



Board of Supervisors Memorandum

December 1, 2020

2021 Legislative Agenda

Background

Attached please find Resolution No. 2020 - _____ adopting the County legislative program for 2021 (Attachment 1).

Last year, the Legislative Agenda contained a number of priority categories that generally remain the same for 2021; however, we will not be as specific as we have been in the past, providing flexibility in our Legislative Agenda to respond to either dynamic conditions in the Legislature or modified priorities when seating three new members of the Board of Supervisors on January 1, 2021. This legislative agenda should be reviewed again in the first week of February for Board direction after the first month of the legislative session.

The general legislative priorities of Pima County are as follows:

1. Criminal Justice Reform
2. Transportation Funding
3. Strengthening County Public Health Functions
4. Reducing or Eliminating Annual State Cost Transfers to Counties
5. Public Works - Wastewater Reclamation Fees – Billing and Collection
6. Support the County Supervisors Association Adopted Legislative Agenda

Criminal Justice Reform

Criminal justice reform has been a topic that has been on our agenda since we initiated a Criminal Justice Reform Unit in the County's Administrator's Office. The purpose of this Unit was to identify and facilitate criminal justice reform that could lower costs and improve outcomes.

The criminal justice system in Pima County consumes a vast majority of County General Fund resources. In Fiscal Year (FY) 2020/21, the total budgeted expenditure of the County for criminal justice costs will exceed \$345 million, which amounts to 60.57 percent of General Fund revenues and is 97.38 percent of the Pima County primary property tax revenue. Hence, it could be concluded the criminal justice system requires all of our primary property tax revenues.

The outcomes from the present system are not particularly beneficial to the individuals involved in the system. In FY 2019 there were 53,473 criminal filings against individuals in Pima County. There were 45,542 civil filings for traffic offenses, 5,280 protective orders

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and 12,427 actions for eviction. (Data includes Ajo, Green Valley, Pima County Consolidated Justice Court and Superior Court)

This data, on each case filing, involves one or more individuals; hence, our system touches over 20 percent of our population each year. Many or most outcomes are not particularly favorable.

Clearly, our criminal justice system requires significant reform. Long term reform can be assisted and accelerated through revisions by the Legislature to the State Criminal Code.

A number of suggestions and programs will continue to be advanced. In fact, the Criminal Justice Reform Commission has unanimously endorsed a number of specific criminal justice system reforms. The Commission reviewed these proposals on November 12, 2020. For the Board's information, the Commission consists of the following individuals:

- Judge Richard Fields (retired, Presiding Judge Criminal Bench);
- Lori Lefferts, Pima County Public Defense Services (retired);
- Jim Walsh, former Pinal County Attorney;
- Kent Batty, Pima County Superior Court Administrator (retired), current Interim Justice Court Administrator;
- Gerald Kicanas, Tucson Diocese Bishop, emeritus;
- David Neri, Tucson Police Department- Counter Narcotics Agency, Captain, retired;
- Chuck Pyle, federal magistrate, retired; and
- Patricia Alvarez Hurley, Assistant Pima County Administrator for Justice and Law Enforcement, retired

The primary purpose of reform is to conserve resources, allowing those resources to be redirected to other priorities of the County and to significantly improve the outcomes for individuals caught up in the criminal justice system.

A number of policy positions are being recommended to the Board for adoption as our Legislative Agenda related to criminal justice reform. They are as follows in order of importance:

- Eliminate cash bail – In 2016, the Arizona Supreme Court commissioned a Task Force to review Arizona's cash bail system and issued a report in August of that year recommending the elimination of the cash bail system and rely, instead, on a risk based pre-trial release system. This would avoid individuals accused on minor crimes from prolonged stays in detention facilities due to their financial inability to pay a monetary bail. In addition, the County is proposing a Community Bond Program that would provide stop gap relief until real bail reform can occur at the State level. As our top legislative priority in criminal justice reform, I recommend elimination of cash bail.

- Deflection Allowable for Arizona County Sheriff's - The Tucson Police Department initiated a deflection program in July 2018. This program is designed to deflect persons from arrest who may be charged with low level drug possession. The individuals deflected are not taken to a detention facility, but are instead taken to treatment for substance abuse and mental health issues. Our Criminal Justice Reform Unit developed a U-MATTER Team funded by a federal grant designed to assist individuals in receiving substance abuse and mental health treatment. The Pima County Sheriff's Department has declined to participate in a deflection program simply because they believe they do not have the statutory authority to do so. It is believed that Arizona Sheriffs have some discretion in this matter; however, in order to legally validate a deflection program based on a strict reading of Arizona Criminal law, it is recommended the Board of Supervisors support legislation that would provide county sheriffs the ability to implement a deflection program for individuals charged with low level drug possession if they choose to undertake treatment for substance abuse or receive mental health treatment.
- Body worn Cameras for all Arizona Law Enforcement Officers – It is recommended there be statutory mandates that all Arizona law enforcement officers be required to wear and utilize body worn cameras. While body worn cameras may not specifically prevent civil rights violations or prevent law enforcement violence, they will promote transparency of law enforcement actions and safety, both for law enforcement and the public.
- Increased Credit for Training, Education, Substance Abuse and Drug Treatment Applied to a Prisoner's Sentence – Earned time off of a sentence should be increased to incentivize those incarcerated in Arizona to peacefully and cooperatively serve their sentence, while at the same time improving themselves through training and education. These credits should be significantly increased for inmates who seek and successfully complete appropriate substance abuse or addiction programs, job training certifications or the completion of higher education while incarcerated. These incentives for sentence reduction should be structured to substantially reduce the time of sentence if successfully completed.
- Expanding the Time between Filing of an Eviction Notice to the Hearing Date – The current Arizona Residential Landlord and Tenant Act outlines a process for eviction and the steps a landlord must take in the case of eviction for nonpayment. Such can occur in as little as five days after notice of noncompliance. This is entirely too short a timeframe to allow the tenant to either work out a payment plan with the landlord or to seek and receive rental assistance funding. It is recommended the notice time be increased from five days to 15 calendar days. This will provide time for all parties to make either financial arrangements or to find other suitable housing.
- Justice of the Peace Judicial Retention Review – Presently, the only judicial officers that do not have a judicial performance review process are Justices of the Peace. These reviews occur for members of the Supreme Court, Court of Appeals, Superior Court Judges and Town/City Magistrates.

Very often, as in the case in the current 2020 General Election, Justices of the Peace run unopposed. This is essentially a de facto judicial performance review process even though it is not intended to be so. Given Justices of the Peace largely run unopposed and are the only judicial officer to not be subject to judicial performance review, it is appropriate that legislation be enacted requiring judicial performance reviews for Justices of the Peace to be administered by the State Supreme Court.

- Reconciling the Conflict between a Consolidated Justice Court and an Unconsolidated Constables Office – In Pima County, the Justice Court is consolidated in the general urban area with 8 precincts. The only two standalone precincts are Green Valley and Ajo, primarily because of the distance between the metropolitan area of Pima County and these communities. Consolidation simply means that an urban Justice of the Peace can hear a particular case whether or not that case is filed directly within the precinct of that Justice of the Peace. There is no such consolidation of Constable's functions; hence, each Constable has a dramatically different case or workload. There is no mandatory consolidation of Constables workloads, which simply means the metropolitan area workload of a Constable may vary dramatically between Constables. Such is both inefficient and unfair.

Appropriate legislation needs to be enacted to effectively signal that if a Justice Court within a county chooses to consolidate, the Constables within those justice precincts are also consolidated.

An October 15, 2020 memorandum from Assistant County Administrator Wendy Petersen provides more detail on several of these areas and is attached for your information. (Attachment 2) The details and examples in this memorandum are well worth reading.

A number of specific proposals were submitted by the Public Defender for Public Defense Services. These include the following:

- a) Reclassification of Class 6 Undesignated Offenses – A.R.S. 13-604 provides a person convicted of a class 6 non-dangerous felony to have their offense designated a class 1 misdemeanor if the court, in its discretion, determines that it would be unduly harsh to sentence the defendant for a felony. The court can consider the "nature and circumstances of the crime and the history and character of the defendant." The bill also allows for the court to leave the offense undesignated and place the defendant on probation for a set period of time, and, upon successful completion of probation allow the defendant to petition the court to have the offense designated a misdemeanor. During the time that an offense is left "undesignated," A.R.S. 13-604 provides that the offense be treated as a felony until ordered otherwise. Leaving the offense a felony during this time is counterproductive to the person's ability to get a job and find housing, all while trying to pay their fines and fees and monthly probation expenses. The current language criminalizes poverty. A person may successfully complete probation, but because they are poor, or deemed indigent. No matter the success on probation, the offense remains a felony simply because of an inability to

pay statutorily mandated fines and fees. The current statute places the burden on the persons themselves to petition the court for the misdemeanor designation.

- b) **Judicial Safety Valve/Discretion** – This would create a new statute in the sentencing codes of A.R.S. 13 (Criminal Code). Arizona currently has one of the harshest and strictest sentencing structures in the country, Arizona has the fourth highest incarceration rate in the country. This is costly to taxpayers and does not improve community safety upon release. Judges have long complained that their hands are tied even though they believe that some of the sentencing laws are overly harsh. If a person chooses to go to trial on his/her third drug possession case, the judge is forced to send the person to prison for 6 to 15 years, even if they believe the sentence is overly harsh. This bill would give discretion to judges to exercise a safety valve and hand down a reduced sentence if they felt that the statutory sentence was not in the interest of justice.
- c) **County Attorney Reporting/Publishing Requirement** – In 2017, the state legislature passed a bill allocating funds to Pinal and Yavapai Counties for the purpose of tracking arrests, charges and case statistics, and required that the results be posted on their respective websites. Because the original bill was a one-year requirement that was part of a larger budget bill, a new statute would need to be in place that made the requirement permanent. The funding for just Pinal and Yavapai was \$200,000 for the year. Policy changes should be founded on facts that can be obtained through this process.
- d) **Oppose any legislation that institutes mandatory minimums** - Legislators have introduced bills that provide extremely broad mandatory prison terms for any type of drug sale, including addicts selling small amounts to support their own habit. The last mandatory minimum drug bill, legislators claimed the bill was aimed at “cartels” and “major drug dealers” when the reality was that it applied almost exclusively to small sales amounts.
- e) **Fresh Start Bill** - Arizona only has what is called a “set aside,” meaning that a person can petition the court to make a record that their conviction was set aside. The conviction remains on the person’s public record and still counts as a felony conviction that follows them for the rest of their life. Under a Fresh Start Act, a person whose record is sealed shall be treated in the public record as if they had never been “arrested, convicted or sentenced.” This action would allow persons with non-violent felonies or misdemeanors to earn the opportunity to have their record publicly sealed so that the felony does not follow them for the rest of their lives and hamper their ability to obtain housing, employment and be productive members of society.
- f) **Elimination of Mandatory Department of Corrections Sentence for Probation Available Aggravated DUI Convictions** – A.R.S. § 28-1383(D) requires that, if placed on probation for Aggravated DUI, they must serve at least 4 months in the Arizona Department of Corrections (ADOC) as part of their probation sentence. This ADOC

requirement does not exist for any other probation available conviction, is costly to taxpayers and deprives persons struggling with alcohol addiction of much needed treatment.

- g) **Automatic Restoration of Civil Rights for all Felons Upon Discharge** – A.R.S. 13-907 provides for automatic restoration of any civil rights lost as a result of a defendant's first felony as long as restitution has been paid. (This does not include the right to possess a firearm). Subsequent felony convictions require that a person petition the court to have their civil rights restored pursuant to and are at the mercy of the Court. The proposed legislation would eliminate A.R.S. 13-908 and reword A.R.S. 13-907 to apply to restoration of civil rights upon final discharge of any felony.

- h) **Add Defense Bar to AZ Criminal Justice Commission** – The Arizona Criminal Justice Commission ("ACJC"), whose mission is to address, improve, sustain and enhance public safety in the state of Arizona, is often relied on by the legislature to deliver data and statistics and distribute funds. The ACJC is currently made up of County Attorneys, Department of Public Safety and Law Enforcement officers, judges, court administrators and probation executives. Currently, there are no Public Defense representatives or members of the defense bar at all. The addition of a member of the Defense bar would make the ACJC a fully comprehensive body overseeing criminal justice in Arizona and advising the legislature on criminal justice statistics and policy. The ACJC without a member of the defense bar could lead to statistics skewed towards prosecution and incarceration rather than balanced definitions and policies. This proposal would revise A.R.S. 41-2404(B).

- i) **Elimination of ability to use "Hannah Priors" to enhance charging/sentencing** – Currently, A.R.S. 13-703(A) has the effect of eliminating eligibility of probation after the first offense even if the person had never been arrested before let alone been convicted of a crime. The operative language reads:
 - A. If a person is convicted of multiple felony offenses that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions, the person **shall be sentenced as a first time felony offender** pursuant to section 13-702 for the first offense, as a category one repetitive offender for the second offense, and as a category two repetitive offender for the third and subsequent offenses.

This language makes it impossible for a judge to apply specific facts to a series of offences that may have been committed on the same day but at different locations.

I recommend approval of Items a through i.

The specifics of each proposal are attached (Attachment 3) to this agenda.

Transportation Funding

Investment in transportation is a key element of economic development. The State has not seriously invested in our transportation system in over 30 years, leading to declining revenues, inflation erosion of those revenues all leading to deteriorating transportation systems.

Recognizing that there will be little help in increasing transportation revenues from the Legislature, the Board of Supervisors began to significantly invest in road repair in Fiscal Year 2018/19. We are now into the third year of increased transportation investment for road repair purposes. To date, including the funding approved just last year for the current fiscal year, we will have invested \$116.9 million in road repairs. The Board also on November 5, 2019 approved a 10-year road repair program, which will bring the pavement condition of all unincorporated Pima County roads to a Good condition. This road repair program calls for the continued investment of \$412.8 million from both County transportation sources and the County's General Fund.

Continuing road repairs is a top County transportation priority. Therefore, as a Legislative priority, the County supports any increase in transportation revenues that can be used to accelerate the County road repair program.

As a legislative priority, the County will support any increase in transportation revenues from any source for the purpose of accelerating the adopted County road repair program.

Strengthening County Public Health Functions

The Coronavirus pandemic has focused the public's attention on the importance of county public health agencies. In the past, these agencies were generally taken for granted, primarily involved in sexually transmitted disease prevention, immunizations, Tuberculosis control and maternal-child health. While these are important functions, they do not have high profiles and hence, do not attract the same attention as perhaps organizations involved in the criminal justice system.

The pandemic has clearly demonstrated that county public health agencies are vitally important to community and individual health as well as to responding to highly infectious disease threats such as COVID-19. County public health agencies have been moving toward the model of overall community health and linking factors such as income, ethnicity, education and similar socio-economic factors in defining who among the general population is most susceptible to disease and poor health.

The exclusive role of county public health agencies in providing public health services throughout the County's population is not well understood. Cities and towns, while they comprise a large percentage of the state population, frankly, have no statutory role in public health as opposed to county public health agencies having full responsibility to manage and execute a countywide public health program. Very often, these actions and other public

health related programs are delegated to the counties through the State public health agency, the Arizona Department of Health Services.

It is important county public health agencies be given clear authority as well as autonomy to carry out public health programs to improve overall community health and minimize the spread of infectious diseases.

- Require a Public Health Nurse in Schools where the attendance is at least 500 on a daily basis – School nurses were common team members in almost all public schools in Arizona. Due to budget constraints and other factors, these essential functions were eliminated much the same way school librarians have been largely eliminated from school district employment. Schools are critical partners but poorly resourced partners responding to the Coronavirus pandemic. Currently they assist the health department with reporting and contact tracing functions as required in the Governor’s Executive Order. Additionally, federal resources have earmarked point-of-care COVID-19 antigen tests to school settings but these are challenged with the lack of staffing and infrastructure to put these tools into use. The future availability of the COVID-19 vaccine and the designation of school staff and eventually students as priority populations for vaccination, also create a need for on-site health professionals to facilitate vaccine education, assess vaccination compliance, and even to deliver the vaccine. It is appropriate for the state to provide the funding for and to require that public health nurse be assigned to any school where the attendance is greater than 300 students.

In addition, the public health nurse can coordinate with the county public health agency to connect families with health care resources, coordinate care of medically complex children, and disseminate prevention information related to diseases, obesity, diabetes, tobacco use, other regulated drugs, including marijuana and community health programs designed to improve the overall health of the community.

- Require each County Public Health Agency to Organize, Create, Staff and Fund an Organizational Unit Dedicated to Emerging Infectious Disease Threats – While we are preoccupied with the Coronavirus pandemic, infectious diseases have reemerged as a major threat to public health. These infectious diseases include the human immunodeficiency virus (HIV) also known as AIDS, Ebola, tuberculosis, influenza, West Nile virus, Zika virus and other emerging viruses. It is important that public health agencies be appropriately staffed and plan for controlling the next emergent virus. One particular point of vulnerability that has been exacerbated by the current pandemic is the lack of infrastructure to support the timely electronic reporting of disease and test results by clinical and laboratory partners in support of public health and sentinel awareness. State and local policy, infra-structure, and human resources are needed for the exchange information in an interoperable manner and to ensure appropriate analytic tools for use at the state and local level.

One of the primary purposes of a county public health agency organizational unit dedicated to emerging infections is to develop plans and identify priorities for

confronting the threats of emerging infections. Effective identification and control of these emerging infectious disease threats requires disease surveillance and an organizational capacity to do so.

- Minimum Pass through of Public Health Funds to County Public Health Agencies – Today, federal funding provides the primary support for state public health infrastructure. The overwhelming majority of these resources are retained centrally by the State with no specific requirement to pass through any funds to counties for local public health programming. Very often, the State retains a disproportionate share of these funds for their program purposes or use. Hence, funding does not reach in the amount it should for the population of the County where the public health funds are targeted for a very specific federal public health objective. It would be appropriate to enact legislation that would require at least 50 percent of public health funding provided by the federal government to the State to be passed through to county public health agencies. Such action would serve to support and protect the statutory authority of county health departments as they seek to conduct their constitutionally mandated functions.
- Imposition of State Regulations if County Regulated Codes have been Updated There is little coordination in the timing of public health code updates between Arizona Department of Health Services (ADHS) and county public health agencies. As an example, the County has updated its food health code after extensive review and public input. The State has recently announced revisions or modifications to the state food code now causing the County to review and revisit a public process. This will require the County to update and modify the food code again. This is a waste of time and resources; therefore appropriate protocols should be enacted that require local county consultation and coordination, as well as specific timing and review of state promulgated legislation in conjunction with county public health enforced health regulations and codes.

State Cost Transfers

State cost transfers for Fiscal Year 2020/21 increased by \$5.8 million from the previous amount of \$88 million to \$93.8 million. This is equivalent to 26.79 percent of our primary property tax revenue. Hence, at least a quarter of our property tax levy is a result of State mandated cost transfers. In many instances, these State cost transfers have absolutely no policy connection. The best example is the State's mandated cost transfer for Pima and Maricopa Counties for supporting the State's Juvenile Department of Corrections. Pima County has a long history of sending very few juveniles to State facilities. In fact, transfers that do occur significantly underrepresent our proportion of the State's population. Hence, by funding our juvenile system locally, we are punished by being required to fund a State system we generally do not use.

There are many other State cost transfers that have questionable policy connection to State programs. Nevertheless, they are mandated by the Legislature and if objected to by the County, the State will withhold the payment of State-shared revenues. Therefore, we have

little choice other than to accept State cost transfers and unfortunately, these costs increase without sound policy consideration and add to the tax burden of our local citizens.

The County will oppose any and all State cost transfers that increase the tax burden on Pima County taxpayers.

Public Works

The Public Works Legislative Agenda proposals contain a significant list of “monitor and advise” for any efforts that could potentially affect Pima County in the areas of sustainability and conservation, transportation, wastewater reclamation. These areas are attached for your information in an October 19, 2020 memorandum from Deputy County Administrator Carmine DeBonis (Attachment 4).

A new legislative proposal is worth additional discussion. It is listed below:

Wastewater Reclamation Fees Billing and Collection

Pima County’s Regional Wastewater and Reclamation Department (RWRD) now spends \$5.3 million in having various water utilities provide a billing and collection system for wastewater fees. This is done primarily due to the inability to turn off sewer service as opposed to metered water service. The RWRD has only this mechanism as well as a Court mechanism to collect delinquent fees. Given, RWRD fees rarely vary not only month-to-month but also year-to-year, the actual billed amount remains constant over an entire year and sometimes over multiple years. Therefore, the funding provided to various water utilities for this analysis service of three-month water average water billing is highly inefficient and unnecessary except for delinquent collections.

A much more efficient manner would be to have the RWRD delinquent bills become a lien against the real property served by wastewater connection this would require that when property ownership is transferred, any liens regarding delinquent sewer user fees would be required to be paid before title to a property with delinquent fees could transfer.

To reduce costs, legislation should be enacted allowing a property lien for nonpayment of sewage system user fees be allowed if payment is delinquent for more than 90 days. Such would result in lower operating cost of the RWRD and if legislation is provided, the differential in costs or cost savings could be then rebated to customers.

Support the County Supervisors Association Adopted Legislative Agenda

The County also closely monitors the County Supervisors Association (CSA) and their coalition priorities for the upcoming legislative session (Attachment 5). Pima County agrees with all of the items set forth in the 2020 CSA Virtual Legislative Summit and suggests the Board of Supervisors also support these consensus coalition priorities for the CSA.

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Recommendation

It is recommended the Board adopt resolution No. 2020 - _____ adopting the County legislative program for 2021.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/anc – November 20, 2020

c: Jan Leshar, Chief Deputy County Administrator
Francisco García, MD, MPH, Deputy County Administrator and Chief Medical Officer
Health and Community Services
Carmine DeBonis, Deputy County Administrator, Public Works
Michael Racy, Racy Associates Inc.

ATTACHMENT 1

PIMA COUNTY

RESOLUTION NO. 2021 - _____

**A RESOLUTION OF THE BOARD OF SUPERVISORS IN PIMA COUNTY, ARIZONA
ADOPTING A PIMA COUNTY LEGISLATIVE PROGRAM FOR 2021**

BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY,
ARIZONA, AS FOLLOWS:

Section 1

That those persons authorized by Pima County to lobby on its behalf and registered as such with the Secretary of State of the State of Arizona pursuant to Arizona Revised Statutes §41-1231 et seq. (the "County Lobbyists") are hereby authorized and directed, subject to the continuing supervision of the Pima County Administrator and this Board, to represent and pursue the legislative interests of Pima County by supporting legislation that embodies any of the following basic principles:

- A. Empowers Pima County with sufficient flexibility to address an expanding and changing variety of local needs and conditions.
- B. Establishes appropriate means to adequately compensate Pima County for the costs of complying with state mandated requirements.
- C. Provides Pima County with the means to cope with inflationary cost increases, population growth and escalating service requirements.
- D. Enables Pima County to provide public services in a more responsive, efficient and cost-effective manner.
- E. Defines appropriate fiscal and administrative responsibilities within various State/County and City/County joint programs.

