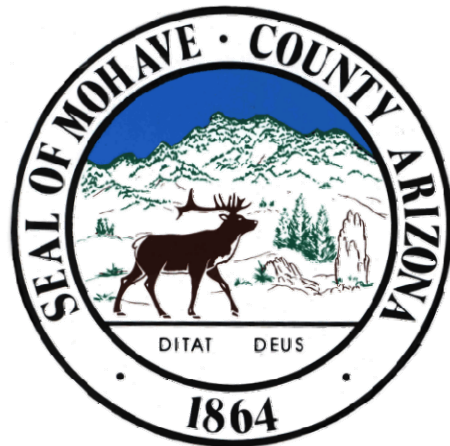


Law Offices of the Mohave County  
Public Defender



FY 2008  
Annual Report

Prepared by:  
Dana P. Hlavac  
Public Defender  
318 N. 5<sup>th</sup> St.  
Kingman, AZ 86401

## Executive Summary

This report is prepared in accordance with A.R.S. §11-584(A)(2) & (3) which requires 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 setting forth the number of cases filed and to which an indigent defense attorney was appointed during FY 2008 together with an accounting of funds expended in FY 2008. 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 that 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 2008 represented the twenty-third 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, the 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 2008 continued to see significant gains in recruiting with over 190 applicants from around the nation seeking a position with the Law Offices of the Mohave County Public Defender. From this group of applicants, 24 individuals traveled to Kingman to be interviewed and 5 final offers were extended to fill vacancies which existed at the close of FY 2007. These five vacancies reflected roughly twenty-four percent of the authorized positions which were unfilled at the close of FY 2007.

All 5 of the offers were accepted with individuals starting as early as April of 2008, and as late as September 2008. Three of the five individuals that accepted offers needed to take the July 2008 Bar Examination to obtain their Arizona license. With only three new hires awaiting Bar results as we entered FY 2009 (as well as one existing Attorney Intern who also took the July 2008 Bar exam) the outlook for staff licensed attorneys is very high going into FY 2009. All current professional staff is licensed at the time of the finalization of this report. This has resulted in the highest level of staffing ever for this office and a less than 10% vacancy rate. As a result there should be a significant reduction in the use of outside contract counsel during the second half of FY 2009. For FY 2008, the vacancy rate was the third lowest since this data has been recorded (2001) at 21.9%. Overall productivity, as measured by hours worked, was the fourth highest at 37,531, or an average of 42.83 hours per week. It is important to note that the total hours worked was only 12 less for the entire

year than the highest year to date, but with the addition of one additional authorized FTE during FY 2008, that was not filled, the total available hours versus actual hours was lower. Early data for FY 2009 shows a trend toward roughly 10% more hours worked based on staffing levels at the end of FY 2008.

During FY 2008, only four attorneys left the office. One of those departures was due to retirement, one due to medical, and two relocated to the Phoenix area (one to private practice and one to another indigent defense office). The two attorneys who relocated to Phoenix had a combined thirty-two (32) months of licensed experience. During the same period eight attorneys began employment.

FY 2008 was the first full year the department was operating in the renovated historic St. John's United Methodist Church (former Mohave County Public Health) building. The renovated facility has significantly improved morale, efficiency and overall professionalism within the office. Long term benefits are being seen in greater success at recruiting and retention efforts.

FY 2008 began extremely promising as 6 offers were extended to third year graduating law school students. These offers went to students from Franklin Pierce College of Law, New Hampshire; University of Seattle, Washington; University of Cincinnati, Ohio (2); University of Louisville, Kentucky; SUNY Buffalo, New York; Harvard, Massachusetts; and Tulane University, Louisiana. One of these individuals began work in the latter part of the 4<sup>th</sup> quarter of FY 2007 with the remainder beginning near the latter part of the first quarter of FY 2008. This meant that for the bulk of FY 2008, licensed professional staffing was critically low. Over 700 cases were "overflowed" to private contract counsel because there was insufficient internal trained professional staff to handle the cases<sup>1</sup>. 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. Unanticipated costs were roughly \$ 644,000 for FY 2008 due to staffing shortages. By comparison there were cost avoidances of roughly \$ 520,518 from the same staffing shortages. The net to the county was an unexpected loss of \$ 123, 482 for FY 2008, this is a lower loss than the \$145,000 realized in FY 2007.

On the positive side, since the implementation of the "Hot Job" incentive program for recruiting and retention, applications are up significantly. To date, retention is up from 25% to over 80%, although the time period to fully evaluate retention differences is too short to be reliable at this point.

At the beginning of the fiscal year, one additional FTE (Attorney III) was authorized through the budget process. This position was unfilled for the entire period of FY 2008 due to staffing shortages.

The provision of legal services through the staff at the Law Offices of the Mohave County Public Defender remained the cheapest manner of providing service on a weighted case basis. The Legal Defender's office was the most expensive delivery method, coming in roughly one hundred sixty dollars (\$160) per case higher than the average contract cost per case, and over three hundred dollars (\$300) more than the average case cost of the Public Defender.

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<sup>1</sup> 531 adult felonies, 3 juvenile delinquencies, 25 misdemeanors and 164 probation violation cases. On a weighted case basis, this represents a total of 601 felony equivalents, or 4 FTE workloads.

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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 2008.

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 2008. The term “weighted case” is used throughout this report to represent an adjustment to raw caseload figures based on acceptable annual 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). During FY 2008 the necessity of ensuring that caseloads were properly managed and reviewed was emphasized by the American Bar Association in its’ ethics opinion 06-0441 (Appendix A).

Caseload/workload issues have become a major issue not only in Mohave County, but throughout the nation. The current status of this issue, as it impacts operational considerations in Mohave County, is addressed in this section.

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.

## **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 schedule 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 previously included only delinquency cases, however in FY 2008 the Board of Supervisors authorized the Law Offices of the Mohave County Public Defender to also represent dually adjudicated youth in both their delinquency and dependency cases.<sup>5</sup>); and (3) misdemeanor cases.<sup>6</sup>

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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 a complete business day.

<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).

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.

| <b>Caseload Counts FY 2008</b> |                      |             |
|--------------------------------|----------------------|-------------|
| <b><u>PDO</u></b>              |                      |             |
|                                | Misdemeanor          | 1982        |
|                                | Felony               | 1448        |
|                                | Juvenile             | 399         |
|                                | PCR                  | 62          |
|                                | Appeals              | 37          |
|                                | Probation Violations | 175         |
|                                | Subtotal             | <b>4103</b> |
| <b><u>LDO</u></b>              |                      |             |
|                                | Misdemeanor          | 384         |
|                                | Felony               | 564         |
|                                | Juvenile             | 74          |
|                                | PCR                  | 0           |
|                                | Appeals              | 0           |
|                                | Probation Violations | 189         |
|                                | Subtotal             | <b>1211</b> |
| <b><u>Private Contract</u></b> |                      |             |
|                                | Misdemeanor          | 101         |
|                                | Felony               | 875         |
|                                | Juvenile             | 91          |
|                                | PCR                  | 0           |
|                                | Appeals              | 0           |
|                                | Probation Violations | 204         |
|                                | Subtotal             | <b>1271</b> |
|                                | <b>Total</b>         | <b>6585</b> |

**Table 1** – This table shows the raw caseloads assigned to each of the three respective delivery providers of indigent defense for FY 2008.

## **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 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, 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 achieved 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

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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.

<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,

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. If the grand jury finds probable cause to believe an individual committed a criminal offense the grand jury returns a signed Indictment. 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.

In FY 2008 there were a total of 2,887 felony cases to which an attorney was assigned. For fiscal year 2008, the Law Offices of the Mohave County Public Defender averaged 12 attorneys, the Legal Defender averaged 5 and there were twenty-six indigent defense contract attorneys at the end of FY 2008.<sup>12</sup> During FY 2008 the Law Offices of the Mohave County Public Defender represented 1448 felony defendants (50.2%), the Legal Defender represented 564 felony defendants (19.5%) and contract attorneys represented 875 (30.3%). Most notable of these figures is the fact that the percentage of cases sent to outside contractors grew by over 5% during FY 08 as compared to FY 07.

