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# Board of Supervisors Memorandum

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February 3, 2015

**Additional DUI Defense Attorney for the Legal Defender's Office**

## Background

Attached is a memorandum from Assistant County Administrator Ellen Wheeler regarding the substantial costs Pima County incurs each year for prosecution, legal defense and incarceration related to DUI (Driving Under the Influence) offenses. These expenses are in the range of \$3 to \$4 million per year, not including overhead at an average rate of approximately seven percent. I asked Assistant County Administrator Wheeler to gather this information on the County's mandated spending for just this one type of offense to illustrate the significant portion of the County's budget allocated to such required services.

I am often asked about the benefits the average taxpayer receives from Pima County. In fact, regarding many of our expenditures related to justice, law enforcement and the criminal justice system, most taxpayers receive no benefit other than the general principle of overall public safety. Our prosecution, defense and incarceration cost related to DUI offenses is an excellent example of how significant resources are consumed for the simple administration and enforcement of the criminal codes in Arizona.

I recommend the addition of one attorney to the Legal Defender's Office for its Aggravated DUI defense team, which is a cost-effective method to deliver such defense services. As indicated in the attached memorandum, the Legal Defender's costs per case for Aggravated DUI are significantly less than the costs incurred by the Office of Court Appointed Counsel for similar cases. Also, the Legal Defender turned away 124 Aggravated DUI cases last fiscal year because its DUI team had reached caseload maximums. One additional attorney would be able to handle that number of cases, resulting in a cost savings to the County.

Unfortunately, such funding cannot be shifted from the contract attorney or Indigent Defense budgets, which are projected to consume all allocated funding for this fiscal year.

## Recommendation

I recommend the Board of Supervisors fund an additional attorney position in the Legal Defender's Office at a cost of \$80,387, including salary and benefits, from the Contingency Fund.

Respectfully submitted,

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

C.H. Huckelberry  
County Administrator

CHH/mjk – January 28, 2015

c: Ellen Wheeler, Assistant County Administrator



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# MEMORANDUM

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Date: January 27, 2015

To: C. H. Huckelberry  
County Administrator

From: Ellen Wheeler *EW*  
Assistant County Administrator

Re: **DUI Defense Costs to Pima County**

This memo is in response to your memo of January 2 regarding your intention to recommend to the Board of Supervisors a new attorney position in the Legal Defender's Office dedicated to defense of felony DUI (driving under the influence cases) to be funded from Board Contingency Funds. In that memo, you asked for a review of the County's obligation to represent indigent defendants in DUI cases and the expenses incurred for prosecution, defense, and incarceration.

## **Background**

There are three Arizona statutes that make it unlawful to drive under the influence of intoxicating liquor or drugs, A.R.S. §§ 28-1381, 28-1382 and 28-1383. Violations of the first two statutes are misdemeanors; a violation of the third statute (§ 28-1383) is called "Aggravated DUI" and is a felony.

The County is required to provide a defense to individuals charged with DUI who cannot afford an attorney. The right to court-appointed counsel for defendants charged with felonies was established by the U.S. Supreme Court in the case of *Gideon v. Wainwright*, 372 U.S. 335 (1963). The right to counsel for those charged with misdemeanors and at risk for jail sentences was defined by the U.S. Supreme Court in *Argersinger v. Hamlin*, 407 U.S. 25 (1972). Counsel must be provided at government expense if the defendant is indigent. In Arizona, it is the county's responsibility to pay the expense of court-appointed counsel under A.R.S. § 13-4013.

## **Determination of Indigence**

Indigence is defined in Pima County as annual income that is less than 133% of the annual Health and Human Services Poverty Guidelines. The same income guidelines are used by Superior Court for felony cases and Justice Court for misdemeanor cases.

In FY 2014-15, an individual in a single-person household is considered indigent if his annual income is \$15,521 or less; the same individual is considered "quasi-indigent" if his income is between \$15,522 and \$31,042. The distinction between indigence and quasi-indigence is relevant to the amount of attorney's fees the defendant will be ordered to pay. If an individual in a single-person household has income in excess of \$31,042 he would not generally be entitled to counsel at state expense. A defendant with a household of four would be considered indigent with income of \$31,721 or less, quasi-indigent with income between \$31,722 and \$63,441, and not entitled to court-appointed counsel with an income greater than \$63,441.

