



A Report
to the
Board of
Supervisors

Maricopa County
Internal Audit
Department

Ross L. Tate
County Auditor

Superior Court

*Indigent Defense Screening
Needs Improvement*

January ■ 2008

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The mission of Maricopa County is to provide regional leadership and fiscally responsible, necessary public services so that residents can enjoy living in a healthy and safe community.

The mission of the Internal Audit Department is to provide objective, accurate, and meaningful information about County operations so the Board of Supervisors can make informed decisions to better serve County citizens.

The County Auditor reports directly to the Maricopa County Board of Supervisors, with an advisory reporting relationship to the Citizen's Audit Advisory Committee.

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January 11, 2008

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We have completed our Fiscal Year (FY) 2007-2008 review of the Superior Court. This audit was performed in accordance with the annual audit plan approved by the Board of Supervisors. The specific areas reviewed were selected through a formal risk assessment process.

Highlights of this report include:

- Indigent defense reimbursement has not been fully implemented
- Eligibility for indigent defense is based on unverified, self-reported financial information
- Assessments for the reimbursement of attorneys' fees are based on outdated cost estimates
- Defendants' financial questionnaires are not always obtained and/or retained

We also reviewed four related Managing for Results performance measures. Two were not certified and two were certified with qualifications.

This report contains an executive summary, specific information on the areas reviewed, and Superior Court's response to our recommendations. We reviewed this information with Superior Court and appreciate the excellent cooperation provided by management and staff. The Court Administrator took action after the completion of audit fieldwork to address issues noted. If you have any questions, or wish to discuss the information presented in this report, please contact Eve Murillo at (602) 506-7245.

Sincerely,

A handwritten signature in cursive script that reads "Ross L. Tate".

Ross L. Tate
County Auditor

Executive Summary

Issue 1 Indigent Defense Reimbursement (Page 9)

In fiscal year 2007, less than 20 percent of defendants appointed public counsel were reviewed by the Indigent Defense Reimbursement Unit to determine their ability to contribute to the cost of their defense. As a result, Superior Court does not ensure equitable treatment of all defendants or effectively recoup costs for indigent defense services provided. Superior Court should (1) review the program to ensure the equitable treatment of all defendants and the effective recovery of allowable costs, (2) establish written policies and procedures, and (3) perform periodic program evaluations.

Issue 2 Indigent Defense Eligibility (Page 11)

The process used to determine eligibility does not ensure that only indigent defendants are assigned public counsel. Eligibility criteria are not well defined, and Superior Court makes the assignments based on unverified, self-reported financial information. As a result, the County may be providing legal services for some defendants who are not eligible to receive these services. Superior Court should develop uniform standards and guidelines for determining indigence, and consider requiring defendants who apply for public counsel to provide documentation to support their reported financial condition.

Issue 3 Outdated Cost Estimates (Page 14)

When assessing defendants for the reimbursement of attorneys' fees, Superior Court must make a finding as to the defendant's actual financial resources and the actual cost of legal services provided. In considering actual costs, Superior Court uses an outdated 2004 estimate of \$310 for cases resulting in a plea, although the costs for public defense services are generally much higher. As a result, Superior Court may be under assessing defendants for reimbursement of indigent defense services, resulting in lost revenue to the County. Superior Court should establish a procedure to ensure that judicial officers are using accurate and timely information when making findings as to actual costs when assessing defendants for indigent defense services.

Issue 4 Reimbursement Amounts (Page 16)

Judicial officers have full discretion and little guidance in establishing the amounts that defendants must contribute toward the cost of public defense services provided. No clear guidelines have been established to ensure that equitable and consistent standards are applied when making assessments for attorneys' fees. Superior Court should establish written criteria for assessing defendants for indigent defense reimbursement as a tool for judicial officers.

Issue 5 Financial Questionnaires (Page 18)

Defendants who request public representation are required by law to complete under oath a questionnaire concerning their financial resources. However, there are no procedures in place to ensure that summonsed defendants complete the required questionnaire. In addition, financial questionnaires are not always retained. Failure to obtain the required financial questionnaire could impair Superior Court's ability to properly determine eligibility for public representation. Superior Court should establish written procedures and ensure that the requisite financial forms are obtained, as required by law, and retained.

Issue 6 Performance Measures (Page 20)

We reviewed four Indigent Defense Reimbursement Unit performance measures. We rated two as not certified and two as certified with qualifications. The measures did not have written procedures or supervisory review controls. Management's ability to make informed decisions could be negatively impacted by inaccurate performance measurement data. Superior Court should establish written procedures that include a review process.

Introduction

Background

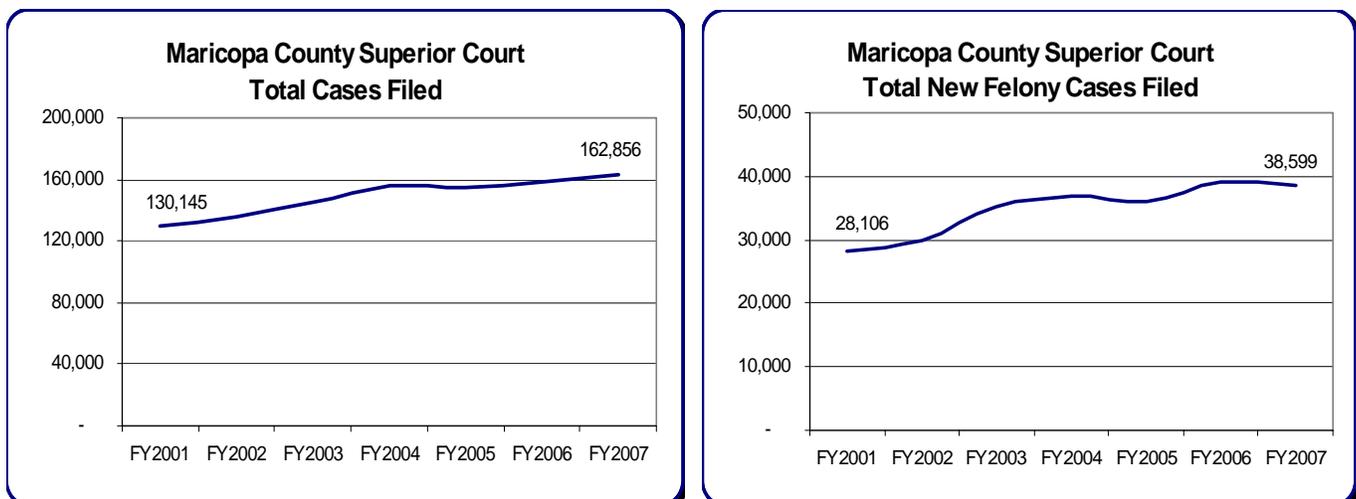
The Judicial Branch of Arizona is responsible for the operational oversight of both general and limited jurisdiction courts in Maricopa County. Superior Court is a general jurisdiction (geographically and type of legal case) court funded both through the County and the State of Arizona. Superior Court presides over legal cases related to criminal (felonies), juvenile, family, probate/mental health, tax, and civil (proposed settlements of \$10,000 or more), and is part of a state integrated judicial system under the Arizona Supreme Court administrative authority.