Conversely, legislation that is inconsistent with any of these basic principles should be opposed or appropriate amendments pursued.

Section 2

That, in addition to those basic principles set forth in Section 1, the County Lobbyists are authorized and directed to pursue the following specific objectives:

- A. Criminal Justice Reform
 - 1. Eliminate cash bail
 - 2. Deflection Allowable for Arizona County Sheriff's

3. Body worn Cameras for all Arizona Law Enforcement Officers
4. Increased Credit for Training, Education, Substance Abuse and Drug Treatment Applied to a Prisoner's Sentence
5. Expanding the Time between Filing of an Eviction Notice to the Hearing Date
6. Justice of the Peace Judicial Retention Review
7. Reconciling the Conflict between a Consolidated Justice Court and an Unconsolidated Constables Office
8. Public Defense Services Proposals
 - Reclassification of Class 6 Undesignated Offenses
 - Judicial Safety Valve/Discretion
 - County Attorney Reporting/Publishing Requirement
 - Oppose Any Legislation that Institutes Mandatory Minimums
 - Fresh Start Bill
 - Elimination of Mandatory Department of Corrections Sentence for Probation Available Aggravated DUI Convictions
 - Automatic Restoration of Civil Rights for all Felons Upon Discharge
 - Add Defense Bar to AZ Criminal Justice Commission
 - Elimination of ability to use "Hannah Priors" to Enhance Charging/Sentence

B. Transportation Funding

Support any increase in transportation funding to accelerate the County road repair program.

C. Strengthening County Public Health Functions

1. Require a Public Health Nurse in Schools Where Attendance is at least 500 on a Daily Basis
2. Minimum Pass through of Public Health Funds to County Public Health Agencies
3. Require Each County Public Health Agency to Organize, Create, Staff and Fund an Organizational Unit Dedicated to Infectious Diseases

D. Reducing or Eliminating Annual State Cost Transfers to Counties

Oppose any State Cost Transfer that would transfer cost to the County.

E. Public Works

1. Wastewater Reclamation Fees – Billing and Collection

F. Support the County Supervisors Association Adopted Legislative Agenda

Continue to support the County Supervisors Association Adopted Legislative Agenda.

PASSED, ADOPTED AND APPROVED this ___ day of _____, 2020 by the Board of Supervisors of Pima County.

Chair of the Board of Supervisors

ATTEST:

APPROVED AS TO FORM:

Clerk of the Board of Supervisors

Deputy County Attorney

ATTACHMENT 2



MEMORANDUM

Criminal Justice Reform Unit

Date: October 15, 2020

To: C. H. Huckelberry
County Administrator

From: Wendy Petersen
Assistant County Administrator

Re: **2021 Legislative Proposals from the Criminal Justice Reform Unit**

I am attaching five Legislative Proposals for your review and consideration:

1. Expanding the time between filing an eviction to the hearing date;
2. Bail Reform – Elimination of Cash Bail;
3. Deflection applicable to Arizona County Sheriffs;
4. Body Worn Cameras for all Arizona Law Enforcement Officers; and
5. Release from Prison after serving 50% of prisoners' sentence

Criminal Justice Reform is sweeping the nation. The time has never been more fitting to offer these changes to the Arizona Legislature. Our country has experienced a devastating year, which has literally affected everyone: the COVID-19 Pandemic closed down most of our country in March of 2020 and over 200,000 Americans have died from the virus thus far. The murders of George Floyd, Breonna Taylor and locally, Carlos Ingram-Lopez, brought to the nation's attention the horror and tragedy of law enforcement involved deaths. Protests of these incidents, peaceful and otherwise, cannot and should not be ignored. This heightened awareness makes it incumbent upon American citizens to demand that the *status quo* change. In a peaceful and enlightened democracy, this can and does begin with legislative change.

1. Expanding the time Between filing an Eviction to the Hearing Date

Arizona's Residential Landlord and Tenant Act outlines the process to evict someone from a home, and the steps a landlord or tenant must undertake for an eviction to take place. In the case of an eviction for non-payment, the landlord may, after issuing a five-day notice for noncompliance, remove someone from the property in as little as five days after the notice is served. This timeline does not provide the tenant much time to remedy the situation by seeking rental assistance funds, or work out a payment plan with the landlord or seek post-eviction housing (finding a shelter or staying with relatives). The COVID-19 pandemic has only exacerbated this problem. Although there are federal and state moratoriums in place for evictions, these will expire in the next few weeks and with no clear indication if these will be extended; an eviction crisis is upon us. Funding has been allocated to different jurisdictions for rental assistance, but with this short time frame and such high demand for funding, many tenants will not have sufficient time to process rental assistance applications and will end up being evicted from their homes.

This proposal intends to expand the initial notice time from five to fifteen calendar days. This will provide all parties involved more time to find a solution and try to avoid the eviction or the tenant

more time to find a suitable housing situation before being evicted. Extending the time frame even by just ten days, would have a tremendous impact on the citizens of Arizona during this frightening pandemic crisis.

Constables play an important role in the eviction process. Several Pima County Constables make efforts to avoid evictions and frequently help tenants stay in their homes. Pima County Presiding Constable Kristen Randall, in an *Arizona Daily Star* article from October 17, 2019 explains the consequences of this short time frame for people facing eviction:

Since many people don't realize how quickly they can be evicted — it's often just five days after the court hearing and then within 15 minutes of the constable's arrival — they are shocked and unprepared when it occurs.

Constable Bennett Bernal and Presiding Constable Kristen Randall help tenants by hand-delivering the eviction documents so people have a little more time to decide what to do next. The constables also provide information about shelters and services as well as paperwork about a relatively new county grant that could help residents who qualify avoid an eviction.

Some of the people Randall has evicted under court order in midtown's busy Precinct 8 have special needs or are elderly or have children, all factors that are hard to manage in 15 minutes. Some don't have transportation, she said, and so they are left standing on the sidewalk with a few bags, searching for a ride.

"I want to get things in place so if and when the eviction happens," Randall says, "we're not just going around and throwing people out."

The COVID-19 pandemic has only made these problems worse. Extending the initial notice period from five to fifteen days gives Arizona residents and their families an extended window of time to find solutions.

2. Bail Reform – Elimination of Cash Bail

The dramatic economic disparities involving who gets out of jail on bond in Arizona may be demonstrated by comparing the experiences of Floyd Howesa and former NFL Arizona Cardinals running back Jonathan Dwyer. From an *Arizona Central* story from 2016:

Floyd Howesa was discovered sleeping in a Flagstaff Barnes & Noble parking lot. The bookstore opted to press charges, resulting in Howesa's arrest for trespassing, a booking into the Coconino County Jail, and a bond set at \$250.

The bond might as well have been \$25,000. Howesa, a local man with a rap sheet of nuisance crimes, sat in jail for four days until a judge compromised on a \$100 bond.

Compare Howesa's case to that of former Arizona Cardinals running back Jonathan Dwyer, who was arrested Sept. 17, 2014, after reports surfaced that he head-butted his wife in the

face [breaking her nose] after she refused sex. [He was also charged with throwing a shoe at his 18-month old son]. Dwyer's bond was set at \$25,000, which was posted immediately. Altogether, the football player put in less than 12 hours behind bars, according to jail records.

Neither Howesa nor Dwyer had been convicted for their alleged crimes, and by law, were presumed innocent. Their disparate resources made the difference between awaiting trial in the comfort of their own home vs. in a concrete cell. (emphasis added)

In 2016, the Arizona Supreme Court commissioned a task force to review Arizona's cash bail system. In August of 2017, the group "Task Force on Fair Justice for All" released a report recommending that Arizona eliminate the "cash bail" system that has become customary in criminal cases across the country.

The report proposed relying on a "risk-based" pretrial release system. Those deemed low or moderate risk would be out on their own recognizance or with electronic monitoring, and high-risk defendants would remain behind bars, according to the plan.

Dave Byers, administrative director of the courts and chair of the Task Force on Fair Justice for All said the cash bail system can ruin lives for those who cannot afford it, and has proven statistically meaningless in ensuring defendants return to court. The recommendations came the same month as a U.S. Department of Justice brief that said it was unconstitutional to lock someone up because they cannot afford bail.

Incidentally, Mr. Dwyer was cut from the Cardinals and he received 18 months' probation for the assault of his family.

3. Deflection Applicable to Arizona County Sheriffs

The Tucson Police Department (TPD) started its deflection program in July 2018, with trained officers deflecting persons from arrest who may be charged with low-level drug possession. Since July 2018, TPD successfully deflected 1,295 persons. The people deflected are not taken to the Pima County Adult Detention Complex and instead, are taken for treatment for substance abuse and mental health issues. These are people who need treatment, not necessarily incarceration.

Assistant TPD Chief Kevin Hall launched the deflection program for the stated reason that he was "tired of seeing overdose deaths". Experts say that it can take many, many attempts to resolve an addiction or disorder and despite that reality, the success stories from the TPD deflection/U-MATTER program are myriad and are recounted below as told by the Peer Support Specialists engaged in the work (Initials of program participants are used to maintain privacy):

- (a) HG: The U-MATTER team was informed of a person who had overdosed recently. The Peer Support Specialist ("PSS") team made phone calls and home visits. The PSS provided Peer support and motivational interviewing and HG made the decision to go to CODAC Health, Recovery, and Wellness, Inc. (CODAC) and start medication. A few months on his
-

medications and HG looked and sounded like a brand new man. His progress motivated HG's significant other to make the decision to change her life and start MAT (Medically Assisted Treatment). The grown children of HG and his partner are excited for their parents' new life and are thankful for the program. This family never heard of behavioral health and police officers working together and taking time to share resources and treatment options over the phone and at their homes. Both are still receiving services and even invited the U-MATTER team over for dinner to show their gratitude for the program.

- (b) MA: MA was originally deflected in November 2019. This was MA's first attempt at getting clean. He was clean for 7 days at that time he was transported to CODAC. He did well for a few weeks and then went back to the streets and the PSS team lost contact with him. MA had another police contact in March but was not deflected the second time. The PSS team had been looking for him since he dropped out of services and next saw him in jail. He stated he wanted to get help. TPD Officers Morales and Napier and the PSS remained in contact with him through his jail incarceration. MA was released to Pretrial Services, absconded and was rearrested. The PSS visited MA in jail and obtained consent to speak to his lawyer and probation officer to obtain housing upon sentencing and release. MA was eligible for Pima County's Housing First program through Old Pueblo Community Services. While in Housing First, MA obtained an ID, his naturalization paperwork and his lifetime Section 8 voucher on June 28, 2020. While he is early in his recovery, MA is now focused on his goal of "becoming a Peer Support Specialist and going back to college and be able to help people the way that the deflection program helped him."
- (c) AJ: AJ was in the Pima County Adult Detention Complex (PCADC), pregnant and very "closed off". AJ continued to show up to group every single time. She advocated for herself and her baby, constantly seeking the best medical care to make sure both her and baby were safe and healthy. She also slowly started to open up about her substance dependence and the severe trauma and she had endured throughout her life and worked hard to absorb everything that was discussed in groups and applied it to her recovery. AJ was released into Las Amiga's (CODAC's Residential Treatment Facility for Females). She and her baby completed the program, all while engaging in MAT services and attending all of her medical appointments for her baby. She then moved to Connie Hillman House, a transitional living program for women with children where she currently resides, and loves it. She and her baby are doing well and AJ is actively seeking employment and custody of her older children.

With patience and perseverance, deflection works and helps people turn their lives around, instead of spending time in jail.

4. Body Worn Cameras for all Arizona Law Enforcement Officers

While Body Worn Cameras may not specifically prevent civil rights violations or prevent law enforcement violence, it does promote transparency of law enforcement actions and safety for both law enforcement officers and the public. Arizona State University professor of criminology Mike White told Fox 10 Phoenix that "The demand is there; citizens expect that police officers will wear cameras... Studies have shown that [wearing Body Worn Cameras] leads to a reduction in

complaints in some officers, reduction in use of force. Some studies show that body-worn cameras actually save money with all of the benefits they can produce." He also stated that law enforcement officers like the cameras, for the same reasons citizens do: transparency and community trust.

The failure to charge the Arizona Department of Public Safety (DPS) troopers in the May 2020 Dion Johnson death can be directly linked (per the Maricopa County Attorney) to the lack of camera footage.

5. Release from Prison after Serving 50% of Prisoners' Sentence

In January of 2019, formerly incarcerated people spoke with lawmakers about how the change in the sentencing law would impact the lives of the convicted. "That hope gives people life," said Gerald Williams, who was formerly incarcerated and a current member of the Criminal Justice Reform Unit. Williams said the opportunity to earn time off a sentence would incentivize those incarcerated in Arizona state prisons to better themselves.

"The hope will keep you pushing toward doing the right thing, to do the things that will help them be successful and productive in society," Williams said. Other formerly incarcerated people stated that for the law to work, there will need to be an expansion of programming opportunities for the incarcerated. Although incarcerated people want to change and want to do something better with their lives, the programming is not available. Many people that are incarcerated, knowing they will have to serve at least 85 percent of their sentence, opt to serve 100 percent of their sentence so that they will not be required to undergo community supervision upon their release. Reducing the time will provide hope that will keep inmates pushing toward doing the right thing, to do the things that will help them be successful and productive in society. It is referred to as 'killing your number,'" but the practice leads to a population that will likely recidivate and in the end, wasting even more taxpayer dollars by not preparing people to re-enter into society. There is no incentive to change. Our proposal recommends that prisoners be eligible for release after serving 50% not 85% in the Arizona Department of Corrections, Rehabilitation and Reentry. The 85% requirement does not serve the prison, Arizona taxpayers of incarcerated person who could otherwise get an earlier start on rebuilding their lives.

Now is the time to push for successful, feasible and inexpensive criminal justice reform. Americans and Arizonans are ready to change the status quo.

Attachments

WP/dr

c: Jan Leshar, Chief Deputy County Administrator
Kate Vesely, Director of Justice Reform Initiatives



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

Federal
 State

Date: October 15, 2020

Department/Office: County Administration/ Criminal Justice Reform Unit

Name, Title and Telephone Number of Contact Person: Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement, (520) 724-8849

Subject or Title of Proposal: Extension of initial landlord/tenant notice timeframe

Proposal Description:

Arizona's relationships between Landlord and Tenants is governed by the Arizona Residential Landlord and Tenant Act. The Act describes the process to evict someone from a home, specific timelines and the steps a landlord or tenant must undertake for an eviction to take place. In the case of an eviction for non-payment, the landlord may, after issuing a five-day notice for noncompliance, remove someone from the property in as little as five days after the notice is served (depending on how quickly a hearing is scheduled with the court). This timeline does not provide the tenant much time to try to remedy the situation by seeking rental assistance funds, or work a payment plan with the landlord or seek post-eviction housing (shelter, relatives, etc.). The COVID-19 pandemic has only exacerbated this problem. Although there are federal and state moratoriums in place for evictions, these will expire in the next few weeks and with no clear indication if these will be extended; an eviction crisis is upon us. Funding has been allocated to different jurisdictions for rental assistance, but with this short time frame and such high demand for funding, many tenants will not have sufficient time to process rental assistance applications and will end up being evicted from their homes.

This proposal intends to expand the initial notice time from five to fifteen calendar days. This will provide all parties involved more time to find a solution and try to avoid the eviction or the tenant more time to find a suitable housing situation before being evicted.

A. Background Information:

(Describe the issue or problem in need of legislative attention. Attach all existing documents relating to the issue.)

In order to gain a better perspective, the following is a brief description of the existing timeline and process:

Arizona landlords must first serve a notice to a tenant complying with the Arizona eviction notice laws. In cases of nonpayment of rent, the landlord must serve a written Five-Day Notice to the tenant to pay the required rent or vacate the unit. The notice must state the amount of rent owed, that the tenant can remain in the property if the entire

rent is paid by a certain date, and that a lawsuit will be filed if the tenant fails to comply by the termination date.

After the Five-day notice is served, tenant can either move out or cure the problem. Once the five-day notice time expires, and if the tenant has not moved out or cured the problem, the landlord may file a complaint with the Court. The Court then issues a summons/complaint and sets a hearing within three to six days and then the Court hearing commences. If the court rules in favor of the landlord (in most failure to pay cases it does), the court issues a judgment in favor of the landlord and the tenant must vacate property. In some cases, this entire process can unfold in as little as ten calendar days.

Many argue that this is not sufficient time for the tenant to seek financial assistance or secure housing past eviction. Constables play an important role in the eviction process. They are tasked with serving notices of complaints and at times asked to remove tenants from properties after a judgment in favor of the tenant is issued. There have been efforts from local Constables in Pima County to try to avert evictions and help tenants stay in their homes. These efforts even go back prior to the COVID-19 pandemic. Pima County Constable Kristen Randall, in an *Arizona Daily Star* article from October 17, 2019, is quoted in that article as follows:

“Since many people don’t realize how quickly they can be evicted — it’s often just five days after the court hearing and then within 15 minutes of the constable’s arrival — they are shocked and unprepared when it occurs. The court documents from the hearing they missed offer some of these details, but since the court mails them out, the documents often arrive after the person or family has already been evicted”

And so what [Constables] Bernal and Randall are doing is helping the tenants by hand-delivering the documents, called minute entries, so people have a little more time to decide what to do next. The constables also provide information about shelters and services as well as paperwork about a relatively new county grant that could help residents who qualify avoid an eviction

Some of the people Randall has evicted under court order in midtown’s busy Precinct 8 have special needs or are elderly or have children, all factors that are hard to manage in 15 minutes. Some don’t have transportation, she said, and so they are left standing on the sidewalk with a few bags, searching for a ride

“I want to get things in place so if and when the eviction happens,” Randall says, “we’re not just going around and throwing people out.”

The COVID-19 pandemic has only made this problem worse. Extending the initial notice period from five to fifteen days gives all the players an extended window of time in which to find solutions.

B. Legislative Proposal:

(Describe the proposal and what it would accomplish.)

This legislative proposal change intends to provide tenants more time to seek help and avoid being evicted. With such a high demand for rental assistance due to the COVID-19 pandemic, it is practically impossible to secure funding through the different

organizations in five days. It also provides more time for tenants that in the event the eviction takes place, they are able to secure housing (temporary or permanent) after eviction.

- C. Statutes/Regulations Affected or Proposed Language:
(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

The Arizona Landlord and Tenant Act section 33-1368 under 1. B. contains the five-day notice for unpaid rent. We proposed changing five days to fifteen-day notice:

“A tenant may not withhold rent for any reason not authorized by this chapter. If rent is unpaid when due and the tenant fails to pay the rent within ~~five~~ **fifteen** days after a written notice by the landlord of nonpayment and the landlord’s intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement by filing a special detainer action pursuant to section 33-1377”

- D. Fiscal Impact:
(Describe any direct or indirect impact on Pima County expenditures or revenues.)

The intent of extending the initial notice is primarily to avoid evictions in Pima County and the State of Arizona. There is no research available for Pima County in regards to the cost of evictions to taxpayers. However, in an article published by the Rice/Kinder Institute for Urban Research on September 19,2020, it uses Harris County (Houston) Texas as an example. The research provided the following information:

*The potential fiscal impacts of evictions are staggering. Researchers at the Kinder Institute for Urban Research estimate that in Harris County, the public and private sectors spend **\$241.4 million per year** addressing the county’s uniquely large mass-eviction crisis. That fiscal impact takes into account only the costs that are readily enumerated — the most prominent downstream externalities of evictions, which include costs for shelter and the medical care and criminal justice expenses that stem directly from eviction. In reality, there are other hidden costs borne by the public, private and nonprofit sectors.*

The article makes emphasis that these are valuable resources that could be used towards the county’s public health, transportation and public safety.

- E. Proposal History:
(Describe any previous efforts by any person/entity to pursue this proposal.)
N/A

- F. Interested Parties:
(Identify any persons/entities that you know or believe will either support or oppose this proposal.)

Pima County Constables
Pima County Eviction Prevention Taskforce
All Pima County Justice Courts



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

Federal
 State

Date: October 15, 2020

Department/Office: Pima County Administrator's Office – Criminal Justice Reform Unit

Name, Title and Telephone Number of Contact Person: Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement, (520) 724-8849

Subject or Title of Proposal: Bail Reform – Elimination of Cash Bail

Proposal Description:

From Arizona Supreme Court Justice Robert Brutinel (*Arizona Capitol Times* June 23, 2019): Courts should make release determinations based on risk and not on one's ability to pay. People should not remain in jail only because they cannot afford the bond. Courts have created "risk-analysis instruments" to help judges determine who can be released. The next step is automating that system to make it available, and more quickly, to all levels of the court system. Dangerous people should stay in jail, i.e., those people who are a risk to the public but people who are safe to release to be out working their jobs and being with their families.

A. Background Information:

(Describe the issue or problem in need of legislative attention. Attach all existing documents relating to the issue.)

The imposition of cash bail creates a disproportionate impact on low income and people of color. This is a fundamental injustice in our system. Bail reform is sweeping the nation, states from California, New York and New Jersey have already implemented bail reform.

New York: New York overhauled its bail law in April 2019, limiting the number of crimes for which judges could set bail, primarily those deemed violent felonies. All others would be released while their cases made their way through court. While many supporters, including Gov. Andrew Cuomo, wanted the law to go so far as to eliminate cash bail entirely, less far-reaching language that was enacted still had its intended effect. In the months since it was implemented on January 1, 2020, jail populations have gone down across New York state.

New Jersey: On any given day, more than 1,500 people, 12 percent of New Jersey's jail population, were being held behind bars solely because they could not afford bail of \$2,500 or less. For months, sometimes years, they sat in jail, while others, some of whom posed a greater risk to public safety but had the money to buy their way out, were released. New Jersey's cash bail system was clearly discriminating against the poor.

In January 2017, the state essentially eliminated cash bail despite concerns from segments of the community who feared a public safety crisis. Nearly three years later, the first studies on the reform are emerging, and all signs are pointing toward success.

Nearly 75 percent of the 15,000 individuals sitting in New Jersey jails were there not because they had been convicted of a crime, they were simply awaiting their trial or sentencing. The average length of incarceration for pretrial inmates was more than 10 months. The cash bail system was mostly to blame, as nearly 40 percent of the total jail population had the option to post bail but lacked the money to do so.

California: In August 2018, California Governor Jerry Brown signed sweeping legislation to eliminate cash bail in California. The change, which took effect in October 2019, went further than any other state in the country to remove money from pretrial detention.