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The total of 2887 felony cases, represents a 17% decrease in total felony cases handled over FY 2007. Case filing reductions in FY 2007 and 2008, are an anomaly that are not wholly consistent with reduced crime arrests, or reports. It would appear that reduced filing may be a result of reduced staffing levels in the County Attorneys' office.

## 2. Juvenile Cases

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an offer to plea to a lesser felony offense, a guarantee of probation if the client pleas 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> Christian C. Ackerley (Show Low), Lenore Knudtson (Kingman), Creighton Cornell (Tucson), Stephen R. Glazer (Flagstaff), David Goldberg (Flagstaff), Shawn Hamp (Kingman), Sarah Heckathorne (Flagstaff), John W. Lovell (Tucson), Troy Messer (Kingman), Gail Natale (Phoenix), Geraldine Miller (Bullhead), Elana Sears (Kingman), M. Alex Harris (Prescott), Michael J. Hrubby (Williams), Cathy Johnstone (Page), Thomas Jones (Lake Havasu City), Daniel B. Kaiser (Flagstaff), Rick Williams (Bullhead City), Deborah A. Liverence (Kingman), Randolph Wolfson (Bullhead City), William Porter (Kingman), Vince Ianonne (Lake Havasu City), Charles Wallace (Kingman), Bryan Whitney (Kingman), Jim O'Haver (Prescott) and Daniel DeRienzo (Prescott).

Juvenile cases consist of juvenile *delinquency* cases (persons under the age of 18 charged with crimes) and Dependencies (*see Section B below*) if the child is dually adjudicated<sup>13</sup>. Legal services are provided to children whom are charged with delinquent offenses and dependencies under appropriate circumstances.

#### **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 decreased slightly from 618 in FY 2007 to 564 in FY 2007 (a 8.7% decrease). This decrease has been anecdotally tied to lack of prosecution and probation resources in processing juveniles prior to formal charging.

#### **B. Dependencies**

At the beginning of the fiscal year legal representation for all parties to a juvenile dependency case was coordinated through the Courts. The Court has separate contracts with private counsel which pays on different terms than those contracts managed by the public defender's office. In January of 2008, the Law Offices of the Mohave County Public Defender sought Board approval to expand representation of its' juvenile division attorneys to include the representation of juveniles who had both a delinquency and a dependency case pending at the same time. These are referred to as dually adjudicated juveniles. For the second half of FY 2008, the Law offices of the Mohave County Public Defender was assigned two dependency cases for dually adjudicated youth.

An upcoming re-organization proposal includes a future expansion of this type of representation by staff attorneys to create additional cost savings.

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 is handled by the organizational unit that currently

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<sup>13</sup>The term "dually adjudicated" refers to a child who has both a pending delinquency and a dependency case ongoing at the same time.

represents juvenile delinquency clients. There is a high level of cross-over between juveniles accused of delinquent acts and those that the State<sup>14</sup> seeks to declare dependent.

### **3. Misdemeanor Cases**

A misdemeanor is an offense for which a sentence to a term of incarceration 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 2008 were 2467 as compared to 2444 in FY 2007, an increase of 0.9 %. 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 99 Appeals and Post Conviction Relief (PCR) cases filed as compared to 82 in FY 2007. This is an increase of 20.7 %. An appeal is a case which occurs automatically after a trial results in the 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.

For FY 2008, approximately 15% of the convictions or sentences were overturned and remanded back to Mohave County for additional proceedings. A significant majority of these cases were assigned to contract counsel which results in even higher costs when the case is returned for additional proceedings..

## **Part II - Indigent Defense Costs**

The Law Offices of the Mohave County Public Defender was approximately 17.7% under authorized budget for FY 2008. Most of these savings came from the underfilling of authorized attorney positions with attorney interns.

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<sup>14</sup> Notably these cases are NOT handled by the County Attorney's Office, but rather by the Attorney General's Office.

|             |                                | ORIGINAL    | REVISED     | ACTUAL      | PCT<br>USED |   |
|-------------|--------------------------------|-------------|-------------|-------------|-------------|---|
| 40110 -     | REGULAR SALARIES/WAGES         | \$2,038,409 | \$2,038,409 | \$1,676,116 | 82.2        | % |
|             | SALARY/WAGES/OT REIMBURSEMENTS |             |             |             |             |   |
| 40160 -     |                                | \$0         | \$0         | -\$176      | 100         | % |
| 40210 -     | EMP.BENE.-FICA                 | \$155,938   | \$155,938   | \$123,989   | 79.5        | % |
| 40210 -1100 | EMPLOYEE BENEFIT FICA          | \$0         | \$0         | \$6         | 100         | % |
| 40230 -     | CTY.HEALTH INS.                | \$309,401   | \$309,401   | \$222,663   | 72          | % |
| 40230 -1100 | COUNTY HEALTH INSURANCE        | \$0         | \$0         | \$9         | 100         | % |
| 40240 -     | WORKERS COMP                   | \$3,001     | \$3,001     | \$2,523     | 84.1        | % |
| 40260 -     | STATE RETIRE.                  | \$195,687   | \$195,687   | \$156,781   | 80.1        | % |
| 40260 -1100 | STATE RETIREMENT               | \$0         | \$0         | \$7         | 100         | % |
| 41100 -     | OFFICE SUPPLIES                | \$11,234    | \$11,070    | \$9,548     | 86.2        | % |
| 41140 -     | COPIES/DUPL. SUPPLIES          | \$3,744     | \$3,744     | \$3,085     | 82.4        | % |
| 41150 -     | DATA PROCESSING SUPPLIES       | \$2,746     | \$5,312     | \$5,312     | 100         | % |
| 41400 -     | TOOLS & EQUIPMENT UNDER \$1000 | \$2,000     | \$2,211     | \$1,837     | 83.1        | % |
| 41406 -     | SOFTWARE \$1000-\$4999         | \$3,300     | \$3,300     | \$347       | 10.5        | % |
| 41408 -     | COMP HARDWARE \$1000-\$4999    | \$2,000     | \$2,000     | \$0         | 0           | % |
| 43110 -     | LEGAL SERVICES                 | \$228,800   | \$228,800   | \$235,024   | 102.7       | % |
| 43115 -     | INVESTIGATION FEES             | \$8,639     | \$8,489     | \$2,414     | 28.4        | % |
| 43120 -     | DATA PROCESSING SERVICES       | \$73,675    | \$73,675    | \$71,925    | 97.6        | % |
| 43177 -     | EDUCATIONAL ASSISTANCE         | \$23,500    | \$23,500    | \$0         | 0           | % |
| 43180 -     | TRAINING COSTS                 | \$15,000    | \$14,982    | \$14,002    | 93.5        | % |
| 43210 -     | TELEPHONE                      | \$25,840    | \$25,840    | \$31,834    | 123.2       | % |
| 43215 -     | TELEPHONE COMPUTER DATA        | \$5,123     | \$5,123     | \$5,123     | 100         | % |
| 43216 -     | CELL PHONE CHARGES             | \$2,100     | \$2,100     | \$2,180     | 103.8       | % |
| 43230 -     | POSTAGE                        | \$5,720     | \$5,720     | \$4,618     | 80.7        | % |
| 43310 -     | TRAVEL EXPENSES                | \$7,040     | \$7,040     | \$5,808     | 82.5        | % |
| 43312 -     | TRAVEL RECRUITING              | \$3,100     | \$3,100     | \$2,602     | 83.9        | % |
| 43320 -     | MOTOR POOL CHGS.               | \$16,417    | \$16,417    | \$20,421    | 124.4       | % |
| 43325 -     | VEHICLE REPLACEMENT            | \$9,348     | \$9,384     | \$9,384     | 100         | % |
| 43340 -     | MOVING EXPENSES                | \$31,000    | \$31,000    | \$7,405     | 23.9        | % |
| 43430 -     | JOB ADVERTISING                | \$330       | \$330       | \$0         | 0           | % |
| 43510 -     | PRINTING EXP'S                 | \$1,659     | \$1,659     | \$995       | 60          | % |
| 43530 -     | COPIER CONTRACT                | \$7,301     | \$7,301     | \$7,286     | 99.8        | % |
| 43730 -     | WATER EXPENSE                  | \$660       | \$810       | \$786       | 97          | % |
| 43810 -     | LEASE COMPUTER (IT ONLY)       | \$20,501    | \$20,501    | \$20,501    | 100         | % |
| 43860 -     | BUILDING LEASES                | \$5,100     | \$2,505     | \$2,505     | 100         | % |
| 43910 -     | R&M AUTOMOTIVE                 | \$480       | \$315       | \$240       | 76.1        | % |
| 43920 -     | R&M OFFICE EQUIP               | \$550       | \$679       | \$679       | 99.9        | % |
| 47910 -     | COURT COSTS/INVESTIGATIONS     | \$10,013    | \$10,013    | \$9,616     | 96          | % |
| 47910 -1100 | COURT COSTS INVESTIGATIONS     | \$0         | \$0         | \$77        | 100         | % |
| 47930 -     | DUES, SUBSCRIPTIONS/MEMBERSHIP | \$15,060    | \$15,060    | \$11,458    | 76.1        | % |
| GRAND TOTAL |                                | \$3,244,416 | \$3,244,416 | \$2,668,929 | 82.3        | % |