Defendants who say they cannot afford to hire an attorney must provide a financial statement under oath and an authorization for release of financial information to the court, which makes the determination of indigence and appoints counsel. When a court makes a determination of indigence and appoints counsel, it also generally orders the individual to pay an assessment for attorney's fees, depending on the type of case and the person's level of income. Aggravated DUI defendants would be assessed either \$400 or \$800 in attorney's fees, depending on their income level. An individual charged with a misdemeanor DUI in Justice Court would be assessed \$350 in attorney's fees. Both Attorney Fee Assessment Schedules (which include the income guidelines) are attached.

### **Defense of Aggravated DUI Cases**

Aggravated DUI cases are prosecuted in Superior Court, which has jurisdiction over felony cases. In general, the offense of aggravated DUI involves one of the following: 1) committing a DUI offense while the individual's driver's license is suspended or revoked because of a prior DUI; 2) a third or subsequent DUI within 84 months of a prior DUI violation; 3) DUI with a child under the age of 15 in the vehicle; or 4) a DUI offense by an individual who is required to have an ignition interlock device on any vehicle he operates.

The Pima County Attorney reports filing 806 felony DUI cases In Calendar Year 2013 and closing 801 cases. (Fiscal year numbers have been requested.) The County provides legal defense of indigent individuals charged with Aggravated DUI through both the Legal Defender and the Office of Court-Appointed Counsel (OCAC). OCAC contracts with attorneys in private practice to represent indigent defendants if neither the Public Defender nor the Legal Defender can take the case because of a conflict or caseload restrictions.<sup>1</sup> Indigent Defense reports

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<sup>1</sup> In *State v. Joe U. Smith*, 140 Ariz. 355 (1984), the Arizona Supreme Court set maximum caseload limits for indigent defense attorneys. The maximum established for felonies was 150 per lawyer per year.

that, of the 420 Aggravated DUI cases open at some point since January 1, 2015, about 58% were being handled by the Legal Defender, about 27% by private counsel or self-represented, and about 12% by OCAC contract attorneys.

*County spending on Aggravated DUI defense.* Data on the County's cost per case has been generated from the Justware case management system, which is used by all the indigent legal services offices. The analysis examined cases that were closed (completed) in a given fiscal year. Costs for the Legal Defender include salary and benefits for its DUI team, which has five attorneys and one secretary, as well as case-related costs such as expert witnesses. OCAC costs include attorney's fees at \$90 per hour, plus other allowable costs incurred by contract attorneys such as expert witnesses, paralegal time billed at \$25 per hour, and investigator time at \$35 per hour.

Justware data indicate that the County spent \$474,027 on 789 Aggravated DUI cases handled by the Legal Defender and closed in FY 2013-14 for an approximate cost per case of \$600. (This cost figure does not include any investigator or paralegal time for the Legal Defender, because those services typically have not been part of the LD's DUI team. If the cost of one investigator and one part-time paralegal were added in, the average cost per case would be \$713.) Such costs compared with \$185,031 on 154 cases that OCAC contract attorneys closed last year, which is an approximate cost per case of \$1,200. In FY 2012-13, the difference in cost per case was even larger, with expenditures of \$448,064 for 580 cases at the Legal Defender (or \$772 per case) compared with \$195,046 for 95 cases closed at OCAC (or \$2,053 per case).<sup>2</sup>

Based on these figures generated by the Justware case management system, it appears to be more cost-effective to use Legal Defender attorneys for the Aggravated DUI cases. Moreover, the Legal Defender reports that its DUI team had to decline 124 cases in 2013-14 due to case overload, and that one more attorney position could absorb most or all of those cases. The approximate cost to the County for these 124 cases through OCAC was \$148,800 in 2013-14, whereas the estimated cost for an additional staff attorney at the Legal Defender (including salary, benefits and case-related costs) is \$80,387, with an estimated net savings to the County of \$68,000.

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<sup>2</sup> The reason for the reduction in OCAC's per-case cost in 2013-14 isn't readily apparent. One possible factor is a switch from an up-front flat rate plus hourly rates for excess hours in 2012-13 to a straight hourly rate in 2013-14, which seems to be more cost-effective. A large number of cases might also have gone to trial in 2012-13, which would have contributed to higher total fees.

### **Misdemeanor DUI Cases and Costs**

Pima County Justice Courts have jurisdiction over misdemeanor DUI cases, which are governed by A.R.S. §§ 28-1381 and 28-1382, if the incidents occur in unincorporated Pima County. The County provides defense of indigent defendants through OCAC contract attorneys.

A.R.S. § 28-1381 generally provides that it is unlawful to drive 1) while under the influence of alcohol or drugs if impaired to the slightest degree; 2) with a blood alcohol level of 0.08 or more within two hours of driving; 3) while there is any drug specified in A.R.S. § 13-3401 or its metabolite in the person's system; or 4) if the vehicle is one requiring a commercial driver's license and the driver's blood alcohol level is 0.04 or more. A.R.S. § 28-1382 relates to "extreme DUI," which it defines as driving with a blood alcohol content of 0.15 or more, and it provides for more severe penalties than § 28-1381.