Under Senate Bill 10, California replaced bail with “risk assessments” of individuals and nonmonetary conditions of release. Counties establish local agencies to evaluate any individual arrested on felony charges for their likelihood of returning for court hearings and their chances of re-arrest.

A person whose risk to public safety and risk of failure to appear is determined to be “low” would be released with the least restrictive nonmonetary conditions possible. “Medium-risk” individuals could be released or held depending on local standards. “High-risk” individuals would remain in custody until their arraignment, as would anyone who has committed certain sex crimes or violent felonies, is arrested for driving under the influence for the third time in less than 10 years, is already under supervision by the courts or has violated any conditions of pretrial release in the previous five years.

Advocates of abolishing bail contend that too many defendants remain stuck in custody because they cannot afford to bail out, effectively creating unequal justice based on wealth. California is at the forefront of a national campaign to end money bail that has also recently seen states like New Jersey and New Mexico adopt policies to circumvent the for-profit bail industry, though none had yet eliminated bail completely.

SB 10 was approved by the California in August, after a nearly two-year push, with largely Democratic support. The bill faced heavy opposition from the bail industry.

B. Legislative Proposal:
(Describe the proposal and what it would accomplish.)

Existing Arizona law provides for:

- The procedure for approving and accepting bail;
- Issuing an order for the appearance of release of an arrested person;
- Bail set in a fixed amount and requires, in setting, reducing or denying bail, a judge or magistrate to take in to consideration:
 - the protection of the public;
 - The seriousness of the offense charged;
 - The previous criminal record of the defendant; and
 - The probability of his/her appearance at trial or a hearing of the case.

The magistrate or judge to whom the application is made is authorized to set bail in an amount that he or she deems sufficient to ensure the defendant’s appearance or to ensure the safety of a victim, or family member of a victim, or family member of a victim, of domestic violence, and to set bail on the terms and conditions that he or she in his or

her discretion deems appropriate or he or she may authorize the defendant's release on his or her own recognizance.

The proposal would require that persons arrested and detained be subject to a pretrial risk assessment conducted by Pre Trial Services (defined as an entity, division or program assigned the responsibility to assess the risk level of persons charged with the commission of a crime) who will report the results of the risk determination to the court and make recommendations for conditions release of individuals pending adjudication of their criminal case. The proposal would require a person arrested or detained for a misdemeanor be booked and released without being required to submit to a risk assessment by Pre Trial Services. The proposal would authorize Pre Trial Services to release a person assessed as being a low risk on his or her own recognizance. The proposal would additionally require a superior court to adopt a rule authorizing Pre Trial Services to release persons assessed as being a medium risk on his or her own recognizance. The proposal would prohibit Pre Trial Services from releasing persons who meet specified conditions.

If a person is not released, the proposal would authorize the court to conduct a pre-arraignment review and release the person. The proposal would allow the court to detain the person pending arraignment if there is a substantial likelihood that no condition or combination of conditions of pretrial supervision will reasonably assure public safety or the appearance of the person in court.

The proposal would require the victim of the crime be given notice of the arraignment by the prosecution and a chance to be heard on the matter of the defendant's custody status. By imposing additional duties on local prosecutors, this proposal would impose a state-mandated local program. The proposal would create a presumption that the court will release the defendant on his or her own recognizance at arraignment with the least restrictive nonmonetary conditions that will reasonably assure public safety and the defendant's return to court.

The proposal would allow the prosecutor to file a motion seeking detention of the defendant pending trial under specified circumstances. If the court determines that there is a substantial likelihood that no conditions of pretrial supervision will reasonably assure the appearance of the defendant in court or reasonably assure public safety, the proposal would authorize the court to detain the defendant pending a preventive detention hearing and require the court to state the reasons for the detention on the record. The proposal would prohibit the court from imposing a financial condition.

In cases in which the defendant is detained in custody, the proposal would require a preventive detention hearing to be held no later than three court days after the motion for preventive detention is filed. The proposal would grant the defendant the right to be represented by counsel at the preventive detention hearing and would require the court to appoint counsel if the defendant is financially unable to obtain representation. By imposing additional duties on county public defenders, this proposal would impose a state-mandated local program. The proposal would require the prosecutor to give the victim notice of the preventive detention hearing. By imposing new duties on local prosecutors, this proposal would impose a state-mandated local program. The proposal would create a rebuttable presumption that no condition of pretrial supervision will reasonably assure public safety if, among other things, the crime was a violent felony or the defendant was convicted of a violent felony within the past five years. The proposal would allow the court to order preventive detention of the defendant pending trial if the court determines by clear and convincing evidence that no condition or combination of conditions of pretrial supervision will reasonably assure public safety or the appearance of the defendant in court. If the court determines there is not a sufficient basis for

detaining the defendant, the proposal would require the court to release the defendant on his or her own recognizance or supervised own recognizance and impose the least restrictive nonmonetary conditions of pretrial release to reasonably assure public safety and the appearance of the defendant.

- C. Statutes/Regulations Affected or Proposed Language:
(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

ARS 13-3961, *et seq.*

Arizona Constitution, Article 22, Section 22
Arizona Rules of Criminal Procedure, 7.2 Right to Release

- D. Fiscal Impact:
(Describe any direct or indirect impact on Pima County expenditures or revenues.)

The elimination of cash bail could have a positive fiscal impact on Pima County by drastically lowering the pretrial Jail population and the accompanying costs associated with the costs of detaining an inmate in the Pima County Adult Detention Complex,

- E. Proposal History:
(Describe any previous efforts by any person/entity to pursue this proposal.)

In August 2016, the Arizona Supreme Court commissioned a task force called Fair Justice for All, which released a report recommending that Arizona eliminate cash bail

Arizona Change to the Rules of Criminal Procedure:

In December, 2016, the Arizona Supreme Court ordered bail reform changes to the Arizona Rules of Criminal Procedure. The changes to Rules 7.1, 7.2, and 7.3 were implemented on April 3, 2017.

Despite the rule changes, judges still have the option to require a financial based bond and the judge “must impose the least onerous” type of bail bond necessary in the lowest amount necessary to protect the community and other people in the defendant’s life. There may be times when a judge believes a suitable bail amount will serve to deter a particular defendant from fleeing the jurisdiction.

Even a few days of pretrial detention can mean the difference between working or getting fired, paying rent or getting evicted, or caring for a loved one.

The cash bail system can ruin lives for those who can’t afford it, and has proven statistically meaningless in ensuring defendants return to court. The recommendations come the same month as a U.S. Department of Justice brief that said it was unconstitutional to lock someone up because they can't afford bail.

A 2013 study from the Pretrial Justice Institute found that people paying for release were **no more likely to show up** than people who promised to pay the money on the back end if they failed to appear.

Research from the Laura and John Arnold Foundation shows **low-risk defendants are increasingly likely to be arrested again the longer they’re in jail.** When compared with defendants who are in jail for one day or less, those in jail for 2-3 days are 39

percent more likely to be arrested again, those in jail for 4-7 days are 50 percent more likely, and those in jail for 8-14 days are 56 percent more likely.

F. Interested Parties:

(Identify any persons/entities that you know or believe will either support or oppose this proposal.)

All Arizona County Attorneys; Public Defense Services, all Arizona County Superior Courts, all Arizona County Sheriff's Department jails and County Pretrial Services



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

 Federal
 X State

Date: October 15, 2020

Department/Office: County Administrator's Office – Criminal Justice Reform Unit

Name, Title and Telephone Number of Contact Person: Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement, (520) 724-8849

Subject or Title of Proposal: Pre-Arrest Deflection of arrestees by Arizona County Sheriffs

Proposal Description: Currently, Tucson Police Department (TPD) deflects from arrest persons who may be charged with low-level drug possession. Since July 2018, TPD successfully deflected 1295 persons who were not taken to the Pima County Adult Detention Complex and instead, were taken for treatment for substance abuse and mental health issues. The Pima County Sheriff believes that Arizona statutes prohibit him from engaging in deflection.

A. Background Information:
(Describe the issue or problem in need of legislative attention. Attach all existing documents relating to the issue.)

Arizona Revised Statutes provide the Powers and Duties of an Arizona Sheriff. ARS 11-411 provides that the Sheriff shall:

2) Arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have committed a public offense.

If this statute is modified to exempt those arrestees charged with low-level drug possession, allowing them to be deflected into treatment, Arizona county sheriffs would be permitted, by Arizona law, to engage in a deflection program.

B. Legislative Proposal: (Describe the proposal and what it would accomplish.)

In September 2018, the Criminal Justice Reform Unit in the County Administrator's Office received \$1.4 million grant from the Federal Substance Abuse and Mental Health Services Administration (SAMHSA) for the purpose of expanding and enhancing a coordinated approach to increase access to a sustainable and long-term substance abused treatment. We refer to this project as U-MATTER (Unified Medication Assisted Treatment Target Engagement Response) Pima County's partners in this project include: TPD; CODAC Health Recovery and Wellness, Arizona Superior Court Pre Trial Services and the University of Arizona – Southwest Institute for Research on Women. The goals of this program include: improving community health outcomes; alternatives

to arrest and incarceration; crime reduction and reduction of opioid overdose deaths. TPD's Substance Use Disorder Deflection Model applies to all officers in the field, deflection efforts include felonies and misdemeanors (if a victim is involved, permission is necessary to deflect); crimes of violence, Domestic Violence, sex offenses, children or vulnerable adults are not considered for deflection; significant latitude is given to officer discretion. Many impacted individuals have co-existing mental illness and are homeless.

This deflection model is working in Tucson and Pima County. The thought is that persons charged with low level non-violent crimes with substance abuse disorders and mental health problems do not belong in jail, but instead belong in treatment.

If the statute were to exempt the arrest requirement in ARS 11-441 were to change, sheriff's deputies could also deflect persons from arrest and into treatment.

- C. Statutes/Regulations Affected or Proposed Language:
(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

ARS 11-441.

11-441. **Powers and duties**

A. The sheriff shall:

1. Preserve the peace.
2. Arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have committed a public offense; (b) Sheriff's deputies in the field may, in the officers' discretion, deflect certain individuals from arrest and incarceration who exhibit signs of opioid use disorder (OUD) or co-occurring mental illness and who may be candidates for medication assisted treatment (MAT) and by enrolling the, and providing comprehensive, evidence based MAT and Recovery Support Services; (c) the provisions of paragraph b above shall not apply to those charged with crimes of violence, domestic violence, children or vulnerable adults.
3. Prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to the knowledge of the sheriff.
4. Attend all courts, except justice and municipal courts, when an element of danger is anticipated and attendance is requested by the presiding judge, and obey lawful orders and directions issued by the judge.
5. Take charge of and keep the county jail, including a county jail under the jurisdiction of a county jail district, and the prisoners in the county jail.
6. Endorse upon all process and notices the year, month, day, hour and minute of reception, and issue to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper and time of reception.
7. Serve process and notices in the manner prescribed by law and certify under the sheriff's hand upon the process or notices the manner and time of service, or if the sheriff fails to make service, the reasons for failure, and return them without delay. When returnable to another county, the sheriff may enclose such process or notices in an envelope, addressed to the officer from whom received, and deposit it postage prepaid in the post office. The return of the sheriff is prima facie evidence of the facts stated in the return.

8. Secure, as soon as possible, the home of a deceased person located outside the boundaries of an incorporated city or town if the sheriff is unable to determine or locate the heirs or executor of the deceased person.
- B. The sheriff may in the execution of the duties prescribed in subsection A, paragraphs 1 through 4 command the aid of as many inhabitants of the county as the sheriff deems necessary.
- C. The sheriff shall conduct or coordinate within the county search or rescue operations involving the life or health of any person, or may assist in such operations in another county at the request of that county's sheriff, and may request assistance from any persons or agencies in the fulfillment of duties under this subsection.
- D. The sheriff, in the execution of the duties prescribed in this section, may request the aid of volunteer posse and reserve organizations located in the county.
- E. The sheriff may assist in the execution of the duties prescribed in this section in another county at the request of that county's sheriff.
- F. The sheriff may require any prisoner who is on work release to reimburse the county for reasonable expenses incurred in connection with the release.
- G. The board of supervisors of a county bordering the Republic of Mexico may adopt an ordinance pursuant to chapter 2 of this title allowing the sheriff to prevent the entry from this state into the Republic of Mexico at the border by any resident of this state who is under eighteen years of age if the minor is unaccompanied by a parent or guardian or does not have written consent for entry from a parent or guardian. The authority of the sheriff is only to prevent entry and not to otherwise detain the minor. This subsection shall not be construed to limit the authority of the sheriff pursuant to any other law. A county is not civilly or criminally liable for not adopting an ordinance pursuant to this subsection.
- H. Notwithstanding section 13-3112, the sheriff may authorize members of the sheriff's volunteer posse who have received and passed firearms training that is approved by the Arizona peace officer standards and training board to carry a deadly weapon without a permit while on duty.

- D. Fiscal Impact:
(Describe any direct or indirect impact on Pima County expenditures or revenues.)

Little to none: This change would reduce the amount of dollars spent in booking and housing inmates in the Pima County Adult Detention Complex. Additionally, the infrastructure of the U-MATTER project is already in place and paid for with monies from the SAMHSA grant.

- E. Proposal History:
(Describe any previous efforts by any person/entity to pursue this proposal.)

None

F. Interested Parties:

(Identify any persons/entities that you know or believe will either support or oppose this proposal.)

Tucson Police Department;
All Arizona county sheriffs



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

Federal
 State

Date: October 15, 2020

Department/Office: Pima County Administrator's Office, Criminal Justice Reform Unit

Name, Title and Telephone Number of Contact Person: Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement

Subject or Title of Proposal: Body Worn Cameras for all Arizona Law Enforcement Officers

Proposal Description: Amend current statutes to require law enforcement officers to wear Body Worn Cameras.

A. Background Information:

(Describe the issue or problem in need of legislative attention. Attach all existing documents relating to the issue.)

On May 25, 2020, an Arizona Department of Public Safety (DPS) trooper shot and killed Dion Johnson, 28-year-old Black man, on Loop 101 in Phoenix (the same day George Floyd was killed in Minneapolis). Although the Maricopa County Attorney's Office was looking into possible charges against the DPS troopers involved, the Maricopa County Attorney declined to prosecute the troopers because, at least in part, the DPS officers were not wearing Body Worn Cameras. Maricopa County Attorney Allister Adel went on record requesting that all Arizona Law Enforcement officers in the field wear Body Worn Camera.

Body Worn Cameras have been adopted by police department across the country, their use in excessive use of force incidents have gained national attention. The use of Body Worn Cameras leads to a reduction in complaints against Law Enforcement Officer and a reduction in "Use of Force" complaints. Many law enforcement officers support the use of Body Worn Cameras due to the tenets of transparency and community trust.

B. Legislative Proposal:

(Describe the proposal and what it would accomplish.)

Requiring law enforcement officers to wear Body Worn Cameras may help avoid excessive force actions and possibly death of law enforcement officers as well as citizens. If nothing else, wearing the cameras gives an opportunity for transparency on the part of law enforcement. If enacted, the ultimate outcome could avoid costly lawsuits and again, prevent death or severe injury.

- C. Statutes/Regulations Affected or Proposed Language:
(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

ARS 38-1161 - Definitions

In this article, unless the context otherwise requires:

1. "Law Enforcement Officer Body Camera" includes a video and audio recording device that is worn on the body of a law enforcement officer.
2. "Nonrecordable Incident" means an incident involving any of the following:
 - a. A law enforcement action;
 - b. Investigation of a suspicious person or suspect;
 - c. The handling of an emotionally disturbed person
 - d. The generation of a complaint involving an activity listed in subdivision (a) (b) or (c) of this paragraph
 - e. Any activity that is likely to lead to a criminal or civil court action;
 - f. Any activity in which all of the involved parties consent to the recording and the recording is not otherwise prohibited by law
 - g. Any activity that the law enforcement officer determines should be recorded

38-1162 Camera Operations

- A. A law enforcement agency may employ a law enforcement officer body camera that operates on a continuous basis or a camera that is manually turned on or off by the law enforcement officer.
- B. If a body camera is continuously on:
 1. A law enforcement officer may turn the body camera off during the following:
 - a) For the following nonrecordable incidents:
 - i. a private conversation or activity, law enforcement related or not, including personal telephone calls, use of restroom facilities or conversations with another law enforcement officer or person.
 - ii. A conversation with a person who is not a suspect or the object of a law enforcement action when the person requests that the body camera be turned off. A law enforcement officer must announce on the recording that the body camera is being turned off at the person's request.
 - b) For the following recordable incidents:
 - (i) A conversation between law enforcement officers that relates to the handling of an incident, including information about any involved parties and action options. The law enforcement officers must announce on the recording that the body camera is being turned off.

- D. Fiscal Impact:
(Describe any direct or indirect impact on Pima County expenditures or revenues.)

A 2015 City of Mesa report found that the cameras cost \$120; however, costs to maintain the equipment and store data was closer to \$1,147 per camera.

In January 2020, Arizona Governor Ducey requested \$3 million for Body Worn Cameras for all Department of Public Safety officers and another \$3 million to hire people to download and store all the videos; however, that request did not progress as state

lawmakers wrapped up the session early with the onset of the COVID-19 pandemic spread.

Another jurisdiction, Ferguson, Missouri, received \$500,000 from the US Department of Justice for Body Worn Cameras. Ferguson was the site of the murder of Michael Brown in 2014.

Police departments in Arizona have been found sorely lacking in their policy guidelines for Body Worn Cameras privacy concerns and accountability. Limited case law and statutory law address these concerns; only a few cases in Arizona address Body Worn Camera privacy concerns tangentially, though more cases examine privacy concerns of general video recordings; however, Body Worn Camera usage is rapidly rising: in the past year, the Tucson Police Department has increased its Body Worn Camera usage from 70 to 300 Body Worn Cameras through a city-wide sales-tax initiative.

The only legislative response so far has been a 2017 bill that protects police officers under investigation for use of force if there is available Body Worn Camera footage of the event. Therefore, in Arizona, the time is ripe to set a comprehensive standard that handles privacy concerns while encouraging accountability and transparency of police behavior. See, *Slow Your Roll Out of Body Worn Cameras: Privacy Concerns and the Tension Between Transparency and Surveillance in Arizona*, Wouter Zwart, 60 Ariz. , Law Rev 783.

E. Proposal History:

(Describe any previous efforts by any person/entity to pursue this proposal.)

In 2015, Republican Arizona State Senator John Kavanagh introduced SB 1300 relating to Law Enforcement Officer Body Cameras.

F. Interested Parties:

(Identify any persons/entities that you know or believe will either support or oppose this proposal.)

All Arizona Law Enforcement agencies.



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

Federal
 State

Date: October 15, 2020

Department/Office: County Administrator's Office – Criminal Justice Reform Unit

Name, Title and Telephone Number of Contact Person: Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement; (520) 724-8849

Subject or Title of Proposal: Release from the Arizona Department of Corrections Rehabilitation & Reentry after Serving 50% of time rather than 75-85%; amendment of ARS 41-1604.07.

Proposal Description:

A. Background Information:

(Describe the issue or problem in need of legislative attention. Attach all existing documents relating to the issue.)

On June 7, 2019, Arizona Governor Doug Ducey signed SB 1310 (amendment to ARS 41-1604.07) into law allowing inmates who have been convicted solely of drug offenses to be eligible for release after serving 70 percent of their sentences, rather than the 85 percent required of other inmates under Arizona's strict "truth in sentencing" law. Inmates who do not complete their entire sentences behind bars serve out the remainder under community supervision. In order to be eligible for early release, inmates must complete a drug treatment program or other "self-improvement program."

The then Arizona Department of Corrections, Rehabilitation and Reentry(ADCRR) Director, Chuck Ryan, found 7,367 inmates who could be released early under SB1310. Of those, 4,918 had to complete the required drug treatment or other self-improvement programming. Director Ryan cautioned that it could be many years before some of those inmates are eligible for release.

Reducing the time from 85% to 75% was a start but more reform is needed.

According to data from the ADCRR from April 2019, 78% of inmates revealed histories of serious substance-abuse issues at intake. During April, 2019, 839 inmates in the state's prison population, which numbered around 42,000, were in addiction-treatment programs. The vast majority of people in prison are in high need or moderate need of substance abuse treatments. The department does not have treatment available to provide to everyone. In addition, for many inmates, by the time they are able to enter one of the ADCRR's drug treatment programs are already far along in their sentence. Many people have already reached that 70% (sentence served) mark, where they would

be able to be released if they had access to, and had completed, a rehabilitation program.

In 2019, the ADCRR released 101 inmates eligible for early release through June 2019. In a June 11, 2019, letter to a bipartisan group of state legislators, then-Director Chuck Ryan said nearly one hundred more inmates may be eligible for early release if they complete the required programming. The reality is the number of drug-rehabilitation programs available to Arizona inmates is small compared to the state's large prison population.

Arizona taxpayers spend far too much money on incarceration and the better path is to make an investment in education and training which would help prevent people from entering into the prison system in the first place. Amending the statute would allow these people to reach their potential and embrace their talent to do great things in Arizona communities, become tax paying citizens and change their lives forever.

B. Legislative Proposal:
(Describe the proposal and what it would accomplish.)

The proposal is to amend ARS 41-1604.07, *Earned Release Credit*, to allow prisoners to be considered for release after serving 50% of their time.

41-1604.07. Earned release credits; forfeiture; restoration; released prisoner health care; annual report

A. Pursuant to rules adopted by the director, each prisoner who is in the eligible earned release credit class shall be allowed an earned release credit as set forth in subsection B of this section, including time served in county jails, except for those prisoners who are sentenced to serve the full term of imprisonment imposed by the court.

B. The earned release credit is:

1. One day for every day served if the prisoner:

(a) Was sentenced to a term of imprisonment for the possession or use of marijuana pursuant to section 13-3405, subsection A, paragraph 1, the possession or use of a dangerous drug pursuant to section 13-3407, subsection A, paragraph 1, the possession or use of a narcotic drug pursuant to section 13-3408, subsection A, paragraph 1 or the possession of drug paraphernalia pursuant to section 13-3415.

(b) Has successfully completed a drug treatment program or other major self-improvement program provided by the department during the prisoner's term of imprisonment OR be eligible for a 90-day pre-release transition program for drug offenders (see ARS 31-281)

(c) Has not previously been convicted of a violent or aggravated felony as defined in section 13-706.

C. Statutes/Regulations Affected or Proposed Language:
(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

ARS 41-1604.07, *Earned Release Credit*

- D. Fiscal Impact:
(Describe any direct or indirect impact on Pima County expenditures or revenues.)

Very little. In fact, releasing inmates after serving half their sentence will save the substantial amount of money it costs to incarcerate people.

- E. Proposal History:
(Describe any previous efforts by any person/entity to pursue this proposal.)

