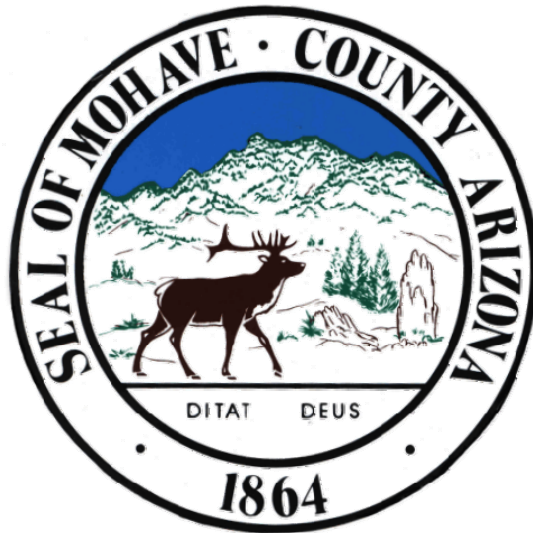


Law Offices of the Mohave County  
Public Defender



FY 2006  
Annual Report

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## Executive Summary

This report is prepared in accordance with A.R.S. §11-584(A)(2) & (3) that require that the Public Defender prepare and file with the Board of Supervisors an annual report of services rendered as well as an annual report with the presiding judge of the superior court, the chief probation officer and the board of supervisors on the average cost of defending a felony case. This report combines the requirements of A.R.S. §11-584(A)(2) & (3) by outlining the number of cases filed which required the appointment of an indigent defense attorney during FY 2006 and providing an accounting of funds expended in FY 2006. The report will also highlight several of our accomplishments during the year. Finally, the report provides an analysis of the statistics for future planning purposes.

This report also incorporates data relevant to the Loan Repayment Assistance and Relocation Assistance Programs that were approved by the Board of Supervisors in January of 2005. This data will review the number of attorneys on staff at the beginning of the fiscal year who were projected to be eligible for participation in the Loan Repayment Assistance Program together with data regarding their individual and collective comparison of employment history in relation to historical trends in attorney retention.

FY 2006 represented the twenty-first full year of operation for the Law Offices of the Mohave County Public Defender. The Law Offices of the Mohave County Public Defender continues to provide quality legal services to those persons whose cause has been entrusted to this office for representation.

In addition our office continues to strive to fulfill our goal of providing indigent defense services in a cost efficient manner. The staff at the Law Offices of the Mohave County Public Defender remains dedicated to considering the impact of our organizational structure and efficiency on the taxpayers of Mohave County.

FY 2006 saw significant gains in recruiting with over 250 applicants from around the nation seeking a position with the Law Offices of the Mohave County Public Defender. From this group of applicants, 50 individuals traveled to Kingman to be interviewed and 8 final offers were extended to fill vacancies which existed at the close of FY 2006. At the close of FY 2006, these eight vacancies reflected forty percent of the authorized positions were unfilled. Due to the time required to recruit and train new attorneys the effectiveness of this forty percent will be minimal during FY 2007, with the most significant impact to be seen in FY 2008 when these new employees will have a full 6+ months of training and licensure behind them. As a result, although the positions will have been filled during FY 2007 there will be only minor increases in efficiency and ability to handle caseloads within the office during FY 2007. This will result in continued excess contract expenditures on private counsel throughout most of FY 2007. For FY 2006, the vacancy rate was equal to the lowest since FY 2001 at 74.2%. Overall productivity as measured by hours worked was also the lowest since FY 2001 at only 32,702, or an average of 42.28 hours per week.

During FY 2006, eight attorneys left the office, with three of those attorneys working less than six months. The remaining five departures averaged two years of service. During the same period nine attorneys began employment.

FY 2006 saw the beginning of the renovation of physical facilities to more appropriately accommodate staff. The facilities are projected to be complete during the third quarter of FY 2007.

FY 2006 began extremely promising as 8 offers were extended to third year graduating law school students. These offers went to students from New Hampshire, Texas, California, Nebraska, Nevada, Michigan, Utah and New York. Unfortunately none of these individuals began work until the first quarter of FY 07. This meant that for the bulk of FY 2006, professional staffing was critically low. Over 800 cases were "overflowed" to private contract counsel because there was insufficient internal trained professional staff to handle the cases. The year end per case cost analysis showed that private contract cases continue to be significantly more expensive than cases handled by an in house indigent defense office. Un anticipated costs were roughly \$240,000 for FY 2006 due to staffing shortages.

On the positive side, since the implementation of the Hot Job incentive program for recruiting and retention, applications are up significantly and to date retention is up from 25% to 71% although the time period to fully evaluate retention differences is too short to be reliable at this point.

One additional FTE was authorized through the budget process to serve as a Mitigation Specialist. A Mitigation Specialist assists attorneys in issues related to pre-trial release and post-conviction sentencing and alternative release and treatment programs. Mitigation Specialists are well recognized throughout the nation as an integral function of indigent defense. The essential function of a Mitigation Specialist will be to screen new admittee's in the Mohave County Jail to determine appropriate release conditions, to screen both in-custody and out-of custody Public Defender clients for treatment programs in lieu of continued incarceration if appropriate, and to make alternative sentencing recommendations in appropriate cases in lieu of prison incarceration.

A Mitigation specialist will additionally allow licensed attorneys to focus more on the legal aspects of a clients case, rather than get tied up in the social work aspects of treatment programs. Currently attorneys who have clients whom they believe would be better served by treatment programs, spend an exorbitant amount of time pursuing these options. This occurs because the attorneys are not as familiar with the availability of such programs, and it therefore takes them much longer to research these issues. The time that the attorneys put into social program research is better spent on the legal issues. Ultimately, if an attorney's workload becomes excessive, there would be an additional need for more attorneys. Attorneys are more costly to the County. It is therefore most beneficial to the county to attempt to divert these social program activities away from the attorney and to a social "expert" who can perform the tasks with greater efficiency and at lower cost.

Unfortunately due to processing times and the fact that this position was new to the County and required a complete classification study, there was a significant delay in hiring to fill this newly created position and the position was not filled during FY 06.

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## **Introduction**

This report is intended to provide an overview of services provided by the Law Offices of the Mohave County Public Defender for Fiscal Year 2006.

The first section of this report will discuss indigent defense caseloads and statistics. The caseloads will be broken down by type of case (i.e.: felony, juvenile, misdemeanor) and by major charge (i.e.: assault, theft, etc.).

The second section will discuss costs associated with indigent defense and provide a breakdown of the costs per case on a weighted case basis for FY 2006. The term “weighted case” is used throughout this report to represent an adjustment to raw caseload figures based on acceptable workload standards under State (*Joe U. Smith*) and Federal (*US Department of Justice Compendium of Standards for Indigent Defense Systems*) law. Felony cases are weighted as a complete case and are therefore fully credited (a 1:1 ratio). Misdemeanor cases are weighted as .375 cases (a 3:8 ratio) based on the standard caseload permissible being 400 versus 150 for felonies. Juvenile cases are weighted as .75 cases (a 3:4 ratio) based on the standard permissible caseload being 200 versus 150 felonies. Probation violation cases are weighted as .375 cases (a 3:8 ratio) based on the standard caseload permissible being 400 versus 150 for felonies. Appeals are weighted as 6 cases based on the standard permissible caseload being 25 (a 6:1 ratio) while post-conviction relief proceedings are weighted as 2 cases based on the standard permissible caseload being 70 (a 2:1 ratio).<sup>1</sup>

The third section will highlight several of the office highlights and achievements during the year.