**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 \$ 838.66 during FY 2008. This is up about \$ 167.50 per case from FY 2007, and up \$250.07 per case from FY 2006. By comparison, the average cost per case for an appointed attorney from the Legal Defender’s Office was \$ 1,139.85 for FY 2008, up \$ 316.79 from FY 2007 and up \$ 317.73 from FY 2006. The average cost per case for the contract attorneys also rose for the third straight year to \$ 973.33 for FY 2008. This is up from \$ 931.06 in FY 2007, \$897.09 in FY 2006 and \$ 745.95 in FY 2005. The significant jump in the average cost of Public Defender cases during FY 2008 was due to the extraordinary number of attorney interns that were unlicensed for a total of 236 weeks. This created a double expense for the county. We were paying intern salaries (Roughly 65% of a licensed attorney) **and** still sending cases out to contract. This meant that our overhead remained high, while our ability to keep more cases was not impacted for a large portion of the year<sup>15</sup>. The total number of cases which were required to be sent to contract counsel grew by 3.8% from 1224 in FY 2007 to 1271 in FY 2008. The chart in Figure 1 shows the comparative costs of the three delivery methods for FY 2008. The chart in Figure 2 shows a six year comparison of the costs of the three delivery systems and the six 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 six year period (FY 2003-2008).

| Percentage of Funding by Provider Agency |         |         |         |         |         |         |
|--|---------|---------|---------|---------|---------|---------|
| Agency                                   | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
| PDO                                      | 59.3    | 65.2    | 65.1    | 54.6    | 56.1    | 55.1    |
| LDO                                      | 24.3    | 22.3    | 24.0    | 21.8    | 19.8    | 21.5    |
| Contract                                 | 16.4    | 12.5    | 10.8    | 23.6    | 24.1    | 23.3    |

**Table 3 – This table shows the percentage of total indigent defense expenditures for Mohave County that were attributable to each of the three delivery providers. It is reasonable to expect 65% of all funding to be through the PDO, 15% to be to contracts and 20% to LDO in an optimal year.**

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

<sup>15</sup> See the prior footnote on the dilemma posed by excessive use of attorney interns. Adoption of the new admission rule for out of state attorneys in rural public defender offices should greatly reduce this situation in the future.

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. This use of weighted case counts provides a more accurate picture of case costs than using raw figures, but there remains significant room for improvement in the reporting and analysis of case weights and counts. Another caveat is that both Public and Legal Defender costs are based on general fund budget expenditures for the fiscal year and do NOT include facility operation and maintenance (O&M) costs for the fiscal year.

The numbers speak for themselves. It cost the County more tax dollars, per case, to retain a contract attorney than it does for a Public Defender 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. Over the course of six fiscal years (03-08) the average cost per case has been Five Hundred Eighty Nine dollars and Fifteen cents (\$ 589.15) for the Law Offices of the Mohave County Public Defender, Eight Hundred Twenty Three dollars and Two cents (\$ 823.02) for the Mohave County Legal Defender’s Office and Eight Hundred Seventy Three dollars and Ninety Four cents (\$ 873.94) for private contractors. Figure 4 illustrates this six year cost averaging by provider.

It is important to note that a significant portion of the increased internal per case cost for FY 2008 is attributable to the number of FTE attorney positions that were underfilled with Attorney Interns. This equated to over \$ 150,000 in salary and benefits that went to employees pending bar results who could not handle a caseload. This means that the expense was raised without any parallel increase in the ability to handle caseload during that period.

The necessity to hire graduating law school students due to a lack of an adequate licensed applicant pool has caused this additional expense in prior years as well. While an attorney intern does provide some additional capacity for workload by a licensed staff attorney the additional capacity is far below that of an additional fully licensed attorney. If the employee can be retained for a sufficient period of time after becoming licensed, this is a justifiable expense. The priority of working with Human Resources and finance to derive a break-even formula for recruiting these applicants, versus holding a position vacant and waiting for a qualified applicant (lateral transfer) has been addressed to a significant degree by the approval of a Supreme Court Rule on special admission for rural public defender employees. There is now an exemption to the standard licensing procedure previously required for all attorneys from other states who wished to come to Arizona to work. A rural public defender office may now hire an attorney from another state who has practiced for at least two years, and that persons may immediately begin work without additional licensing requirements<sup>16</sup> in a rural public defender office. Future recruiting efforts should include a strong mix of out of state

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<sup>16</sup> There are some administrative rules that must be followed in terms of submitting a special application to the Supreme Court and State Bar, but these are much less onerous than waiting for an individual to take a bar exam, pass the exam and then be cleared by Character & Fitness.

experienced lawyers along with new law school graduates. There is a risk of alienating younger attorneys in creating too high a ratio of experienced attorneys and creating the impression that there are limited career growth opportunities in the office. In the end analysis, a careful weighing of the factors involved in the risk of an attorney intern passing the bar exam and staying a sufficient period to make the investment in them worthwhile versus the unknown and unpredictability of waiting to fill a vacancy with either an in state or out of state licensed attorney.

### **Part III - FY 2008 Highlights and Achievements**

During FY 2008, technology invested in during FY 2002 was expanded upon. Automation played a huge part in the ability to hold costs low while providing quality representation. By utilizing automation capabilities, the average of 12 attorneys at the Law Offices of the Mohave County Public Defender were required to plan to attend 22,310 court appearances during the year; this figure was lower than the prior fiscal year and moving toward acceptable workloads.

| Year  | Number of Attorneys | Number of hearings | Average # Hearings |
|-------|---------------------|--------------------|--------------------|
| FY 05 | 17                  | 18,910             | 1,112              |
| FY 06 | 15                  | 21,523             | 1,435              |
| FY 07 | 13                  | 25,041             | 1,926              |
| FY 08 | 12                  | 22,310             | 1,859              |

**Table 4 – This table illustrates the average number of hearings attended by a Public Defender licensed attorney for FY 05-08. The slightly lower average number of hearings is due at least in part to closer caseload management to ensure ethical workloads by staff attorneys.**

During this same time period from FY 05 to FY 08 the number of cases which were retained by the Law Offices of the Mohave County Public Defender actually went down by roughly twenty percent (20%) due to reduced staffing through the latter parts of FY 08. The decrease in hearings is at least partially attributable to more manageable workloads resulting in the need for fewer continuances in cases.

Twenty Nine Thousand Fifty Seven (29,057) documents were created through an automated document assembly system which retrieved data from the case management database. This is an decrease of roughly 3.6% from FY 2007. However, relative to the almost twelve percent (12%) decrease in cases handled by the office during FY 08, there was an increase in the average number of automated documents per case. 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 242 to 968 FTE hours!

FY 2008 was a difficult year with respect to personnel. The year began with a limited staff of 12 licensed attorneys and 2 Attorney Interns on staff. In addition 6 law school graduates<sup>17</sup> who took the Arizona Bar Examination in July of 2007 were scheduled to start between August and September of 2007. This presented the hope that there would be a fully licensed staff by mid-year (December,

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<sup>17</sup> These individuals came from Harvard University, University of Cincinnati (2), Franklin Pierce Law School (New Hampshire), University of Seattle, and SUNY Buffalo.