The Superior Court presiding judge oversees both the Superior and Justice Courts (limited jurisdiction courts), as well as the Adult and Juvenile Probation departments. The presiding judge is appointed by, and serves at the pleasure of, the Arizona Supreme Court. Associate presiding judges are selected by the presiding judge to assist with administrative duties. Additionally, the court administrator assists the presiding judge charged with the responsibility of overseeing non-judicial personnel for the Superior Court, long-term future growth, and caseload management.

Superior Court has 1,572 authorized full time employees for FY 2008. The judicial bench is comprised of 95 judges and 58 commissioners. Judges are appointed by the governor and are re-elected every four years by voters.

Total Case Filings

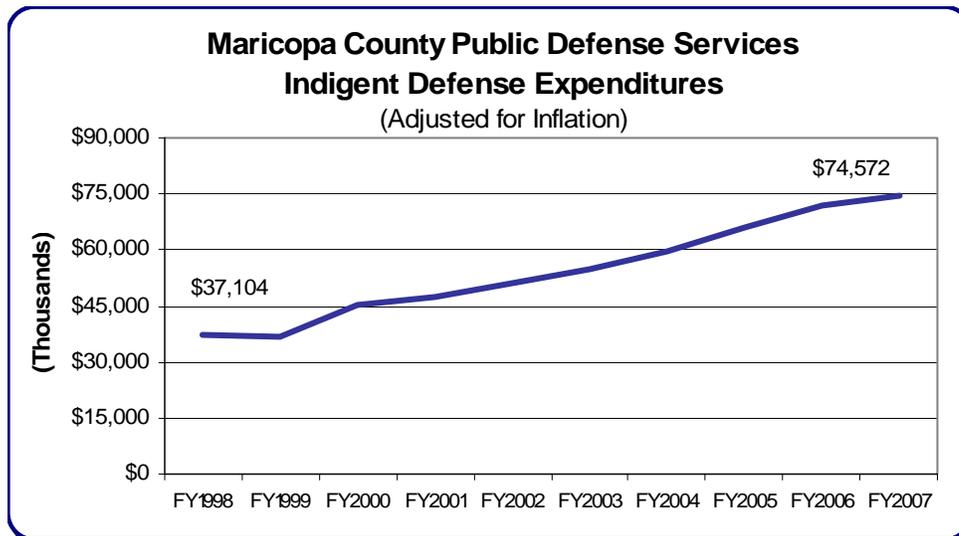
Superior Court total case filings have increased 25 percent from FY 2001 to FY 2007, as shown on the left below. The largest increase was in new felony cases, which experienced 37 percent growth during the period, although a slight decrease in FY 2007 is noted, as shown on the right.



Source: Judicial Branch of Arizona in Maricopa County, Superior and Justice Courts, Adult and Juvenile Probation Annual Reports

Indigent Defense Costs Rising

As caseloads have increased, so have costs to provide counsel to indigent defendants (low-income individuals who cannot afford to hire their own attorney). Superior Court judicial officers determine who qualifies for indigent defense, commonly referred to as public defense services. Following a determination of indigence by Superior Court, counsel is provided by Maricopa County Public Defense Services. Inflation-adjusted indigent defense costs have doubled since FY 1998, as shown below.



Source: Maricopa County Office of Management and Budget

Right to Representation by Counsel

The Bill of Rights, adopted in 1791, established that persons accused of committing a crime have the right to be represented by counsel. Specifically, the Sixth Amendment to the United States Constitution states: “In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense.” United States Supreme Court cases further defined specific aspects of this right. In a 1963 opinion, the Supreme Court unanimously held that an indigent person accused of a serious crime was entitled to the appointment of defense counsel at state expense. Other cases extended the right to counsel to an indigent child charged in a juvenile delinquency proceeding and the right to counsel to all misdemeanor state proceedings where there is a potential loss of liberty.

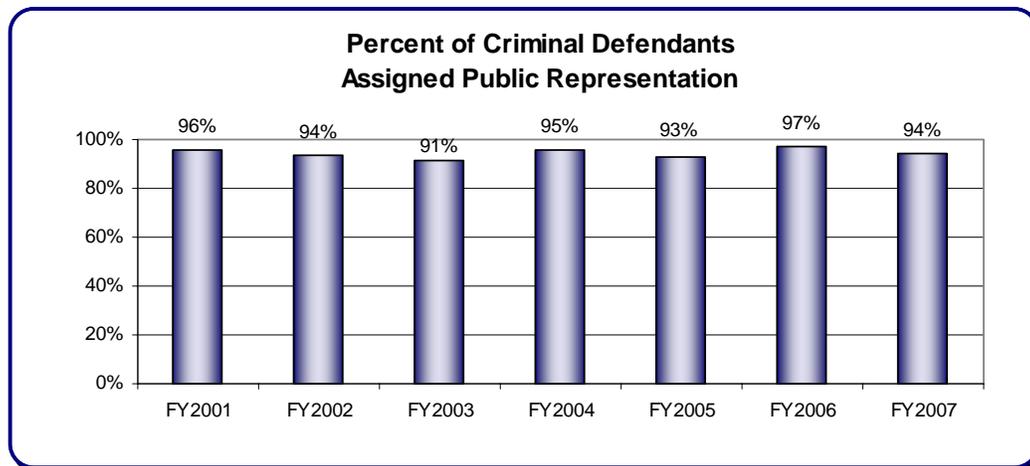
In Maricopa County, a number of provisions establish the types of cases for which counsel must be appointed when individuals lack the resources to retain an attorney. Pursuant to Rules 6.1 and 32, Arizona Rules of Criminal Procedure, A.R.S. §§ 36-528(D), 36-536(A), 36-537, 8-221, 36-3704 and 11-584 to 587, Article 2, § 24 of the Arizona Constitution, and case law interpreting these provisions, counsel shall be provided at government expense for:

- Individuals facing criminal charges, including misdemeanors, that could result in loss of liberty at the trial and post-sentencing level
- Juveniles accused of delinquency or incorrigibility

- Defendants opposing extradition
- Witnesses in criminal cases, when assigned by the court
- Individuals facing mental health commitments
- Parents and children involved in child dependency and severance proceedings
- Individuals whom the state is seeking to civilly commit as “sexually violent persons”

County Indigency Rate Higher than National Average

According to the National Center for State Courts, between 80 and 90 percent of all people charged with criminal offenses in the United States qualify for indigent defense. In Maricopa County, the indigency rate for criminal defendants averaged 94 percent over the past seven years, and reached a high of 97 percent in FY 2006, as shown below.



Source: Office of the Public Defender and Judicial Branch of Arizona in Maricopa County, Annual Statistical Reports

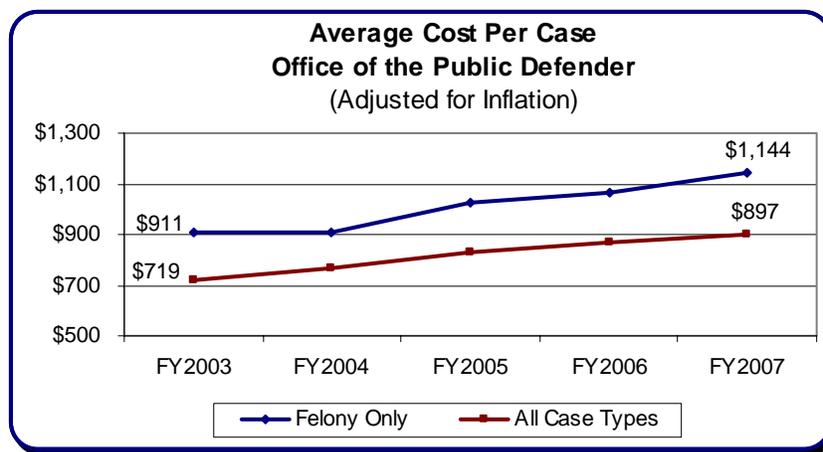
Maricopa County Public Defense Services

Maricopa County Public Defense Services is outside of the scope of this audit; however, an overview of the system is helpful in understanding County indigent defense operations. Maricopa County, like most states and localities, uses a combination of public defender programs and private attorneys who work under contract. Three in-house defender offices, listed below, have been established to address legal conflict of interest issues with co-defendants, victims, or witnesses. The offices also procure the legal services of private attorneys.

- Office of the Public Defender - Provides legal defense services to (1) indigent defendants in criminal proceedings (including felonies, misdemeanors, probation violations, appeals, post-conviction relief cases, and cases in which defendants oppose extradition), (2) juveniles facing delinquency or incorrigibility charges, and (3) indigent individuals at risk of a loss of liberty in civil mental health proceedings, when appointed by the court.

- Office of the Legal Defender - Provides legal defense services to (1) indigent defendants in criminal proceedings (including felonies, probation violations, appeals, post-conviction relief cases, and cases in which defendants oppose extradition), (2) assigned indigent adult witnesses who may testify in criminal matters, and (3) parents involved in civil child dependency or severance proceedings, when appointed by the court.
- Office of the Legal Advocate – Provides legal defense services to (1) indigent defendants in criminal proceedings (including felonies, probation violations, appeals, post-conviction relief cases, and cases in which defendants oppose extradition), (2) assigned indigent adult witnesses who may testify in criminal matters, (3) indigent individuals at risk of a loss of liberty in civil mental health proceedings, and (4) children involved in civil child dependency or severance proceedings, when appointed by the court.

The average cost per case for the Office of the Public Defender has increased significantly.



Source: Office of the Public Defender

The Office of the Public Defender attributed rising costs to a number of factors, including:

- Recent salary market studies, annual merit increases, higher employee benefit costs, and a student loan repayment program for attorneys instituted in 2006
- In June 2002, the U.S. Supreme Court ruled on a death penalty case that dealt with the constitutionality of a judge, rather than a jury, deciding the critical sentencing issues in a death penalty case. The court held that the failure to require a jury to determine whether aggravating factors exist to warrant a death sentence violates a defendant's constitutional right to a trial by jury. As a result, Arizona was required to change its sentencing policies and review the cases of all capital defendants on death row.
- Changes in plea policies have increased workloads as attorneys prepare for and go to trial more frequently. Related costs for internal and external resources, including training, transcription, expert witness, and investigative travel have increased.
- Technological advances in evidence (e.g., DNA) have greatly increased costs over the last decade

- Legislative changes have resulted in increased costs (e.g., Proposition 100 immigration issues, holding people non-bondable, special hearings)

Scope and Methodology

Audit Objectives

We last reviewed Superior Court operations in FY 2001. We limited this audit to financial efficiency and effectiveness of indigent defense screening processes and related performance measures. The objectives of this audit were to:

- Determine if public representation is provided only to those criminal defendants who cannot afford to provide their own attorney
- Determine if guidelines used to determine the amounts ordered for reimbursement of attorneys' fees appropriately reflect the costs for public defense services

We also verified the Indigent Defense Reimbursement Unit (IDRU) Managing for Results performance measures.