The fourth section will detail human resource issues and participation in the Loan Repayment and Relocation Assistance Programs.

The final section is a conclusion that will discuss challenges and trends that need to be considered in future planning for success.

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<sup>1</sup> Please note that prior year caseloads have been adjusted using the proper case weights for appeals and post-conviction proceedings.

## **Part I - Indigent Defense Caseload Statistics**

### **A. Service Delivery Methods**

In Mohave County, there is one method by which indigent persons<sup>2</sup> accused of committing criminal acts are provided legal services. They are appointed a Public Defender and the case is referred to the Law Offices of the Mohave County Public Defender. As soon as paperwork is received<sup>3</sup> the individuals' name is screened for potential conflicts in representing the individual within the Law Offices of the Mohave County Public Defender. If there is no apparent conflict based on the initial paperwork, a case file is opened and an attorney is assigned to the case<sup>4</sup>. If a conflict is identified, the Legal Defender's Office is contacted and a similar conflict check is performed by that office. If there is a conflict in both the Public and Legal Defender offices, the case is then assigned to a contract counsel based on a rotating list and attorney qualifications.

Data is maintained within the Law Offices of the Mohave County Public Defender on all cases to which an individual has been assigned government funded counsel. This data is cross-checked and verified to the greatest extent possible at each year end to ensure the best information is included within this report.

### **B. Case Classifications**

There are three major classifications of indigent defense services: (1) felony cases; (2) juvenile cases (juvenile cases currently include only delinquency cases<sup>5</sup>); and (3) misdemeanor cases.<sup>6</sup>

Prior to reviewing the figures below, please review Appendix A entitled, "Where the Numbers Came From and What They Represent" for a discussion about how the statistics are kept, what they mean and how they may differ from the case statistics kept by the other agencies.

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<sup>2</sup> It is important to note, that there is a very minimal screening process to determine the true financial eligibility of individuals based on income and assets.

<sup>3</sup> The time frame for paperwork to be transmitted varies from court to court, but can range from 12 to 72 hours.

<sup>4</sup> This process usually takes one complete business day to complete.

<sup>5</sup> Statutorily the Board of Supervisors may authorize local indigent defense offices to handle "All juvenile proceedings other than delinquency and incorrigibility proceedings under subdivision (f), including serving as a guardian ad litem, when appointed by the court pursuant to section 8-221, if the court appoints the public defender and the board of supervisors has advised the presiding judge of the county that the public defender is authorized to accept the appointment." A.R.S. § 11-584(H)

<sup>6</sup> Additional representational duties are authorized by statute, but such authorization along with accompanying staffing has not occurred in Mohave County to date. Specifically, local indigent defense services may represent "All mental health hearings regarding release recommendations held before the psychiatric security review board pursuant to section 13-3994, when appointed by the court as provided in section 31-502, subsection A, paragraph 8, if the court appoints the public defender and the board of supervisors has advised the presiding judge of the superior court in the county that the public defender is authorized to accept the appointment." A.R.S. § 11-584(i) and may act "As attorneys pursuant to title 14, chapter 5, article 4 of adults who are allegedly unable to effectively manage their affairs or preserve their estates, if the court appoints the public defender and the board of supervisors has advised the presiding judge of the county that the public defender is authorized to accept the appointment." A.R.S. § 11-584(j).

<b>Caseload Counts FY 2006</b>		
<b><u>PDO</u></b>		
	Misdemeanor	1739
	Felony	2316
	Juvenile	267
	PCR	65
	Appeals	18
	Probation Violations	328
	Subtotal	<b>4733</b>
<b><u>LDO</u></b>		
	Misdemeanor	338
	Felony	730
	Juvenile	100
	PCR	0
	Appeals	2
	Probation Violations	178
	Rejected	21
	Subtotal	<b>1349</b>
<b><u>Private Contract</u></b>		
	Misdemeanor	156
	Felony	641
	Juvenile	336
	PCR	20
	Appeals	2
	Probation Violations	105
	Subtotal	<b>1260</b>
	<b>Total</b>	<b>7342</b>

**Table 1** – This table shows the raw caseloads assigned to each of the three respective delivery providers of indigent defense for FY 2006. The 21 cases listed as rejected by the Legal Defender’s Office were cases which were assigned to the Legal defender’s office, accepted by that office, but subsequently rejected due to a conflict arising during the handling of the case. These cases were only counted once and credited to the Legal Defender’s office.

## 1. Felony Cases

A felony is a crime which carries a potential sentence of at least one year in prison. The first type of felony case generally begins with an arrest. An arrested individual must appear before a magistrate or justice of the peace within 24 hours for a determination as to whether there is sufficient reason to believe the person committed an offense for which they can be lawfully arrested. This first hearing is known as an initial appearance. These hearings currently are held without any counsel being present. At the hearing, a decision is made regarding whether the individual should remain in custody and if so what bond should be required for them to be released. If an individual requests counsel during this first hearing, the Law Offices of the Mohave County Public Defender is appointed to represent the individual. The physical paperwork indicating that appointment is forwarded by the court to the Law Offices of the Mohave County Public Defender. The paperwork is generally received between 12 and 72 hours later depending on the court. An individual who remains in custody is entitled to a *preliminary hearing*<sup>7</sup> within 10 days. An individual who is out of custody is entitled to a preliminary hearing within 20 days.

For individuals that are appointed counsel a conflict check is performed to identify any potential conflict of interests which would preclude representation by a member of the Law Offices of the Mohave County Public Defender. If there is a conflict, the case is sent to either the Legal Defender, or a private contract attorney, depending on whether the Legal Defender has a conflict or not. This process usually takes roughly one business day depending on the volume of incoming cases. If the case is retained within the Law Offices of the Mohave County Public Defender it is immediately assigned to the FasTrak supervisor. These cases are all assigned to the FasTrak unit in an attempt to achieve a speedy disposition of the case. The FasTrak unit attempts to mirror the *charging entities*<sup>8</sup> at the Mohave County Attorney's office and negotiate pleas, waiver-bind overs<sup>9</sup>, or dismissals. If none of these resolutions can be achieved, then either the case proceeds to a contested preliminary hearing, or the County Attorney may present the case to the Grand Jury for indictment.

The FasTrak supervisor immediately attempts to contact the appropriate charging entity within the Mohave County Attorneys' Office. The FasTrak supervisor and supporting secretaries attempt to influence the appropriate deputy county attorney to forward all reports and law enforcement documentation regarding the case as quickly as possible. Depending on the individual deputy County Attorney this may occur within a day, or sometimes not for a week or more (in the instance of a case being presented to the grand jury, reports may not be forwarded for several weeks or more ,

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<sup>7</sup> A preliminary hearing is a hearing at which a judge must make a determination as to whether there is probable cause to believe that the individual has committed the offense that they are charged with. The hearing generally consists of a law enforcement officer (who may, or may not, have been involved in the arrest and investigation of the individual) detailing the arresting officers report to the court. The court must view any evidence presented by the State in the light most favorable to sustaining a finding of probable cause.

<sup>8</sup> A charging entity is the individual responsible for making charging decisions about a case. These decisions include what statutory sections to allege have been violated, how the charging should proceed (by information to the justice court, or grand jury presentation), what offers should be made to resolve the case early on (if any), and whether law enforcement has provided sufficient information in reports to base a filing decision on in the first place.

