

## COMMITTEE ON LIMITED JURISDICTION COURTS

<b>Date of Meeting:</b>  April 29, 2015	<b>This agenda item is for:</b>  [ ] Formal Action/Request [X] Information Only [ ] Other	<b>Subject:</b>  The Hidden Cost of Pre-Trial Detention
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**Presenter(s):** Tom Manos, Maricopa County Manager  
Mary Ellen Sheppard, Maricopa County Assistant Manager

**Discussion:** In October of last year, *The Hidden Cost of Pre-Trial Detention* was presented at the Court Leadership Conference. At the recommendation of Patrick Scott, who attended the session, Mr. Manos and Ms. Sheppard have been invited to present the findings of Alexander M. Holsinger, Ph.D., Professor of Criminal Justice and Criminology, University of Missouri – Kansas City.

**Recommended Action or Request (if any):** None.



# Maricopa County

## Smart Justice

Rethinking Pretrial Business Practices  
*Improving Public Safety Outcomes in Maricopa County through Evidence-Based Decision-Making, Policies and Practices*

Court Presentation

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### Why important? Why now?

We know more about what works to improve public safety outcomes.

There is renewed cooperation and collaboration among stakeholders.

The present and projected criminal justice costs mandate review and potential reform.




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### Some Background...Who is in our Jails?

8,069	• Average Daily Population in the jails (2014)
76%	• Of those in jail are unsentenced inmates
9%	• Of inmates have a bond amount of \$1 to \$1,000
16.7%	• Of <i>all</i> inmates are women
20.8%	• Of <i>sentenced</i> inmates are women




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### Who is in our Jails, continued:

Average length of stay in the jails at release is 27.54 days

Unsented population average length of stay is 7.54 days

Sented population average length of stay is 22.39 days

The most common charges holding someone in our jails are related to substance use and probation violations

Seriously Mentally Ill (SMI) offenders represent 5.6% of jail bookings



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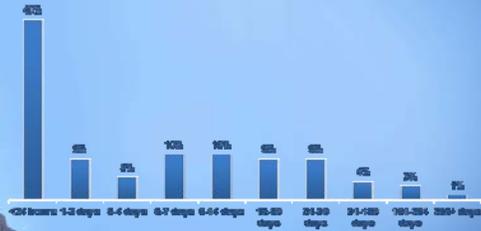
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### How long do they stay?

February 2015 Length of Stay (at release)



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### How often do they come back (recidivate)?

In December 2011, the Sheriff's Office introduced the **Risk Recidivism Score RRS (Proxy)**.

The Proxy is an easily administered, validated risk screening tool used to measure a person's likelihood to reoffend.

The Proxy does NOT incorporate severity of crime, and is NOT intended to replace other assessment tools.



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### Smart Justice Principles: Is there a better way?

Long term public safety is best achieved when:

- Low risk offenders remain connected to the supports that make them low risk (home, family, jobs, churches, etc.)
- Moderate to high risk offenders receive interventions which sufficiently address their criminogenic needs.

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## The Science Behind the Principles

Numerous research studies show that intense correctional interventions are MOST effective when delivered to higher risk offenders.

- Putting offenders who are low-risk to reoffend in the wrong program can actually **increase** recidivism.
- Putting offenders who are moderate to high-risk to reoffend in intense programs **reduces** recidivism.




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## More research...

Low-risk defendants held for 8-14 days are:

-  ...more likely to be arrested before trial
-  ...more likely to recidivate after sentence completion

When compared to those held less than 24 hours!

Researchers found that even a relatively short period in jail pretrial—*as few as two days*—correlates with negative outcomes for defendants and for public safety when compared to those defendants released within 24 hours.

Source: Christopher Lowenkamp, Mairie VanNostrand, and Alexander M. Holsinger. The Hidden Costs of Pretrial Detentions. (New York: The Laura and John Arnold Foundation, 2013)




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## Applying Smart Justice Principles

- Proxy used to establish a baseline risk screening on all offenders staying in the jail.
- Offender programs offered in the jail and in adult probation were evaluated for fidelity to evidence-based practices.
- Program participation was shifted from voluntary participation to a focus on higher risk offenders.
- Program content was revised to address key criminogenic needs: anti-social attitudes, behaviors, etc.
- Low-risk offenders evaluated for release and/or expedited case processing.
- More recently, Proxy scores used to help guide housing decisions within the jail.