In FY 2012-13, a total of 1,550 new DUI cases (i.e., defendants) were filed in Pima County Consolidated Justice Courts (PCCJC). The Justice Courts do not track the number of cases in which defendants are represented by court-appointed counsel as opposed to private counsel. OCAC records show that 1,062 new DUI cases were received from PCCJC by OCAC in 2012-13, which would represent about 68.5% of new filings. OCAC received another 32 cases from Green Valley in 2012-13, out of 89 new cases filed, or 36%. In FY 2013-14, about 1,760 new DUI cases were filed in PCCJC, and OCAC received 1,236 of those, or 70%. OCAC received another 48 cases from Green Valley Justice Court out of 75 filed, or 64%.

Figures generated by Justware show that the County paid a total of \$331,154 to OCAC contract attorneys for 801 Justice Court cases that were closed in FY 2013-14 (of which 42 were in Green Valley), for a cost per case of about \$413. In FY 2012-13, the cost was \$549,586 for 1,168 cases that were completed (including 38 in Green Valley), for a cost per case of \$470. Misdemeanor defense attorneys are paid \$60 per hour.

### **Prosecution Costs**

Figures available from the Pima County Attorney's Office for Calendar Year 2013 indicate that the County Attorney filed 806 felony DUI cases that year and disposed of a total of 801 (including trials, pleas and dismissals). The County Attorney and County Indigent Defense count felony DUI cases in a comparable manner (i.e., by counting the number of defendants whose cases involve a felony DUI charge). The attorney personnel cost for DUI prosecution in CY2013 was \$412,792, or about \$515 per case, which covered four attorneys and one

supervising attorney. (No support staff or case costs are included in this figure.) The County Attorney reduced staffing for felony DUI prosecution by one attorney in July 2014, so the unit now includes three attorneys and one supervisor, which presumably will reduce the per case cost.

The Pima County Attorney reports disposing of 3,754 misdemeanor DUI charges in FY 2012-13. (The County Attorney's misdemeanor numbers are based on the state Administrative Office of the Courts number, which counts each charge of DUI, as opposed to each case.) Attorney personnel costs were \$763,296, for a cost *per charge* of \$203. Given that the number of DUI *charges* each year appears to be roughly twice the numbers of *cases/defendants*,<sup>3</sup> the cost per case of prosecuting attorneys appears to be about \$400.

### **Jail Costs**

The Pima County Adult Detention Complex (ADC) has provided an estimate of jail costs for DUI-related inmates in calendar year 2014 of between \$2.3 million and \$3.6 million, of which about 57% (\$1.3 million to \$2.1 million per year) is paid solely by Pima County. It is difficult to calculate the cost of DUI-related inmates, since most inmates have other warrants and offenses unrelated to DUI that also affect their custody status. Corrections officials' best estimate for calendar year 2014 is that there were more than 3,900 DUI-related inmates, accounting for between 20,000 and 37,000 jail bed days, at a total cost of between \$2.3 million and \$3.6 million. Forty-five percent of those jail bed days are attributable to Pima County Justice Court cases, 12% are related to Superior Court cases, and the remainder are attributable to misdemeanor charges from other jurisdictions that are billed for jail costs by the Sheriff.

### **Summary**

The County spent approximately \$990,212 for defense of DUI cases in Superior Court and Justice Court<sup>4</sup> in FY 2013-14. The prior year, the County spent about \$1,192,696 on DUI defense. The cost per case decreased across the board for DUI defense (including at the Legal Defender and OCAC and by type of case) from 2012-13 to 2013-14.

Comparable fiscal year numbers were not available immediately from the County Attorney's Office, but based on the total felony prosecution costs for Calendar Year 2013, plus the fiscal year prosecution costs for misdemeanors, it appears that the County spends more than \$1

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<sup>3</sup> The state Administrative Office of the Courts shows 3,468 new charges in 2012-13 for PCCJC, which is about 2.24 times the number of 1,550 new cases provided by PCCJC Administrator Doug Kooi.

<sup>4</sup> This includes Pima County Consolidated Justice Courts and Green Valley Justice Court.

million per year on DUI prosecutions. It seems safe to assume that the County's annual DUI prosecution and defense costs reach or exceed \$2 million. These estimated costs do not include overhead, which on average adds about 7% to an agency's costs.

In addition, costs to the County of detaining DUI-related inmates at the Adult Detention Complex are in the range of \$1.3 million to \$2 million per year.