Audit Timeframe

Data from the following fiscal years were used in conducting this audit: March through June 2005, 2006, and 2007. Specifically, we reviewed the policies and procedures to determine the indigence status of criminal defendants at Superior Court during FY 2007. We reviewed IDRU policies and procedures since inception of the unit in March 2005 through FY 2007. We did not independently verify the indigent status of defendants, except as noted in this report.

Auditing Standards

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



Court Reported Accomplishments

Superior Court management has provided the Internal Audit Department with the following information for inclusion in this report.

- Presiding Judge Barbara Rodriguez Mundell and the Maricopa County Superior Court received a *Highway Safety Award* from the Arizona Governor's Office of Highway Safety for Spanish DUI Court.
- The Financial Compliance Program received a *Showcase in Excellence Award* from the Arizona Quality Alliance in recognition of continuous improvement and performance excellence.
- The Adult Probation Department received a *FY 2006 Strategic Fitness Award* from the Maricopa County Office of Management and Budget in recognition of its efforts in effectively carrying out the strategic management requirements of the county.
- The Adult Probation Department received a FY 2006 Strategic Fitness Award from the Maricopa County Office of Management and Budget in recognition of its efforts in effectively carrying out the strategic management requirements of the county.
- The Adult Probation Department received a FY 2006 Fiscal Fitness Award from the Maricopa County Office of Management and Budget for excellence in budget preparation and for exhibiting fiscal prudence.
- Awards for Programs and Services to the Public Juvenile Sex Offender Supervision Unit "Showcase in Excellence" Award from the Arizona Quality Alliance
- Durango Juvenile Detention Center Expansion "Selected Design" Award from the American Institute of Architects
- Community Works – Safe Schools Project at Desert Sands "Best in State" from the Arizona Foundation for Legal Services and Education

Issue 1 Indigent Defense Reimbursement

Summary

In fiscal year 2007, less than 20 percent of defendants appointed public counsel were reviewed by the Indigent Defense Reimbursement Unit (IDRU) to determine their ability to contribute to the cost of their defense. As a result, Superior Court does not ensure equitable treatment of all defendants or effectively recoup costs for indigent defense services provided. Superior Court should review the program to ensure the equitable treatment of all defendants and the effective recovery of allowable costs, establish written policies and procedures, and perform periodic program evaluations.

Criteria

Under Arizona Revised Statutes (ARS) § 11-584 and Rule 6.7(d) of the Arizona Rules of Criminal Procedure, if in determining that a person is indigent, the court finds that such person has financial resources which enable him or her to offset in part the costs of the legal services to be provided, the court shall order him or her to pay such amount as it finds he or she is able to pay without incurring substantial hardship to himself or herself or to his or her family.

Condition

The IDRU was established in March 2005. It was anticipated that IDRU would operate on a small scale for at least twelve months, and then be expanded court-wide. However, the program remains in the pilot phase two and one-half years after inception. The program was initially established to:

- Ensure that counsel appointments are restricted to indigent defendants
- Verify the information defendants complete on the financial questionnaire
- Assist defendants who have no documented financial information to complete the questionnaires to determine defendants' ability to partially reimburse costs for defense services
- Order appropriate defendants who have been assigned indigent counsel to partially reimburse the County for these services

In FY 2006 and FY 2007, IDRU reviewed a small percentage of criminal defendants to determine their ability to contribute to the cost of their defense. However, no financial information was verified; reviews were based solely on the defendants' self-reported financial information. IDRU statistics for FY 2006 and FY 2007 are shown on the following page.

Statistical Summary	FY 2006	FY 2007
Total Criminal, Felony Case Filings	39,039	38,599
# Assigned Public Counsel	38,054	36,137
% Assigned Public Counsel	97%	94%
% Screened for Reimbursement by IDRU	16%	17%
% Screened Who Were Ordered to Contribute	88%	64%
Total \$ Ordered for Reimbursement	\$600,046	\$463,050
Total \$ Collected	\$203,038	\$234,568
Average Amount Ordered	\$113.56	\$120.40

Source: Justice Systems Activities Reports, Department of Finance, County Collections Unit

Based on IDRU statistics, we estimate an additional \$5.5 million could have been assessed and \$2.3 million collected, if all defendants were screened during both fiscal years. However, we did not attempt to estimate costs required to achieve a 100 percent screening rate.

Effect

Superior Court is not effectively recouping costs for indigent defense services, resulting in lost revenue to the County. In addition, selective assessments have the effect of treating defendants unequally, as others who may be financially capable of contributing to the costs of their defense are not required to do so.

Cause

Superior Court has not fully implemented the IDRU program and/or evaluated pilot program results in a timely manner.

Recommendation

The auditors and the Board of Supervisors are mindful of the distinction and separation of governmental powers. This audit makes no intent to intrude on the discretion of the Superior Court to enter such orders as appropriate in indigent defense cases. The auditors do find and conclude that the Superior Court has a fiduciary responsibility to contain the County's costs whenever feasible and in accordance with state law and its own Rules.

Superior Court should:

- A.** Promptly conduct a comprehensive review of the IDRU program to ensure the equitable treatment of all defendants and the effective recovery of allowable costs.
- B.** Establish written IDRU policies and procedures and perform periodic program evaluations.

Issue 2 Indigent Defense Eligibility

Summary

The process used to determine eligibility does not ensure that only indigent defendants are assigned public counsel. Eligibility criteria are not well defined, and Superior Court makes the assignments based on unverified, self-reported financial information. As a result, the County may be providing legal services for some defendants who are not eligible to receive these services. Superior Court should develop uniform standards and guidelines for determining indigence, and consider requiring defendants who apply for public counsel to provide documentation to support their reported financial condition.

Criteria

All persons involved in certain classes of court cases who are financially unable to obtain adequate representation without suffering hardship must be provided representation at public expense. Arizona Rules of Criminal Procedure require that defendants complete, under oath, a questionnaire concerning financial resources. Judicial officers review the questionnaires before appointing public representation. Defendants also are required to be examined under oath regarding their financial resources by the judicial officer responsible for appointing public representation.