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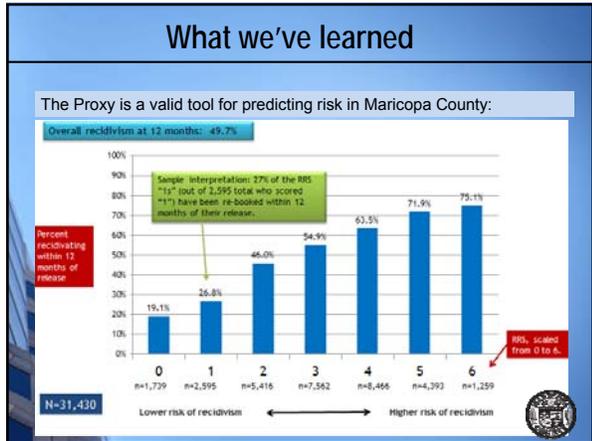
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### What we learned, continued...

Opportunities may exist to reduce either the length of stay for low risk offenders or reduce the use of the jail for the low-risk population in order to prevent increasing their risk for recidivism.

With the right intervention improved outcomes are achieved for higher risk offenders.

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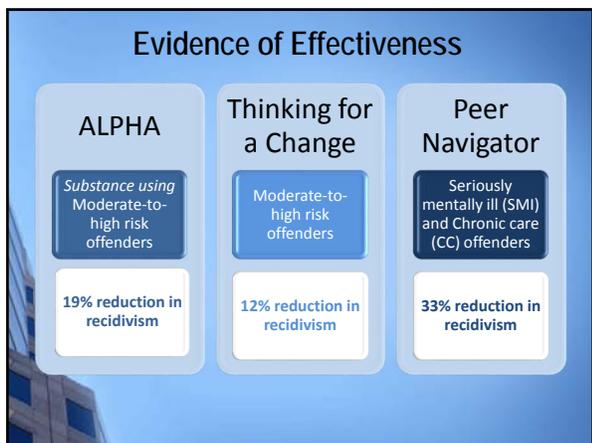
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## Next Steps

Expand evidence-based interventions to additional sub-populations in the jails and under community supervision.

- Target the SMI population for comprehensive “Smart Justice” interventions—reduce LOS and Recidivism.
- Target the female population for comprehensive “Smart Justice” interventions—reduce LOS and Recidivism.



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## Additional Considerations for the Criminal Justice System

Continue to evaluate the use of the jail for all risk categories to determine:

- Whether the use of the jail or intense correctional interventions are necessary for low risk;
- Whether interventions used for moderate to high risk offenders are reducing risk to reoffend.



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## Additional Considerations for the Criminal Justice System

Expand the Smart Justice focus from the jails to decision-making at the first point of contact with an offender.

Evaluate the use of costly criminal justice interventions for all risk levels to determine if less costly options exist which would achieve the same or better outcomes.



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### A Role for the Courts

Evaluate the use of interventions for low risk offenders, such that those which increase the risk of recidivism are minimized when possible.

Incentivize participation in programs and services which target criminogenic needs when sanctions are imposed for moderate to high risk offenders.



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### A Role for the Courts

When low bonds and fines are holding offenders in custody, consider the costs and benefits of the strategy, especially in the aggregate if such a practice may lead to the need for more jails.

Promote the sharing of data to allow the system to continue to evaluate its efficacy and advancement of public safety and justice system goals.



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### Questions?

### Comments



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## COMMITTEE ON LIMITED JURISDICTION COURTS

<b>Date of Meeting:</b>  <b>April 29, 2015</b>	<b>This agenda item is for:</b>  <input type="checkbox"/> Formal Action/Request  <input checked="" type="checkbox"/> Information Only  <input type="checkbox"/> Other	<b>Subject:</b>  <b>Defensive Driving School Eligibility Change HB 2308 A.R.S. 28-3392</b>
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**Presenter(s):** Jerry Landau, Government Affairs Director, AOC  
David Withey, Chief Counsel, AOC

**Discussion:** Effective after midnight July 2, 2015, the period of ineligibility to attend defensive driving school (DDS) of drivers cited for eligible traffic offenses changes from two years to one year from the date of a previous citation for which the driver attended DDS. This change is effective for all such offenses pending on July 3. Drivers determine their eligibility for DDS by contacting a certified school which checks a database that tracks when a driver last was cited and attended DDS. Until July 3, 2015 drivers who attended DDS for a citation issued from July 3, 2013 to July 3 2014 (the first year of the current two year period of ineligibility) will be informed they are ineligible to attend DDS for a new citation. Effective July 3, 2015 these drivers will be informed they are eligible for DDS (because their citation is not within the new one year period of ineligibility). Under current rules, schools will be able to grant a 30 day continuance of a scheduled court appearance beyond July 3 unless the request is made within the seven days prior to the appearance date. A court order is required within this period. Consequently, from approximately seven days prior to the July 3 effective date until citations issued prior to July 3 have reached disposition, drivers may come to court who do not know they are eligible to attend DDS or who know of their eligibility and request a continuance in order to attend DDS.