During the 2020 Legislative Session, two bills were introduced that would have reformed how much time Arizona Prisoners can receive time off their sentences:

HB 2808 would have allowed people not convicted of violent or aggravated felony to serve 70 percent, not 85 percent, of their sentence if they completed a rehabilitative program in prison.

HB 2753 would have given all people in prison significantly more earned release credit as well as good time credit, depending on the offense.

The 2020 Legislative Session ended in June 2020. Neither of these bills were passed.

In 2019, state Rep. Walter Blackman sponsored HB 2270, a bill that would allow people in state prisons to earn credit against their sentences with good behavior and participation in rehabilitative programming. HB 2270 would have changed state law so that nonviolent offenders could earn one day for every day served, while those convicted of a dangerous offense could earn one day for every three days served. People convicted of "a dangerous crime against children" would only be eligible to earn one day for every six days served in prison. This bill did not go to the Governor.

Instead, Gov. Doug Ducey signed SB 1310, which softened Arizona's penalties for those accused and convicted of crimes by allowing drug offenders to earn time off their sentences. Under the new law, inmates convicted of possession of drugs or paraphernalia and who have never been convicted of a violent offense will be eligible to earn three days off their sentence for every seven days served.

ARS 41-1604.07 provides, in pertinent part:

- B. The earned release credit is:
1. Three days for every seven days served if the prisoner:
 - (a) Was sentenced to a term of imprisonment for the possession or use of marijuana pursuant to section 13-3405, subsection A, paragraph 1, the possession or use of a narcotic drug pursuant to section 13-3408, subsection A, paragraph 1 or the possession of drug paraphernalia pursuant to section 13-3415.
 - (b) Has successfully completed a drug treatment program or other major self-improvement program provided by the department during the prisoner's term of imprisonment.
 - (c) Has not been previously convicted of a violent or aggravated felony as defined in section 13-706.
 2. One day for every six days served if the prisoner was sentenced to a term of imprisonment for an offense not listed in paragraph of this subsection.

To qualify, inmates are required to complete a drug rehabilitation program through the ADCRR a requirement that has made the bill somewhat controversial among advocacy

groups, particularly the ACLU of Arizona, who argue that few will actually be eligible for time off their sentences under SB 1310.

F. Interested Parties:

(Identify any persons/entities that you know or believe will either support or oppose this proposal.)

Arizona county prosecutors;
Arizona Defense attorneys;
Arizona American Civil Liberties Union;

ATTACHMENT 3



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

Federal
 State

Date: 8/20/2020

Department/Office: Pima County Public Defender/Public Defense Services

Name, Title and Telephone Number of Contact Person:

Nate Wade, Assistant Public Defender, 724-6811
Dean Brault, Public Defense Services, 724-6967
Joel Feinman, Public Defender, 724-6930

Subject or Title of Proposal: Class 6 Undesignated Offenses- Reclassification

Proposal Description:

A. Background Information:

(Describe the issue or problem in need of legislative attention. Attach all existing documents relating to the issue.)

Arizona Revised Statute 13-604 provides a person convicted of a class 6 non-dangerous felony to have their offense designated a class 1 misdemeanor if the court, in its discretion, determines that it would be unduly harsh to sentence the defendant for a felony. The court can consider the “nature and circumstances of the crime and the history and character of the defendant.”

The bill also allows for the court to leave the offense undesignated and place the defendant on probation for a set period of time, and, upon successful completion of probation allow the defendant to petition the court to have the offense designated a misdemeanor. Often, the County Attorney offers plea agreements that require an offense to be left undesignated for a specific amount of time before the offense can be designated a misdemeanor. The purpose of the bill is to encourage defendants to get back on track, find employment, pay fines and fees and not reoffend.

Currently, during the time that an offense is left “undesignated,” A.R.S. 13-604 provides that the offense be treated as a felony until ordered otherwise. There are two problems with that. First, leaving the offense a felony during this time is counterproductive to the person’s ability to get a job and find housing, all while trying to pay their fines and fees and monthly probation expenses. There is a built

in road-block to what a person needs to be able to do in order to be successful, and this obstacle can sometimes thwart the goal of using the undesignated offense to reduce recidivism by leaving the barriers that cause recidivism in place.

Second, the current language criminalizes poverty. Quite often, a person successfully completes probation, but because they are poor, or deemed indigent (such as the clients of the Pima County Public Defense Services), they cannot pay all of the fines and fees. When this happens, quite often, no matter their success on probation, their offense remains a felony simply because of an inability to pay statutorily mandated fines and fees.

Finally, the current statute places the burden on the person themselves to petition the court for the misdemeanor designation. Often, persons believe that if they successfully complete probation, the offense is automatically designated a misdemeanor which leads to problems with the “check the box” portion of job applications. Additionally, if the court at the time of sentencing believes that the “nature and circumstances of the crime and character of the defendant” merit misdemeanor designation, the statute should reflect that it is treated as a misdemeanor until such time as designated a felony. This places the burden on the State to prove that the court’s inclination as to the reasons for offering the opportunity for a misdemeanor designation is wrong.

B. Legislative Proposal:

(Describe the proposal and what it would accomplish.)

The attached bill is quite simple. It amends A.R.S. 13-604 to state that when an offense is left undesignated, the offense “shall be treated as a misdemeanor until such time as the court may actually enter an order designating the offense as a misdemeanor or a felony.” Currently, the statute reads “Shall be treated as a felony until such time . . . “

The bill allows the prosecuting attorney or the defendant to petition the court at any time for final designation as either a misdemeanor or a felony. It also does not apply to persons with two prior felonies.

The proposal is to give people who the court deems worthy of earning a misdemeanor an actual meaningful opportunity to do so by removing the (even temporary) stigma and barriers created by having a felony on their record. Often the temporary felony tag during the undesignated period create road blocks that are proven to increase recidivism (homelessness, inability to find meaningful employment). The motivation is actually enhanced- the person is being given the opportunity to completely avoid a felony on their record and the tools to avoid that.

C. Statutes/Regulations Affected or Proposed Language:

(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

This would amend A.R.S. 13-604 as outlined above.

- D. Fiscal Impact:
(Describe any direct or indirect impact on Pima County expenditures or revenues.)
The fiscal impact would be indirect. Persons who are employed can pay county taxes, find housing and contribute to safer neighborhoods and communities. Persons in this situation would be less likely to recidivate, which in turn reduce incarceration costs, saving the County and the State money.
- E. Proposal History:
(Describe any previous efforts by any person/entity to pursue this proposal.)
Rep. Jeff Weninger sponsored this bill in 2018-19. This bill was subject to an intensive stakeholder process that included almost every County Attorney and Public Defenders from several counties.
In 2019-2020, the bill had the same widespread support, but faltered when the Judiciary Committee chairs in the House and Senate indicated that they would not hear the bill.
The bill passed the House in 2019 with near unanimous support, but Rep. E Farnsworth refused to give it a hearing in the Senate.
Given the fact that both Judiciary Committee chairs will not be in place, the bill faces an easier path to passage in 2020-21.
Pima County has supported this bill since its inception.
- F. Interested Parties:
(Identify any persons/entities that you know or believe will either support or oppose this proposal.)
Almost all, if not all, criminal justice reform organizations, including Arizona Attorneys for Criminal Justice, who are leading the charge as far as finding sponsors for the bill and shepherding the bill through the legislative process.
- County Attorneys were actively involved in the stakeholder process for this bill. There is no reason that they should not and would not support this bill at this point.
- ***Attached on the next page is the language from the 2019 bill that went through a stakeholder process with Public Defense, County Attorneys, and Adult Probation, among others. This will be the language that is put forward in 2021. Language in ALL CAPS is language changed by the legislation***

13-604. Class 6 felony; designation

A. Notwithstanding any other provision of this title, if a person is convicted of any class 6 felony not involving a dangerous offense and if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that it would be unduly harsh to sentence the defendant for a felony, the court may enter judgment of conviction for a class 1 misdemeanor and make disposition accordingly or may place the defendant on probation in accordance with chapter 9 of this title and refrain from designating the offense as a felony or misdemeanor until the probation is terminated. The offense shall be treated as a felony MISDEMEANOR for all purposes until such time as the court may actually enter an order designating the offense a misdemeanor OR FELONY, EXCEPT THAT ON AGREEMENT OF THE PERSON AND THE STATE THE OFFENSE SHALL BE TREATED AS A FELONY FOR ALL PURPOSES UNTIL THE COURT ENTERS AN ORDER DESIGNATING THE OFFENSE A MISDEMEANOR OR FELONY. BEFORE FINAL DESIGNATION BY THE COURT, THE PERSON OR THE STATE MAY PETITION THE COURT TO DESIGNATE THE OFFENSE EITHER A MISDEMEANOR OR FELONY. This subsection does not apply to any person who stands convicted of a class 6 felony and who has previously been convicted of two or more felonies.

B. NOTWITHSTANDING ANY OUTSTANDING MONETARY OBLIGATION, ON THE PERSON'S SUCCESSFUL FULFILLMENT OF THE CONDITIONS OF PROBATION AND DISCHARGE BY THE COURT, THE COURT SHALL DESIGNATE AN UNDESIGNATED OFFENSE A MISDEMEANOR. ALL OUTSTANDING MONETARY OBLIGATIONS SHALL BE CONVERTED TO A CRIMINAL RESTITUTION ORDER. THIS SUBSECTION DOES NOT APPLY TO A PERSON WHO OWES VICTIM RESTITUTION OR WHO WILFULLY FAILS TO PAY A MONETARY OBLIGATION ORDERED BY THE COURT. FOR THE PURPOSES OF THIS SUBSECTION, "SUCCESSFUL" MEANS, IN THE DISCRETION OF THE COURT, THE PERSON HAS SATISFIED THE CONDITIONS OF PROBATION.

C. FOR THE PURPOSES OF CHAPTERS 7, 8 AND 9 OF THIS TITLE, AN UNDESIGNATED OFFENSE THAT IS TREATED AS A MISDEMEANOR SHALL BE TREATED AS A CLASS 1 MISDEMEANOR.

D. If a crime or public offense is punishable in the discretion of the court by a sentence as a class 6 felony or a class 1 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting attorney files any of the following:

1. An information in superior court designating the offense as a misdemeanor.
2. A complaint in justice court or municipal court designating the offense as a misdemeanor within the jurisdiction of the respective court.
3. A complaint, with the consent of the defendant, before or during the preliminary hearing amending the complaint to charge a misdemeanor.



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

Federal
 State

Date: 9/14/2020

Department/Office: Pima County Public Defense Services

Name, Title and Telephone Number of Contact Person:

Dean Brault, Public Defense Services, 724-6967

Joel Feinman, Pima County Public Defender, 724-6930

Nathan Wade, Assistant Public Defender, 724-6811

Subject or Title of Proposal: Judicial Safety Valve/Discretion

Proposal Description:

A. Background Information:

(Describe the issue or problem in need of legislative attention. Attach all existing documents relating to the issue.)

Arizona currently has one of the harshest and strictest sentencing structures in the country, leading the state to have the fourth highest incarceration rate in the country. This is costly to taxpayers and, without requirements for the AZ Department of Corrections, Rehabilitation and Re-entry to provide treatment, mental health or job skills training to inmates, does not improve community safety upon release.

Judges have long complained that their hands are tied even though they believe that some of the sentencing laws are overly harsh. For example if a person chooses to go to trial on their third drug possession case, the judge is forced to send the person to prison for 6 -15 years, even if they believe the statutory sentence is overly harsh.

B. Legislative Proposal:

(Describe the proposal and what it would accomplish.)

This bill would give discretion to judges to exercise a safety valve and hand down a reduced sentence if they felt that the statutory sentence was not in the interest of justice. The judge would have to provide a factual basis in the sentencing minute entry for the reasons for using this 'safety valve' and judges use of this would be reported annually.

- C. Statutes/Regulations Affected or Proposed Language:
(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

This would create a new statute in the sentencing codes of ARS 13 (Criminal Code)

- D. Fiscal Impact:
(Describe any direct or indirect impact on Pima County expenditures or revenues.)

There should be no fiscal impact.

- E. Proposal History:
(Describe any previous efforts by any person/entity to pursue this proposal.)

This bill was very popular in prior sessions, but was blocked by the House and Senate Judiciary chairs from a hearing.

The federal government passed this exact bill for federal crimes a few years ago.

- F. Interested Parties:
(Identify any persons/entities that you know or believe will either support or oppose this proposal.)

Judges, victims, defendants, defense and prosecutorial agencies.

Judges are likely to support this.

County attorneys are likely to oppose this, as it allows judges more discretion that County Attorneys have had since the institution of mandatory minimum sentencing in Arizona in the mid-90s.

Attached is language from a bill that has previously been put forward

13-719. Mandatory prison sentence; judicial discretion; annual report; annual savings determination

A. NOTWITHSTANDING ANY OTHER LAW, WHEN SENTENCING A DEFENDANT WHO IS CONVICTED OF AN OFFENSE THAT REQUIRES A MANDATORY PRISON SENTENCE, THE COURT MAY DEPART FROM THE APPLICABLE MANDATORY PRISON SENTENCE AND IMPOSE A SHORTER PRISON SENTENCE OR SUSPEND THE SENTENCE AND IMPOSE A TERM OF PROBATION IF THE COURT FINDS THAT, IN GIVING DUE REGARD TO THE NATURE OF THE OFFENSE AND THE DEFENDANT'S HISTORY AND CHARACTER, BOTH OF THE FOLLOWING APPLY:

1. THE IMPOSITION OF THE MANDATORY PRISON SENTENCE WOULD RESULT IN AN INJUSTICE TO THE DEFENDANT.

2. THE MANDATORY PRISON SENTENCE IS NOT NECESSARY FOR THE PROTECTION OF THE PUBLIC.

B. THIS SECTION DOES NOT APPLY TO A CONVICTION FOR ANY OF THE FOLLOWING:

1. AN OFFENSE INVOLVING DEATH OR SERIOUS PHYSICAL INJURY TO ANOTHER PERSON.

2. AN OFFENSE THAT IS LISTED IN CHAPTER 14 OF THIS TITLE AND THAT IS COMMITTED BY THE DEFENDANT AGAINST A MINOR, OTHER THAN AN OFFENSE INVOLVING SEXUAL CONDUCT IF THE VICTIM WAS FIFTEEN, SIXTEEN OR SEVENTEEN YEARS OF AGE, THE DEFENDANT WAS UNDER NINETEEN YEARS OF AGE OR ATTENDING HIGH SCHOOL AND WAS NOT MORE THAN TWENTY-FOUR MONTHS OLDER THAN THE VICTIM, AND THE CONDUCT WAS CONSENSUAL.

3. AN OFFENSE IN WHICH THE DEFENDANT ENGAGES IN A CONTINUING CRIMINAL ENTERPRISE OR ORGANIZES, LEADS, MANAGES OR SUPERVISES OTHERS IN AN OFFENSE.

C. THE COURT SHALL STATE ON THE RECORD IN EACH CASE IN WHICH THE COURT DEPARTS FROM A MANDATORY PRISON SENTENCE THE REASON FOR DEPARTING FROM THE MANDATORY PRISON SENTENCE.

D. THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL SUBMIT AN ANNUAL REPORT TO THE ARIZONA CRIMINAL JUSTICE COMMISSION THAT CONTAINS THE NAME OF EACH CASE IN WHICH THE COURT DEPARTED FROM A MANDATORY PRISON SENTENCE.

E. THE ARIZONA CRIMINAL JUSTICE COMMISSION SHALL ANNUALLY DETERMINE THE COST SAVINGS REALIZED AS A RESULT OF MANDATORY PRISON SENTENCE DEPARTURES AND SHALL NOTIFY THE STATE TREASURER OF THIS AMOUNT.

Sec. 2. Short title

This act may be cited as the "Arizona Judicial Discretion Act".



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

Federal
 State

Date: 9/14/2020

Department/Office: Pima County Public Defender

Name, Title and Telephone Number of Contact Person:

Dean Brault, Public Defense Services, 724-6967

Joel Feinman, Public Defender, 724-6930

Nathan Wade, Assistant Public Defender, 724-6811

Subject or Title of Proposal: County Attorney Reporting/Publishing Requirement

Proposal Description:

A. Background Information:

(Describe the issue or problem in need of legislative attention. Attach all existing documents relating to the issue.)

In 2017, the state legislature passed a bill in the budget allocating funds to Pinal and Yavapai Counties for the purpose of tracking arrests, charges and case statistics, and required that the results be posted on their respective websites.

The requirements included, but were not limited to:

- The number of misdemeanor and felony cases indicted and percentage resolved through plea agreements;
- Results and lengths of prison sentences for first time and repetitive offenders if given prison
- Percentage of drug possession cases prosecuted and breakdown by type
- Breakdown of demographic information of individuals indicted, including age, race, gender identity

The logistics of the original statute can be found on pages 8-9 of SB 1523:

<https://www.azleg.gov/legtext/53leg/2R/laws/0278.pdf>

The Pinal County Attorney's website with this information can be found at:

<https://pinalcountyattorney.org/criminal-justice/criminal-statistics/>

B. Legislative Proposal:
(Describe the proposal and what it would accomplish.)

This bill would expand this original requirement to apply to all counties in Arizona and would provide accurate reporting and transparency as to the charging practices as well as case management practices in each county.

C. Statutes/Regulations Affected or Proposed Language:
(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

Because the original bill was a one year requirement that was part of a larger budget bill, a new statute would need to be in place that made the requirement permanent.

D. Fiscal Impact:
(Describe any direct or indirect impact on Pima County expenditures or revenues.)

There will be a cost involved. The allocation for just Pinal and Yavapai was \$200,000 for the year. However, this data can be used to evaluate and sharpen policy that could save money long term. Most cost will be an up front implementation with a minimal upkeep cost in the ensuing years.

E. Proposal History:
(Describe any previous efforts by any person/entity to pursue this proposal.)

This bill passed the Senate in 2020 after intensive stakeholder input. Due to COVID, the bill was not heard in the House before the legislature disbanded.

F. Interested Parties:
(Identify any persons/entities that you know or believe will either support or oppose this proposal.)

Any county criminal justice task force. County supervisors and management. Public defense agencies as well as county attorneys.

Obviously this will create extra work for the County Attorneys. However, in a recent presentation to a legislative ad hoc committee, Pinal County Attorney actually used his reporting website to give a comprehensive report on how his office works. He was proud of the site and the data that it gave. There should be no opposition to transparency. Additionally, the Maricopa County Attorney began sharing some statistics covered by this bill during the summer of 2020.

Attached is the version that was sent to the legislature in 2020 but not able to be heard. A 2021 bill will look either identical to or remarkably similar to this document

AN ACT

AMENDING TITLE 41, CHAPTER 17, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-2202; RELATING TO CRIMINAL JUSTICE INFORMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 41, chapter 17, article 1, Arizona Revised Statutes, is amended by adding section 41-2202, to read:

41-2202. Uniform criminal justice data collection; reporting requirements; public access; withholding of monies for noncompliance; definitions

A. BEGINNING TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION AND EVERY SIX MONTHS THEREAFTER, THE ATTORNEY GENERAL AND EACH COUNTY ATTORNEY FROM A COUNTY WITH A POPULATION OVER 100,000 SHALL REPORT DATA THAT INCLUDES THE NUMBER OF FELONY AND MISDEMEANOR CASES THAT:

1. ARE CHARGED BY THE RESPECTIVE PROSECUTOR'S OFFICE THROUGH AN INDICTMENT OR INFORMATION OR ARE FILED DIRECTLY WITH A COURT BY A LAW ENFORCEMENT AGENCY.

2. ARE RESOLVED BY THE RESPECTIVE PROSECUTOR'S OFFICE THROUGH A PLEA AGREEMENT AND WHETHER THE DEFENDANT PLEADED EITHER:

(a) GUILTY.

(b) NO CONTEST.

3. ARE PRESENTED BY THE RESPECTIVE PROSECUTOR FOR BENCH OR JURY TRIAL CONSIDERATION AND WHETHER THE CASE ENDED WITH:

(a) A FINDING OF GUILT.

(b) A FINDING OF GUILTY EXCEPT INSANE.

(c) AN ACQUITTAL.

(d) A DISMISSAL BASED ON A FINDING THAT THE DEFENDANT IS INCOMPETENT TO STAND TRIAL.

(e) A DEADLOCKED JURY.

(f) A SPLIT DECISION. IF THE JURY SPLITS THE VERDICTS IN A CASE, THE PROSECUTOR SHALL REPORT THE NUMBER OF CHARGES THAT ENDED IN A FINDING OF GUILT AND THE NUMBER OF CHARGES THAT ENDED IN AN ACQUITTAL.

4. A FIRST TIME FELONY OFFENDER RECEIVED A SENTENCE OF:

(a) PROBATION.

(b) LESS THAN ONE YEAR OF IMPRISONMENT.

(c) ONE YEAR OR MORE BUT LESS THAN THREE YEARS OF IMPRISONMENT.

(d) THREE YEARS OR MORE BUT LESS THAN FIVE YEARS OF IMPRISONMENT.

(e) FIVE YEARS OR MORE BUT LESS THAN TEN YEARS OF IMPRISONMENT.

(f) TEN YEARS OR MORE OF IMPRISONMENT.

(g) DEATH.

5. A REPETITIVE FELONY OFFENDER RECEIVED A SENTENCE OF:

(a) PROBATION.

(b) LESS THAN ONE YEAR OF IMPRISONMENT.

(c) ONE YEAR OR MORE BUT LESS THAN THREE YEARS OF IMPRISONMENT.

(d) THREE YEARS OR MORE BUT LESS THAN FIVE YEARS OF IMPRISONMENT.

(e) FIVE YEARS OR MORE BUT LESS THAN TEN YEARS OF IMPRISONMENT.

(f) TEN YEARS OR MORE OF IMPRISONMENT.

(g) DEATH.

B. FOR EACH INDIVIDUAL CASE THAT IS INCLUDED IN THE REPORT REQUIRED BY SUBSECTION A OF THIS SECTION, THE OFFICE OF THE PROSECUTOR OF THE CASE SHALL INCLUDE ALL OF THE FOLLOWING:

1. AN ANONYMIZED UNIQUE CASE IDENTIFIER THAT IS CREATED ONLY FOR REPORTING PURPOSES.

2. A STATE IDENTIFICATION NUMBER THAT IS PRODUCED BY THE DEPARTMENT OF PUBLIC SAFETY.

3. A UNIQUE DEFENDANT IDENTIFIER THAT IS CREATED ONLY FOR REPORTING PURPOSES.

4. THE DEFENDANT'S AGE.

5. THE DEFENDANT'S RACE AS DEFINED BY THE UNITED STATES CENSUS BUREAU.

6. THE DEFENDANT'S GENDER.

7. THE INCIDENT DATE.

8. THE ARREST OR CITATION DATE.

9. THE COUNTY, CITY AND MAJOR CROSS STREETS OF THE ARREST OR CITATION, IF APPLICABLE.

10. THE ORIGINATING AGENCY IDENTIFICATION NUMBER FOR THE PRIMARY ARRESTING AGENCY OR THE AGENCY THAT ISSUED THE CITATION.