<sup>9</sup> A felony case may only get to Superior Court if there has been a finding of probable cause made either by a Justice of the Peace at a contested hearing, or by a grand Jury. The exception is that an individual may waive their right to a probable cause determination and agree to have their case "bound over" to Superior court for all future proceedings.

causing significant delay in the overall processing time and costs attributable to the case). The delay in receiving reports prevents an attorney from having any meaningful discussion with a client due to the lack of information as to the alleged evidence that would be presented against the client. Ultimately, the goal of the FasTrak unit is to gather information to provide clients with appropriate advice as early in the judicial process as possible and to resolve the status of a felony currently filed in a justice court. This resolution may be by pointing out deficiencies in evidence, or investigation sufficient to convince a deputy county attorney to dismiss either because of a lack of evidence, or because a client is not guilty; pleading the client to a misdemeanor offer if appropriate; having the client agree to waive their right to a preliminary hearing in exchange for a benefit offered by the State<sup>10</sup>; or by conducting a contested preliminary hearing at which the State puts on evidence and the defense may cross-examine on the issue of probable cause. If the court finds probable cause, or the client waives their right to a preliminary hearing, the case is sent to Superior Court for all further proceedings.

Felony cases are divided into two classifications in terms of internal administration. The first group of cases is those which are filed in one of the five outlying Justice Courts<sup>11</sup>.

The second group of felony cases is known as *original indictments*. An original indictment is generally a case in which an individual was not arrested and a complaint was never filed in a justice court, but rather proceeds directly to Superior Court after the indictment is returned. In general, these cases involve more complex factual issues which were presented to the grand Jury for investigative or political reasons. A Mohave County OMB review of Grand Jury costs a year or so back, indicated that each grand jury indictment costs the county approximately \$250. The Law Offices of the Mohave County Public Defender has attempted to reduce the number of grand jury presentations by working more closely with the Mohave County Attorneys' office, but this effort has been only nominally successful. In a significant number of grand jury presentations attempts to move a case to Superior Court through less expensive alternatives such as those previously mentioned have been met by un-returned e-mails, phone calls or other attempts to resolve the matters. Despite this resistance, the FasTrak supervisor remains tasked with attempting to minimize the number of grand jury presentations by working jointly with the various charging entities. If the grand jury finds probable cause to believe an individual committed a criminal offense the grand jury returns a signed Indictment.

In FY 2006 there were a total of 3,687 felony cases to which an attorney was assigned. For fiscal year 2006, the Law Offices of the Mohave County Public Defender averaged 14.8 attorneys, the Legal Defender averaged 5 and there were seventeen felony indigent defense contract attorneys at the end of FY 2006.<sup>12</sup> During FY 2006 the Law Offices of the Mohave County Public Defender represented 2316 felony defendants (63%), the Legal Defender represented 730 felony defendants (20%) and contract attorneys represented 641 (17%). Most notable of these figures is the fact that

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<sup>10</sup> This benefit can be an offer to a sentencing stipulation which is less than the client is facing based on the charges, an offer to plea to a lesser felony offense, a guarantee of probation if the client pleads to a felony, a reduced bond, or release on their own recognizance.

<sup>11</sup> Kingman, Cerbat, Bullhead City, Lake Havasu City and Moccasin are the 5 justice courts within Mohave County.

<sup>12</sup> Chris Ackerly (Pinetop), Craig Cornell (Flagstaff), Stephen R. Glazer (Flagstaff), M. Alex Harris (Prescott), Sarah Hackathorne (Flagstaff), Michael J. Hruby (Williams), Cathy Johnstone (Page), Thomas Jones (Lake Havasu City), Daniel B. Kaiser (Flagstaff), Lenore Knudtson (Kingman), Rick Williams (Bullhead City), Deborah A. Liverence (Kingman), Randolph Wolfson (Bullhead City), William Porter (Kingman), Elana Sears (Kingman), Jason Smith (Phoenix) and Daniel DeRienzo (Prescott).

the number of cases sent to outside contractors doubled during FY 06.

The total of 3687 felony cases, represents a 12.8% increase in total felony cases handled over FY 2005.

## **2. Juvenile Cases**

Juvenile cases consist of juvenile *delinquency* cases (persons under the age of 18 charged with crimes). Legal services are provided to the children whom are charged with criminal offenses.

### **A. Delinquent and Incurrible Juveniles**

A "Delinquent Juvenile" is a juvenile who committed an act which if committed by an adult would be a criminal or petty offense. An "Incurrible Juvenile" is one who has been adjudicated to have committed an offense which can only be committed by a juvenile, such as refusing to obey one's parents, truancy, runaway, etc.

The number of delinquencies cases to which counsel was appointed increased slightly from 664 in FY 2005 to 683 in FY 2005 (a 2.9% increase).

### **B. Dependencies**

Currently legal representation for all parties to a juvenile dependency case is coordinated through the Courts. The Court has separate contracts with private counsels which pay a set amount for a specific number of cases. The Board of Supervisors has directed County Staff to review the efficacy of implementing a contract administrator position and review methods of reducing the cost of providing representation to indigent individuals in dependency actions. It has been discussed that this function might be best handled by a legal services procurement officer who works for procurement, but is co-located with the Law Offices of the Mohave County Public Defender. It is likely that the representation of dependent children will become an additional area of responsibility for the Law Offices of the Mohave County Public Defender in the future. It is anticipated that cost savings can be accomplished, although contract counsel will always be required due to conflicts of interest in representing adverse parties in a single action.

A "dependent child" is one who is:

1. In need of proper and effective parental care and control and has no parent or guardian, or the parent or guardian is not willing to exercise or incapable of exercising care and control, or
2. a child who is destitute, or is not provided with the necessities of life, including adequate food, clothing, shelter or medical care, or where the home is "unfit" by reason of abuse, neglect, cruelty or depravity by a parent, guardian or other person having care or custody of the child, or
3. A child who is incompetent or not restorable to competency and who is alleged to have committed a serious offense.

The Law Offices of the Mohave County Public Defender is organized in a manner in which the

representation of parties to a dependency action will be handled by the organizational unit that currently represents juvenile delinquency clients. There is a high level of cross-over between juveniles accused of delinquent acts and those that the State<sup>13</sup> seeks to declare dependent.

### **3. Misdemeanor Cases**

A misdemeanor is an offense for which a sentence to a term of imprisonment other than to the custody of the department of corrections is authorized by state law. Jurisdiction for adjudicating these offenses lies with the Justice Courts of Mohave County. Total misdemeanor case assignments during FY 2006 were 2234 as compared to 2158 in FY 2005, an increase of 3.5%. The highest concentrations of cases in this area are driving under the influence and domestic violence related cases.

### **4. Appeals and Post Conviction Relief Cases**

This year there were 98 Appeals and Post Conviction Relief (PCR) cases filed as compared to 150 in FY 2005. This is a reduction of 35%. An appeal is a case which occurs automatically after a trial results in a conviction of a defendant. Exceptions occur at the sole choice of the defendant and are predominantly limited to instances where the defendant is convicted of only a very minor charge and does not wish to remain entangled in the court system any longer than necessary. Post Conviction Relief cases are filed pursuant to Criminal Rule of Procedure 32 and are essentially a claim that the quality of legal representation was below professional standards. While information is anecdotal, there is an obvious connection between the workload an attorney has and the perceived performance each particular client has of that attorney's ability to work their cause. Higher per attorney caseloads inevitably result in a greater percentage of post-conviction relief proceedings. When you consider that the case weighting is 2 for a post-conviction relief case (Requires attorney to review everything that was originally done, re-do everything that was originally done, and evaluate whether the methodology falls below professional standards) it is certainly less expensive to do it right the first time.

