

# Apache County Attorney's Office

## Diversion/Deferred Prosecution Program

Internal Control and  
Compliance Review

Fiscal year ended  
June 30, 2017  
Report 18-304

A Report to the Arizona Legislature

Lindsey Perry  
Auditor General





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AUDITOR GENERAL

**STATE OF ARIZONA**  
OFFICE OF THE  
**AUDITOR GENERAL**

**MELANIE M. CHESNEY**  
DEPUTY AUDITOR GENERAL

July 25, 2018

The Honorable Michael B. Whiting, County Attorney  
Apache County

We have performed an internal control and compliance review of the Apache County Attorney's Office (County Attorney's Office) Diversion/Deferred Prosecution Program (Program) for the fiscal year ended June 30, 2017. Specifically, we tested internal controls and compliance with the compliance requirements specified in the Arizona Prosecuting Attorneys' Advisory Council Deferred Prosecution Guidelines and related state laws over the County Attorney's Office program administration. Our review consisted primarily of inquiries, observations, and selected tests of internal control policies and procedures, accounting records, and related documents. The review was more limited than would be necessary to give an opinion on internal controls and compliance. Accordingly, we do not express an opinion on the effectiveness of internal controls or on compliance or ensure that all deficiencies in internal controls or instances of noncompliance are disclosed.

As a result of our review, we noted certain deficiencies in internal controls and instances of noncompliance that the County Attorney's Office management should correct to ensure that it fulfills its responsibility to establish and maintain adequate internal controls and complies with the Program's requirements. The accompanying summary describes our findings and recommendations concerning these deficiencies.

Should you have any questions concerning our review, please let us know.

Sincerely,

Jay Zsorey, CPA  
Director, Financial Audit Division





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## Apache County Attorney's Office should improve policies and procedures over administration of Diversion/Deferred Prosecution Program

**Criteria**—Arizona Revised Statutes (A.R.S.) §11-362(A) requires that the Apache County Attorney's Office (County Attorney's Office) Diversion/Deferred Prosecution Program (Program) be administered according to the Arizona Prosecuting Attorneys' Advisory Council Deferred Prosecution Guidelines (APAAC Guidelines). The County Attorney's Office should have detailed policies and procedures for its employees to follow in administering its Program in accordance with the APAAC Guidelines.

**Condition and context**—The County Attorney's Office has written policies and procedures for administering its Program; however, these policies and procedures were outdated and lacked sufficient written procedures for certain key elements. As a result, for two of five program participants tested, the County Attorney's Office did not retain documentation that a background check was performed to ensure the participants were eligible to participate prior to being enrolled in the Program. However, auditors verified that the individuals were eligible to participate in the Program.

**Effect**—There is an increased risk that the County Attorney's Office will not comply with the APAAC Guidelines.

**Cause**—The County Attorney's Office policies and procedures were not updated to conform with changes in the APAAC Guidelines.

**Recommendations**—To help ensure that its policies and procedures for administering the Program are current, the County Attorney's Office should have a process in place to update its policies and procedures when changes are made to the APAAC Guidelines. In addition, these policies and procedures should include detailed instructions for program eligibility determinations, enrollment processing, fee charges, payment receipts, monitoring participant progress, successful and unsuccessful terminations, and mandated reporting. In addition, to help ensure the County Attorney's Office complies with the APAAC Guidelines, it should ensure compliance is documented and retained in accordance with its records-retention policy.





# Apache County Attorney's Office should establish program fees in accordance with Arizona Prosecuting Attorneys' Advisory Council Deferred Prosecution Guidelines and state law

**Criteria**—As prescribed by the Arizona Prosecuting Attorneys' Advisory Council Deferred Prosecution Guidelines (APAAC Guidelines), program fees may be established pursuant to A.R.S. §11-251.08 or similar authority. A.R.S. §11-251.08 gives the county board of supervisors the authority to adopt fee schedules for any specific services the county provides to the public. Fees established according to A.R.S. §11-251.08 should be attributable to and defray or cover the expense of the service for which the fee is assessed. Further, a fee shall not exceed the actual cost of the service. Also, before adopting a fee for service, the board of supervisors must hold a public hearing on the fee with at least 15 days' published notice. If a similar authority is used to establish program fees, the Apache County Attorney's Office (County Attorney's Office) should follow those requirements.

**Condition and context**—Fees should be established pursuant to specific legal authority; however, the County Attorney's Office was unable to demonstrate that it complied with APAAC Guidelines and state law when it established its program fees.

**Effect**—The County Attorney's Office did not comply with APAAC Guidelines and state law and may have inappropriately established program fees.

**Cause**—The County Attorney's Office did not ensure it complied with the current APAAC Guidelines and state law when it established its program fees.