Condition

Procedures for determining eligibility for public representation do not ensure that counsel is appointed only to those who are financially unable to retain private counsel without suffering hardship because (1) eligibility criteria are not well defined, and (2) determinations are made based on unverified, self-reported financial information.

The law requires that public representation be provided to all persons at risk of loss of life or liberty who are *financially unable to obtain adequate representation without suffering hardship*. No financial eligibility criteria have been defined. Determinations as to what constitutes an inability to afford private counsel and/or a hardship are left to the discretion of many judicial officers who make indigency determinations for Superior Court.

We found that some judicial officers determine eligibility based on a matrix derived from the Federal Poverty Guidelines that does not take into consideration important factors such as property owned, outstanding obligations, number and ages of dependants, and other sources of family income. These factors should be taken into consideration according to the Arizona Rules of Criminal Procedure, Rule 6.4(a) commentary.

Further, indigency determinations are based on self-reported financial information that is considered to be unreliable and incomplete, as the information is obtained from most defendants within 24 hours of their arrest, when many are under the influence and/or are very uncooperative. Superior Court uses this financial information to determine indigency. While the defendants may also be examined under oath regarding their financial resources, there are no processes in place to verify the information either before or after appointing public counsel.

We reviewed 35 financial questionnaires and found the information to be unreliable and incomplete. Additionally, we identified two questionnaires (6%) for defendants who did not appear to qualify for public counsel based on the information provided, as shown below. We were unable to perform a statistically valid review due to the absence of reliable financial information.

	Defendant A	Defendant B
Net Monthly Income	\$2,800	\$2,400
Monthly Expenses	None reported	1,200
No. of Dependents	1	0
Charge	Theft	Narcotic Drugs

Verification

According to Superior Court, verification policies and procedures have been inconsistent over the years due to conflicting philosophical opinions surrounding indigent defense issues. Further, many strongly believe that there is little or no cost benefit in expending resources for verification due to the socioeconomic status of most criminal defendants, according to Court management.

Management states a number of programs have been established over the years to verify the financial resources of defendants and to charge defendants for indigent defense services they receive:

- Defendants were previously required to produce at least two pay stubs and monthly bills as evidence of their financial situation
- Credit reports were previously obtained and defendants were required to draw on available credit to pay towards their defense

Superior Court has organized a number of committees over the years to study indigent defense issues and to make recommendations for process improvements. According to Superior Court management, while these efforts have led to improvements, many gains have proven to be short term.

Effect

Without a system in place to ensure that only indigent defendants are assigned public representation, the County could be paying for legal services for those who are not eligible. We were not able to determine to what extent public defense services may have been inappropriately assigned due to a lack of defined eligibility criteria, and the fact that no reliable financial information is obtained by Superior Court.

However, in an attempt to estimate what the County may be spending for public defense services provided to ineligible defendants, we estimated that 90 percent of all people charged with criminal offenses qualify for indigent defense (very top of the range for the national average per the

National Center for State Courts). Based on this estimate, services may have been provided to over 1,543 criminal defendants (4%) who were not eligible in FY 2007, at a total cost to the County of \$2,006,716 , based on a weighted average by felony class, excluding capital cases.

Cause

Eligibility criteria for indigent defense are not well defined. There are no uniform standards or verification procedures for determining eligibility for public defense services.

Recommendation

Superior Court should:

- A.** Develop uniform standards and guidelines for determining the indigence status of defendants.
- B.** Consider requiring defendants who apply for public defense services to provide documentation to support the information reported in their financial questionnaire (e.g., copies of pay stubs, bank statements, bills, public assistance receipts, etc., where applicable).

Issue 3 Outdated Cost Estimates

Summary

When assessing defendants for the reimbursement of attorneys' fees, Superior Court must make a finding as to the defendant's actual financial resources and the actual cost of legal services provided. In considering actual costs, Superior Court uses an outdated 2004 estimate of \$310 for cases resulting in a plea, although the costs for public defense services are generally much higher. As a result, Superior Court may be under assessing defendants for reimbursement of indigent defense services, resulting in lost revenue to the County. Superior Court should establish a procedure to ensure that judicial officers are using accurate and timely information when making findings as to actual costs when assessing defendants for indigent defense services.

Criteria

Under ARS § 11-584 and Rule 6.7(d) of the Arizona Rules of Criminal Procedure, if in determining that a person is indigent, the court finds that such person has financial resources which enable him or her to offset in part the costs of the legal services to be provided, the court shall order him or her to pay such amount as it finds he or she is able to pay without incurring substantial hardship to himself or herself or to his or her family. Additionally, in *State v. Oehlerking*, 147 Ariz. 266, 709 P.2d 900 (1985), the appellate court held that the court must make both a finding as to the defendant's actual financial resources, and a finding as to the actual cost of the legal services provided.

Condition

When assessing defendants for the reimbursement of attorneys' fees, Superior Court must make a finding as to the defendant's actual financial resources and the actual cost of legal services provided. Superior Court judicial officers review the defendants' unverified financial questionnaires to determine the defendant's actual financial resources.

In considering actual costs, Superior Court uses an estimate of \$310, which was determined in early 2004 to be the minimum expense incurred by an indigent defense agency for services resulting in a guilty plea. We found that the actual cost of public defense services is generally much higher. According to the Office of the Public Defender, the average cost per felony case is currently \$1,144; however, this figure includes complex cases and murder cases.

Effect

Superior Court may be under assessing defendants for reimbursement of indigent defense services, resulting in lost revenue to the County. Undercharging individuals who could afford to pay actual costs impacts the County's available resources for others in need.

Cause

There are no procedures in place to ensure that judicial officers are using accurate and timely information when making findings as to actual costs when making assessments for the reimbursement of indigent defense services.

Recommendation

Superior Court should establish a procedure to ensure that judicial officers are using accurate and timely information when making findings as to actual costs when assessing defendants for indigent defense services.