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<sup>13</sup> Notably these cases are NOT handled by the County Attorney's Office, but rather by the Attorney General's Office.

## Part II - Indigent Defense Costs

The Law Offices of the Mohave County Public Defender was approximately 13% under authorized budget for FY 2006. Most of these savings came from the inability to fill authorized attorney positions.

ACCOUNTS FOR:	ORIGINAL	REVISED	YTD ACTUAL	BUDGET USED
40110 REGULAR SALARIES/WAGES	1,709,399	1,709,399	1,460,666.09	85.4%
40120 OVERTIME	0	0	217.65	.0% *
40130 TEMPORARY EMPLOYEES	1,000	1,000	726.53	72.7%
40160 SALARY/WAGES/OT REIMBURSEME	0	0	-494.03	.0%
40210 EMP.BENE.-FICA	130,769	130,769	108,442.34	82.9%
40230 CTY.HEALTH INS.	265,464	265,464	199,056.85	75.0%
40240 WORKERS COMP	4,105	4,105	3,040.00	74.1%
40260 STATE RETIRE.	126,496	126,496	103,510.00	81.8%
41100 OFFICE SUPPLIES	9,600	9,602	9,065.15	94.4%
41140 COPIES/DUPL. SUPPLIES	3,600	2,350	2,040.38	86.8%
41150 DATA PROCESSING SUPPLIES	2,400	4,600	4,385.44	95.3%
41400 TOOLS & EQUIPMENT UNDER \$10	2,000	1,945	1,915.45	98.5%
43110 LEGAL SERVICES	220,000	220,000	254,794.89	115.8% *
43115 INVESTIGATION FEES	8,320	6,662	6,661.97	100.0%
43120 DATA PROCESSING SERVICES	52,433	52,433	52,433.00	100.0%
43210 TELEPHONE	24,926	25,526	25,294.77	99.1%
43215 TELEPHONE COMPUTER DATA	3,648	3,648	3,648.00	100.0%
43216 CELL PHONE CHARGES	1,680	1,830	1,704.64	93.1%
43230 POSTAGE	5,000	5,200	4,991.64	96.0%
43310 TRAVEL EXPENSES	3,673	3,673	3,937.51	107.2% *
43312 TRAVEL RECRUITING	3,100	3,190	3,187.93	99.9%
43320 MOTOR POOL CHGS.	16,000	16,000	14,326.39	89.5%
43325 VEHICLE REPLACEMENT	5,460	5,460	5,460.00	100.0%
43430 JOB ADVERTISING	330	180	173.40	96.3%
43510 PRINTING EXP'S	1,595	1,295	1,134.47	87.6%
43530 COPIER CONTRACT	7,534	7,984	7,387.09	92.5%
43730 WATER EXPENSE	480	480	367.50	76.6%
43810 LEASE COMPUTER (IT ONLY)	29,230	29,230	29,230.00	100.0%
43860 BUILDING LEASES	5,100	5,690	5,624.50	98.8%
43910 R&M AUTOMOTIVE	480	120	118.90	99.1%
43920 R&M OFFICE EQUIP	550	30	22.61	75.4%
47910 COURT COSTS/INVESTIGATIONS	5,000	5,013	5,012.16	100.0%
47930 DUES, SUBSCRIPTIONS/MEMBERS	14,000	14,000	13,972.64	99.8%
GRAND TOTAL	2,663,372	2,663,374	2,332,056.18	87.6%

**Table 2** – This table lists the totality of expenditures under the primary General Fund account which comprises the main budget for the Law Offices of the Mohave County Public Defender.

### Cost per Case Analysis

The average cost per case for an appointed attorney from the Law Offices of the Mohave County Public Defender was \$588.59 during FY 2006. This is up about \$83.83 per case from FY 2005, and up \$81.44 per case from FY 2004. By comparison, the average cost per case for an appointed attorney from the Legal Defender's Office was \$ 822.12 for FY 2006, up from \$722.74 for FY 2005 and up from \$691.49 in FY 2004 and up from \$767.68 in FY 2003. The average cost per case for the contract attorneys also rose for the second straight year by over \$150 to \$ 897.09 in FY 2006 versus \$745.95 for FY 2005, \$904.59 for FY 2004 at \$904.59 and \$655.39 in FY 2003. The significant jump in the average cost during FY 2006 was due to a large number of homicide cases which required outside contract counsel due to the lack of trained and experienced staff attorneys within

the law Offices of the Mohave County Public Defender. The chart in Figure 1 shows the comparative costs of the three delivery methods for FY 2006. The chart in Figure 2 shows a four year comparison of the costs of the three delivery systems and the four year average for all three systems. The chart in Figure 3 shows the change in the raw number of cases handled through each delivery method over a four year period (FY 2003-2006).

It is important to comment briefly on the structure of the conflict contracts. Under the contract, a private attorney can either accept, or decline an offered case. If they accept the case, the price is established as a flat rate for the first 25 hours of work. There are minor exceptions which can reduce the flat rate if the case resolves quickly. However, if the case exceeds 25 hours, the attorney simply asks the court to order the contract administrator (currently the Public Defender) to pay an hourly rate for all work beyond the 25<sup>th</sup> hour. Such converted hourly cases are generally a very small percentage, but when they occur (generally in complex cases) the result is an extreme deviation to the average cost.

The cost per case calculation is a little more complex than may first appear due to the fact that the actual number of cases is derived based upon a weighted average. The reason for this is consistency. Different types of cases as set forth in the Introduction require differing amounts of effort to perform an effective job of representing accused persons. The contract system is set up to recognize this difference by paying more for more complex cases and less for simpler ones. Similarly two similarly paid staff attorneys can handle significantly different caseloads based on the complexity. Therefore the cases are “weighted” to standardize the average work required per case and this weighted figure is used to determine the average case cost.

The numbers speak for themselves. It cost the County more tax dollars, per case, to retain a contract attorney than it does for a staff attorney to handle a case “in-house.” The reasons for this include 1) economies of scale; 2) fixed salaried employees versus the variable cost of contract attorneys; 3) centralized management; 4) improved record keeping; 5) organized division of labor; 6) a centralized databank and 7) increased amount of state and federal funding. The costs for the Law Offices of the Mohave County Public Defender are the lowest primarily because of economies of scale that enable an organizational structure which provides a heightened level of efficiency, and therefore, slightly higher caseloads per attorney without an accompanying increase in the time required to provide effective representation.

### **Part III - FY 2006 Highlights and Achievements**

During FY 2006, technology invested in during FY 2002 began to pay huge dividends. Automation played a huge part in the ability to hold costs low while providing quality representation. By utilizing automation capabilities, the averages of 14.8 attorneys at the Law Offices of the Mohave County Public Defender were able to make 22,437 court appearances during the year; this is an incredible feat when you consider that in FY 05 there were only 18,910 court hearings attended by 17 attorneys. Over 29,000 documents were created through an automated document assembly system which retrieved data from the case management database. Each of these documents was created with a time savings of 30-120 seconds. Individually this seems like a small amount, but collectively this is a time savings of over 600 hours!