**Recommendations**—The County Attorney's Office should formally establish its program fees according to the APAAC Guidelines and state law.





# Apache County Attorney's Office should report required statistical information in annual report

**Criteria**—As required by Arizona Prosecuting Attorneys' Advisory Council Deferred Prosecution Guidelines (APAAC Guidelines), the Apache County Attorney's Office (County Attorney's Office) is required to maintain statistical records related to its Program and annually provide a program evaluation to the APAAC along with the following statistical information in accordance with the APAAC Guidelines:

- How many people were enrolled in the Program during the previous fiscal year;
- How many people successfully completed the Program in the previous fiscal year;
- If available, how many people were enrolled in the Program during the previous fiscal year and subsequently convicted of a new felony offense.

**Condition and context**—The County Attorney's Office maintained the statistical information for its Program; however, it did not include the required statistical information in its annual report to the APAAC. Apache County was the only county to omit the statistical information in its 2017 report. The APAAC uses the County Attorney's report to compile an annual comprehensive Deferred Prosecution Report for all counties administering the program and submits it to the President of the Senate, the Speaker of the House, and the Joint Legislative Budget Committee.

**Effect**—The County Attorney's Office did not comply with the APAAC Guidelines reporting requirements. As a result, the APAAC did not have complete information to compile the annual comprehensive Deferred Prosecution Report for all counties.

**Cause**—The County Attorney's Office did not ensure it complied with the APAAC Guidelines reporting requirements.

**Recommendations**—To help ensure compliance with the APAAC Guidelines, the County Attorney's Office should include the required statistical information in its annual report to the APAAC.



# APACHE COUNTY ATTORNEY'S OFFICE RESPONSE



# APACHE COUNTY ATTORNEY'S OFFICE

MICHAEL B. WHITING, COUNTY ATTORNEY

*"... one nation, under God, indivisible, with liberty and justice for all."*

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July 25, 2018

Jay Zsorey  
Arizona Auditor General's Office  
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Phoenix, AZ 85018

## **Re: Deferred Prosecution Program Audit, ACAO**

Dear Mr. Zsorey:

Thank you for the opportunity to respond to the Arizona Auditor General's (OAG) audit of the Apache County Attorney's Office Deferred/Diversion Program (Program). This letter is intended to respond to the findings of the Arizona Auditor General's internal control and compliance review and findings. While the original letter from the OAG suggested that the use of Program revenue was to be part of the audit, none of the findings reflect any suggested changes in the use of such funds. The Review concluded with three findings suggesting possible improvements to the Program. This Office has completed or begun implementing these suggested changes for each of the three findings as discussed below.

### **I. FINDING 1 – THE PROGRAM SHOULD UPDATE WRITTEN POLICES AND PROCEDURES**

As part of the Review conducted by the OAG, several program participants were reviewed for eligibility. One of the requirements for eligibility is that the participant may not be enrolled if he/she has previously committed certain disqualifying crimes. While all participants reviewed were properly eligible for the Program, the eligibility background check for two misdemeanor participants were not retained in the participant file.

As noted in our March, 2018 response to your letter, all felony criminal cases are presented to the prosecutor for filing of a complaint and review for diversion. A criminal history report is performed by a staff member and is part of the file before a prosecutor makes any diversion offer. However, in contrast to felony cases, not all misdemeanor case files require the criminal history report. This Office has updated its policies to ensure that all diversion offers are made after a criminal history report has been reviewed on all misdemeanor cases.

Program policies and procedures are also being updated in all other ways to ensure that they are evaluated and updated annually according to legislative updates and amendments to APAAC guidelines.

**II. FINDING 2 – PROGRAM FEES SHOULD BE ESTABLISHED PURSUANT TO A.R.S. 11-251.08**

The Program was created under the APAAC guidelines then existing. Prior to 2016, the APAAC guidelines (2011 & 2014) did not mandate that fees be established pursuant to A.R.S. 11-251.08. However, this changed in 2016 and this Office has initiated the process of seeking Apache County Board of Supervisors approval for Program fees pursuant to the updated APAAC guidelines.

**III. FINDING 3 – PROGRAM REPORTING OF STATISTICAL INFORMATION TO APAAC SHOULD BE EXPANDED**

As noted in your finding, this Office maintains sufficient statistical information for the Program, including all data requested by APAAC. We have updated our policies and procedures to ensure all relevant statistical information is reported each year.

Hopefully this information is helpful in the review of the findings of the audit of the ACAO's Program. The process of analyzing the Program's policies and procedures has been helpful to this Office in ensuring the best possible outcome in these types of cases, and improving the administration of justice for citizens of Apache County. We appreciate your professionalism in handling this audit, and for your assistance in improving the Program.

Sincerely,

Joseph D. Young  
Chief Deputy County Attorney