Issue 4 Reimbursement Amounts

Summary

Judicial officers have full discretion and little guidance in establishing amounts that defendants must contribute toward the cost for public defense services provided. No clear guidelines have been established to ensure that equitable and consistent standards are applied when making assessments for attorneys' fees. Superior Court should establish written criteria for assessing defendants for indigent defense reimbursement as a tool for judicial officers.

Criteria

Under ARS § 11-584 and Rule 6.7(d) of the Arizona Rules of Criminal Procedure, if in determining that a person is indigent, the court finds that such person has financial resources which enable him or her to offset in part the costs of the legal services to be provided, the court shall order him or her to pay such amount as it finds he or she is able to pay without incurring substantial hardship to himself or herself or to his or her family.

Condition

Judicial officers have full discretion in establishing amounts that defendants are ordered to contribute toward the cost for public defense services provided. No clear guidelines have been established to ensure that equitable and consistent standards are applied when making assessments for attorneys' fees.

In 2006, the McJustice Committee¹ recommended that Superior Court establish written criteria for assessing defendants for indigent defense reimbursement. However, Superior Court rejected this approach, stating that "...the Court must maintain its inherent judicial discretion to impose assessment amounts most appropriate to each individual defendant's unique circumstances and background."

Subsequently, however, the Superior Court presiding judge approved the following criteria:

- Superior Court will not order a defendant to reimburse the County for indigent defense services if a government agency has verified that the defendant is indigent
- If a defendant has retained counsel, Superior Court shall not order reimbursement
- If a defendant has not been designated as indigent by a government agency, commissioners shall use their discretion in ordering an appropriate amount for said services

¹ An interagency consortium of the major law enforcement and justice agencies in Maricopa County that is dedicated to exploring collaborative solutions to justice issues.

We reviewed ten Indigent Defense Reimbursement Unit financial questionnaires and found:

- One defendant did not appear to qualify for indigent defense based upon reported net monthly income of \$2,400; the individual had no dependants
- One defendant with no dependents and no income was ordered to repay the same amount as a defendant who reported a net monthly income of \$2,400
- Two defendants were ordered to pay an amount significantly less than the amounts they offered to pay

	Defendant A	Defendant B	Defendant C	Defendant D
NET Monthly income	\$2,400	\$0	\$1,500 - \$1,600	\$1,100
Down Payment Offered	\$0	\$0	\$1,000	\$0
Monthly Payments Offered	\$0	\$0	\$100/week	\$50/week
Amount Ordered	\$335	\$335	\$250	\$90
Charge	Narcotic Drug Violation	Theft	Marijuana Violation	Marijuana Violation

Effect

Superior Court is unable to ensure that equitable and consistent standards are applied when making assessments for attorneys' fees, given the lack of written criteria to apply in establishing amounts.

Cause

Guidance has not been adopted for establishing the amounts the defendants are required to pay for reimbursement of indigent defense services. Judicial officers are not trained or monitored for performance in this area.

Recommendation

Superior Court should consider establishing written criteria for initially assessing defendants for indigent defense reimbursement and provide training to judicial officers.

Issue 5 Financial Questionnaires

Summary

Defendants who request public representation are required by law to complete under oath a questionnaire concerning their financial resources. However, there are no procedures in place to ensure that summonsed defendants complete the required questionnaire. In addition, financial questionnaires are not always retained. Superior Court should establish written procedures and ensure that the requisite financial forms are obtained, as required by law, and retained.

Criteria

Pursuant to Rule 6.4 of the Arizona Rules of Criminal Procedure, a defendant desiring to proceed as an indigent shall complete under oath a questionnaire concerning that defendant's financial resources on a form approved by the Supreme Court. The defendant shall be examined under oath regarding the defendant's financial resources by the judge, magistrate, or court commissioner responsible for determining indigency. The defendant shall, prior to said questioning, be advised of the perjury penalties as set forth in ARS § 13 2701 et seq.

Condition

All defendants who request public representation are required by law to complete a questionnaire concerning their financial resources under oath. However, at the time of our review, the financial questionnaire was only obtained from defendants who were processed through the 4th Avenue jail. This process excludes all defendants who are summonsed to appear in court. In FY 2007, approximately 9,200 defendants were summonsed to appear, although only an estimated 3,000 appeared.

Additionally, we attempted to obtain and review the financial questionnaires completed by defendants reviewed by the IDRU. We found that the financial records are not considered to be official court paperwork and are routinely destroyed by judicial officers. By contrast, the financial questionnaires completed by defendants through the Adult Probation Pre-Trial Services are considered to be official court documents and are retained.

Effect

Failure to obtain the required financial questionnaire could impair Superior Court's ability to properly determine eligibility for public representation and to assess defendants' ability to contribute to the cost of their defense.

Cause

Superior Court has not developed policies and procedures to ensure that a financial questionnaire is completed by all defendants who apply for public representation.

Financial questionnaires are routinely destroyed by the IDRU judicial officers, as they are not considered to be official court documents.

Recommendation

Superior Court should:

- A.** Establish written policies and procedures to ensure that all defendants desiring to proceed as an indigent have completed the requisite financial questionnaire and been examined under oath regarding their financial resources by the judicial officer responsible for determining indigency.
- B.** Retain all financial questionnaires used in making indigency determinations and/or assessments for attorneys' fees.

Issue 6 Performance Measures

Summary

We reviewed four IDRU performance measures. We rated two as not certified and two as certified with qualifications. The measures did not have written procedures or supervisory review controls. Management's ability to make informed decisions could be negatively impacted by inaccurate performance measurement data. Superior Court should establish written procedures that include a review process.

Criteria

Maricopa County Board of Supervisors Policy B6001 (4.D Evaluating Results) requires the Internal Audit Department to review County departments' strategic plans and performance measures and report on results as part of the Managing for Results (MfR) process. The following information defines the results categories that are used in the certification process.

Definitions:

Certified:

The reported performance measurement is accurate (+/- 5%) and adequate procedures are in place for collecting/reporting performance data.

Certified with Qualifications:

The reported performance measurement is accurate (+/- 5%) but adequate procedures are not in place for collecting and reporting performance data.