As we went into the budget process for FY 2006, plans had begun to renovate and move into the historic St. Johns church. During this budget process full funding for an appropriate remodel was finally authorized after several years of delay. The project was fully underway by the end of the fiscal year and the anticipation is that full occupancy will be accomplished sometime during the 2<sup>nd</sup> or 3<sup>rd</sup> quarter of FY 07. This project should significantly enhance the professionalism and morale within the office. An increase in retention is anticipated as a result as well.

Appropriate caseloads and staffing have a definite role in the level of stress felt by employees. In FY 2005 the weighted caseload of 3825 cases should have been handled by a *minimum* of 25.5 attorneys. In FY 2006, the number of cases handled by the attorneys at the Law Offices of the Mohave County Public Defender decreased by roughly 300 cases to 3,529 which still required a staffing of 23.5 attorneys to handle. If you add back in the cases which went to expensive contract counsel, the number of attorneys needed to maintain a solid in-house cost –effective program blossoms to over 33 attorneys. The longer the County goes without addressing adequate staffing, the harder it will be in the future to catch up. By ignoring the dilemma, we are setting ourselves up as a county for a major issue with the provision of indigent defense in the coming years.

### **Part IV – Human Resources / Participation in Loan Repayment and Relocation Assistance Programs**

#### **Human Resources –**

FY 2006 began with 14 attorneys on staff. During the course of the year 5 attorneys who had been with the office for one or more years left the office. Specifically, two attorneys who had previously been seeing their spouses only on week-ends choose to relocate to be with their spouse's, one attorney left for a position with Community Legal Services in Kingman, one attorney left to take a position in the Coconino Public Defender's Office (this had long been an aspiration of his, and he took a significant pay cut and walked away from the new Loan Repayment Assistance program which he would have had maximum eligibility for an additional \$6,000 per year), and one attorney left after 13 weeks due to incompatibility with office protocols and standards. Of the five attorneys

who left, 3 relocated and cited problems with work force, or lifestyle as a factor in their decision, one remained in Kingman in another legal position and one was separated and subsequently relocated.

	Attorneys/ Interns July 1	Number Attorneys/ Interns departing	Number Attorneys/ Interns hired	Net Change	Participation in Relocation	Participation in LRAP	Average Years of Experience
FY 2002	10/0	3	4	+1	N/A	N/A	11
FY 2003	10/2	3/1	6/5	+7	N/A	N/A	7.75
FY 2004	18/0	4/0	2/0	-2	N/A	N/A	8.75
FY 2005	16/0	4/0	3/0	-1	N/A	N/A	10.2
FY 2006	14/0	9/0	9/0	E	1	3	7.17
Totals		23/1	24/5	+5	1	N/A	9.38

FY 2006 was a difficult year with respect to personnel. Of nine (9) new hires made during the course of FY 06, four new hires did not last beyond 6 months. A 5<sup>th</sup> new hire moved on after 10 months due to her husband's relocation for work to the metropolitan Phoenix area. A 6<sup>th</sup> new hire failed to pass the bar examination. The 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> new hires remain with the office and are high performers with long careers ahead of them with the office should they so choose, although at least one remains challenged by the local sociological issues inherent to Kingman and Mohave County as a rural jurisdiction.

Subsequent to the approval of the Loan Repayment and Relocation Assistance Programs by the Board of Supervisors in January of 2006, interest in positions with the Law Offices of the Mohave County Public Defender has grown phenomenally. In previous years an average annual total of applications would be roughly two dozen. By contrast over 250 applications were received within three weeks of advertising the new programs. Over 50 potential candidates were selected from this group to come and interview at their own expense. The 50 individuals were screened down to 8 third year law students who were extended offers which 7 of them accepted. These individuals came from a diverse geographic area encompassing, Miami, New Hampshire, California, Texas, Michigan, Nebraska, Nevada and New York. Of the seven individuals who accepted employment in March of 2006, all but one passed the bar examination. While it is still too early to validate the efficacy of the new Loan and Relocation Programs, initial responses have been very favorable and it appears that they will significantly turn the tables on recruiting and retention efforts during the coming years. During 2006 the office lost only 2 people with more than 2 years experience.

Additional consideration must be placed on the recruiting cycle for new hires. As a general rule, we have had considerably more success hiring students out of law school and retaining them than we have had with lateral hires from within the State, although it should be noted that we have also

initiated a fairly aggressive recruiting program for lateral hires from other public defender offices outside of Arizona. The primary recruiting cycle for new law school graduates is September through January of the individuals third year in law school. Employment offers must be out to 3<sup>rd</sup> year students no later than March as the application fees for bar examinations go up each month, with a final deadline generally of April 1 of the examination year. The target for the first round of offers is January 1, with secondary offers to alternate candidates is February 1 of each year. These applicants begin their employment between the first week of August and the first week of September. Bar examination results are generally released the first week in October, and individuals are generally sworn in and licensed between mid-October and late November depending on their Character and Fitness processing.

The amount of time it takes to recruit a new law school graduate and have them on board with a license is a minimum of 8 to 20 months. The amount of time required is significantly dependant on when the recruiting need arises. For a vacancy which arises shortly before, or during a recruiting cycle, the time for an attorney to be recruited and licensed is between 8 and 14 months. For a vacancy which arises after January it can take 14-20 months to have a new recruit on board and licensed.

After becoming licensed it takes roughly 1-3 months of direct mentoring in the courtroom for a new attorney to be able to handle a justice court docket and caseload on their own. The time frame depends solely on the individuals' ability. Once the new attorney has handled their own caseload and clientele for a minimum of 6 months up to 36 months, they are competent to begin to handle a low level felony caseload. The amount of time and degree of complexity that the individual is capable of handling varies greatly and is solely dependant on the individual abilities of the employee.

All of this means that the fastest a new attorney can be reasonably trained to be competent to handle a felony caseload is 14 months from initial recruitment. This process can take as long as 60 months.

With the unique characteristics of a successful employee including the ability to adapt and thrive in the rural environment of Mohave County, those individuals who may take 60 months can not be discounted if they are otherwise solid long term employment prospects. The initial recruiting and training cycle is illustrated in figure XXXX

With the average cost to send a case to an outside contract attorney averaging over nine hundred dollars (\$900+), the cost of sending a standard caseload out is \$11,250 per month ( $(900 \times 150)/12$ ), or \$135,000 annually. If this were the only cost, it would be roughly \$45,000 more than an average staff attorney. However, this is an additional cost on top of the cost of having the new trainee attorney on board, until such time as the new attorney is capable of handling the caseload, at which point the cost is reduced to the salary and benefits of the employee. Having only the exact number of positions authorized as are also required to handle the cases assigned, will consistently cause a training lapse of roughly 16 months, or \$180,000 per vacancy. Based on the average number of vacancies over the past few years being roughly 4, this is an annual cost of roughly \$700,000 which is to some degree avoidable. If additional training positions were authorized as Attorney I's, the training void could be reduced by having trainees at the ready when a vacancy does occur. It is strongly recommended that an additional two "training Attorney I positions be authorized to reduce the training lag when felony attorneys do leave.

The average growth rate in caseloads over the past four years has been 7.8%. It has been and remains my strong recommendation that budget projections include an increase of 5% to all criminal justice system entities, particularly public defender staffing be planned each year. This figure can be adjusted each year by averaging out the prior 5 and ten year periods' growth.

While the Loan Repayment Assistance Program (LRAP) having a bearing on the significant increase in applicants, the long term impact on retention will not be known until the first class recruited with the incentive is eligible for participation. The first of the new hires will not be eligible until January of 2008.