It would be useful to future analyses of costs if the various agencies involved in the criminal justice system could adopt similar conventions about how they define and track cases and the cost elements that they include in their calculations.

**Estimated Annual Cost to County of DUI Offenses**

	Legal Defender	Office of Court Appointed Counsel	County Attorney	Jail
Fiscal Year 2012-13				
Felony	448,064	195,046		
Misdemeanor		549,586	763,296	
<b>Subtotal</b>	<b>448,064</b>	<b>744,632</b>		
Calendar Year 2013			412,792	
Fiscal Year 2013-14				
Felony	474,027	185,586		
Misdemeanor		331,154		
<b>Subtotal</b>	<b>474,027</b>	<b>516,740</b>		
Calendar Year 2014				1,311,000 – 2,052,000

# 2014 ATTORNEY FEE ASSESSMENT SCHEDULE FOR COURT-APPOINTED ATTORNEYS

Indigence is defined as annual income less than 133% of the 2014 Health and Human Services Poverty Guidelines  
 Quasi-Indigence is annual income between 133% and 266% of the 2014 Health and Human Services Poverty Guidelines.  
 Any person who requests a court-appointed attorney will be charged a \$25 Indigent Administrative Assessment in addition to the attorney fee assessment.

## INDIGENCE

Size of Household	If income is between:	Attorney fee assessment is:		
		Group A	Group B	Prob. Rev.
1	0 - 15,521	400	400	125
2	0 - 20,921	400	400	125
3	0 - 26,321	400	400	125
4	0 - 31,721	400	400	125
5	0 - 37,120	400	400	125
6	0 - 42,520	400	400	125
7	0 - 47,920	400	400	125
8	0 - 53,320	400	400	125

## QUASI-INDIGENCE

If income is between:	Attorney fee assessment is:			Not entitled to Court-appointed attorney if income is greater than:
	Group A	Group B	Prob. Rev.	
15,522 - 31,042	800	3,000	250	31,042
20,922 - 41,842	800	3,000	250	41,842
26,322 - 52,641	800	3,000	250	52,641
31,722 - 63,441	800	3,000	250	63,441
37,121 - 74,241	800	3,000	250	74,241
42,521 - 85,040	800	3,000	250	85,040
47,921 - 95,840	800	3,000	250	95,840
53,321 - 106,639	800	3,000	250	106,639

**Group A** includes all Class 2,3,4,5, and 6 felonies not listed in Group B.

**Group B** includes cases where the charges against the defendant include the following Class 2 and 3 felonies: attempted murder, second degree homicide, manslaughter, negligent homicide, drive-by shooting, arson of an occupied structure, sexual offenses pursuant to Chapter 14 involving child victims or multiple victims, armed robbery and dangerous crimes against children.

Indigent Defense will update this chart annually to reflect changes to the Federal Poverty Guidelines and/or changes to the base rates for contract attorneys.

## 2014 ATTORNEY FEE ASSESSMENT SCHEDULE FOR MISDEMEANOR COURT-APPOINTED ATTORNEYS

Indigence is defined as annual income less than 133% of the 2014 Health and Human Services Poverty Guidelines  
 Quasi-Indigence is annual income between 133% and 266% of the 2014 Health and Human Services Poverty Guidelines.  
 Any person who requests a court-appointed attorney will be charged a \$25 Indigent Administrative Assessment in addition to the attorney fee assessment.

### INDIGENCE

Size of Household	If income is between:	Attorney fee is:	
		Misd.	Prob. Rev.
1	0 - 15,521	350	250
2	0 - 20,921	350	250
3	0 - 26,321	350	250
4	0 - 31,721	350	250
5	0 - 37,120	350	250
6	0 - 42,520	350	250
7	0 - 47,920	350	250
8	0 - 53,320	350	250

### QUASI-INDIGENCE

If income is between:	Attorney fee is:	
	Misd	Prob. Rev.
15,522 - 31,042	350	250
20,922 - 41,842	350	250
26,322 - 52,641	350	250
31,722 - 63,441	350	250
37,121 - 74,241	350	250
42,521 - 85,040	350	250
47,921 - 95,840	350	250
53,321 - 106,639	350	250

Not entitled to Court-appointed attorney if income is greater than:
31,042
41,842
52,641
63,441
74,241
85,040
95,840
106,639

Indigent Defense will update this chart annually to reflect changes to the Federal Poverty Guidelines and/or changes to the base rates for contract attorneys.

Last updated: 05/05/14  
 Admin\Contract\Misdemeanor\Attorney Fee Chart 2014