2007) depending on bar examination results. Unfortunately, after the fiscal year began, the following unexpected changes in personnel occurred:

- 1) one licensed experienced felony attorney left the office due to medical reasons;
- 2) a young attorney moved to Phoenix after receiving a higher paying job with a private firm in the Phoenix area;
- 3) a young attorney moved to Phoenix to work with a public defense agency there. (Note: This attorney had expressed ongoing dissatisfaction with the lifestyle in Kingman);
- 4) a mid-level attorney handling felony cases retired;
- 5) three of the attorney interns did not pass the July 2007 bar examination. The decision was made to keep all three on staff to take the exam in February of 2008, but this resulted in their not being licensed until almost the end of the fiscal year;
- and 6) an experienced attorney from out of state took almost 6 months longer than anticipated to obtain final approval of the committee on Character and Fitness.

As a result of these unanticipated circumstances, instead of being fully staffed with licensed attorneys by mid year, the office had only 10 licensed attorneys by late November, early December. This caused the office to move to withdraw from cases due to excessive caseloads during this time period.

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 since the implementation of these programs, the number of applications from 3<sup>rd</sup> year law students has been at or above 200 each successive year. The first of the employees recruited under these programs will become eligible for participation in the second quarter of Fiscal year 2009. Of the initial 7 who were recruited under these programs, two remain employed with the office and will begin to participate in the program in FY 2009. This equates to Twenty Nine percent (29%) retention after two years. In Fiscal 2008, a total of 8 combined offers were made to 6 3<sup>rd</sup> year law students and two experienced attorneys. At the time of writing this report, all remain employed by the office. These individuals were chosen from over 211 applications and 18 on site interviews. These individuals came from a diverse geographic area encompassing New Hampshire, Washington, Ohio (2), Kentucky, Massachusetts, Arizona and New York. Of the eight individuals who accepted employment in March of 2007, 6 sat for the July 2007 bar with 4 passing (the overall passing rate for the examination was 76.1%). The remaining two took and passed subsequent bar exams and are now licensed and employed with the office.

While it is still too early to validate the efficacy of the new Loan and Relocation programs as a retention tool, it is unquestionable that they have been instrumental in being an invaluable asset to recruiting. The plans will need to be extended for an additional period to validly assess the impact. It is recommended that the plan be extended for an additional 5 years. The total cost of both programs for Fiscal Year 2008 was roughly Seven Thousand Four Hundred dollars (\$ 7,400).

As we went into the budget process for FY 2008, the office had relocated and was fully operational in the remodeled former public health building. The morale of the office has significantly improved since the move into the new facilities. While the facilities are not spacious, they were designed to

maximize the use of space and provide for organizational functionality. With the ability to conduct management, team and even departmental meetings within the facility, communication has vastly improved (this has resulted in a significant decrease in gossip and rumors among office personnel).

Appropriate caseloads and staffing have a definite role in the level of stress and accompanying job satisfaction felt by employees. In FY 2008 the professional staff in the office handled 2902 felony equivalent cases (Weighted Cases). Pursuant to *Joe U. Smith* standards, this should have been handled by 19.3 attorneys, however the load was borne by an average of 12 attorneys over the course of the fiscal year. The number of weighted cases retained internally in fiscal year 2008 was roughly 450 less than in fiscal year 2007 while the average number of attorneys over the course of the fiscal year dropped by one from fiscal year 2007. A total of 528 felonies (weighting factor of 1), 3 juveniles (weighting factor of .75, for a weighted load of 2 felony equivalents), 25 misdemeanors (weighting factor of .375, for a weighted load of 9 felony equivalents), and 164 probation violation cases (weighting factor of .375, for a weighted load of 62 felony equivalents) were sent out to “overflow” contractors. These 601 felony equivalent cases could have been handled by the public defenders office if appropriate resources and staffing had been available.

| Overflow Case Type  | Raw Number | Conversion | Net Weighted Cases |
|---------------------|------------|------------|--------------------|
| Felony              | 528        | 1          | 528                |
| Misdemeanor         | 25         | .375       | 9                  |
| Juvenile            | 3          | .75        | 2                  |
| Probation Violation | 164        | .375       | 62                 |
| Total               |            |            | 601                |

**Table 5- This table shows the conversion factors for the cases which were sent to “overflow” contract counsel during FY 2008. These are cases which could have, and should have been handled by in-house attorneys on the Public Defender staff, but for lack of authorizations and staff. The weighted number must be added back into the number of cases actually handled to make projections on needed staff to fully perform the Public Defender function at optimal levels (resulting in lower average and overall per case costs!). Overall there were 87 felony equivalents less sent out on overflow in FY 2008 than there were in FY 2007.**

Adding the 601 weighted cases to the 2,902 actually handled, equates to a need to handle 3,503 felony cases in fiscal year 2008. To appropriately handle this number of cases, 23 attorneys would have been required. A staffing of 23 attorneys would also require two supervisors to maintain appropriate levels of supervision, or a total of 25 authorized professional staff members. During Fiscal 2008, the office was authorized 21 attorneys, including supervisors, for a net deficit of 4 positions. Past gaps have been larger, but a reduction in overall felony equivalents in FY 2008 has flattened this trend. Caution is urged, as this trend has been attributed by some to reduced experience and numbers of prosecutors having resulted in a greater number of cases being declined or pled at the justice court level. The County should be cautious NOT to base future projections on the FY 2007-2008 trends, and is instead encouraged to utilize at least a five year data set to make future projections. Use of a five year data set would indicate a slowed growth rate of less than one percent (1%) per year.

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. The continuation of current recruiting and retention tools which recognize that it is difficult to recruit and retain public defenders will be key to continuing to move forward toward a system that will become self sustaining and effective on both a tangible fiscal and intangible performance basis.

Continuing losses in general fund revenue as well as a strong desire to implement better controls on outside contract costs is motivating the development of a plan to re-organize indigent defense within Mohave County. It is expected that a proposal will be placed before the Board of Supervisors prior to the development of the FY 2010 budget process so that any changes can be implemented beginning in FY 2010. The exact nature of the re-organization is still being flushed out.

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

##### **Human Resources –**

FY 2008 began the same as FY 2007 with 12 licensed attorneys and 2 Attorney Interns on staff. In addition 7 law school graduates who took the Arizona Bar Examination in July of 2007 were scheduled to start between the beginning of the fiscal year and September of 2007. This appeared to present a near full licensed staff by mid-year, depending on bar examination results. Unfortunately, after the fiscal year began, the following unexpected changes in personnel occurred:

- 1) one seasoned attorney with over 12 years experience left the office for medical reasons; 2) a young attorney who had been licensed 15 months and was just beginning to do more serious felony case work left to join Phillips and Associates in Phoenix for considerably more money and to be closer to family; 3) a senior attorney retired; and 4) a young attorney left the office to work for the Maricopa County Legal Advocates office for higher pay.

Additionally two of the interns did not pass the July 2007 bar exam<sup>18</sup>, and two of the individuals who did pass had their admission delayed by the Character & Fitness process. Ultimately this meant that four (4) attorneys who had been handling felony cases left without the ability to immediately replace them. This caused a shortage of felony attorneys that resulted in the office having to move to withdraw from numerous felony cases before the Superior Courts.

By the end of the fiscal year, while we had anticipated a staffing of (20) out of (21) professional

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<sup>18</sup> The efficacy of releasing an individual who has not passed the bar exam and re-recruiting for an individual to fill the position versus keeping the individual on is not easily quantified. Due to the cycle of hiring law school graduates, it was felt to be more effective to at least have an individual on staff to assist with cases and give additional opportunity to pass the bar exam, than it was to release them, and wait another recruiting cycle to fill the position and run the same risk with a new individual. New Arizona Supreme Court rules relative to recruiting out of state attorneys will warrant the re-consideration of this practice in future years.

positions, we were faced with an average of only twelve (12) of twenty one (21) authorized positions filled. However by the end of the fiscal year, we had sixteen (16) of the positions filled, with four (4) offers accepted by new law school graduates to begin in September, 2008 after the July bar exam. All of these individuals passed the bar exam and have been sworn in as licensed attorneys. As of the date of this report, the office has twenty (20) licensed attorneys out of twenty one (21) authorized positions, with an attorney intern (taking the February 2009 bar exam) to begin in March of 2009. In FY 2008, hired staff represented the University of Southern California, University of Tulsa, Arizona State University, DePaul University (Chicago), Hamline University (Michigan) and Seton Hall University (New Jersey).