New employees have all requested assistance with the costs of relocation, and those employees who have prematurely left employment have all complied with the payback provisions of the program.

Failure to provide staff authorizations, **and** the tools to recruit and retain are simply a shifting of costs from one area to another. Instead of paying for employees, and recruiting and retention programs, we have historically systematically recruited who we can, gotten whatever work we could from them, and then allowed them to burnout and fall to the wayside as replacements were recruited. The soft and hard dollars that go into sustaining this process need to be utilized to create and sustain a more positive system. A positive system will exist when appropriately professional work environment, proper staffing levels, and proper support staffing levels are all in place. Key to the creation of such a system will be the implementation of recruiting and retention tools which recognize that it is much more difficult to recruit and retain a defense attorney than other attorneys in the county.

### **Part V – Conclusion (Challenges and Trends for the Future)**

Systemically the Law Offices of the Mohave County Public Defender is light years ahead of where it was in FY 2001. Organizational structure and technological advances have been put in place which can allow near optimal human efficiencies. The lack and delay of providing appropriate physical facilities has caused a significant setback in the advancement of the organization as one which can become self-sustaining. Current staffing losses and recruiting challenges appear to be returning to the 1999-2000 cycle of wholesale desperation in simply filling positions. To avoid a knee-jerk reaction to simply hire “*bodies*” to fill chairs and create additional problems down the line it is imperative that caseloads be maintained with professional standards. This will require that cases which can not be absorbed by remaining staff due to numbers or experience be sent to outside private contract counsel. This will result in a projected budget over-expenditure of roughly \$450,000 - \$700,000 for FY 2007. In order to not exacerbate the use of private counsel at higher cost, it will be imperative to approve and allow for the recruiting of additional FTE staff to maintain professional standards and limit liability to the County. It is important to note that if the County knowingly fails to provide effective counsel by maintaining a system which is known to be ineffective, the county can be held civilly liable for under 42 U.S. C. § 1983 (See, *Miranda v. Clark County*, Appendix G)

On the positive side, the process of remodeling and renovating the historic St. John's church is underway and it is possible that the design and remodel of the third floor may be done prior to the

beginning of the new fiscal year. The completion of this project in a timely manner will be crucial to a successful recruiting season (the period when most law schools graduate students after the end of their third year, and Arizona allows applicants to take the Bar examination, roughly from April – August of each year). The implementation of a salary structure which brings defense counsel on par with other competitive jurisdictions per the *Siegel Study* will definitely enhance recruiting efforts. However, since the budget does not become final until August, which is the end of the recruiting season, it will be imperative that a commitment is made prior to the finalization of the budget as to what tools will be available to increase the recruiting and retention of defense attorneys. These tools should be designed in a manner which will adequately address the realities of significant differences in the ability to recruit and retain staff attorneys in the various attorney positions within the county.

If the positive aspects of the issues raised and addressed in this report can be enhanced and followed through on, the future looks bright for all of the citizenry of Mohave County to know that the justice system in Mohave County will be fair and that they can have faith in the integrity of the results of that system. Failure to follow through will likely result in continued depletion of quality attorneys in the government defense offices which will result in a significantly lower quality of representation at a higher cost. Lower quality representation as discussed will result in additional costs beyond the initial contract cost of representation due to a likely increase in post-conviction relief cases.

## **Appendix A - Where the Numbers Come From and What They Represent**

In order to best analyze the caseload statistics, it is important to understand where the numbers came from and what the numbers represent.

The caseload/crime statistics contained in this report were compiled from the Public Defender case management database known as *Justware*. This database was implemented in 2001 and was designed to track caseload information at several different levels. Because many crimes are unreported and because many crimes are not solved, the numbers compiled in this report in no way reflect the crime rate in Mohave County. Those figures should be obtained from law enforcement agencies. Similarly, not every reported crime, or arrest becomes a case, so the internal case data is unlikely to directly reflect local law enforcement data.

In addition, the figures represent the number of individuals charged with a crime, not necessarily the number of cases filed in the Superior Court. For example, when a crime is committed by multiple defendants our office records the number of defendants. This is because each defendant will need a lawyer. The Superior Court and the County Attorney, on the other hand, may record that case as a single filing. For this reason, our statistics may differ from those of the Superior Court and the County Attorney.

It is also helpful to understand that the type of crimes recorded represent the crimes *as charged* (ie: assault, theft, etc.), and not the ultimate disposition (not the crime to which the defendant was found guilty of, pled to, or was acquitted of). Many defendants plead to lesser offenses. Sometimes felonies are reduced to misdemeanors or dismissed outright. Sometimes defendants are found not guilty by a jury. For the purpose of staffing, management and planning analysis it is important to know what a defendant is charged with initially. It is the initial charge which determines whether counsel is appointed and how much the County must ultimately spend for the defense.

In addition, the crime figures mentioned in this report reflect only the main crime charged. Many defendants are charged with multiple offenses arising out of a single act. For example, a defendant may be charged with Possession of Marijuana, Possession of Marijuana with Intent to Sell, Possession of Drug Paraphernalia and Underage Drinking. The following statistics would reflect only the main charge, to wit, Possession with Intent to Sell. If we counted all of the multiple charges which the prosecutor decided to file, analysis would prove meaningless, because indigent defense attorneys are not compensated based upon the number of charges filed.

Finally, our statistics reflect only charges filed against indigent defendants. We estimate that 95% of all persons charged with felony and juvenile offenses are found to be indigent and are provided counsel through the Law Offices of the Mohave County Public Defender.

**Appendix B - Breakdown of Most Prevalent Crimes for FY 2006 By Charge**

<b>Statute and Description</b>	<b>Number of cases involving</b>
13-3415 – Possession of Drug Paraphernalia	1,650
13-901.C – Probation Violation/Petition to Revoke	420
13-3407 – Possession of Dangerous Drugs	764
13-3405 – Possession of Marijuana	634
13-1203.A.1 – Assault by Domestic Violence	246
28-3473 – Driving w/ DL Suspended	462
28-1381.A.1 – DUI	244
13-2904/13-3601 – Disorderly Conduct by DV	249
13-1602.A.1 – Criminal Damage > \$250 < \$2,000	394
13-2904 – Disorderly Conduct	299
28-1383.A.1 – Aggravated DUI	192
13-1506 – Burglary in the Third Degree	153
13-1802.A – Theft \$1,000 < \$ 2,000	445
13-2002 – Forgery	163
13-1203 – Assault	215
13-1814 – Theft of means of Transportation	174
13-1105 – First Degree Murder	15
13-1104 – Second Degree Murder	10
13-1103 - Manslaughter	5
28-1381.A.2 – DUI .08	162

**General Category Breakdown**

<b>Type of Crime</b>	<b>Number</b>
Primary Drug	3175
Domestic Violence	884
DUI	767
Burglary	297
Forgery	166
Assault/Disorderly Conduct	1484
Theft of means of Transportation	174