11. THE DIRECT COMPLAINT AND INDICTED CHARGES LISTED FOR THE DEFENDANT ON THE ARRESTING AGENCY PAPERWORK, INCLUDING THE CHARGE DESCRIPTION, CHARGE STATUTE REFERENCE AND CHARGE SEVERITY CLASSIFICATION.

12. A LIST OF ALL OF THE DEFENDANT'S ALLEGED PRIOR FELONY CHARGES, INCLUDING THE CHARGE DESCRIPTION, CHARGE STATUTE REFERENCE AND CHARGE SEVERITY CLASSIFICATION.

13. A LIST OF ALL PRIOR FELONY CONVICTIONS ALLEGED BY THE PROSECUTOR.

14. THE KNOWN CHARGES THE ARRESTING AGENCY REFERRED TO THE PROSECUTOR.

15. THE PROSECUTORIAL REVIEW DATE.

16. THE DATE FOR THE FILING OF INITIAL CHARGES.

17. THE DEFENDANT'S INITIAL APPEARANCE DATE.

18. THE DEFENDANT'S ARRAIGNMENT DATE.

19. WHETHER THE CHARGES WERE DIVERSION ELIGIBLE.

20. WHETHER DIVERSION WAS OFFERED TO THE DEFENDANT AND IF OFFERED:

(a) THE DATE OF THE DIVERSION OFFER.

(b) WHETHER THE DEFENDANT ACCEPTED THE DIVERSION OFFER.

(c) WHETHER THE DEFENDANT SUCCESSFULLY COMPLETED DIVERSION.

21. WHETHER THE PROSECUTOR REQUESTED ANY RELEASE CONDITION.

22. IF A RELEASE CONDITION WAS REQUESTED:

A. WHETHER THE RELEASE CONDITION WAS A MONETARY OR NON-MONETARY CONDITION.

B. IF THE RELEASE CONDITION WAS A BASED ON A MONETARY CONDITION, THE AMOUNT OF BAIL REQUESTED.

C. IF THE RELEASE CONDITION WAS BASED ON NON-MONETARY CONDITIONS, A DESCRIPTION OF THE CONDITIONS REQUESTED.

23. THE AMOUNT OF THE BAIL IMPOSED.

24. THE DEFENDANT'S RELEASE CONDITIONS OTHER THAN BAIL OR BOND, IF ORDERED.

25. THE NUMBER OF DAYS THAT THE DEFENDANT SPENT IN PRETRIAL DETENTION.

26. WHETHER A RISK ASSESSMENT OR OTHER ALGORITHM-BASED OR QUANTITATIVE TOOL WAS USED IN DETERMINING WHETHER TO ORDER PRETRIAL DETENTION AND THE AMOUNT OF BAIL OR BOND, OR BOTH.

27. WHETHER THE DEFENDANT WAS OFFERED A PLEA AGREEMENT AND IF OFFERED:

(a) THE DATE(S) THAT THE FIRST PLEA AGREEMENT WAS OFFERED AND THE FINAL PLEA AGREEMENT WAS OFFERED.

(b) WHETHER THE PLEA AGREEMENT(S) INCLUDED A TIME LIMIT OR DEADLINE TO ACCEPT THE PLEA AGREEMENT.

(c) THE TERMS OF THE FIRST PLEA AGREEMENT OFFERED AND THE TERMS OF THE FINAL PLEA AGREEMENT OFFERED

-(d) WHETHER THE DEFENDANT ACCEPTED OR REJECTED THE PLEA AGREEMENT.

(e) WHETHER THE COURT ACCEPTED OR REJECTED THE PLEA AGREEMENT.

(f) WHETHER DISCOVERY WAS OFFERED TO THE DEFENDANT BEFORE A PLEA AGREEMENT WAS OFFERED.

27. THE DATE DISCOVERY WAS DISCLOSED TO THE DEFENDANT OR THE DEFENDANT'S ATTORNEY.

28. THE TYPE OF DISCOVERY DISCLOSED.
 29. THE DISPOSITION OF EACH CHARGE OF THE CASE, INCLUDING:
 - (a) WHETHER THE CASE OR CHARGES WERE DISMISSED BY OR ON MOTION OF THE PROSECUTOR AND THE REASON FOR DISMISSAL.
 - (b) ALL CHARGES OF WHICH THE DEFENDANT WAS CONVICTED, IF ANY.
 - (c) IF THE DEFENDANT WAS CONVICTED, WHETHER THE CONVICTION OCCURRED BY PLEA, JURY TRIAL OR BENCH TRIAL.
 - (d) IF THE CASE WAS DISMISSED BY A JUDGE, THE REASON FOR DISMISSAL.
 - (e) IF THE CASE OR ANY CHARGES WERE REJECTED FOR PROSECUTION.
 - (f) IF NO CHARGE WAS FILED.
 30. THE DISPOSITION DATE.
 31. THE TYPE OF SENTENCE IMPOSED, INCLUDING PRISON, SUPERVISED PROBATION OR UNSUPERVISED PROBATION.
 32. THE LENGTH OF THE SENTENCE.
 33. THE TERMS OF ANY SUPERVISION THAT WAS IMPOSED, INCLUDING STANDARD OR INTENSIVE PROBATION AND ELECTRONIC MONITORING.
 34. WHETHER THE DEFENDANT WAS PLACED ON PROBATION FOLLOWING A PRISON SENTENCE.
 35. WHETHER THE COURT IMPOSED A FINE.
 36. WHETHER THE COURT IMPOSED ANY FEES.
 37. WHETHER THE COURT WAIVED OR MODIFIED ANY SURCHARGES ON ANY IMPOSED FINES OR FEES.
 38. THE FINAL FINE AMOUNT OWED, IF ANY.
 39. THE FINAL RESTITUTION AMOUNT OWED, IF ANY.
 40. WHETHER THE CONVICTION REQUIRED THE FORFEITURE OF ANY PROPERTY.
- C. BEGINNING TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION AND EVERY SIX MONTHS THEREAFTER, THE ATTORNEY GENERAL AND EACH COUNTY ATTORNEY FROM A COUNTY WITH A POPULATION OVER 100,000 THAT PROSECUTES ANY OF THE FOLLOWING CHARGES SHALL ~~MAKE A~~ REPORT DATA FOR EACH APPLICABLE INDIVIDUAL CHARGE, INCLUDING ANY PREPARATORY OFFENSES UNDER TITLE 13, CHAPTER 10, THAT INCLUDES THE DRUG TYPE AND WEIGHT IN GRAMS OR POUNDS OF THE DRUGS INVOLVED, EXCEPT THAT IF THE ARRESTING OFFICER DID NOT RECORD A SPECIFIC WEIGHT, THE INFORMATION MAY INCLUDE THE WORDS, "NOT COLLECTED":
1. POSSESSION OR USE OF MARIJUANA.
 2. POSSESSION OR USE OF A DANGEROUS DRUG.
 3. POSSESSION OR USE OF A NARCOTIC DRUG.
 4. POSSESSION OR USE OF A PRESCRIPTION-ONLY DRUG.
 5. POSSESSION FOR SALE OF MARIJUANA.
 6. POSSESSION FOR SALE OF A DANGEROUS DRUG.
 7. POSSESSION FOR SALE OF A NARCOTIC DRUG.
 8. POSSESSION OF EQUIPMENT OR CHEMICALS, OR BOTH, FOR THE PURPOSE OF MANUFACTURING A DANGEROUS DRUG.
 9. POSSESSION OF EQUIPMENT OR CHEMICALS, OR BOTH, FOR THE PURPOSE OF MANUFACTURING A NARCOTIC DRUG.
 10. MANUFACTURING A DANGEROUS DRUG.
 11. MANUFACTURING A NARCOTIC DRUG.
 12. ADMINISTERING A DANGEROUS DRUG TO ANOTHER PERSON.
 13. ADMINISTERING A NARCOTIC DRUG TO ANOTHER PERSON.
 14. OBTAINING OR PROCURING THE ADMINISTRATION OF A DANGEROUS DRUG BY FRAUD, DECEIT, MISREPRESENTATION OR SUBTERFUGE.
 15. OBTAINING OR PROCURING THE ADMINISTRATION OF A NARCOTIC DRUG BY FRAUD, DECEIT, MISREPRESENTATION OR SUBTERFUGE.
 16. TRANSPORTING FOR SALE, IMPORTING INTO THIS STATE OR OFFERING TO TRANSPORT FOR SALE OR IMPORT INTO THIS STATE, SELLING, TRANSFERRING OR OFFERING TO SELL OR TRANSFER MARIJUANA.
 17. TRANSPORTING FOR SALE, IMPORTING INTO THIS STATE OR OFFERING TO TRANSPORT FOR SALE OR IMPORT INTO THIS STATE, SELLING, TRANSFERRING OR OFFERING TO SELL OR TRANSFER A DANGEROUS DRUG.

18. TRANSPORTING FOR SALE, IMPORTING INTO THIS STATE OR OFFERING TO TRANSPORT FOR SALE OR IMPORT INTO THIS STATE, SELLING, TRANSFERRING OR OFFERING TO SELL OR TRANSFER A NARCOTIC DRUG.

D. THE PROSECUTOR MAY NOT LEAVE ANY BLANK RESPONSES IN THE REPORTS THAT ARE REQUIRED UNDER SUBSECTIONS A, B AND C OF THIS SECTION AND SHALL USE THE FOLLOWING WORDS IF INFORMATION IS NOT AVAILABLE FOR A REPORT:

1. "NOT COLLECTED" FOR ANY DATA THAT IS MISSING FROM A REPORT BECAUSE THE OFFICE FAILED TO OBTAIN OR REPORT THE DATA.
2. "TO BE DETERMINED" FOR ANY DATA THAT IS MISSING FROM THE REPORT BECAUSE THE REQUESTED DATA HAS NOT BEEN OBTAINED AS OF THE DATE OF THE REPORT.
3. "NOT APPLICABLE" FOR ANY DATA THAT DOES NOT APPLY TO THE SPECIFIC CASE.
4. "REFUSED" FOR ANY DATA THAT THE INDIVIDUAL CHOSE NOT TO PROVIDE.
5. "MISSING" FOR ANY DATA THAT IS MISSING.

E. THE DIRECTOR OF THE ARIZONA CRIMINAL JUSTICE COMMISSION IS DESIGNATED AS THE CENTRAL COLLECTION POINT FOR CRIMINAL JUSTICE DATA REPORTS. THE ARIZONA CRIMINAL JUSTICE COMMISSION SHALL DETERMINE THE METHOD FOR EACH COUNTY ATTORNEY AND THE ATTORNEY GENERAL TO TRANSMIT THE REPORTS PRESCRIBED BY SUBSECTIONS A, B AND C OF THIS SECTION TO THE ATTORNEY GENERAL. THE DIRECTOR OR THE APPOINTED MEMBERS ON THE COMMISSION, OR BOTH, SHALL REVIEW AND CONSOLIDATE THE DATA WITHIN SIXTY DAYS AFTER RECEIVING THE DATA OR AT THE NEXT SCHEDULED COMMISSION BOARD MEETING FOLLOWING THE RECEIPT OF THE DATA. THE ARIZONA CRIMINAL JUSTICE COMMISSION SHALL CALCULATE THE OVERALL RECIDIVISM RATE OF ALL PRISONERS WHO ARE RELEASED FROM PRISON FOR FIVE, TEN AND FIFTEEN YEARS AFTER THE PRISONER'S RELEASE. RECIDIVISM SHALL BE SEPARATELY CALCULATED BY RECONVICTION, REINCARCERATION AND REARREST. THE DIRECTOR OF THE ARIZONA CRIMINAL JUSTICE COMMISSION SHALL SUBMIT THE COMMISSION'S RECOMMENDATIONS, THE RECIDIVISM RATES AND THE CONSOLIDATED DATA REPORT TEN CALENDAR DAYS AFTER THE SIXTIETH DAY OR TEN CALENDAR DAYS AFTER THE COMMISSION BOARD ADJOURNS TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE PRESIDENT OF THE SENATE THE MINORITY LEADER IN THE HOUSE OF REPRESENTATIVE AND THE MINORITY LEADER IN THE SENATE. THE ARIZONA CRIMINAL JUSTICE COMMISSION SHALL ENSURE THAT THE REPORTING IS COMPLETED IN A UNIFORM AND CONSISTENT MANNER.

F. BEGINNING TWELVE MONTHS AFTER THE ENACTMENT OF THIS LAW AND EVERY SIX MONTHS THEREAFTER, EACH COUNTY ATTORNEY SHALL TRANSMIT THE DATA PRESCRIBED BY SUBSECTIONS A, B AND C OF THIS SECTION TO THE ARIZONA CRIMINAL JUSTICE COMMISSION.

G. BEGINNING TWELVE MONTHS AFTER THE ENACTMENT OF THIS LAW AND EVERY SIX MONTHS THEREAFTER, THE ARIZONA CRIMINAL JUSTICE COMMISSION SHALL PUBLISH THE REPORTS DATA PRESCRIBED BY SUBSECTIONS A, B AND C OF THIS SECTION, INCLUDING THE AGGREGATE AND CASE-LEVEL DATA REQUIRED FOR THE REPORTS IN THIS SECTION, ON THE ARIZONA CRIMINAL JUSTICE COMMISSION'S WEBSITE IN A MODERN, OPEN, ELECTRONIC FORMAT THAT IS MACHINE-READABLE, MACHINE-SEARCHABLE AND READILY ACCESSIBLE TO THE PUBLIC. THE PUBLISHED REPORTS MAY NOT CONTAIN INDIVIDUALIZED OR IDENTIFYING PERSONAL INFORMATION ABOUT ANY PERSON WHO IS ARRESTED OR PROSECUTED. NOTHING IN THIS SECTION PREVENTS A COUNTY ATTORNEY'S OFFICE FROM ALSO PUBLISHING THE DATA COLLECTED PURSUANT TO THIS SECTION.

H. BEGINNING—TWELVE MONTHS AFTER THE ENACTMENT OF THIS LAW EACH COUNTY ATTORNEY AND PUBLIC DEFENDER'S OFFICE SHALL ANNUALLY PUBLISH THE FOLLOWING INFORMATION ON THE OFFICE'S WEBSITE:

1. THE NUMBER OF ATTORNEYS ON THE OFFICE'S STAFF.
2. THE NUMBER OF CASES ASSIGNED PER YEAR PER ATTORNEY.
3. THE NUMBER OF ATTORNEYS WHO WORKED FOR THE OFFICE IN A TEMPORARY OR CONTRACT CAPACITY DURING THE PREVIOUS CALENDAR YEAR.
4. THE NUMBER OF PARALEGALS AND ADMINISTRATIVE STAFF WHO ARE EMPLOYED BY THE OFFICE.
5. THE NUMBER OF INVESTIGATORS WHO ARE USED BY THE OFFICE DURING THE PREVIOUS CALENDAR YEAR, WHETHER ON STAFF OR OTHERWISE.

6. THE TOTAL EXPENSES FOR COMPENSATION OF EXPERTS WHO ARE USED BY THE OFFICE DURING THE PREVIOUS CALENDAR YEAR, WHETHER ON STAFF OR OTHERWISE, INCLUDING THE USE OF AN EXPERT WHO IS A POLICE OFFICER OR WHO WORKS FOR A POLICE AGENCY.

I. NOTWITHSTANDING ANY OTHER LAW, ANY PERSON MAY ALERT THE ATTORNEY GENERAL'S OFFICE IF THEY BELIEVE A COUNTY ATTORNEY IS NOT COMPLYING WITH THIS SECTION. IF THE ATTORNEY GENERAL DETERMINES THAT A COUNTY ATTORNEY IS NOT COMPLYING WITH THIS SECTION, THE ATTORNEY GENERAL SHALL COMPEL COMPLIANCE BY WITHHOLDING THE DISTRIBUTION TO THE COUNTY ATTORNEY OF MONIES THAT THE ATTORNEY GENERAL ADMINISTERS. THE ATTORNEY GENERAL MAY RESTORE FUNDING ONLY AFTER THE COUNTY ATTORNEY FULLY COMPLIES WITH THIS SECTION AND PROVIDES THE REQUIRED INFORMATION FROM THE DATE OF NONCOMPLIANCE THROUGH THE CURRENT DATE AND AFTER THE ATTORNEY GENERAL COMPLETES A COMPLIANCE REVIEW AND CERTIFIES THAT THE COUNTY ATTORNEY IS IN COMPLIANCE.

J. FOR THE PURPOSES OF THIS SECTION:

1. "CASE" MEANS ALL THE CHARGES THAT ARE ASSOCIATED WITH THE SAME DEFENDANT AND THAT ARE FILED IN COURT ON THE SAME DATE, EXCEPT THAT A CASE INVOLVING MULTIPLE DEFENDANTS IS COUNTED SEPARATELY FOR EACH CODEFENDANT.

2. "CHARGE" MEANS A CRIMINAL ACCUSATION BY A PROSECUTOR'S OFFICE THAT A PERSON COMMITTED AN ACT IN VIOLATION OF AN ORDINANCE, CITATION, SUMMARY OR STATUTE DEFINING AN OFFENSE AND INCLUDES ACCUSATIONS BROUGHT BY TICKET, CITATION, INFORMATION, COMPLAINT, INDICTMENT OR OTHER CHARGING INSTRUMENT.

3. "CONSIDERATION" MEANS A JURY IS EMPANELED AND SWORN IN TO CONSIDER THE CHARGES OR, IN THE CASE OF A BENCH TRIAL, AT LEAST ONE WITNESS TESTIFIES.

4. "DISPOSITION" MEANS THE CONCLUSION OF THE PROSECUTION OF ANY CHARGE BY A PLEA OF NO CONTEST, DIVERSION, DISMISSAL, DISMISSAL AS PART OF A PLEA AGREEMENT, DECLINATION OF PROSECUTION, CONVICTION AS PART OF A PLEA AGREEMENT, CONVICTION AT TRIAL, ACQUITTAL OR ANY OTHER MEANS.

5. "PROSECUTOR" MEANS THE ATTORNEY GENERAL, DEPUTY ATTORNEY GENERAL, COUNTY ATTORNEY OR DEPUTY COUNTY ATTORNEY.

6. "UNIQUE DEFENDANT IDENTIFIER" MEANS A RANDOMLY GENERATED ANONYMIZED NUMBER THAT IS ASSIGNED IN PLACE OF THE DEFENDANT'S NAME OR CASE NUMBER AND THAT FOLLOWS THE INDIVIDUAL ACROSS CASES.

Sec. 2. Legislative intent

It is the intent of the legislature to implement a model for uniform criminal justice data collection by requiring each county attorney and the attorney general to report complete, accurate and timely data about their respective criminal prosecutions and to make this information available to the public. The legislature finds that implementing a uniform criminal justice data collection model is an important state interest and promotes criminal justice data transparency.



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

___ Federal
___ State

Date: 9/14/20

Department/Office: Pima County Public Defense Services

Name, Title and Telephone Number of Contact Person:

Dean Brault, Public Defense Services, 724-6967

Joel Feinman, Public Defender, 724-6930

Nathan Wade, 724-6811

Subject or Title of Proposal: Pima County Position: Oppose any legislation that institutes mandatory minimums

Proposal Description:

A. Background Information:

(Describe the issue or problem in need of legislative attention. Attach all existing documents relating to the issue.)

Over the last several sessions, bills have been introduced at the legislature that introduced extremely broad mandatory prison terms for any type of drug sale, including addicts selling small amounts to support their own habit. No mandatory minimum bill at the legislature has ever been narrowly written.

What this does is catch people who, according to testimony by proponents of mandatory minimums in any situation, are not the intended target of the new law, but end up being prosecuted under the mandatory minimum due to the broadness of the law.

For example- in the last mandatory minimum drug bill, legislators claimed the bill was aimed at “cartels” and “major drug dealers” when the reality was that it applied equally to small sales amounts.

Mandatory minimums are extremely costly to taxpayers

B. Legislative Proposal:

Allow the Pima County Public Defender to, as a policy, oppose any legislation that adds more mandatory minimum laws to Arizona Criminal Statutes.

- C. Statutes/Regulations Affected or Proposed Language:
(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

Only proposed new statutes.

- D. Fiscal Impact:
(Describe any direct or indirect impact on Pima County expenditures or revenues.)

Significant fiscal impact. Less people will be incarcerated in the Pima County Jail or held on bonds because they are in a mandatory minimum situation. Less people who are out of custody will go into custody and into the Pima County Jail pending sentencing (30+) and transfer to the Department of Corrections

- E. Proposal History:
(Describe any previous efforts by any person/entity to pursue this proposal.)

This is a new proposal to allow our office to represent our clients as a whole at the legislature on an issue that allows for over-indicting, coercive plea bargaining and does not promote public safety. We would consider this as part of our advocacy for clients on a larger scale.

- F. Interested Parties:
(Identify any persons/entities that you know or believe will either support or oppose this proposal.)

Anyone accused of a crime in Pima County; Public Defenders; Judges who are bound to mandatory minimums; Victims (some of whom will oppose mandatory minimums, some will want them); County Attorneys.



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

Federal
 State

Date: 8/20/2020

Department/Office: Pima County Public Defender

Name, Title and Telephone Number of Contact Person:
Nathan Wade, Assistant Public Defender, 724-6811
Dean Breault, Public Defense Services, 724-6967

Subject or Title of Proposal: Fresh Start Bill

Proposal Description:

- A. Background Information:
(Describe the issue or problem in need of legislative attention. Attach all existing documents relating to the issue.)

The consequences of having a felony conviction in one's past extend well beyond the completion of the sentence; a conviction can stifle opportunities for employment, housing, public benefits, student loans, serving as a foster parent, and visiting relatives in jail, even decades after the offense. Often, these priors are drug related, and often for simple possession.

Persons who cannot find employment and housing are more likely to reoffend than those who can.

This also affects city, county, and state economies. Often, employers require applicants to disclose whether or not they have prior felonies on their records as part of the initial application process and discard applicants who "check the box." The reduced available workforce caused by keeping felonies on a person's public record for years after a conviction affects the decision of companies when choosing where to locate their businesses.

- B. Legislative Proposal:
(Describe the proposal and what it would accomplish.)

The proposal is to support an "Fresh Start" bill at the State legislature. Currently, Arizona only has what is called a "set aside," meaning that a person can petition the court to make a record that their conviction was set aside. The conviction remains on the person's public record and still counts as a felony conviction that follows them for the rest of their life. The set aside guidelines and parameters are found in A.R.S. 13-907.