Of the four professional staff employees who left during the fiscal year, two relocated and cited problems with work force, or lifestyle as a factor in their decision, one left for medical reasons and one retired. This number of departing attorneys equals the lowest number previously realized in a fiscal year.

All of the individuals who were hired in FY 2008 participated in the relocation assistance program. No one hired in FY 08 has left, but all remain subject to the terms of the relocation assistance program. In FY 08, only \$ 7,405 was spent in relocation assistance out of a budgeted \$ 31,000. Only one individual who left had received any benefits under the relocation assistance program. That employee's initial benefit had been \$ 385.01 and the employee repaid \$ 193.08 of that benefit.

To date, no employee who was recruited under the Loan Repayment Assistance Program has yet to qualify. The first employee that will qualify will not qualify until approximately August of 2008. An extension of the LRAP and relocation programs for 5 years was granted to carry the program through June of 2013 in order to allow for sufficient program participation to evaluate whether it will have the desired impact on retention. The impact on recruiting is clearly a positive and if for no other reason than that, should be continued. The total cost of the LRAP program was zero (\$ -0-) for FY 2008.

|            | Attorneys/<br>Interns July<br>1 | Number<br>Attorneys/<br>Interns<br>departing | Number<br>Attorneys/<br>Interns<br>hired | Net<br>Change | Participation<br>in<br>Relocation | Participation<br>in LRAP | Average<br>Years of<br>Experience |
|------------|---------------------------------|--|--|---------------|-----------------------------------|--------------------------|-----------------------------------|
| FY<br>2002 | 10/0                            | 3  | 4  | +1            | N/A                               | N/A                      | 11                                |
| FY<br>2003 | 10/2                            | 3/1  | 6/5                                      | +7            | N/A                               | N/A                      | 7.75                              |
| FY<br>2004 | 18/0                            | 4/0  | 2/0                                      | -2            | N/A                               | N/A                      | 8.75                              |
| FY<br>2005 | 16/0                            | 4/0  | 3/0                                      | -1            | N/A                               | N/A                      | 10.2                              |
| FY<br>2006 | 15/0                            | 9/0  | 6/2                                      | -1            | 8                                 | N/A                      | 9.18                              |
| FY<br>2007 | 12/2                            | 7/4  | 2/7                                      | -2            | 9                                 | 2                        | 5.14                              |

|         |      |      |       |    |      |     |      |
|---------|------|------|-------|----|------|-----|------|
| FY 2008 | 12/2 | 4/0  | 6/2   | +4 | 8    | 0   | 4.85 |
| Totals  |      | 30/5 | 23/14 | +6 | 8.33 | N/A | 8.12 |

**Table 6 – This table shows the shift in professional staffing levels on an annual basis.**

Since reliable records began to be kept in October of 2001, the average professional employee of the Law offices of the Mohave County Public Defender has worked in the office for 2.8 years. This calculation does NOT take into consideration time that employees spent with the office prior to October of 2001! The first year in which professional staff employees were recruited using the Loan Repayment Assistance program (LRAP) and Relocation Assistance Programs was FY 2007. While it is still too early to gather sufficient data to provide a statistically relevant analysis, to date the retention figures for groups recruited after the implementation of the LRAP and relocation assistance programs appear to be increasingly positive.

| YEAR HIRED | Avg. Length of Service (YRS) | % who left prior to 2 years | Percentage Remaining on Staff After 2 Years |
|------------|------------------------------|-----------------------------|---|
| FY 2003    | 2.0                          | 45.5%                       | 18.2  |
| FY 2004    | 3.0                          | 50%                         | 0   |
| FY 2005    | 1.1                          | 100%                        | 0   |
| FY 2006    | 1.0                          | 88.9%                       | 11.1  |
| FY 2007    | 1.8                          | 55.5%                       | 55.6  |
| FY 2008    | 2.8                          | 0%                          | 100   |

**Table 7 – This table shows the average length of service by recruiting year, the percentage of recruit who left county service prior to the end of their initial 2 year period, and the percentage who still remain on staff. The FY 2007 and FY 2008 numbers could change if any of the remaining employees leave prior to the end of their second full year.**

## **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. However the occupation of the recently renovated facility has been instrumental in assisting in a significant turn around of staff morale. Personnel losses prior to the occupation of the new facility and re-organization of the Department caused a significant set back, however with moral, staffing and organization significantly improved, the future looks very bright. With a high level of projected staffing for FY 09, the overall budget was reduced by almost Four Hundred Thousand dollars (\$ 400,000) to begin FY 09, and at the time of the writing of this report, expenditures appear to be tracking for an additional One Hundred Thousand dollars (\$ 100,000) in savings by the end of the fiscal year.

It remains imperative to avoid a knee-jerk reaction to simply hire “*bodies*” to fill chairs and create additional problems down the line and it is therefore 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. Without the recruiting and retention of appropriate licensed staff to handle the incoming cases while maintaining ethical caseload/workload limits, it will be necessary to revert to reliance on outside contract counsel. In order to not exacerbate the use of private counsel at higher cost, it will be imperative to retain the ability to recruit for any vacancies under an exemption to any general hiring freezes which may be in place. 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*, 319 F.3d 465, 03 Cal. Daily Op. Serv. 1037, 2003 Daily Journal D.A.R. 1353 (9th Cir.(Nev.) (Feb 03, 2003), *certiorari denied* by *Clark County, NV v. Hernandez Miranda*, 540 U.S. 814, 124 S.Ct. 64, 157 L.Ed.2d 28, 71 USLW 3724, 72 USLW 3206, 72 USLW 3235 (U.S. Oct 06, 2003) and *Powers v. Hamilton County Public Defender Comm.*, 2004 FED App. 0288P (6<sup>th</sup> Cir.) (August 29, 2007).

If the positive aspects of the issues raised and addressed in this report can be enhanced and pursued, 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 is likely to 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 the potential for an increase in post-conviction relief cases and civil liability.

All in all FY 2008 looks to be a turning point (although not without its' challenges) and it is anticipated that many of the successes can be expanded upon well into FY 2009 and 2010. If a commitment to continuing the positive changes can be maintained, Mohave County will be well on its way to having an Indigent Defense system which will ensure that every citizen of Mohave County can view the justice system with confidence and pride.

## **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 of which the defendant was found guilty, 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 2008 By Charge**

| <b>Statute and Description</b>                    | <b>Number of cases involving</b> |
|---|----------------------------------|
| 13-3415 – Possession of Drug Paraphernalia        | 1,179                            |
| 13-901.C – Probation Violation/Petition to Revoke | 654                              |
| 28-3473 – Driving w/ DL Suspended                 | 524                              |
| 13-3405 – Possession of Marijuana                 | 498                              |
| 13-3407 – Possession of Dangerous Drugs           | 430                              |
| 13-1602 – Criminal Damage (\$250 or less)         | 363                              |
| 28-1381.A.1 – DUI                                 | 361                              |
| 13-2904/13-3601 – Disorderly Conduct by DV        | 296                              |
| 13-1802.A – Theft (less than \$250)               | 272                              |
| 28-1381.A.2 – DUI .08%                            | 270                              |
| 13-2904 – Disorderly Conduct                      | 246                              |
| 13-1203.A.1 – Assault by Domestic Violence        | 237                              |
| 28-1382.A – Extreme DUI                           | 209                              |
| 13-2506 – Failure to Appear                       | 204                              |
| 13-1204.A.2 – Aggravated Assault                  | 180                              |
| 28-1383.A.1 – Aggravated DUI                      | 173                              |
| 13-1203 – Assault                                 | 160                              |
| 13-1506 – Burglary in the Third Degree            | 132                              |
| 13-2002 – Forgery                                 | 118                              |
| 28-4135.A – No Mandatory Insurance                | 117                              |
| 13-1814 – Theft of means of Transportation        | 106                              |

**Table 8 – This table is solely based on the number of cases in which the listed charge appears. It is possible for a single case to contain multiple charges, and therefore the numbers can NOT be used to calculate caseloads.**