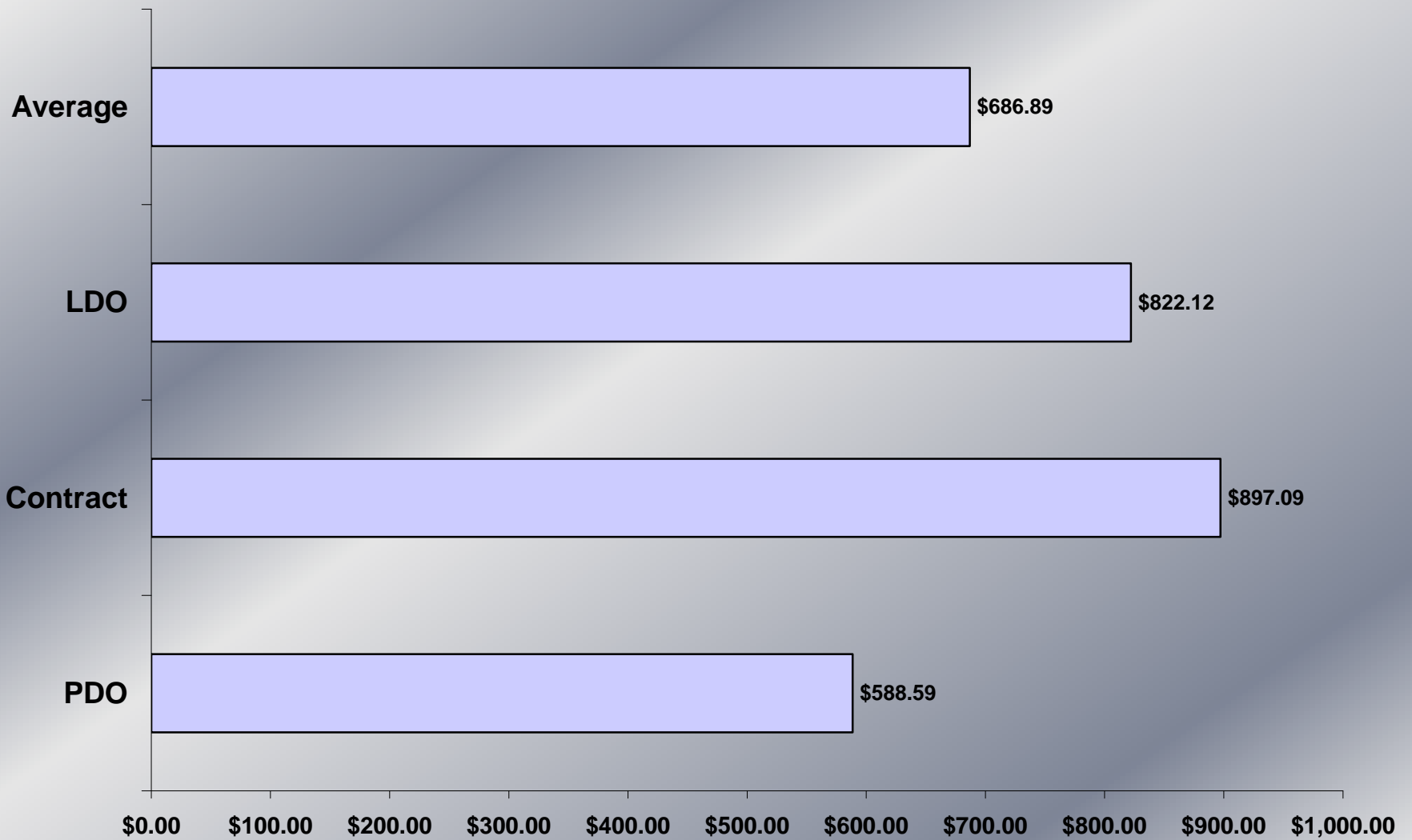
## Appendix C - Detailed Budget Report

ACCOUNTS FOR:	ORIGINAL	REVISED	YTD ACTUAL	BUDGET USED
40110 REGULAR SALARIES/WAGES	1,709,399	1,709,399	1,460,666.09	85.4%
40120 OVERTIME	0	0	217.65	.0% *
40130 TEMPORARY EMPLOYEES	1,000	1,000	726.53	72.7%
40160 SALARY/WAGES/OT REIMBURSEME	0	0	-494.03	.0%
40210 EMP.BENE.-FICA	130,769	130,769	108,442.34	82.9%
40230 CTY.HEALTH INS.	265,464	265,464	199,056.85	75.0%
40240 WORKERS COMP	4,105	4,105	3,040.00	74.1%
40260 STATE RETIRE.	126,496	126,496	103,510.00	81.8%
41100 OFFICE SUPPLIES	9,600	9,602	9,065.15	94.4%
41140 COPIES/DUPL. SUPPLIES	3,600	2,350	2,040.38	86.8%
41150 DATA PROCESSING SUPPLIES	2,400	4,600	4,385.44	95.3%
41400 TOOLS & EQUIPMENT UNDER \$10	2,000	1,945	1,915.45	98.5%
43110 LEGAL SERVICES	220,000	220,000	254,794.89	115.8% *
43115 INVESTIGATION FEES	8,320	6,662	6,661.97	100.0%
43120 DATA PROCESSING SERVICES	52,433	52,433	52,433.00	100.0%
43210 TELEPHONE	24,926	25,526	25,294.77	99.1%
43215 TELEPHONE COMPUTER DATA	3,648	3,648	3,648.00	100.0%
43216 CELL PHONE CHARGES	1,680	1,830	1,704.64	93.1%
43230 POSTAGE	5,000	5,200	4,991.64	96.0%
43310 TRAVEL EXPENSES	3,673	3,673	3,937.51	107.2% *
43312 TRAVEL RECRUITING	3,100	3,190	3,187.93	99.9%
43320 MOTOR POOL CHGS.	16,000	16,000	14,326.39	89.5%
43325 VEHICLE REPLACEMENT	5,460	5,460	5,460.00	100.0%
43430 JOB ADVERTISING	330	180	173.40	96.3%
43510 PRINTING EXP'S	1,595	1,295	1,134.47	87.6%
43530 COPIER CONTRACT	7,534	7,984	7,387.09	92.5%
43730 WATER EXPENSE	480	480	367.50	76.6%
43810 LEASE COMPUTER (IT ONLY)	29,230	29,230	29,230.00	100.0%
43860 BUILDING LEASES	5,100	5,690	5,624.50	98.8%
43910 R&M AUTOMOTIVE	480	120	118.90	99.1%
43920 R&M OFFICE EQUIP	550	30	22.61	75.4%
47910 COURT COSTS/INVESTIGATIONS	5,000	5,013	5,012.16	100.0%
47930 DUES, SUBSCRIPTIONS/MEMBERS	14,000	14,000	13,972.64	99.8%
<b>GRAND TOTAL</b>	<b>2,663,372</b>	<b>2,663,374</b>	<b>2,332,056.18</b>	<b>87.6%</b>

**Appendix D - Cost per Case Analysis using Weighting Factors**

<b>Caseload Counts FY 2006</b>						
		<u>Raw Number</u>	<u>Conversion Factor</u>	<u>Weighted Cases</u>	<u>FY '06 Budget</u>	<u>Per case Weighted Cost</u>
<b>PDO</b>		(Actual Expenditures)				
	Misdemeanor	1739	0.375	652.125		
	Felony	2316	1	2316		
	Juvenile	267	0.75	200.25		
	PCR	65	2	130		
	Appeals	18	6	108		
	Probation Violations	328	0.375	123		
Subtotal		<b>4733</b>		3529	\$2,077,361.00	\$588.59
<b>LDO</b>						
	Misdemeanor	338	0.375	126.75		
	Felony	730	1	730		
	Juvenile	100	0.75	75		
	PCR	0	2	0		
	Appeals	2	6	12		
	Probation Violations	178	0.375	66.75		
	Rejected	21				
Subtotal		<b>1349</b>		1010	\$830,750.00	\$822.12
<b>Private Contract</b>						
	Misdemeanor	156	0.375	58.5		
	Felony	641	1	641		
	Juvenile	295	0.75	222		
	PCR	20	2	40		
	Appeals		6			
	Probation Violations	105	0.375	39.375		
Subtotal		<b>1260</b>		1001	\$897,318.00	\$897.09
<b>Total</b>		<b>7342</b>		5540	\$3,805,429.00	\$86.89

## Indigent Defense Provider Cost Per Weighted Case FY '06



**Figure 1** – This table represent the average cost per case for all three forms of legal service providers, as well as the average for all services for fiscal year 2006.