Not Certified:

- 1) Actual performance is not within five percent of reported performance and/or the error rate of tested documents is greater than five percent.
- 2) Actual performance measurement data could not be verified due to inadequate procedures or insufficient documentation. This rating is used when there is a deviation from the department's definition, preventing the auditor from accurately determining the performance measure result.
- 3) Actual performance measurement data was accurately calculated but not consistently posted to the public database.

Condition

Results Summary Table:

Superior Court Performance Measures	Certified	Certified with Qualifications	Not Certified
# of defendants who request legal representation at public expense			√
# of defendants screened		√	
Cost per defendant screened			√
% of defendants determined by the Indigent Defense Reimbursement Unit (IDRU) to have the ability to contribute to the cost of their defense		√	

Measure #1

Description: Number of defendants who request legal representation at public expense.

Results: **Not Certified**

Measure #1	FY 06	FY07
Reported	34,370	37,914
Actual	28,201	Not Tested

The measure is not accurate; written procedures need to be established for the collection and reporting of this measure. Data entry controls are lacking and data input is not reconciled to data output. Someone should review the measure calculations and summary documentation before the information is reported; in addition, the person responsible for the measure should review the information. The measure's calculation and data source should be listed in the Managing for Results (MfR) database.

Measure #2

Description: Number of defendants screened.

Results: **Certified with Qualifications**

Measure #2	FY07
Reported	6,046
Actual	6,258

The measure is accurate +/- 5%; however, written procedures need to be established for the collection and reporting of this measure. Data entry controls are lacking and data input is not reconciled to data output. Someone should review the measure calculations and summary documentation before the information is reported; in addition, the person responsible for the measure should review the information. The measure's calculation and data source should be listed in the MfR database.

Measure #3

Description: Cost per defendant screened.

Results: **Not Certified**

Measure #3	FY07
Reported	\$39.07
Actual	\$37.75

The math calculation is accurate +/- 5%; however, because of numerous control weaknesses regarding the accuracy of the activity's expenditures, this measure is not certified. Written procedures need to be established for the collection and reporting of this measure. Someone should review the measure calculations and summary documentation before the information is reported; in addition, the person responsible for the measure should review the information. The measure's calculation and data source should be listed in the MfR database.

Measure #4

Description: Percent of defendants determined by IDRU to have the ability to contribute to the cost of their defense.

Results: **Certified with Qualifications**

Measure #4	FY07
Reported	63.6%
Actual	61.5%

The measure is accurate +/- 5%. Written procedures need to be established for the collection and reporting of this measure. Data entry controls are lacking and data input is not reconciled to data output. Someone should review the measure calculations and summary documentation before the information is reported; in addition, the person responsible for the measure should review the information. Superior Court spreadsheet formulas did not always capture all the data lines; thereby calculating inaccurate totals. The measure's calculation and data source should be listed in the MfR database.

Effect

Management's ability to make informed operational decisions may be hindered by the lack of inaccurately reported performance measurement data.

Cause

Written policies and procedures for internal controls, such as review and verification, are not in place.

Recommendation

Superior Court should:

- A. Establish written procedures for the collection, calculating, and reporting of data for all measures.
- B. Develop appropriate controls for review and verification before measures are reported in the MfR database; include review in the written procedures.
- C. Consider revising measures to help management make operational decisions.

Superior Court Response



JUDICIAL BRANCH OF ARIZONA

County of Maricopa

Office of the
Court Administrator

Marcus W. Reinkensmeyer
Court Administrator

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"Committed to the Timely, Fair and Impartial Administration of Justice"

To: Ross L. Tate, County Auditor

From: Marcus W. Reinkensmeyer, Judicial Branch Administrator *MR*

Date: January 9, 2008

Subject: Internal Audit of Superior Court

We would like to thank you and your team for their professional work during the course of this internal audit of the court's Indigent Defense Reimbursement Unit (IDRU).

Your team not only presented themselves in a professional manner, but went out of their way to accommodate the court whenever possible.

Please find attached the Court's Response to Internal Audit. Again, I thank you and your team.

If you have any questions regarding the court response, please call me at 602-506-7443.

Attachments

C: D. Eve Murillo, Deputy County Auditor
Carla Harris, Audit Supervisor
Kimmie Wong Yee, Senior Auditor
Kye Nordfelt, Staff Auditor
Trisa Cole, Associate Auditor

AUDIT RESPONSE

Superior Court of Arizona in Maricopa County
January 9, 2008

Issue #1:

In fiscal year 2007, less than 20 percent of defendants appointed public counsel were reviewed by the Indigent Defense Reimbursement Unit (IDRU) to determine their ability to contribute to the cost of their defense.

Response: Concur. The design and development of the Indigent Defense Reimbursement Unit (IDRU) was initiated after careful consideration and realization that to undertake a review of more than 30,000 defendants in a year was a huge undertaking. Superior Court leadership therefore considered an incremental roll-out by design. The first phase of this roll-out was purposefully left at those defendants that would be the less-complicated due to the nature of their availability (out-of-custody) and their proximity to the funded resources – staffing in Phoenix.

The initially designed process of a centralized IDRU program has inherent limitations and only allows for the screening of 30-40 defendants per day or approximately 10,000 defendant screenings a year. This is more than the 6,500 screenings currently performed by only a third of the total possible screenings. Due to this low volume and resource issues the unit functions were decentralized, thus leading to some efficiencies (defendants did not need to be transported to the IDRU courtroom from high-volume case processing calendars), allowing for an increased number of commissioners to assess defense costs as part of plea arrangements and sentencings.

Recommendation A: Promptly conduct a comprehensive review of the IDRU program to ensure the equitable treatment of all defendants and the effective recovery of allowable costs.

Response: Concur – Implementation not currently possible. The court will work to conduct a comprehensive review as noted but in light of the current resource allocation and workload distribution among criminal court commissioners, the highest rate of screening and associated rate of recovery estimated by County Audit may not be achievable.

Target Completion Date: The court will undertake and complete the comprehensive review by 3-17-2008.