**General Category Breakdown**<sup>19</sup>

| <b>Type of Crime</b>        | <b>Number</b> |
|-----------------------------|---------------|
| Primary Drug                | 2,515         |
| Assault/Disorderly Conduct  | 1,553         |
| Vehicle Violations          | 1522          |
| DUI                         | 1176          |
| Domestic Violence           | 866           |
| Probation Violation         | 674           |
| Theft                       | 566           |
| Criminal Damage             | 512           |
| Flight/Escape               | 471           |
| Burglary                    | 446           |
| Forgery                     | 345           |
| False Reporting/Obstruction | 258           |
| Animal Violations           | 255           |

<sup>19</sup> This represents the total number of cases in which this particular type of charge was included. The total number of cases is not reflected as many cases have two or more charges from more than one general category. Similarly, the general category does not distinguish between misdemeanor and felony charges in this table. This table is provided solely to provide a general overview of the type of charges filed and defended, NOT necessarily the severity of the charges. The severity of Charges is more accurately reflected in the number of felony, misdemeanor, juvenile, probation violation, post-conviction relief and appellate cases received which appears elsewhere in this report.

|  |     |
|--|-----|
| Weapons Violations                     | 176 |
| Sex Offenses                           | 169 |
| Theft of means of Transportation       | 148 |
| Trespass (included in burglary counts) | 110 |
| Shoplifting Inc In theft               | 85  |
| Post Conviction Relief                 | 62  |
| Child Abuse/Neglect                    | 57  |
| Appeals                                | 37  |
| Contracting without a License          | 34  |
| Planning & Zoning Violations           | 25  |
| Failure to Appear                      | 23  |
| Homicide                               | 23  |
| Kidnapping/Imprisonment                | 19  |
| Criminal Littering                     | 13  |
| Arson Related                          | 6   |
| Wildlife Violations                    | 3   |

**Table 9 – This table lists charges by major category. The number represents the number of cases in which one or more of the type of charges appeared. Individual cases often contain multiple charges and these numbers therefore should NOT be used to attempt to calculate caseload numbers.**

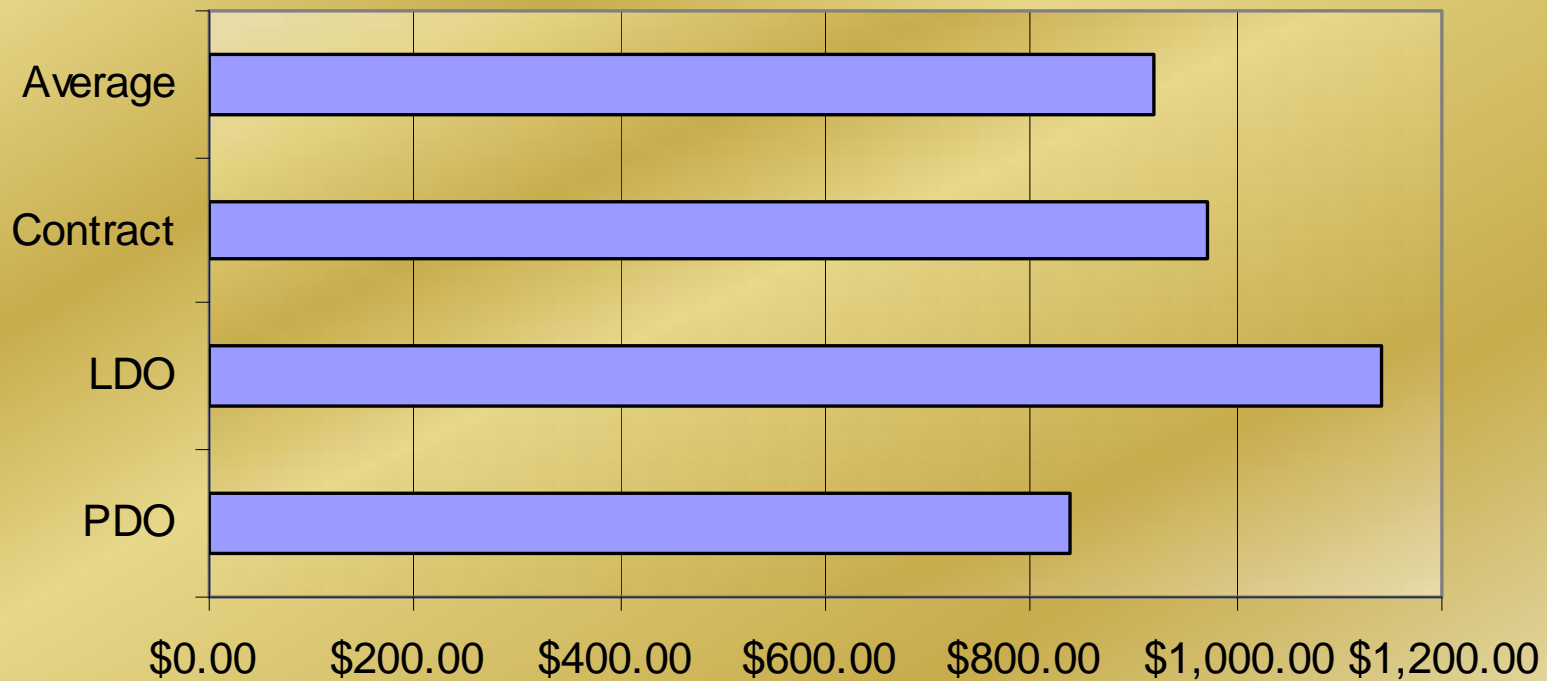
**Appendix C - Detailed Budget Report**

|             | ORIGINAL                       | REVISED     | ACTUAL      | PCT<br>USED |       |   |
|-------------|--------------------------------|-------------|-------------|-------------|-------|---|
| 40110 -     | REGULAR SALARIES/WAGES         | \$2,038,409 | \$2,038,409 | \$1,676,116 | 82.2  | % |
| 40160 -     | SALARY/WAGES/OT REIMBURSEMENTS | \$0         | \$0         | -\$176      | 100   | % |
| 40210 -     | EMP.BENE.-FICA                 | \$155,938   | \$155,938   | \$123,989   | 79.5  | % |
| 40210 -1100 | EMPLOYEE BENEFIT FICA          | \$0         | \$0         | \$6         | 100   | % |
| 40230 -     | CTY.HEALTH INS.                | \$309,401   | \$309,401   | \$222,663   | 72    | % |
| 40230 -1100 | COUNTY HEALTH INSURANCE        | \$0         | \$0         | \$9         | 100   | % |
| 40240 -     | WORKERS COMP                   | \$3,001     | \$3,001     | \$2,523     | 84.1  | % |
| 40260 -     | STATE RETIRE.                  | \$195,687   | \$195,687   | \$156,781   | 80.1  | % |
| 40260 -1100 | STATE RETIREMENT               | \$0         | \$0         | \$7         | 100   | % |
| 41100 -     | OFFICE SUPPLIES                | \$11,234    | \$11,070    | \$9,548     | 86.2  | % |
| 41140 -     | COPIES/DUPL. SUPPLIES          | \$3,744     | \$3,744     | \$3,085     | 82.4  | % |
| 41150 -     | DATA PROCESSING SUPPLIES       | \$2,746     | \$5,312     | \$5,312     | 100   | % |
| 41400 -     | TOOLS & EQUIPMENT UNDER \$1000 | \$2,000     | \$2,211     | \$1,837     | 83.1  | % |
| 41406 -     | SOFTWARE \$1000-\$4999         | \$3,300     | \$3,300     | \$347       | 10.5  | % |
| 41408 -     | COMP HARDWARE \$1000-\$4999    | \$2,000     | \$2,000     | \$0         | 0     | % |
| 43110 -     | LEGAL SERVICES                 | \$228,800   | \$228,800   | \$235,024   | 102.7 | % |
| 43115 -     | INVESTIGATION FEES             | \$8,639     | \$8,489     | \$2,414     | 28.4  | % |
| 43120 -     | DATA PROCESSING SERVICES       | \$73,675    | \$73,675    | \$71,925    | 97.6  | % |
| 43177 -     | EDUCATIONAL ASSISTANCE         | \$23,500    | \$23,500    | \$0         | 0     | % |
| 43180 -     | TRAINING COSTS                 | \$15,000    | \$14,982    | \$14,002    | 93.5  | % |
| 43210 -     | TELEPHONE                      | \$25,840    | \$25,840    | \$31,834    | 123.2 | % |
| 43215 -     | TELEPHONE COMPUTER DATA        | \$5,123     | \$5,123     | \$5,123     | 100   | % |
| 43216 -     | CELL PHONE CHARGES             | \$2,100     | \$2,100     | \$2,180     | 103.8 | % |
| 43230 -     | POSTAGE                        | \$5,720     | \$5,720     | \$4,618     | 80.7  | % |
| 43310 -     | TRAVEL EXPENSES                | \$7,040     | \$7,040     | \$5,808     | 82.5  | % |
| 43312 -     | TRAVEL RECRUITING              | \$3,100     | \$3,100     | \$2,602     | 83.9  | % |
| 43320 -     | MOTOR POOL CHGS.               | \$16,417    | \$16,417    | \$20,421    | 124.4 | % |
| 43325 -     | VEHICLE REPLACEMENT            | \$9,348     | \$9,384     | \$9,384     | 100   | % |
| 43340 -     | MOVING EXPENSES                | \$31,000    | \$31,000    | \$7,405     | 23.9  | % |
| 43430 -     | JOB ADVERTISING                | \$330       | \$330       | \$0         | 0     | % |
| 43510 -     | PRINTING EXP'S                 | \$1,659     | \$1,659     | \$995       | 60    | % |
| 43530 -     | COPIER CONTRACT                | \$7,301     | \$7,301     | \$7,286     | 99.8  | % |
| 43730 -     | WATER EXPENSE                  | \$660       | \$810       | \$786       | 97    | % |
| 43810 -     | LEASE COMPUTER (IT ONLY)       | \$20,501    | \$20,501    | \$20,501    | 100   | % |
| 43860 -     | BUILDING LEASES                | \$5,100     | \$2,505     | \$2,505     | 100   | % |
| 43910 -     | R&M AUTOMOTIVE                 | \$480       | \$315       | \$240       | 76.1  | % |
| 43920 -     | R&M OFFICE EQUIP               | \$550       | \$679       | \$679       | 99.9  | % |
| 47910 -     | COURT COSTS/INVESTIGATIONS     | \$10,013    | \$10,013    | \$9,616     | 96    | % |
| 47910 -1100 | COURT COSTS INVESTIGATIONS     | \$0         | \$0         | \$77        | 100   | % |
| 47930 -     | DUES, SUBSCRIPTIONS/MEMBERSHIP | \$15,060    | \$15,060    | \$11,458    | 76.1  | % |
| GRAND TOTAL |                                | \$3,244,416 | \$3,244,416 | \$2,668,929 | 82.3  | % |