The Office of the Public Defender, in cooperation with Arizona Attorneys for Criminal Justice (and other agencies) proposes replacing the relatively ineffective set aside statute with a more expansive sealing bill, which would create A.R.S. 13-926. Under the Fresh Start Act, a person whose record is sealed shall be treated in the public record as if they had never been “arrested, convicted or sentenced.” However, the record, even if sealed, is preserved for purposes of law enforcement and may be used to establish historical and non-historical priors for sentencing purposes and repetitive offender status.

In the proposed bill, the court may seal a person’s record upon timely petition if the court believes that “sealing of the criminal record will assist in the petitioner’s rehabilitation and will be consistent with the public welfare.”

The bill has timelines for eligibility for the sealing of records, so that a person must prove that they are unlikely to commit another felony in the future. For example, the bill currently lists a period of 10 years before a person can petition for sealing a felony conviction, and significantly less time for misdemeanors. (The time for a class 4, 5, or 6 felonies may be reduced to 5 years in the final draft of the bill.)

There are felonies that are barred from this statute, including dangerous crimes against children, felonies with a prison sentence of 10+ years, and dangerous offender offenses.

This bill allows persons with non-violent felonies to earn the opportunity to have their record publicly sealed so that the felony does not follow them for the rest of their lives and hamper their ability to obtain housing, employment and be productive members of society. It will also reduce recidivism and crime in the community.

- C. Statutes/Regulations Affected or Proposed Language:
(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

This bill would create a new statute, A.R.S. 13-926. There is a chance that it could be folded into A.R.S. 13-907 (set aside) as part of a more expansive overall statute.

- D. Fiscal Impact:
(Describe any direct or indirect impact on Pima County expenditures or revenues.)

Fiscal impact cannot be determined directly, but states with comprehensive expungement and record sealing statutes have reported a decrease in crime and recidivism, which reduces the costs on communities of incarceration. Additionally, it increases the available workforce, which could have the economic boon of attracting new and larger employers.

Persons who have their records sealed and are able to find employment and housing are less likely to rely on government assistance programs as well.

E. Proposal History:

(Describe any previous efforts by any person/entity to pursue this proposal.)

This bill was supported by Pima County for the last two years. It was sponsored by Representative Toma and had strong bipartisan support. Other organizations are again expected to sign on to support this year.

Rep. John Allen, the chair of the House Judiciary committee refused to hear the bill in 2019, and the legislature ended abruptly in 2020, but there are renewed hopes that it will get a hearing this year. Rep. Allen will not be in the House of Representatives and a majority of the Judiciary members of both parties have shown more interest in these types of reforms, so it will likely go further.

F. Interested Parties:

(Identify any persons/entities that you know or believe will either support or oppose this proposal.)

Supporters of expungement include Arizona Attorneys for Criminal Justice, Right on Crime, American Friends Service Committee, Americans for Prosperity, the ACLU, FWD.us, FAMM and other agencies.

Other supporters are persons with felonies who are struggling financially and personally due to the lifetime branding that their felonies put onto their lives.

Those who opposed tended to be law enforcement agencies and county attorney's lobbyists. However, both law enforcement and county attorneys have access to records even after sealing and can use them in pursuit of criminal cases. Given changes in leadership at the County Attorney's office in Pima County and possibly Maricopa County, there are opportunities for partnership on issues like Fresh Start.

Attached is the version of an Expungement bill that went through a stakeholder process with defense, law enforcement and county attorneys prior to introduction in 2019. A bill this session will be very similar, if not identical.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 13, chapter 9, Arizona Revised Statutes, is amended by adding section 13-926, to read:

13-926. Expungement; requirements; fee; appeal

A. THE COURT MAY EXPUNGE A PERSON'S ARREST, CONVICTION AND SENTENCE. EXCEPT AS PROVIDED IN SUBSECTION B, A PERSON WHOSE RECORD IS EXPUNGED SHALL BE TREATED IN ALL RESPECTS AS IF THE PERSON WAS NEVER ARRESTED, CONVICTED OR SENTENCED.

B. A CONVICTION THAT IS EXPUNGED MAY BE:

1. USED AS A CONVICTION IF THE CONVICTION WOULD BE ADMISSIBLE HAD IT NOT BEEN EXPUNGED.
2. ALLEGED AS AN ELEMENT OF AN OFFENSE.
3. USED AS A PRIOR CONVICTION.
4. PLEADED AND PROVED IN ANY SUBSEQUENT PROSECUTION OF THE PERSON BY THIS STATE OR ANY SUBDIVISION OF THIS STATE FOR ANY OFFENSE.

C. EXCEPT AS PROVIDED IN SUBSECTIONS E, F, K OR N OF THIS SECTION, A PERSON WHO IS:

1. CONVICTED OF AN OFFENSE MAY PETITION THE COURT THAT PRONOUNCED SENTENCE TO EXPUNGE THE PERSON'S RECORD OF ARREST, CONVICTION, AND SENTENCE. THE COURT SHALL GRANT THE PETITION IF THE COURT DETERMINES THAT GRANTING THE PETITION IS IN THE BEST INTEREST OF THE PETITIONER AND OF PUBLIC SAFETY.

2. INDICTED FOR AN OFFENSE BUT AGAINST WHOM CHARGES ARE DISMISSED, WHO IS FOUND NOT GUILTY OR WHOSE CONVICTION IS VACATED MAY PETITION THE SUPERIOR COURT IN THE COUNTY IN WHICH THE INDICTMENT WAS FILED TO EXPUNGE THE PERSON'S ARREST RECORD OR COURT RECORD, OR BOTH.

D. UNLESS THE PETITIONER REQUESTS A HEARING, THE COURT MAY GRANT OR DENY A PETITION FOR EXPUNGEMENT WITHOUT A HEARING. THE COURT MAY DISMISS A PETITION THAT DOES NOT MEET THE REQUIREMENTS PRESCRIBED IN SUBSECTIONS E, F, K OR N OF THIS SECTION WITHOUT A HEARING. THE COURT SHALL PROVIDE A COPY OF THE PETITION FOR EXPUNGEMENT TO THE PROSECUTOR, AND THE PROSECUTOR MAY RESPOND TO THE PETITION AND REQUEST A HEARING. THE VICTIM HAS A RIGHT TO BE PRESENT AND HEARD AT ANY PROCEEDING IN WHICH THE DEFENDANT HAS FILED A PETITION FOR EXPUNGEMENT. IF THE VICTIM HAS MADE A REQUEST FOR POST CONVICTION NOTICE, THE PROSECUTOR SHALL PROVIDE THE VICTIM WITH NOTICE OF THE DEFENDANT'S PETITION AND OF THE RIGHTS PROVIDED TO THE VICTIM IN THIS SECTION.

E. AT THE TIME OF SENTENCING, THE COURT SHALL INFORM A PERSON IN WRITING OF THE PERSON'S RIGHT TO PETITION THE COURT FOR AN EXPUNGEMENT OF THEIR ARREST, CONVICTION, AND SENTENCING RECORDS.

F. EVERY PERSON WHO WAS CONVICTED OF AN OFFENSE AND WHO HAS NOT SUBSEQUENTLY BEEN CONVICTED OF ANY OTHER CRIME EXCEPT A MISDEMEANOR VIOLATION OF TITLE 28 EXCLUDING A CONVICTION FOR A VIOLATION OF TITLE 28, CHAPTER 4 MAY PETITION FOR EXPUNGEMENT OF THE PERSON'S RECORD OF ARREST, CONVICTION AND SENTENCE AFTER THE PERSON COMPLETES ALL OF THE TERMS AND CONDITIONS OF THE PERSON'S SENTENCE AND THE FOLLOWING PERIOD OF TIME HAS PASSED SINCE FULFILLMENT OF THE CONDITIONS OF PROBATION OR SENTENCE AND DISCHARGE BY THE COURT:

1. TEN YEARS FOR A CLASS 2 OR 3 FELONY.
2. FIVE YEARS FOR A CLASS 4, 5 OR 6 FELONY.
3. THREE YEARS FOR A CLASS 1 MISDEMEANOR.
4. TWO YEARS FOR A CLASS 2 OR 3 MISDEMEANOR.

G. A PERSON WHO IS CONVICTED OF TWO OR MORE OFFENSES MAY NOT PETITION FOR EXPUNGEMENT UNTIL THE PERIOD OF TIME PRESCRIBED IN SUBSECTION E OF THIS SECTION HAS PASSED FOR EACH CONVICTION.

H. AFTER A PETITION FOR EXPUNGEMENT IS FILED, THE COURT SHALL NOTIFY THE STATE DEPARTMENT OF PUBLIC SAFETY AND REQUEST THE DEPARTMENT TO PREPARE AND SUBMIT A REPORT TO THE COURT THAT INCLUDES ALL OF THE PETITIONER'S STATE AND FEDERAL ARRESTS, PROSECUTIONS AND CONVICTIONS AND ANY OTHER INFORMATION THAT THE COURT REQUESTS OR THAT THE DEPARTMENT BELIEVES WILL ASSIST THE COURT IN MAKING ITS DETERMINATION. THE DIRECTOR MAY CHARGE A FEE DETERMINED BY THE DIRECTOR FOR THE INVESTIGATION UNLESS THE PETITIONER IS INDIGENT OR HAS BEEN FOUND NOT GUILTY OR THE CASE WAS DISMISSED OR NOT PROSECUTED, AND THE PETITION IS FILED PURSUANT TO SUBSECTION B, PARAGRAPH 2 OF THIS SECTION.

I. IF THE COURT GRANTS A PETITION FOR EXPUNGEMENT:

1. THE COURT SHALL ISSUE AN ORDER—THAT THE PETITIONER'S ARREST, CONVICTION AND SENTENCE BE EXPUNGED, AND THAT THE CLERK OF THE COURT NOTIFY THE DEPARTMENT OF PUBLIC SAFETY, THE PROSECUTOR AND THE ARRESTING LAW ENFORCEMENT AGENCY OF THE EXPUNGEMENT ORDER.
2. ON ORDER OF A COURT, THE CLERK OF THE COURT SHALL SEAL ALL RECORDS RELATING TO THE EXPUNGED ARREST, CONVICTION AND SENTENCE.
3. THE DEPARTMENT OF PUBLIC SAFETY SHALL SEAL AND SEPARATE THE EXPUNGED RECORD FROM THE DEPARTMENT'S RECORDS AND INFORM ALL APPROPRIATE STATE AND FEDERAL LAW ENFORCEMENT AGENCIES OF THE EXPUNGEMENT. THE DEPARTMENT MAY CHARGE THE SUCCESSFUL PETITIONER A FEE DETERMINED BY THE DIRECTOR TO RESEARCH AND CORRECT THE PETITIONER'S CRIMINAL HISTORY RECORD UNLESS THE PETITIONER IS INDIGENT OR HAS BEEN FOUND NOT GUILTY OR THE CASE HAS BEEN DISMISSED OR NOT PROSECUTED AND THE PETITION IS FILED PURSUANT TO SUBSECTION B, PARAGRAPH 1 OF THIS SECTION.

4. THE ARRESTING AND PROSECUTING AGENCIES SHALL CLEARLY IDENTIFY IN EACH AGENCY'S FILES AND ELECTRONIC RECORDS THAT THE PETITIONER'S ARREST OR CONVICTION AND SENTENCE IS EXPUNGED.
5. EXCEPT ON AN APPLICATION FOR EMPLOYMENT THAT REQUIRES A FINGERPRINT CLEARANCE CARD PURSUANT TO TITLE 41, CHAPTER 12, ARTICLE 3.1, A PERSON WHOSE CONVICTION IS VACATED PURSUANT TO THIS SECTION MAY STATE, IN ALL INSTANCES, THAT THE PERSON HAS NEVER BEEN ARRESTED FOR, CHARGED WITH OR CONVICTED OF THE CRIME THAT IS THE SUBJECT OF THE CONVICTION, INCLUDING IN RESPONSE TO QUESTIONS ON EMPLOYMENT, HOUSING, FINANCIAL AID OR LOAN APPLICATIONS.
- J. IF THE RECORD OF A PERSON'S ARREST, CONVICTION, OR SENTENCE IS SEALED PURSUANT TO THIS SECTION THE RECORD SHALL BE MADE AVAILABLE FOR THE PURPOSES LISTED IN SUBSECTION B AND TO THE FOLLOWING:
1. THE PERSON WHOSE RECORD IS SEALED AND THE PERSON'S ATTORNEY,
 2. A LAW ENFORCEMENT AGENCY FOR THE PURPOSES OF CONDUCTING A CRIMINAL INVESTIGATION,
 3. A PROSECUTING AGENCY FOR THE PURPOSES OF DETERMINING IF A CRIMINAL CHARGE SHOULD BE FILED AND FOR PROSECUTING A CRIMINAL CASE,
 4. A PROBATION DEPARTMENT OR THE PURPOSES OF PREPARING A PRESENTENCE REPORT,
 5. A COURT FOR THE PURPOSES OF SENTENCING,
 6. THE DEPARTMENT OF CORRECTIONS FOR THE PURPOSES OF MANAGING A PERSON COMMITTED TO THE DEPARTMENT.
- K. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE SUPREME COURT OR THE COURT OF APPEALS TO SEAL ANY RECORD.
- L. IF THE COURT DENIES A PETITION FOR EXPUNGEMENT A NEW PETITION MAY NOT BE FILED UNTIL THREE YEARS AFTER THE DATE OF THE DENIAL.
- M. A CONVICTION FOR AN OFFENSE THAT IS COMMITTED IN ANOTHER JURISDICTION AND THAT IF COMMITTED IN THIS STATE WOULD NOT CONSTITUTE AN OFFENSE IN THIS STATE MAY NOT BE USED AGAINST THE PETITIONER OR PROHIBIT THE PETITIONER FROM OBTAINING AN EXPUNGEMENT.
- N. IF THE PETITIONER IS CHARGED WITH AN OFFENSE AFTER FILING A PETITION FOR EXPUNGEMENT AND THE OFFENSE COULD RESULT IN A CONVICTION THAT CANNOT BE EXPUNGED OR THAT COULD EXTEND THE TIME TO FILE A PETITION FOR EXPUNGEMENT, THE COURT MAY NOT GRANT OR DENY THE PETITION FOR EXPUNGEMENT UNTIL THAT CHARGE IS DISPOSED OF.
- O. THIS SECTION DOES NOT APPLY TO A PERSON WHO IS SENTENCED AS A DANGEROUS OFFENDER PURSUANT TO SECTION 13-704 OR WHO IS CONVICTED

OF A DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-705.

P. THIS SECTION DOES NOT AFFECT EITHER OF THE FOLLOWING:

1. THE RIGHT OF THE PERSON WHOSE RECORD IS EXPUNGED TO APPEAL FROM THE CONVICTION OR SENTENCE OR TO RELY ON IT IN BAR OF ANY SUBSEQUENT PROCEEDING FOR THE SAME OFFENSE.

2. THE RIGHT OF A LAW ENFORCEMENT AGENCY TO MAINTAIN AN ARREST AND CONVICTION RECORD AND TO COMMUNICATE INFORMATION REGARDING THE EXPUNGED RECORD OF ARREST OR CONVICTION TO PROSECUTING AGENCIES AND OTHER LAW ENFORCEMENT AGENCIES FOR LAWFUL INVESTIGATIVE PURPOSES OR IN DEFENSE OF A CIVIL ACTION THAT ARISES OUT OF THE FACTS OF THE ARREST OR TO THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD SOLELY TO ASSIST THE BOARD IN DETERMINING THE FITNESS OF A PERSON TO SERVE AS A PEACE OFFICER, EXCEPT THAT IN ANY OF THESE CASES THE INFORMATION MAY NOT BE DISCLOSED TO ANY OTHER PERSON.

Section 2. Section 13-4033, Arizona Revised Statutes, is amended to read:13-4033. Appeal by defendant

A. AN APPEAL MAY BE TAKEN BY THE DEFENDANT ONLY FROM:

1. A FINAL JUDGMENT OF CONVICTION OR VERDICT OF GUILTY EXCEPT INSANE.

2. AN ORDER DENYING A MOTION FOR A NEW TRIAL.

3. AN ORDER MADE AFTER JUDGMENT AFFECTING THE SUBSTANTIAL RIGHTS OF THE PARTY.

4. A SENTENCE ON THE GROUNDS THAT IT IS ILLEGAL OR EXCESSIVE.

5. FROM AN ORDER DENYING A PETITION FOR EXPUNGEMENT PURSUANT TO SECTION 13-926.

B. IN NONCAPITAL CASES A DEFENDANT MAY NOT APPEAL FROM A JUDGMENT OR SENTENCE THAT IS ENTERED PURSUANT TO A PLEA AGREEMENT OR AN ADMISSION TO A PROBATION VIOLATION.

C. A DEFENDANT MAY NOT APPEAL UNDER SUBSECTION A, PARAGRAPH 1 OR 2 IF THE DEFENDANT'S ABSENCE PREVENTS SENTENCING FROM OCCURRING WITHIN NINETY DAYS AFTER CONVICTION AND THE DEFENDANT FAILS TO PROVE BY CLEAR AND CONVINCING EVIDENCE AT THE TIME OF SENTENCING THAT THE ABSENCE WAS INVOLUNTARY.

Sec. 3. Applicability

THIS ACT APPLIES TO A PERSON WHO IS ARRESTED, CONVICTED OR SENTENCED BEFORE, ON OR AFTER THE EFFECTIVE DATE OF THIS ACT.

Sec. 4. Delayed Effective Date

THIS ACT IS EFFECTIVE FROM AND AFTER DECEMBER 31, 2019



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

___ Federal
___ State

Date: 9/14/20

Department/Office: Pima County Public Defense Services

Name, Title and Telephone Number of Contact Person:

Dean Brault, Public Defense Services, 724-6967

Joel Feinman, Public Defender, 724-6930

Nathan Wade, 724-6811

Subject or Title of Proposal: Elimination of Mandatory Department of Corrections Sentence for Probation Available Aggravated DUI Convictions

Proposal Description:

A. Background Information:

(Describe the issue or problem in need of legislative attention. Attach all existing documents relating to the issue.)

A.R.S. § 28-1383(D) requires that, if placed on probation for Aggravated DUI, they must serve at least 4 months in the Department of Corrections as part of their probation sentence. This ADOC requirement does not exist for any other probation available conviction, is costly to taxpayers and deprives persons struggling with alcohol addiction of much needed treatment.

B. Legislative Proposal:

Eliminate section 1383 (D) from the Aggravated DUI statute

C. Statutes/Regulations Affected or Proposed Language:

(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

Eliminates one section of ARS 28-1383

- D. Fiscal Impact:
(Describe any direct or indirect impact on Pima County expenditures or revenues.)

Significant fiscal savings to taxpayers, counties and state agencies, as there will be no cost to incarcerate people unnecessarily. Likely will reduce probation revocations as persons will go directly to probation upon sentencing rather than being released far from home outside of a DOC facility with little to know resources.

- E. Proposal History:
(Describe any previous efforts by any person/entity to pursue this proposal.)

This is a new proposal that Pima County could take the lead in.

- F. Interested Parties:
(Identify any persons/entities that you know or believe will either support or oppose this proposal.)

Anyone accused of a DUI in Pima County; defense bar and prosecution; judges; families; Adult Probation

****Affected Statute attached with proposed eliminated section highlighted****

§ 28-1383. Aggravated driving or actual physical control while under the influence; county jail program; annual report; violation; classification; definitions

Currentness

A. A person is guilty of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs if the person does any of the following:

1. Commits a violation of § 28-1381, § 28-1382 or this section while the person's driver license or privilege to drive is suspended, canceled, revoked or refused or while a restriction is placed on the person's driver license or privilege to drive as a result of violating § 28-1381 or 28-1382 or under § 28-1385.
2. Within a period of eighty-four months commits a third or subsequent violation of § 28-1381, § 28-1382 or this section or is convicted of a violation of § 28-1381, § 28-1382 or this section and has previously been convicted of any combination of convictions of § 28-1381, § 28-1382 or this section or acts in another jurisdiction that if committed in this state would be a violation of § 28-1381, § 28-1382 or this section.
3. While a person under fifteen years of age is in the vehicle, commits a violation of either:
 - (a) Section 28-1381.
 - (b) Section 28-1382.
4. While the person is ordered by the court or required pursuant to § 28-3319 by the department to equip any motor vehicle the person operates with a certified ignition interlock device, commits a violation of § 28-1381, § 28-1382 or this section.
5. Commits a violation of § 28-1381, § 28-1382 or this section while driving the wrong way on a highway.

B. The dates of the commission of the offenses are the determining factor in applying the eighty-four month provision provided in subsection A, paragraph 2 of this section regardless of the sequence in which the offenses were committed. For the purposes of this section, a third or subsequent violation for which a conviction occurs does not include a conviction for an offense arising out of the same series of acts. The time that a probationer is found to be on absconder status or the time that a person is incarcerated in any state, federal, county or city jail or correctional facility is excluded when determining the eighty-four month period provided in subsection A, paragraph 2 and subsection E of this section.

C. The notice to a person of the suspension, cancellation, revocation or refusal of a driver license or privilege to drive is effective as provided in § 28-3318 or pursuant to the laws of the state issuing the license.

D. A person is not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until the person has served not less than four months in prison if the person is convicted under any of the following:

1. Subsection A, paragraph 1 of this section.
2. Subsection A, paragraph 2 of this section and within an eighty-four month period has been convicted of two prior violations of § 28-1381, § 28-1382 or this section, or any combination of those sections, or acts in another jurisdiction that if committed in this state would be a violation of § 28-1381, § 28-1382 or this section.
3. Subsection A, paragraph 5 of this section.

E. A person who is convicted under subsection A, paragraph 2 of this section and who within an eighty-four month period has been convicted of three or more prior violations of § 28-1381, § 28-1382 or this section, or any combination of those sections, or acts in another jurisdiction that if committed in this state would be a violation of § 28-1381, § 28-1382 or this section is not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until the person has served not less than eight months in prison.

F. A person who is convicted under subsection A, paragraph 3, subdivision (a) of this section shall serve at least the minimum term of incarceration required pursuant to § 28-1381.

G. A person who is convicted under subsection A, paragraph 3, subdivision (b) of this section shall serve at least the minimum term of incarceration required pursuant to § 28-1382.

H. A person who is convicted of a violation of this section shall attend and complete alcohol or other drug screening, education or treatment from an approved facility. If the person fails to comply with this subsection and is placed on probation, in addition to the provisions of § 13-901 the court may order that the person be incarcerated as a term of probation as follows:

1. For a person sentenced pursuant to subsection D of this section, for an individual period of not more than four months and a total period of not more than one year.

