could run a bond program, Mr. Brault prepared a whitepaper on the bond project in August 2020. The whitepaper was submitted to the Pima County Board of Supervisors on August 24, 2020.

The operational plan for how the community bond project would work is as follows:

In June of 2020, Mr. Brault submitted the operational plan for the Bond project:

- A non-profit would most likely create a sub entity that would act as the community bonding agency;
- The director and other relevant employees would need to take the course offered by the Arizona Department of Insurance in order to be certified as a professional bondsperson;
- The assets necessary to secure any bonds posted would be a grant of funds that by contract with the non-profit, could only be used for any bond forfeitures resulting from the program or to post cash bonds for program participants;
- The contract with the non-profit and the participant will be simple:
 - In exchange for posting the bond for individuals who have a bond set of \$30,000 or less, who are not charged with homicide, sex, or child exploitation charges, and who do not have any kind of hold on them, the participant would agree to abide by Pretrial Services (PTS) conditions of release;
 - They would be subject to the same level of supervision as recommended by PTS and the same standards for recommending revocation.
- The preferred method of administering these contracts would be for the non-profit to have staff located in the lower level of the jail to monitor felony initial appearances;
- The Public Defense Services' (PDS) attorney and/or PTS staff covering initial appearances would make sure that any defendant who would meet the conditions for participation in the program was processed by the non-profit;
- If the Sheriff does not allow the non-profit access to the lower level to process the participants, the PDS attorney covering initial appearances review the non-profit's contract

with every person recommended for release, and have contracts ready to deliver to the non-profit immediately after the conclusion of initial appearances.

Benefits of a Bonding Agency

The benefit of using a bonding agency that will post secured bonds is that the process is much faster and has far fewer administrative costs to the jail and the Superior Court. This project could be accomplished with only posting cash bonds, but the process would be slower and involve a larger amount of funding to be distributed to the community bond project.

Cash Only Bonds

The process detailed above covers secured bonds, which apply to almost all bonds set. Judges, however, have the ability to set "cash only" bonds. If a judge sets such a bond, the bond must be posted using cash or a cashier's check. In order to prevent magistrates from bypassing the community bond project and intentionally detaining defendants who do not have the money to post their bond, the community bond project will use the same system used by the jail that allows bonding agencies to securely transfer funds to post both secured and cash bonds. If, for any reason that system is unavailable, the non-profit will maintain a supply of cashier's checks in various denominations made payable to the Pima County Adult Detention Center along with a supply of cash and coins sufficient to post to the exact cent any bond set because the jail will only accept the exact amount of a bond set by a judge.

Pre Trial Services to Perform Supervision

Domingo Corona, the Director of Pretrial Services, related that Pima County Superior Court Administration agreed that PTS could perform the supervision portion of the community bond project. The non-profit would still be the agency running the program, but the contract that participants would sign with them would be to follow any and all conditions of release that would be required by PTS.

The advantage to this is that the project has lower expenses. The non-profit will only need a director and a very small staff to get the contracts with the participants reviewed, signed, and processed. It also creates a consistent and uniform level of supervision, which will strengthen the data, collected when measuring performance and effectiveness and will be neutral regarding judicial decision-making.

The way professional bonding agencies operate is that when posting bonds, no money is actually transferred at the time a bond is posted. With proper credentials issued by the Clerk of the Court, the department at the jail that processes the posting of bonds accepts forms that avow that the agency has the funds to cover the bond in the event of a forfeiture. The paperwork is accepted and the defendant is released.

In the event that the defendant fails to appear at court, the judge makes a referral for the forfeiture of the bond. A different judge then makes a determination of whether the defendant failed to

C.H. Huckelberry, County Administrator
Re: Public Defense Services' Community Bond Program Proposal
November 4, 2020
Page 3

appear, considers any reasons for the failure to appear, and then orders that either none, part, or all of the bond posted be forfeited. The bonding agency is then responsible for depositing whatever amount forfeited with the Superior Court. The Superior Court then deposits those funds with the County, which then deposits them into the general fund. In the event that the defendant appears at all of their hearings, when the case is resolved, the bond is exonerated and that obligation to cover that bond amount is removed.

Please let me know if you have any further questions.

WP/dr

c: Jan Leshar, Chief Deputy County Administrator
Dean Brault, Director, Public Defense Services
Kate Vesely, Director of Justice Reform Initiatives