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

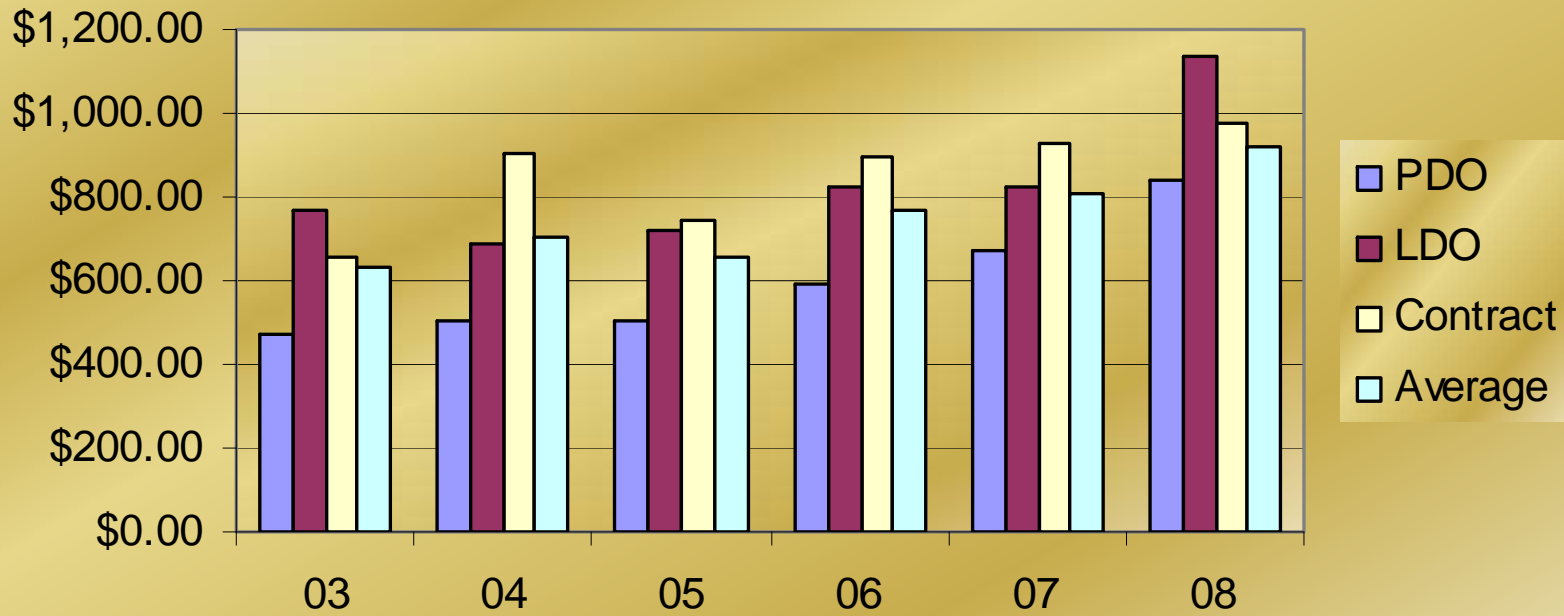
| <b>Caseload Counts FY 2008</b> |                      |                   |                          |                       |                              |                               |            |
|--------------------------------|----------------------|-------------------|--------------------------|-----------------------|------------------------------|-------------------------------|------------|
|                                |                      | <u>Raw Number</u> | <u>Conversion Factor</u> | <u>Weighted Cases</u> | <u>FY '08 Budget</u>         | <u>Per case Weighted Cost</u> |            |
| <b>PDO</b>                     |                      |                   |                          |                       | <b>(Actual Expenditures)</b> |                               |            |
|                                | Misdemeanor *        | 1982              | 0.375                    | 743.25                |                              |                               |            |
|                                | Felony *             | 1448              | 1                        | 1448                  |                              |                               |            |
|                                | Juvenile *           | 399               | 0.75                     | 299.25                |                              |                               |            |
|                                | PCR *                | 62                | 2                        | 124                   |                              |                               |            |
|                                | Appeals              | 37                | 6                        | 222                   |                              |                               |            |
|                                | Probation Violations | 175               | 0.375                    | 65.625                |                              |                               |            |
|                                | Subtotal             | <b>4103</b>       |                          | 2902.125              | \$2,433,904.77               |                               | \$838.66   |
| <b>LDO</b>                     |                      |                   |                          |                       |                              |                               |            |
|                                | Misdemeanor          | 384               | 0.375                    | 144                   |                              |                               |            |
|                                | Felony               | 564               | 1                        | 564                   |                              |                               |            |
|                                | Juvenile             | 74                | 0.75                     | 55.5                  |                              |                               |            |
|                                | PCR                  | 0                 | 2                        | 0                     |                              |                               |            |
|                                | Appeals              | 0                 | 6                        | 0                     |                              |                               |            |
|                                | Probation Violations | 189               | 0.375                    | 70.875                |                              |                               |            |
|                                | Subtotal             | <b>1211</b>       |                          | 834.375               | \$951,066.19                 |                               | \$1,139.85 |
| <b>Private Contract</b>        |                      |                   |                          |                       |                              |                               |            |
|                                | Misdemeanor          | 101               | 0.375                    | 37.875                |                              |                               |            |
|                                | Felony               | 875               | 1                        | 875                   |                              |                               |            |
|                                | Juvenile             | 91                | 0.75                     | 68.25                 |                              |                               |            |
|                                | PCR                  |                   | 2                        | 0                     |                              |                               |            |
|                                | Appeals              | 0                 | 6                        | 0                     |                              |                               |            |
|                                | Probation Violations | 204               | 0.375                    | 76.5                  |                              |                               |            |
|                                | Subtotal             | <b>1271</b>       |                          | 1057.625              | \$1,029,414.37               |                               | \$973.33   |
|                                | <b>Total</b>         | <b>6585</b>       |                          | 4794.125              | \$4,414,385.33               |                               | \$920.79   |