Benefits/Costs: A successful expansion of the screening process will help to ensure a more equitable imposition of cost allocation and an associated increase in revenues.

Recommendation B: Establish written IDRU policies and procedures and perform periodic program evaluations.

Response: Concur.

Target Completion Date: 3-17-2008

Benefits/Costs: Same as stated above.

Issue #2:

The process used to determine eligibility does not ensure that only indigent defendants are assigned public counsel. Eligibility criteria are not well defined and assignments are based on unverified, self-reported financial information.

Response: Concur. The court is concerned that some assertions as to the efficiency of the IDRUs are based on extremely small sample sizes. For example, the audit reviewed 35 financial questionnaires that were processed (Form V – via Pretrial Services) and this sample is .004% of the 36,173 defendants that were assigned public counsel in FY 2007. Additionally, the 6% identified and used for the example is 6% of the .004% figure.

Recommendation A: Develop uniform standards and guidelines for determining the indigence status of defendants.

Response: Concur – in process.

Target Completion Date: 3-17-2008

Benefits/Costs: Improved case processing and assurance of improved treatment of defendants.

Recommendation B: Consider requiring defendants who apply for public defense services to provide documentation to support the information reported in their financial questionnaire (e.g., copies of pay stubs, bank statements, bills, public assistance receipts, etc., where applicable).

Response: Concur – Implementation not currently possible with current level of resources and program design.

Target Completion Date: Unclear at this time.

Benefits/Costs: Improved information gathering and consideration for decision-making process. Costs and time requirements may be insurmountable or require complete program re-design. Current program is designed to stream-line process and expedite establishment of court orders.

Issue #3:

In considering actual costs, Superior Court uses an outdated 2004 estimate of \$310 for cases resulting in a plea, although the costs for public defense services are generally much higher.

Response: Concur. The \$310 figure was used because it was determined to be the minimum expense occurred for a case. Reference case law.

Recommendation: Establish a procedure to ensure that judicial officers are using accurate and timely information when making findings as to actual costs when assessing defendants for indigent defense services.

Response: Concur – in process.

Target Completion Date: 1-31-2008

Benefits/Costs: The regular review of actual minimum costs (as opposed to average cost) will assure a benchmark that will assist in establishing court orders for reimbursement that takes into account actual costs.

Issue #4:

No clear guidelines have been established to ensure that equitable and consistent standards are applied when making assessments for attorneys' fees.

Response: Concur. Clear guidelines would be useful and will be deployed to the criminal department commissioners. As stated earlier during previous meetings between the Court and County Audit team, including the Closing Conference, the ultimate discretion falls upon the commissioners as to the assessment amount. Please note that the current guidelines were established by the former presiding judge. Another concern is that conclusions are based on a review of ten IDRU questionnaires which is a sample size of .001%.

Recommendation: Consider establishing written criteria for initially assessing defendants for indigent defense reimbursement and provide training to judicial officers.

Response: Concur.

Target Completion Date: 3-3-2008

Benefits/Costs: The benefit to guidelines will be that all criminal department commissioners will have a standard from which to gauge their assessments.

Issue #5:

Defendants who request public representation are required by law to complete under oath a questionnaire concerning their financial resources. However, there are no procedures in place to ensure that summonsed defendants complete the required questionnaire. In addition, financial questionnaires are not always retained.

Response: Concur. Please note however, that Form 5 is a mandatory document completed by Pretrial Services during the initial jail interview of defendants. The IDRU financial questionnaire, although developed through a review of Form 5, is not mandated and there are no rules of retention that control it as it is not part of the court record.

Recommendation A: Establish written policies and procedures to ensure that all defendants desiring to proceed as an indigent have completed the requisite financial questionnaire and been examined under oath regarding their financial resources by the judicial officer responsible for determining indigency.

Response: Concur – The requisite knowledge and guidance necessary to reach these ends will come through a more thorough review of all necessary procedures.

New procedures are being developed that will include IA summonsed defendants in regular IDRU screening.

Target Completion Date: 3-17-2008

Benefits/Costs: The new IA Summoning review is developed without additional staff. There are costs to enhance the protection of data via secured platforms. This will ultimately cost the court approximately \$6,500 to \$7,000. This new practice will help to ensure that more defendants are treated similarly as to payment towards legal counsel.

Recommendation B: Retain all financial questionnaires used in making indigency determinations and/or assessments for attorneys' fees.

Response: Concur – Please note that the required Form 5 is retained as required. It is the IDRU defendant questionnaire that is not kept as part of the file.

Target Completion Date: 2-1-2008

Benefits/Costs: IDRU questionnaires will be available for subsequent review and assessment validity.

Issue #6:

The IDRU performance measures did not have written procedures or supervisory review controls.

Response: Concur.

Recommendation A: Establish written procedures for the collection, calculating, and reporting of data for all measures.

Response: Concur – The Court will work with OMB to adjust MfR measures that are reasonable and achievable.

Target Completion Date: 4-30-2008. This response is highly dependent on the review of the program and various procedures.

Benefits/Costs: Improve the timeliness, accuracy, and usefulness of performance measure data and results.

Recommendation B: Develop appropriate controls for review and verification before measures are reported in the Managing for Results database; include review in the written procedures.

Response: Concur – The action will be part of the overall review and adjustments of MfR measures for this activity.

Target Completion Date: 4-30-2008

Benefits/Costs: Benefits will be in the areas of control, accuracy and accountability of performance measure data.

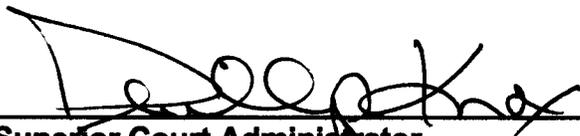
Recommendation C: Consider revising measures to help management make operational decisions.

Response: Concur – if the decision is to fully implement the IDRU the MfR measure will be evaluated to determine relevance and applicability to management decisions.

Target Completion Date: 4-30-2008

Benefits/Costs: See above responses for Benefits/Costs.

Approved By:



Superior Court Administrator

1/9/08
Date



Court Administrator

1/9/08
Date



Presiding Judge

1/10/08
Date