Schools and the AOC will post notice of this DDS eligibility change on web sites. Courts may also choose to take steps to inform drivers of this change in the law so drivers may determine their eligibility following the July 3 change in law if they have not done so. In exercising their discretion to grant continuances, in addition to the usual considerations, judges may consider the legislative intent to expand the opportunity to attend DDS and when the driver became aware of the change in the law.

**Recommended Action or Request (if any):**

None.

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

Section 1. Section 28-3392, Arizona Revised Statutes, is amended to read:

28-3392. Defensive driving school; eligibility

A. A court:

1. Shall allow an individual who is issued a citation for a civil traffic moving violation pursuant to chapter 3, articles 2, 3, 4 and 6 through 15 of this title or a local civil traffic ordinance relating to the same subject matter to attend a defensive driving school for the purposes provided in this article.

2. Except as prescribed in subsection C of this section, may allow an individual who is issued a citation for a violation of section 28-701.02 to attend a defensive driving school.

B. A person who attends a defensive driving school pursuant to this article is not eligible to attend a defensive driving school again within ~~twenty-four~~ TWELVE months from the day of the last violation for which the person was authorized by this article to attend a defensive driving school.

C. Notwithstanding subsection A of this section:

1. An individual who commits a civil or criminal traffic violation resulting in death or serious physical injury is not eligible to attend a defensive driving school, except that the court may order the individual to attend a defensive driving school in addition to another sentence imposed by the court on an adjudication or admission of the traffic violation.

2. If a commercial driver license holder or a driver of a commercial motor vehicle that requires a commercial driver license is found guilty or responsible for a moving violation, the court may require the violator to attend defensive driving school as an element of sentence, but may not dismiss the conviction or finding of responsibility and shall report the conviction or finding of responsibility to the department as prescribed in section 28-1559. A commercial driver license holder or a driver of a commercial motor vehicle that requires a commercial driver license is not eligible for the defensive driving diversion program.

APPROVED BY THE GOVERNOR APRIL 13, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 14, 2015.

## COMMITTEE ON LIMITED JURISDICTION COURTS

<b>Date of Meeting:</b>  <b>April 29, 2015</b>	<b>This agenda item is for:</b>  <input checked="" type="checkbox"/> Formal Action/Request  <input type="checkbox"/> Information Only  <input type="checkbox"/> Other	<b>Subject:</b>  <b>Rule Change Petition Reconsideration</b>
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**Presenter(s):** Judge Antonio Riojas, Chair

**Discussion:** During the presentation of the Rules Update on February 25<sup>th</sup>, members had comments and concerns (some serious) about a couple of Rule Petitions; however no motion was made regarding whether to support, oppose or comment. The LJC is asked to reconsider the following petitions for comment.

- R-15-0015 – Petition to Amend the Rules of Procedure for Eviction Actions, and
- R-15-0018 – Petition to Amend Rules 31, 34, 38, 39 and 42, Rules of the Supreme Court.

Additionally, Judge MaryAnne Majestic volunteered to draft a comment regarding R-15-0028, but there was no motion. It is not clear if the comment drafted regarding R-15-0017 by Judge Jeffery addresses the issues regarding the right of self-representation on appeal.

- R-15-0024 – Petition to Amend Rule 41, Rules of Criminal Procedure.

In order to address motions to comment efficiently, staff has made arrangements to submit comments via the Rules Forum’s Quick Reply during this meeting.

**Recommended Action or Request (if any):**

- Motion to submit quick reply in  support  opposition to R-15-0015
- Motion to submit quick reply in  support  opposition to R-15-0018
- Motion to submit quick reply in  support  opposition to R-15-0028
- Motion to submit quick reply in  support  opposition to R-15-0024

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**SUPREME COURT OF ARIZONA**

In the Matter of: ) Arizona Supreme Court  
) No. R-15-0018  
PETITION TO AMEND RULES 31, 34, )  
38, 39, and 42, Rules of the Supreme Court ) Comment in Opposition  
)  
)  
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The Presiding Judge of the Maricopa County Justice Courts undersigned requests this Court to decline the proposed amendment to Rule 31(d)(25) of the Rules of the Supreme Court. Adoption of the proposed amendment would prohibit a current, beneficial practice whereby Justice Court mediators prepare written mediation agreements, even though these mediators are neither members of the bar nor certified legal document preparers.

**I. Background: The Existing Mediation Program in Maricopa County Justice Courts.** There are twenty-six Justice Courts in Maricopa County. Many of these courts have mediation programs. Other courts see the success of those mediation programs and are contemplating implementation of their own programs.