## Indigent Defense Provider Cost per Weighted Case FY '08



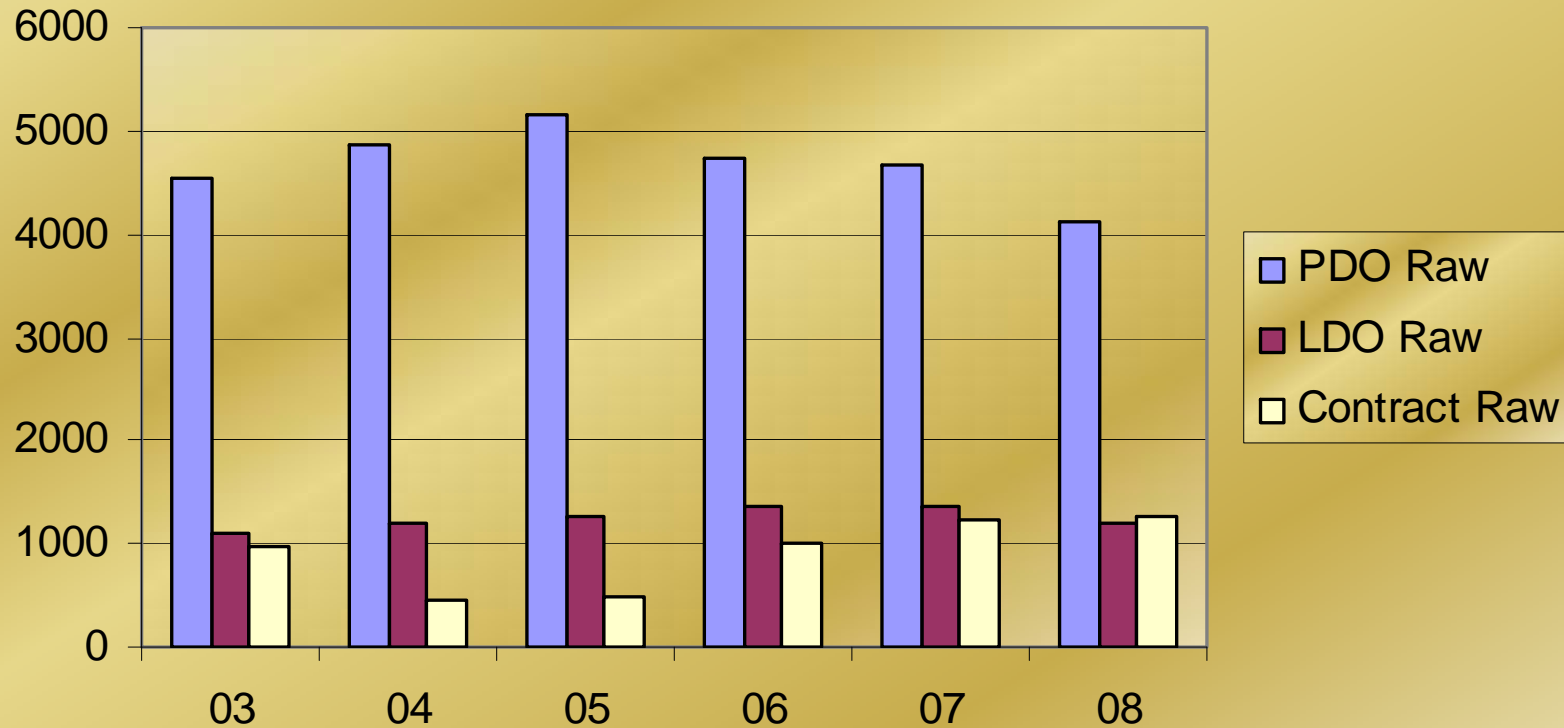
**Figure 1** – This Chart illustrates the average cost per case for all three forms of legal service providers, as well as the average for all services for fiscal year 2008.

## Indigent Defense provider Cost per Weighted Case FY 03 - FY 08



**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. The decline in the raw number of cases handled by the Public Defender’s Office is reflective of the shortage of experienced licensed attorneys encountered during FY 2008. If overflow cases had been handled internally the number of case would have been similar to those for FY 06 and 07, but contracts would have dropped to FY 04-05 levels.

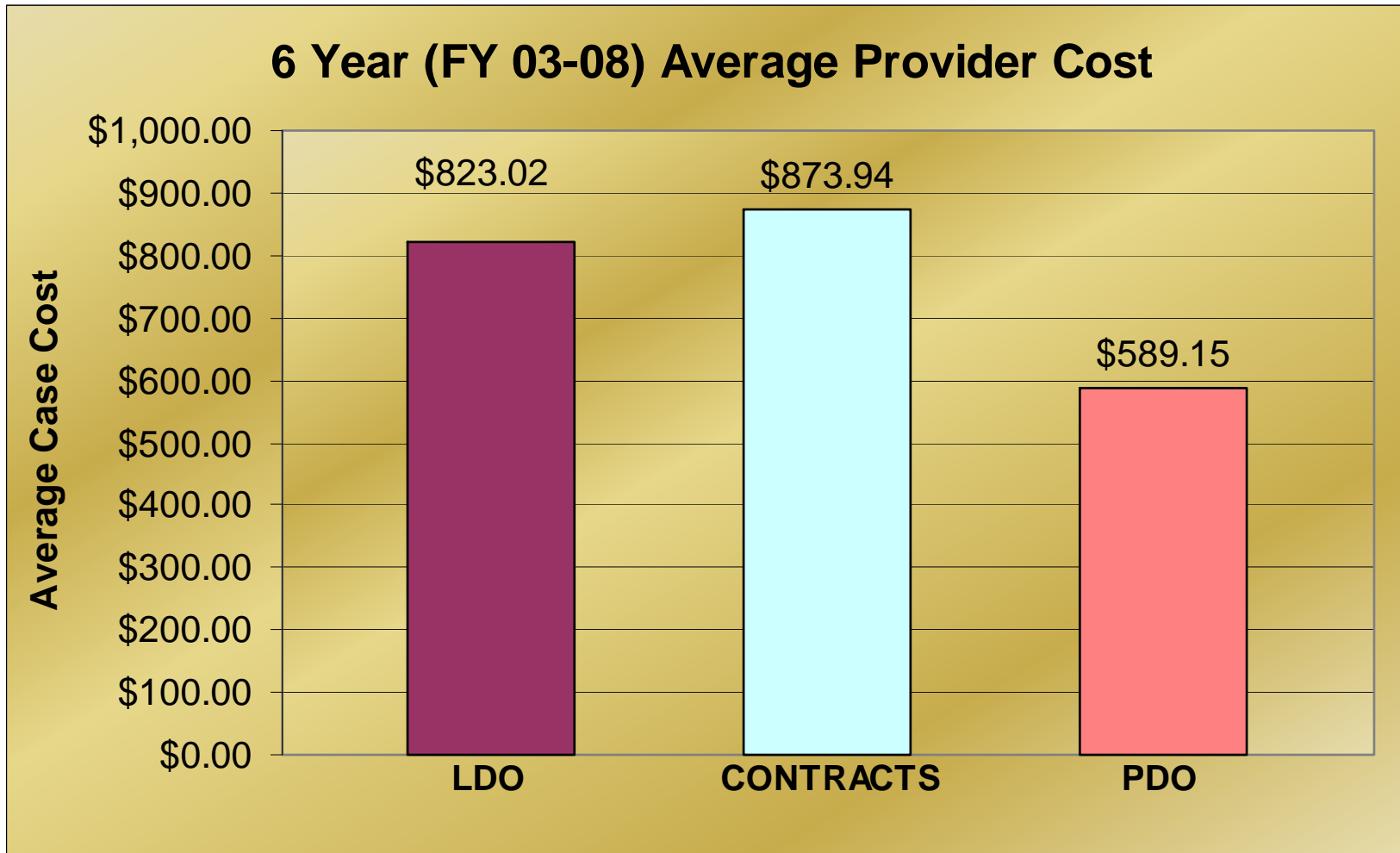


Figure 4 – The average cost over fiscal years 2003-2008 for the three major legal service providers.