2. For a person sentenced pursuant to subsection E of this section, for an individual period of not more than eight months and a total period of not more than two years.

I. The time that a person spends in custody pursuant to subsection H of this section shall not be counted towards the sentence imposed if the person's probation is revoked and the person is sentenced to prison after revocation of probation.

J. On a conviction for a violation of this section, the court:

1. Shall report the conviction to the department. On receipt of the report, the department shall revoke the driving privilege of the person. The department shall not issue the person a new driver license within one year of the date of the conviction and, if the violation involved intoxicating liquor, shall require the person to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to § 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twenty-four months beginning on the date the person successfully completes the alcohol or other drug screening, education or treatment program requirements of this title and the person is otherwise eligible to reinstate the person's driver license or driving privilege. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.¹

2. In addition to any other penalty prescribed by law, shall order the person to pay an additional assessment of \$250. If the conviction occurred in the superior court or a justice court, the court shall transmit the monies received pursuant to this paragraph to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the monies received pursuant to this paragraph to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer. The state treasurer shall deposit the monies received in the driving under the influence abatement fund established by § 28-1304. Any fine imposed for a violation of this section and any assessments, restitution and incarceration costs shall be paid before the assessment prescribed in this paragraph.

3. Shall order the person to pay a fine of not less than \$750.

4. In addition to any other penalty prescribed by law, shall order the person to pay an additional assessment of \$1,500 to be deposited by the state treasurer in the prison construction and operations fund established by § 41-1651. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

5. In addition to any other penalty prescribed by law, shall order the person to pay an additional assessment of \$1,500 to be deposited by the state treasurer in the public safety equipment fund established by § 41-1723. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

K. On conviction for a violation of this section the defendant shall be required by the department to attend and successfully complete an approved traffic survival school course.

L. After completing the period of suspension required by § 28-1385, a person whose driving privilege is revoked for a violation of subsection A, paragraph 3 of this section may apply to the department for a special ignition interlock restricted driver license pursuant to § 28-1401.

M. The court may order a person who is convicted of a violation of this section that does not involve intoxicating liquor to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to § 28-3319. On receipt of the report of conviction and certified ignition interlock device requirement, the department shall require the person to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to § 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date the person successfully completes the alcohol or other drug screening, education or treatment program requirements of this title and the person is otherwise eligible to reinstate the person's driver license or driving privilege. The person who operates a motor vehicle with a certified ignition interlock device under this subsection shall comply with article 5 of this chapter.

N. The sheriff of a county with a population of less than five hundred thousand persons may establish an aggravated driving under the influence jail program. If the sheriff establishes an aggravated driving under the influence jail program, the program may not be implemented until the state department of corrections enters into an agreement with the county board of supervisors pursuant to § 31-234 to facilitate the program. Notwithstanding subsections D and E of this section, if the violation occurs in a county that has established and implemented an aggravated driving under the influence jail program or in a county that is contiguous to a county that has established and implemented an aggravated driving under the influence jail program and the person is placed on probation, the mandatory term of incarceration that the person would otherwise serve in prison may be served in the jail of the county that established and implemented the program. A person who is incarcerated in a county jail pursuant to this subsection is not eligible for any release, work detail or monitoring program that the person would not otherwise be eligible for if incarcerated in prison. A county sheriff who establishes an aggravated driving under the influence jail program pursuant to this subsection shall submit an annual report to the Arizona criminal justice commission that contains the data that the Arizona statistical analysis center determines is necessary to prepare a recidivism report pursuant to § 41-2405.

O. Aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs committed under:

1. Subsection A, paragraph 1, 2, 4 or 5 of this section is a class 4 felony.
2. Subsection A, paragraph 3 of this section is a class 6 felony.

P. For the purposes of this section:

1. "Suspension, cancellation, revocation or refusal" means any suspension, cancellation, revocation or refusal.

2. "Wrong way" means vehicular movement that is in a direction opposing the legal flow of traffic. Wrong way does not include median crossing or a collision where a motor vehicle comes to a stop facing the wrong way.

Ariz. Rev. Stat. Ann. § 28-1383



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

Federal
 State

Date: 9/14/2020

Department/Office: Pima County Public Defense Services

Name, Title and Telephone Number of Contact Person:

Dean Brault, Public Defense Services, 724-6967

Joel Feinman, Pima County Public Defender, 724-6930

Nathan Wade, Assistant Public Defender, 724-6811

Subject or Title of Proposal: Earned Release Credit Bill

Proposal Description:

A. Background Information:

Currently, a person sentenced to DOCRR must serve 85% of their sentence before being released to community supervision for the remaining 15%. There is no requirement that DOCRR provide treatment, job training or education to inmates, and inmates have no incentive to participate. There is an exception for marijuana and drug possession cases that allows for a significantly greater early release for persons in prison solely for those charges.

B. Legislative Proposal:

(Describe the proposal and what it would accomplish.)

The Earned Release Bill we are asking Pima County to Support will be similar to HB2808 (2020), which drastically reduced the mandatory minimum for persons convicted of nondangerous offenses, provided that the incarcerated person participate in specific treatment and education programs. AFSC-AZ and state representatives are working on drafts now that can be provided upon completion.

Proposal is to allow Pima County to advocate for any Earned Release Credit bill that is introduced in the legislature rather than write a separate bill that might cause multiple ERC bills to be introduced and confuse legislators. In other words, Pima County adopt a policy that supports any legislation that allows for Earned Release Credits.

- C. Statutes/Regulations Affected or Proposed Language:
(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

This would amend ARS 41-1604.07 to reflect the new release policies.

- D. Fiscal Impact:
(Describe any direct or indirect impact on Pima County expenditures or revenues.)

Fiscally, money will need to be appropriated for treatment programs, which should not be difficult given the \$1 billion plus budget of the DOCRR

- E. Proposal History:
(Describe any previous efforts by any person/entity to pursue this proposal.)

Versions of this bill have passed through committee multiple sessions, and have passed through the House.

- F. Interested Parties:
(Identify any persons/entities that you know or believe will either support or oppose this proposal.)

All interested parties in the criminal justice system.

Victim organizations will likely launch the most opposition, but there is a strong argument that policies such as this actually create safer communities.



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

Federal
 State

Date: 8/31/20

Department/Office: Pima County Public Defender

Name, Title and Telephone Number of Contact Person:

Dean Brault, Public Defense Services, 724-6967

Joel Feinman, Public Defender, 724-6930

Nathan Wade, Assistant Public Defender, 7246811

Subject or Title of Proposal: Automatic Restoration of Civil Rights for all Felons Upon Discharge

Proposal Description:

A. Background Information:

(Describe the issue or problem in need of legislative attention. Attach all existing documents relating to the issue.)

Currently, ARS 13-907 provides for automatic restoration of any civil rights lost as a result of their first felony as long as restitution has been paid. (This does not include the right to possess a firearm).

Subsequent felony convictions require that a person petition the court to have their civil rights restored pursuant to and are at the mercy of the Court as to whether they can have their rights restored.

These rights are:

1. The right to vote.
2. The right to serve on a jury.
3. The right to fun for certain public offices of trust.

B. Legislative Proposal:

(Describe the proposal and what it would accomplish.)

This bill would eliminate ARS 13-908 and reword ARS 13-907 to apply to restoration of civil rights upon final discharge of any felony. (See attached)

C. Statutes/Regulations Affected or Proposed Language:
(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

D. Fiscal Impact:
(Describe any direct or indirect impact on Pima County expenditures or revenues.)

There should be no fiscal impact.

E. Proposal History:
(Describe any previous efforts by any person/entity to pursue this proposal.)

This is the first time a bill like this would be considered.

F. Interested Parties:
(Identify any persons/entities that you know or believe will either support or oppose this proposal.)

Defendants, victims, County Attorneys, Public Defense/Criminal Defense Attorneys

This is generally a widely accepted concept. Last year the Pima County Attorney supported restoration of voting rights, but not the right to serve on juries or run for office. The broader definition is expected to be supported by the new administration.

Technically, these civil rights do not involve anything that affects victims or supports interactions with victims, so while an interested party, there is no expected repercussion.

§ 13-907. Automatic restoration of civil rights for first offenders; exception; definition

Currentness

- A. Upon final discharge any person convicted of a felony shall automatically be restored any civil rights that were lost or suspended as a result of the conviction if the person pays any victim restitution imposed.
- B. A person who is entitled to the restoration of any civil rights pursuant to this section is not required to file an application pursuant to [§ 13-908](#).
- C. This section does not apply to a person's right to possess a firearm as defined in [§ 13-3101](#). The court may order the restoration of the right to possess a firearm pursuant to [§ 13-910](#).
- D. For the purposes of this section, "final discharge" means the completion of probation or the receipt of an absolute discharge from the state department of corrections or the United States bureau of prisons.

§ 13-906. Restoration of civil rights; process

Currentness

- A. At the time of sentencing, the court shall inform a person in writing of the person's right to the restoration of civil rights.
- B. The clerk of the court shall notify the department of public safety if the court restores the person's civil rights, including whether a person's right to possess a firearm is restored. The department of public safety shall update the person's criminal history with an annotation that the person's civil rights have been restored and any exceptions ordered but may not redact or remove any part of the person's record.**
- C. The restoration of a person's civil rights does not preclude the department of public safety or the board of fingerprinting from considering a conviction of a person whose civil rights have been restored when evaluating an application for a fingerprint clearance card pursuant to [§ 41-1758.03](#) or [41-1758.07](#).
- ~~D. If the court denies an application for the restoration of a person's civil rights, the court shall state its reasons for the denial in writing.~~
- ~~E. If the restoration of a person's civil rights is discretionary with the court, a victim has the right to be present and be heard at any proceeding in which the defendant files an application for the restoration of civil rights. If the victim has made a request for postconviction notice, the attorney for the state shall provide the victim with notice of the defendant's discharge and restoration of rights.~~

~~§ 13-908. Restoration of civil rights; application; definition~~

Currentness

~~A. On final discharge, a person who has previously been convicted of a felony or who has not paid any victim restitution that was imposed may apply to the superior court to have the person's civil rights restored. A person who has received an absolute discharge from imprisonment may file an application for restoration of civil rights no sooner than two years from the date of the person's absolute discharge. The restoration of civil rights is in the discretion of the judicial officer.~~

~~B. The person or the person's attorney or probation officer may file the application for the restoration of civil rights. The clerk of the court may not charge a filing fee for an application. The clerk of the court shall forward a copy of the application to the county attorney.~~

~~C. A person whose civil rights were lost or suspended as a result of a felony conviction in a United States district court and whose period of probation has been completed may file the application for restoration of civil rights in the county in which the person now resides. The person shall file an affidavit of discharge from the judicial officer who discharged the person at the end of the term of probation.~~

~~D. A person who has received an absolute discharge from imprisonment and who files an application for the restoration of civil rights shall file with the application a certificate of absolute discharge from the director of the state department of corrections.~~

~~E. A person whose civil rights were lost or suspended as a result of a felony conviction in a United States district court and who has received an absolute discharge from imprisonment in a federal prison shall file the application for the restoration of civil rights in the county in which the person now resides. The person shall file with the application a certificate of absolute discharge from the director of the federal bureau of prisons, unless it is shown to be impossible to obtain a certificate.~~

~~F. If the court grants the application, the court shall restore the person's civil rights.~~

~~G. This section does not apply to a person's right to possess a firearm as defined in § 13-3101. The court may order the restoration of the right to possess a firearm pursuant to § 13-910.~~

~~H. For the purposes of this section, "final discharge" means the completion of probation or the receipt of an absolute discharge from the state department of corrections or the United States bureau of prisons.~~



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

Federal
 State

Date: 9/14/2020

Department/Office: Pima County Public Defense Services

Name, Title and Telephone Number of Contact Person:
Dean Brault, Public Defense Services, 724-6967

Subject or Title of Proposal: Add Defense Bar to AZ Criminal Justice Commission

Proposal Description:

- A. Background Information:
(Describe the issue or problem in need of legislative attention. Attach all existing documents relating to the issue.)

The Arizona Criminal Justice Commission, which is considered the neutral arbiter and decision maker for the State of Arizona, and is often relied on by the legislature to deliver numbers and statistics as well as handles distribution of funds, is currently made up of County Attorneys (and led by one), Department of Public Safety and Law Enforcement officers, judges, court administrators and probation executives.

There are no Public Defense representatives at all, or members of the defense bar at all. The Executive Director's biography on the website cites his work on behalf of law enforcement and victim's services. This is not acceptable for what is supposed to be a comprehensive body that oversees criminal justice in Arizona and advises the legislature on criminal justice statistics and policy.

In 2020, ACJC had to form a task force to determine definitions such as violent/dangerous and to define recidivism. Only one public defense representative was invited to participate. This leads to definitions and statistics skewed towards prosecution and incarceration rather than balanced definitions and policies.

- B. Legislative Proposal:
(Describe the proposal and what it would accomplish.)

This bill would expand the ACJC to balance and equal number of County Attorney Representatives and Public Defense/Criminal Defense Representatives.

- C. Statutes/Regulations Affected or Proposed Language:
(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

This would alter the language of A.R.S. 41-2404(B) which provides that of the gubernatorial appointments, a police chief, one county attorney and one county sheriff from each county, and that the remainder would include “one law enforcement leader, one former judge, one mayor, one member of a county board of supervisors and one chief probation officer.” This would be altered to require a police chief, one county attorney, *one public defender*, and one county sheriff.

- D. Fiscal Impact:
(Describe any direct or indirect impact on Pima County expenditures or revenues.)

There should be no fiscal impact.

- E. Proposal History:
(Describe any previous efforts by any person/entity to pursue this proposal.)

This bill has been floated twice in the last 3 years and not given a hearing, largely due to opposition from County Attorney lobbyists.

- F. Interested Parties:
(Identify any persons/entities that you know or believe will either support or oppose this proposal.)

All state agencies that deal with criminal justice and all criminal attorneys-prosecution and defense. Legislators who want to ensure that there is balanced representation in the drafting of reports and interpretation of data, as well as the distribution of funds.



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

___ Federal
___ State

Date: 9/14/20

Department/Office: Pima County Public Defense Services

Name, Title and Telephone Number of Contact Person:

Dean Brault, Public Defense Services, 724-6967

Joel Feinman, Public Defender, 724-6930

Nathan Wade, 724-6811

Subject or Title of Proposal: Elimination of ability to use "Hannah Priors" to enhance charging/sentencing

Proposal Description:

A. Background Information:

(Describe the issue or problem in need of legislative attention. Attach all existing documents relating to the issue.)

Currently, A.R.S. 13-703(A), under the Repetitive Offenders Statute allows for the following:

1. If a person is convicted of multiple felony offenses that were not committed on the same occasion but are either consolidated for trial or are not historical prior felonies shall be sentenced as a first time offender for the first offense, with each subsequent offense raising the category level for sentencing ranges.

This has the effect of eliminating the eligibility for probation after the first offense, even if the person has never been arrested at all, much less convicted of a crime.

Examples of where this can come into play in a negative way:

1. Addicts who sell to an undercover agent to support their own habit are purposefully not arrested the first time, but rather the agent arranges multiple sales in order to enhance the number of counts and take away the possibility of probation.
2. Moving simple shoplifting cases to aggravated shoplifting by not arresting persons when they are still in misdemeanor territory and waiting for the person to engage enough times to not only move the person into a felony situation and possibly prison-only.

The effect of these is that it eliminates any and all possibilities of non-incarceration intervention, such as drug treatment or mental health diagnosis and care before the person has ever had an opportunity for such interventions.

Currently, absolute power is then placed in the hands of prosecutors who are the sole determiners of whether or not a person in this situation is deserving of a non-prison alternative, and this absolute power limits the discretion of judges and the courts to determine the best resolution to a case. This power of one single agency to make this determination can lead to an imbalance to who is charged in this manner, how pleas or probation are offered and doled out, and can lead to largely inconsistent sentencing.

Additionally, if this section of the repetitive offender statute is eliminated, law enforcement would be encouraged to make arrests on a first offense when possible, eliminating time and cost of creating multiple offenses which serve no purpose but to eliminate options within the criminal justice system.

B. Legislative Proposal:

Eliminate the “multiple offenses not committed on the same occasion but that are either consolidated for trial or are not historical prior convictions” from statute.

Doing so would allow more parties than just the County Attorney into the decision making process as to the best outcome for a person in these situations, particularly allowing for evaluation for eligibility by Adult Probation prior to sentencing. Courts will still have the option to sentence a person to prison instead of probation, but a more detailed and situational analysis, including motivation, addiction and mental health issues, will carry proper weight in determining the appropriate outcome.

Additionally, this would allow more intervention services to be offered on a person’s first arrest before one agency is determining whether a person goes straight to prison on their first arrest. Obviously, this statute does not include violent crimes or crimes against children, of which consequences are handled in separate statutes.

C. Statutes/Regulations Affected or Proposed Language:

(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

Amend A.R.S. 13-703 by eliminating Section A.

D. Fiscal Impact:

(Describe any direct or indirect impact on Pima County expenditures or revenues.)

Reduce the number of offenders going to county jail and department of corrections on their first offense. Allow more opportunity for less expensive intervention programs.

E. Proposal History:

(Describe any previous efforts by any person/entity to pursue this proposal.)

This Bill passed the legislature with only 3 “no” votes in the 2018-2019 session but was vetoed by the governor after he received misinformation on its effect. Basically, it allows the judge to look at the offenses and gives them more discretion to determine the right punishment. Additionally, it prevents “stacking” offenses to get people to take unfavorable pleas. Both the State and the Defense are allowed to plead for the appropriate outcome and the judge is the arbiter of the final sentence within the available, non-stacked ranges. This is not the information that the governor was told.

Because of the abrupt shutdown of all non-budget and COVID-related legislation, this bill was not heard in 2019-2020 session.

It should be noted that the language in this bill is also in the Second Chances initiative, which would make this moot should Second Chances pass in November

F. Interested Parties:

(Identify any persons/entities that you know or believe will either support or oppose this proposal.)

A large coalition of parties, both right and left leaning, supported this bill, and there is strong momentum to get this bill passed this year. The original bill sponsors want to see this pass. It has widespread support.

Incoming Pima County Attorney Laura Conover strongly and publicly supported the Second Chances initiative, so it is expected that the Pima County Attorney’s office will support this bill in the 2021 Legislative Session.

Bill version that passed the legislature and was vetoed by the governor attached

13-703. Repetitive offenders; sentencing

A. If a person is convicted of multiple felony offenses that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions, the person shall be sentenced as a first time felony offender pursuant to section 13-702 for the first offense, as a category one repetitive offender for the second offense, and as a category two repetitive offender for the third and subsequent offenses.

B. Except as provided in section 13-704 or 13-705, a person shall be sentenced as a category two repetitive offender if the person is at least eighteen years of age or has been tried as an adult and stands convicted of a felony, and has one historical prior felony conviction AND, UNLESS THE PERSON WAS ON RELEASE FOR A FELONY OFFENSE, THE HISTORICAL PRIOR FELONY CONVICTION OCCURRED BEFORE THE DATE ON WHICH THE PRESENT OFFENSE WAS COMMITTED.

C. Except as provided in section 13-704 or 13-705, a person shall be sentenced as a category three repetitive offender if the person is at least eighteen years of age or has been tried as an adult and stands convicted of a felony, and has two or more historical prior felony convictions AND, UNLESS THE PERSON WAS ON RELEASE FOR A FELONY OFFENSE, THE HISTORICAL PRIOR FELONY CONVICTIONS OCCURRED BEFORE THE DATE ON WHICH THE PRESENT OFFENSE WAS COMMITTED.

D. The presumptive term set by this section may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E.

E. If a person is sentenced as a category one repetitive offender pursuant to subsection A of this section and if at least two aggravating circumstances listed in section 13-701, subsection D apply or at least two mitigating circumstances listed in section 13-701, subsection E apply, the court may impose a mitigated or aggravated sentence pursuant to subsection H of this section.

F. If a person is sentenced as a category two repetitive offender pursuant to subsection A or B of this section and if at least two aggravating circumstances listed in section 13-701, subsection D apply or at least two mitigating circumstances listed in section 13-701, subsection E apply, the court may impose a mitigated or aggravated sentence pursuant to subsection I of this section.

G. If a person is sentenced as a category three repetitive offender pursuant to subsection C of this section and at least two aggravating circumstances listed in section 13-701, subsection D or at least two mitigating circumstances listed in section 13-701, subsection E apply, the court may impose a mitigated or aggravated sentence pursuant to subsection J of this section.

ATTACHMENT 4



MEMORANDUM

Public Works Administration

DATE: October 19, 2020

TO: C.H. Huckelberry
County Administrator

FROM: 
Carmine DeBonis, Jr.
Deputy County Administrator

RE: REVISED-Pima County Public Works 2021 Legislative Proposals–55th Arizona Legislature

This revision includes the submission of the Regional Flood Control District.

We ask that our lobbyists “monitor and advise” on any efforts potentially affecting the County for:

- **Sustainability & Conservation**

- Amendments to ARS § 41-841, et seq. – The Arizona Antiquities Act - any proposed amendments
- Amendments to ARS § 41-861, et seq. – The Arizona State Historic Preservation Act – any amendments
- Arizona’s Assumption of the Clean Water Act § 404
- Waters of the State – any legislative proposals affecting or defining waters of the state and water quality standards for such water bodies.
- Arizona Environmental Water Resource Needs
 - HB 2581 (Ecological water; program; fund) was introduced during the 2018 2nd Regular session and failed to get a committee hearing. Legislation would establish requirements for the Arizona Department of Water Resources to report on the status and health of Arizona ecological water.
 - Support appropriation of unappropriated water for ecological purposes.
- Arizona State Land Department (ASLD) Grazing Leases
 - Support Access to ASLD grazing leases by leaseholders to conduct non-ground disturbing natural and cultural resource studies and inventories in order to better manage the leased lands.
 - Oppose legislation or rulemaking limiting the ability of ASLD grazing leaseholders to conduct these studies and inventories.

- **Transportation**

- Transportation Funding – Continue to support any approach to increase revenue for transportation.