# Indigent Defense Provider Cost per Weighted Case FY 03- FY 06

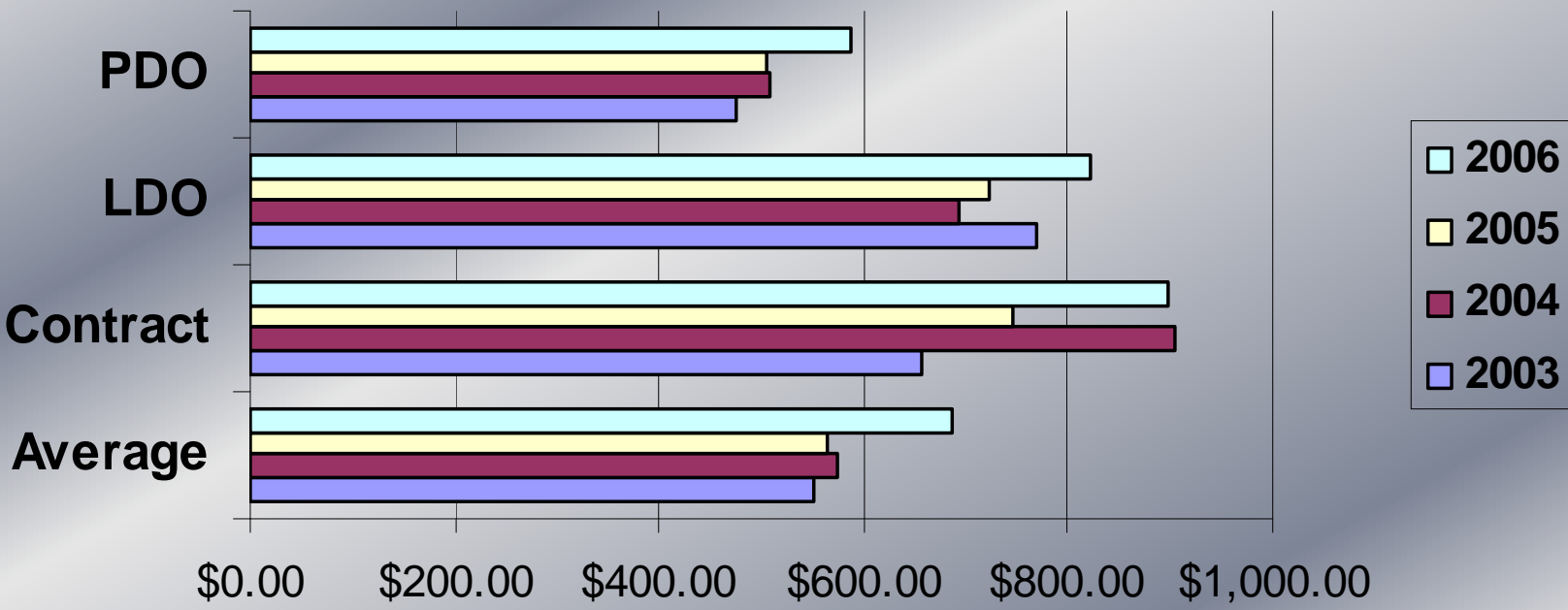
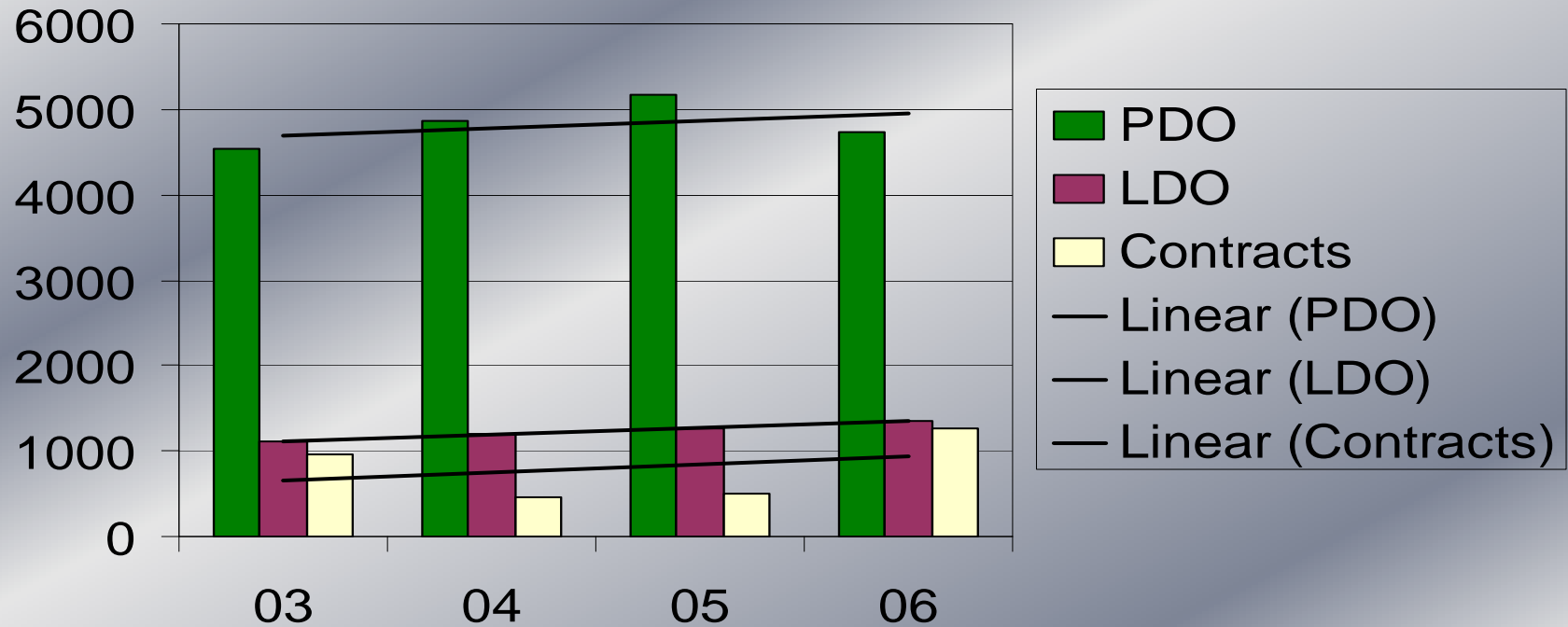


Figure 2 – This Chart shows an annual comparison for all three indigent defense provider systems and the average for the county provided service.

## Raw Cases Handled by Fiscal year



**Figure 3** – This chart shows the growth in the volume of raw cases handled by the respective service provider systems within Mohave County. General decreases in the number of outside contract case assignments is a result of more stringent conflict review, and greater internal efficiencies and optimization of resources.