The four Justice Courts at the Northeast Regional Court Center (NERC) in Phoenix (Desert Ridge, Dreamy Draw, McDowell Mountain, and Moon Valley), provide an example of a long-term, successful mediation program in the Arizona Justice Court system. These four co-located courts set all regular civil cases for mediation if the cases are not otherwise disposed of by default or by motions for summary judgment or judgment on the pleadings. Judges and court managers in those four courts believe that at least 50% of these cases are successfully mediated and settled. Some of these cases are resolved well in advance of the targets of the newly established case processing time standards.

The NERC Justice Courts utilize two different groups of mediators. Both groups consist of volunteers who receive no compensation or reimbursement of expenses for performing their services.

The first group, which has handled the courts' mediations for over ten years, is composed primarily of retired business professionals, some with a master's degree that includes coursework on Alternative Dispute Resolution. Before becoming a Justice Court mediator, these individuals must first complete a 40 hour mediation training program, which is most often provided by the Arizona Attorney General Mediation Training Program. Before being allowed to attend the Arizona Attorney General Mediation training, applicants must be fingerprinted and submit to a criminal background check.

Volunteers who wish to participate in the Maricopa County Justice Court Mediation Program must be fingerprinted again, submit to another criminal background check, and show that they have successfully completed the Arizona Attorney General Mediation Training Program. Successful volunteers are then annually approved by the Maricopa County Justice Courts' bench. To qualify for continuing participation in the program, these volunteers agree to do at least fifteen mediations and attend five hours of COJET training per year, including one hour of ethics training.

Because these volunteers have a strong commitment to the courts and to resolution of their assigned cases, it is not uncommon for these individuals to attend training sessions beyond the basic requirements. These mediators operate under the direct supervision of the judges, and they have many years' experience with mediation theory and practice, as well as an understanding of the courts' operating procedures.

The second group of mediators arises from an association of the four NERC Justice Courts with the Sandra Day O'Connor School of Law's Lodestar Mediation Clinic. This Clinic allows law students an opportunity to gain mediation experience under the supervision of law school faculty and the judges. Quoting from the Lodestar Mediation Clinic website, the students are subject to rigorous training:

The Lodestar Mediation Clinic, an integral component of the nationally recognized Lodestar Dispute Resolution Program, helps students learn

about alternatives to litigation while gaining practical experience about the mediation process. Student attorneys experience an intensive training program focusing on the theory, strategy and skills involved in the mediation of legal disputes, then act as mediators in civil (non-family) cases.

The Clinic has three mandatory training sessions that are typically scheduled prior to the start of semester, in addition to required class meetings. Students should expect to spend an average of 4-5 hours per week on out-of-class assignments in the last two-thirds of the semester. These assignments primarily are serving as a co-mediator in the Maricopa County Justice Courts, observing professional mediations, or participating in other dispute resolution programs on and off campus.

The Clinic is a 5 credit class and satisfies the graduation writing requirement, as the class assignments include a 25-page research paper.

<https://www.law.asu.edu/clinics/theclinicalprogram/lodestarmediationclinic.aspx>

In the event of an unsuccessful outcome in the mediation setting, the NERC Justice Courts ask their mediators to perform basic pre-trial management functions while the parties are at the courthouse, such as:

1. Setting firm trial dates, and providing a hard copy of a “Notice of Trial Date” to the parties;
2. Cooperatively establishing deadlines for discovery;
3. Providing basic trial procedure information to self-represented litigants, such as the order of the proceedings, how to prepare exhibits, the necessity for any witnesses to appear in person, and appeals information.

Even in “unsuccessful” mediation settings, Justice Court judges have found the litigants to be better prepared for trial because of the procedural information provided to them by the mediators. Equally important is that the mediation process provides the parties (particularly self-represented litigants) an opportunity to better define and understand those issues in dispute. As a result, the parties at trial are better organized and are able to use their time more effectively and efficiently. It is also not uncommon for self-represented litigants, who have come to understand the “real world” requirements of trial through the work of the Justice Court mediators, to revisit possibilities for settlement.

## **II. The Unnecessary Adverse Impact of the Proposed Rule Change.**

Undersigned recognizes there may be cogent reasons to strengthen the regulation of mediators operating outside an established court litigation calendar. The problem is that the proposed rule change would destroy the Justice Court mediation program. Few, and perhaps none, of the mediators in the existing Justice Court program are members of the bar or certified document preparers. The Justices of the Peace at NERC do not believe that any of their mediators will obtain those additional qualifications in order to continue to participate in the mediation program.

**III. Conclusion.** The language of Rule 31(d)(25) should assure continuation of the current practice, in which a Justice Court mediator may help prepare a written

mediation agreement, without imposition of the additional requirement that the mediator be a member of the bar or a certified document preparer.

RESPECTFULLY SUBMITTED this \_\_ day of April, 2015.

By \_\_\_\_\_  
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