▪ **Regional Flood Control District**

- Regulatory Bill of Rights – Issues related to statutory requirements that set conditions and limitations on the issuance of permits, licenses and regulations that limit our ability to effectively regulate and permit activities.
- Special Taxing Districts – Issues related to our ability to set tax rates or use of revenues generated by special taxing districts.
- Flood Control Districts – Issues related to limiting the District’s ability to regulate, permit or enforce development within floodplains, erosion hazards or riparian habitat.
- Aggregate Mining – Issues related to aggregate mining activities and impacts on flood control district jurisdiction and authority to regulate related activities
- Water Quality Standards: Ephemeral & Effluent-Dependent Streams – Continue efforts toward the adoption of state water quality standards that are appropriate for ephemeral and effluent-dependent streams and that do not discourage the use of effluent as a renewable resource.
- Environmental Permits – Issues related to the timing, cost, fees and requirements of environmental permits including Arizona Pollutant Discharge Elimination System (AZPPDES) Permits, Aquifer Protection Program (APP) Permits, Reuse Permits and Air Quality/Greenhouse Gas Permits.
- Stormwater Regulation – Issues related to a green infrastructure or BMPs to minimize stormwater runoff or allow runoff to be treated by soils to reduce pollutant loads to receiving waters, i.e., retention basins, detention basins, green management zones (trees, e.g.) and pervious pavement.
- Water Resources
 - Issues related to reuse, recharge, credits, ownership rights, flood control diversion and assured water supply.
 - Issues that impact the ability to capture stormwater from non-point sources, i.e. green infrastructure laws for mandatory use of pervious pavement in road projects that may reduce the amount of stormwater captured at a single point for recharge/treatment/credits.
- ADEQ Primacy of Clean Water Act, Section 404 Permitting Program – Issues related to ADEQ’s authorization and implementation of delegated dredge and fill permitting under Section 404 of the Clean Water Act and authorized pursuant to Laws 2018, Chapter 170 (Senate Bill 1493).

Regional Wastewater Reclamation

- Water-related legislation (ARS Title 45 and Title 49):
 - Changes to the three-county Central Arizona Water Conservation District and impacts to service and representation;
 - Changes to the Central Arizona Groundwater Replenishment District;
 - Water Quality Standards: Aquifer Water Quality standards; Reclaimed Water Quality Standards; Standards for Ephemeral & Effluent-Dependent Streams;
 - Underground Storage Permits and Recovery Wells;
 - Environmental permits: Aquifer Protection Permits, AZPDES permits, Recycled Water Permits, any new program to regulate state waters that are not Water of the United States;
 - Utilization of Effluent and Reclaimed Water
 - Rules and Regulations on Per- and polyfluoroalkyl substances (PFAS) and other contaminants of Emerging Concern
- Professional Engineers – Liability
- Environmental Management Systems; Capacity, Management, Operations and Maintenance (CMOM); Asset Management Systems
- Regulation of Wastewater Treatment Facility Operators and/or Inspectors
- Blue Stake/House Connection Service (HCS)
- Critical Infrastructure
- Stormwater Treatment Costs & Point Source Compliance Pollution Limits
- Stormwater Resource Legislation
- Water Resources

New or amended legislation is proposed in the best interest of the County for:

- **Regional Wastewater Reclamation** (see Attachment)
 - Amending ARS §11-264 to allow County to file property lien for non-payment of sewage system user fees if payment is delinquent for more than 90 days.
 - Amending ARS §34-605(G) to extend or repeal the Statutory Deadline Respecting Authority to procure Construction-Manager-at-Risk, Design-Build and Job-Order-Contracting for horizontal construction.

Let me know if additional information is needed.

Attachment

c: Yves Khawam, PhD, Assistant County Administrator
Directors, Public Works Departments
Managers, Public Works Administration

ATTACHMENT



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

 Federal
 X State

Date: **September 1, 2020**

Department/Office:
Regional Wastewater Reclamation Department/Director

Name, Title and Telephone Number of Contact Person:
Jackson Jenkins, Director, 724-6549

Subject or Title of Proposal:
Allowing County to File Property Lien for Non-payment of Sewage System User Fees if Delinquent for More Than Ninety Days – Amending A.R.S. § 11-264

Proposal Description:

- A. Background Information:
TBD

- B. Legislative Proposal:
Amend A.R.S. § 11-264 allowing county to file a lien on property for non-payment of sewage system user fees for services provided to the property if payment is delinquent for more than 90 days.

- C. Statutes/Regulations Affected or Proposed Language:
A.R.S. § 11-264, See Exhibit

- D. Fiscal Impact:
TBD

- E. Proposal History:
None

- F. Interested Parties:
TBD

EXHIBIT – Allowing County to File Property Lien for Non-payment of Sewage System User Fees if Fees are Delinquent More than 90 Days – Amending A.R.S. § 11-264 11-264. Authority to operate a sewage system; liens; sewage system user fees

A. Any county with a population between one million and two million persons may purchase, construct or operate a sewage system, including the collection, transportation, pumping, treatment and disposal of sewage, and charge fees and levy taxes therefor, if the county secures the assent by resolution of the governing bodies of those incorporated cities and towns representing not less than one-half of the population of the county before purchase, construction or operation of a sewage system. Once an initial assent is given no further assent is necessary to operate or improve the system.

B. The provisions of this section are declaratory of existing law and shall not affect the validity of the authorization or issuance of any bonds by a county for sewage purposes.

C. A county may file a lien on property for the nonpayment of sewage system user fees for services provided to the property if the payment of the fees is delinquent for more than ninety days.

D. Before filing the lien, the county shall provide written notice to the owner of the property. The notice shall be given at least thirty days before filing the lien and shall include an opportunity for a hearing with a designated county official. The notice shall be either personally served or mailed to the property owner, at the last known address by certified mail, or to the address to which the tax bill for the property was last mailed. If the owner does not reside on the property, the notice shall be sent to the last known address.

E. The unpaid sewage system user fees, from the date of recording in the office of the county recorder in the county in which the property is located, are a lien on the property until the fees are paid. The lien is subject and inferior to the lien for general taxes and to all prior recorded mortgages and encumbrances of record. A sale of the property to satisfy a lien obtained under this section shall be made on judgment of foreclosure and order of sale. A county may bring an action to enforce the lien in the superior court in the county in which the property is located at any time after the recording, but failure to enforce the lien by this action does not affect its validity. The recorded unpaid sewage system user fees are prima facie evidence of the truth of all matters recited in the recording and of the regularity of all proceedings before the recording.

F. Unpaid sewage system user fees pursuant to this section accrue interest at the rate prescribed by section 44-1201.

G. A prior assessment of unpaid sewage system user fees for the purposes provided in this section does not bar a subsequent assessment for these purposes and any number of liens on the same lot or tract of land may be enforced in the same action.

H. A COUNTY MAY, BY ORDINANCE, PROVIDE THAT ANY DELINQUENT USER FEES TOGETHER WITH INTEREST AND PENALTIES THEREON MAY BE COLLECTED ON THE TAX ROLL IN THE SAME MANNER AS PROPERTY TAXES. BEFORE ANY ENTITY MAY COLLECT ANY DELINQUENT USER FEES ON THE TAX ROLL, THE COUNTY SHALL PREPARE A REPORT, PROVIDE NOTICE, CONDUCT A PUBLIC HEARING, AND FILE A CERTIFICATE IN THE OFFICE OF THE COUNTY RECORDER, AS FOLLOWS:

1. THE COUNTY SHALL PREPARE AND PUBLISH ON ITS WEBSITE A REPORT THAT DESCRIBES EACH AFFECTED PARCEL OF REAL PROPERTY AND THE AMOUNT OF THE DELINQUENT USER FEES FOR EACH AFFECTED PARCEL FOR THE YEAR. THE COUNTY SHALL GIVE NOTICE OF THE FILING OF THE REPORT AND OF THE TIME, DATE, AND PLACE FOR A PUBLIC HEARING BY PUBLISHING THE NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION, AND BY MAILING THE NOTICE TO THE OWNER OF EACH AFFECTED PARCEL AT LEAST 14 DAYS PRIOR TO THE DATE OF THE HEARING.

2. AT THE PUBLIC HEARING, THE BOARD OF SUPERVISORS SHALL HEAR AND CONSIDER ANY OBJECTIONS OR PROTESTS TO THE REPORT. AT THE CONCLUSION OF THE PUBLIC HEARING, THE BOARD OF SUPERVISORS MAY ADOPT OR REVISE THE DELINQUENT USER FEES, TOGETHER WITH INTEREST AND PENALTIES THEREON. THE BOARD OF SUPERVISORS SHALL MAKE ITS DETERMINATION ON EACH AFFECTED PARCEL AND ITS DETERMINATIONS SHALL BE FINAL.

3. ON OR BEFORE MARCH 1ST OF EACH YEAR, THE COUNTY SHALL FILE WITH THE COUNTY ASSESSOR A COPY OF THE FINAL REPORT ADOPTED BY THE BOARD OF SUPERVISORS. THE COUNTY AUDITOR SHALL ENTER THE AMOUNT OF THE DELINQUENT USER FEES, TOGETHER WITH INTEREST AND PENALTIES THEREON AGAINST EACH OF THE AFFECTED PARCELS OF REAL PROPERTY AS THEY APPEAR ON THE CURRENT ASSESSMENT ROLL. THE COUNTY TREASURER SHALL INCLUDE THE AMOUNT OF THE DELINQUENT USER FEES, TOGETHER WITH INTEREST AND PENALTIES THEREON ON THE TAX BILLS FOR EACH AFFECTED PARCEL OF REAL PROPERTY AND COLLECT THE DELINQUENT USER FEES, TOGETHER WITH INTEREST AND PENALTIES THEREON IN THE SAME MANNER AS PROPERTY TAXES.

HI. ~~Subsection~~ SUBSECTIONS C AND H of this section does not apply to residential property occupied by a lessee where the lessee is responsible for payment of the sewage system user fees. The county shall determine the status of leased residential property before filing the lien.



**PIMA COUNTY
LEGISLATIVE PROPOSAL FORM**

 Federal
 X State

Date: September 1, 2020

Department/Office:
Regional Wastewater Reclamation Department/Director

Name, Title and Telephone Number of Contact Person:
Jackson Jenkins, Director, 724-6549

Subject or Title of Proposal:
Extending or Repealing the Statutory Deadline Respecting Authority to Procure Construction-Manager-at-Risk, Design-Build and Job-Order-Contracting for Horizontal Construction – Amending A.R.S. § 34-605(G)

Proposal Description:

- A. Background Information:
(Describe the issue or problem in need of legislative attention. Attach all existing documents relating to the issue.)

TBD

- B. Legislative Proposal:
(Describe the proposal and what it would accomplish.)

Amend A.R.S. § 34-605(G) extending or repealing the statutory deadline respecting authority to procure Construction-Manager-at-Risk, Design-Build and Job-Order-Contracting for horizontal construction

- C. Statutes/Regulations Affected or Proposed Language:
(Identify any state or federal statutes or regulations to be amended or repealed or attach proposed new language.)

See, EXHIBIT #1 and EXHIBIT #2 – Extending or Repealing the Statutory Deadline Respecting Authority to Procure Construction-Manager-at-Risk, Design-Build and Job-Order-Contracting for Horizontal Construction – Amending A.R.S. § 34-605(G)

- D. Fiscal Impact:
(Describe any direct or indirect impact on Pima County expenditures or revenues.)

TBD

- E. Proposal History:
(Describe any previous efforts by any person/entity to pursue this proposal.)

None

- F. Interested Parties:
(Identify any persons/entities that you know or believe will either support or oppose this proposal.)

Jurisdictions using the Alternative Delivery Methods for construction activities.

EXHIBIT #1 – Extending or Repealing the Statutory Deadline Respecting Authority to Procure Construction-Manager-at-Risk, Design-Build and Job-Order-Contracting for Horizontal Construction – Amending A.R.S. § 34-605(G)

OPTION 1 – Extending Statutory Deadline

34-605. Requirements applicable to construction services and professional services and to contracts for construction services and professional services; definition

...

G. The following apply to horizontal construction:

1. Notwithstanding this chapter, an agent shall not procure any horizontal construction using the construction-manager-at-risk, design-build or job-order-contracting method of project delivery after ~~June 30, 2025~~ _____. For purposes of this paragraph, an agent procures horizontal construction when the contract for the construction services is executed by the agent and the contractor for the construction-manager-at-risk, design-build or job-order-contracting construction services. If a contract is executed for construction services on or before ~~June 30, 2025~~ _____, construction services under the contract may be rendered in whole or in part after ~~June 30, 2025~~ _____.

2. For each horizontal construction project under a design-build or construction-manager-at-risk construction services contract, the licensed contractor performing the contract shall perform, with the contractor's own organization, construction work that amounts to not less than forty-five percent of the total contract price for the construction, except that for light rail the self-performance percentage shall be not less than thirty percent.

3. A project is horizontal construction if more than one-half of the total contract price for the construction is for horizontal construction. Project elements shall not be artificially added in order to make a project not horizontal construction and shall not be artificially deleted in order to make a project horizontal construction.

4. The total contract price for the construction does not include the cost of preconstruction services, design services or any other related services or the cost to procure any right-of-way or other cost of condemnation.

...

EXHIBIT #2 – Extending or Repealing the Statutory Deadline Relating to Authority to Use Construction-Manager-at-Risk, Design-Build and Job-Order-Contracting for Horizontal Construction – Amending A.R.S. § 34-605(G)

OPTION 2 – Repealing Statutory Deadline

34-605. Requirements applicable to construction services and professional services and to contracts for construction services and professional services; definition

...

G. The following apply to horizontal construction:

1. ~~Notwithstanding this chapter, an agent shall not procure any horizontal construction using the construction-manager-at-risk, design-build or job-order contracting method of project delivery after June 30, 2025.~~ For purposes of this paragraph, an agent procures horizontal construction when the contract for the construction services is executed by the agent and the contractor for the construction-manager-at-risk, design-build or job-order-contracting construction services. **~~If a contract is executed for construction services on or before June 30, 2025, construction services under the contract may be rendered in whole or in part after June 30, 2025.~~**

2. For each horizontal construction project under a design-build or construction-manager-at-risk construction services contract, the licensed contractor performing the contract shall perform, with the contractor's own organization, construction work that amounts to not less than forty-five percent of the total contract price for the construction, except that for light rail the self-performance percentage shall be not less than thirty percent.

3. A project is horizontal construction if more than one-half of the total contract price for the construction is for horizontal construction. Project elements shall not be artificially added in order to make a project not horizontal construction and shall not be artificially deleted in order to make a project horizontal construction.

4. The total contract price for the construction does not include the cost of preconstruction services, design services or any other related services or the cost to procure any right-of-way or other cost of condemnation.

...

ATTACHMENT 5

Coalition Priorities

CSA will deliberate and develop policy statements and advocacy strategies regarding the following priority issues:

State Budget Considerations:

- **Eliminate ADJC Fee for the Arizona Department of Juvenile Corrections (ADJC) (*Unanimously Adopted*)**
 - CSA urges the Governor and Arizona State Legislature to permanently eliminate the county payments to the Arizona Department of Juvenile Corrections for all 15 counties.
- **Reauthorize Flexibility Language (*Unanimously Adopted*)**
 - Ensure the continued inclusion of “Flexibility Language” in the State Budget.
- **Resolution 2-20: Increase Investment in Broadband Infrastructure (*Unanimously Adopted*)**
 - CSA respectfully requests that the Governor and Arizona State Legislature:
 - Establish Smart Highway Corridors to create first mile and middle mile broadband infrastructure across Arizona, and
 - Increase ongoing state investment and leverage further federal funding for expanded access to quality, reliable, and affordable broadband in rural Arizona.
- **Resolution 3-20: Increase Investment in Transportation (*Unanimously Adopted*)**
 - CSA respectfully requests that the Governor and Arizona State Legislature:
 - Increase ongoing investment in the state and local transportation systems by way of an increase in the state gas tax, annually adjusted for inflation, to reflect current transportation funding needs, and
 - Establish tax parity between gasoline-powered vehicles and alternative-fuel vehicles by, for example, charging an additional registration fee on alternative-fuel vehicles, per the recommendation of the Task Force, and
 - Oppose the reduction or diversion of existing transportation revenues.

- **Resolution 4-20: Raise Awareness of County Nexus in ALTCS (*Unanimously Adopted*)**
 - CSA urges the Arizona State Legislature and Governor to consider the impact of policy changes that will drive costs in the ALTCS program on county budgets and the local county property taxpayer.

- **Resolution 5-20: Public Safety Pension Funding (*Unanimously Adopted*)**
 - Urge the PSPRS Board of Trustees to continue to work with employers in the system to finish phasing-in a debt repayment schedule that properly funds the system by balancing short-term costs with long-term benefits, and
 - Respectfully request the Arizona State Legislature and Governor exercise restraint in enacting policies that drive other county costs, and
 - *PENDING COUNTY SUBMITTED PROPOSALS: Request the Arizona State Legislature and Governor give counties a tool to enact a dedicated revenue stream to pay down a county's unfunded liability and reduce the total cost to the taxpayer.*

2020 County Submitted Legislative Proposals

#	Proposal	Discussion & Considerations	Proposal Status	Notes
1	Short-Term Vacation Rental Property Tax Parity: <ul style="list-style-type: none"> ▪ Create equity and uniformity in how short-term vacation rental properties are classified in relationship to traditional hotels and the transient lodging industry by partnering with AACo to introduce and support a bill similar to SB 1490. (Coconino & Yavapai Counties) 	Last year, CSA and AACo worked together along with the County Assessors to get bipartisan support for this issue.	Proposal Adopted	

#	Proposal	Discussion & Considerations	Proposal Status	Notes
2	<p>Short-Term Vacation Rental Regulation (Resolution):</p> <ul style="list-style-type: none"> Allow local governments to reasonably regulate short-term rentals through zoning codes. CSA urges the Governor and the Arizona State Legislature to adopt legislation allowing local communities to regulate STR's to mitigate the negative impacts on residential neighborhoods. <p>(Yavapai County)</p>	Resolution is a reflection of previously adopted CSA priorities.	Proposal Adopted	
3	<p>Rural Counties Transient Lodging Tax:</p> <ul style="list-style-type: none"> Enable counties, with a population of fewer than 500,000 persons, to levy a tax on transient lodging in unincorporated areas of the county for economic development and tourism. <p>(Santa Cruz & Yavapai Counties)</p>	No comments.	Proposal Adopted	
4	<p>Resources for Juvenile Dependency Representation:</p> <ul style="list-style-type: none"> Allocate additional funding to counties impacted by increased costs for providing mandated attorney services for indigent defendants in juvenile dependency matters. <p>(Mohave & Yavapai Counties)</p>	Qualifying criteria for indigency are determined by the courts. State action has caused an increase in these costs for several counties.	Proposal Adopted	
5	<p>Dangerous Incompetent and Not Restorable:</p> <ul style="list-style-type: none"> Establishes a civil commitment process to commit and hold dangerous individuals charged with crimes that cannot complete the criminal justice process because they have been found to be incompetent to stand trial and unable to be restored to competency to stand trial. <p>(Yavapai County)</p>	Steps should be taken to ensure this is a state funded process to ensure this does not become an unfunded mandate on counties.	Proposal Adopted	
6	<p>Write-In Candidates:</p> <ul style="list-style-type: none"> Require write-in candidates to maintain residency in the county, district, or precinct they are proposing to represent for at least 120 days prior to filing their nomination papers. (Pinal County) 	Question about whether this could be run next year or by AACo.	Proposal Adopted	

#	Proposal	Discussion & Considerations	Proposal Status	Notes
7	<p>PSPRS Excise Tax:</p> <ul style="list-style-type: none"> Allow counties (board approval) to levy up to 0.5 percent excise tax for payment of the county's unfunded liability in the Public Safety Personnel Retirement System (PSPRS) or Corrections Officer Retirement Plan (CORP). Allow counties to use excise tax revenues for direct repayment of PSPRS or CORP unfunded liability or to secure bond revenues to pay down PSPRS or CORP unfunded liability. (La Paz County) 	<p>La Paz is unique; they could levy this excise tax and eliminate their existing judgement tax and still have a net reduction in the county tax rate. Additionally, an excise tax would allow some of the cost of repayment to be borne by the tourist population, who demand significant public safety resources.</p> <p>Discussion on whether the tax should be voter approved or adopted by a super majority of the Board of Supervisors.</p>	Proposal Failed	Modification: Under 400,000 persons (simple majority board approval)
8	<p>Car Allowance (Withdrawn):</p> <ul style="list-style-type: none"> Authorize the use of a car allowance for members of a county board of supervisors in lieu of mileage reimbursement to simplify travel for district business. (Pinal County) 	No comments.	Withdrawn by sponsoring county.	
9	<p>Military Leave Pay:</p> <ul style="list-style-type: none"> Modify how statute defines "day" for military leave to eliminate discrepancies in total compensation due to the total number of hours worked during a shift. (Pinal County) 	Question about whether this could be delayed until next year.	Proposal Adopted	
10	<p>Court System Financial Responsibility:</p> <ul style="list-style-type: none"> Place the financial responsibility for the Court system on the State of Arizona, who directly mandates the Courts. (Santa Cruz County) 	Court funding is an important issue that needs to be examined more.	Withdrawn by sponsoring county.	Would like managers to have a conversation
11	<p>Agricultural Composting (Withdrawn):</p> <ul style="list-style-type: none"> Clarify the agricultural composting exemption in Arizona Revised Statutes to close a loophole being used to avoid local zoning and other requirements by digester facilities producing methane and other fuels. (Pinal County) 	No comments.	Withdrawn by sponsoring county.	
12	<p>Junk Vehicle Removal (Withdrawn):</p> <ul style="list-style-type: none"> Allow counties to address junk vehicles during abatement of dilapidated structures. (Yavapai County) 	No comments.	Withdrawn by sponsoring county.	

#	Proposal	Discussion & Considerations	Proposal Status	Notes
13	<p>Elected Improvement District Boards:</p> <ul style="list-style-type: none"> Authorize the county board of supervisors to create and empower an elected board of directors for a county recreation improvement district. <p>(Navajo County)</p>	<p>Navajo County would like to get support from all 15 counties but plans to do most of the advocacy work at the legislature on this issue.</p>	Proposal Adopted	
14	<p>Irrigation Non-Expansion Areas:</p> <ul style="list-style-type: none"> Authorize the Arizona Department of Water Resources Director to declare a subsequent irrigation non-expansion area prospectively. <p>(Mohave County)</p>	<p>Concern over giving this much authority to the appointed Director of ADWR. Clarification that the Director already has this authority, but that this proposal would allow local communities to request a subsequent INA based on prospective pumping.</p> <p>The proposed process has extensive public input prior to implementation.</p>	Proposal Adopted	
15	<p>Groundwater Basins:</p> <ul style="list-style-type: none"> Authorize a county board of supervisors outside of an active management area to designate groundwater basins or sub-basins as a rural management area if they meet established criteria. <p>(Mohave County)</p>	<p>Question on why this doesn't just use or modify existing AMA requirements. Clarification that AMAs are very restrictive on agricultural/new municipal uses and cedes some local authority on regulatory mechanisms. This proposal creates a locally crafted regulatory structure that works with local agriculture, municipal and industrial interests.</p> <p>Request to ensure any impacted tribes be involved in the process.</p>	Proposal Failed	<p>Amendment to address basins that straddle two counties</p> <p>Add language to include Native American Communities within the hearing and input process</p>