

**MANAGEMENT STUDY OF
FELONY CASE PROCESSING
IN PIERCE COUNTY, WASHINGTON**

- FINAL REPORT -

By

*Alan Carlson
George Gish
Barry Mahoney
Julie Hodges
Ginger Kyle*

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**The Justice Management Institute
1900 Grant Street, Suite 630
Denver, CO 80203
(303) 831-7564
Fax: (303) 831-4564**

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Introduction

Fair, effective, and efficient criminal justice processes are at the heart of any community's capacity to provide a safe environment for its citizens, a climate that will encourage economic growth, assurance that resources devoted to the justice system are being used well and wisely, and a sense that justice will be done when an individual is charged with breaking the law. The essential resources for an effective criminal justice system are in place in Pierce County. Dedicated, committed, and cooperative staff is present in each agency of the criminal justice system. The good working relationship between the court, prosecutors' office, defender's office and law enforcement agencies would be the envy of many jurisdictions. The automated case tracking systems provide information that most other courts and counties in our nation can only wish they had. Judges, prosecutors, defenders, court employees, and law enforcement offices are hard working with many feeling overworked.

Although the Superior Court for Pierce County is small, from the standpoint of number of employees or total budget, it has a disproportionate impact on Pierce county residents. Using rough estimates, more than 93,000 people, or 13% of Pierce county residents, have some sort of contact with the Superior Court each year. Contact does not necessarily mean they appeared in court, only that they were involved in a case as a litigant or witness, or received information about serving as a prospective juror. Most of the contacts occur during a crisis in the person's life, such as being a victim of crime or a litigant in a divorce, juvenile or civil case. They have high expectations that they will be treated fairly and that a resolution will be achieved quickly. Accomplishing this is not a simple matter, and often involves numerous agencies. This is especially true in the criminal justice area where the resolution of felony criminal cases involves the interaction, and cooperation, of at least eight governmental agencies at the county, city and state level.

It is in this context that the Washington State Office of the Administrator for the Courts retained the Justice Management Institute (JMI) to conduct a management study in Pierce County, Washington, focusing primarily on the organization and operations of the Superior Court. The study was initially requested by the Pierce County Council as part of its performance audit program. The study had two main parts:

1. Analyze the operations of the Superior Court criminal division courts and develop recommendations for improving operations from first court appearance to trial, with a view to achieving greater efficiency without sacrificing the quality of justice; and
2. Assess the process for managing the flow of felony cases in Pierce County from arrest to resolution and develop recommendations for improving performance and making the most effective use of available resources, including an evaluation of the utilization of the court's space.

JMI's approach to this project was similar to the approach that it has followed in other trial court caseflow management and system improvement projects. The basic methodology for the parts of the project is outlined in the monograph entitled *Improving Your Jurisdiction's Felony Caseflow Process: A Primer on Conducting an Assessment and Developing an Action*

*Plan.*¹ The data, both quantitative and qualitative, analyzed and presented in this report were gathered through a series of site visits in which observations and interviews were conducted, telephone conversations with court and justice system personnel, and review of other performance audit reports, statistical reports, agency annual reports, and demographic data. These were then combined to create a total picture and to develop a greater understanding of the criminal justice system as a whole in Pierce County, and to understand the interrelationship between the various agencies contained herein.

The report is organized as follows. Section I begins with an outline of the basic branches of the Pierce County Government. It then describes the role and organization of each criminal justice agency and court that is involved in the filing and resolution of felony criminal cases.

Section II describes each step in a felony case from arrest to post-sentencing activities. The activities that occur at each step are summarized and the inter-actions of the agencies and court are noted.

Section III of the report contains statistical information about the performance of the criminal justice system and provides commentary what the numbers suggest.

Section IV assesses the status of the Pierce County criminal case flow relative to key elements of effective felony case flow management generally accepted in the criminal justice community.

Section V of the report draws all of the information in the first four sections together with conclusions about the strengths of the Pierce County system and makes recommendations to improve the effectiveness of the agencies in handling felony cases.

¹ Denver: The Justice Management Institute, April 2000.

I. Overview of Current Situation

The first section of this report provides an overview of the organization of government in Pierce County as it relates to the handling of felony cases. It then describes the Superior Court and each agency that has some role in the filing and resolution of felony criminal cases.

A. Pierce County Generally

1. Basic Demographics

Pierce County, established in 1852, is presently the second largest county in the state of Washington in terms of population. The July 1, 1999 population estimate from the US Census Bureau for Pierce County is 688,807.² It covers a total of 1,794 square miles that includes a deep-water port, several cities, four large military installations and large rural areas around Mount Rainier, much of it within a National Park of Forest Service jurisdiction.

2. Organization of County Government

The legislative branch in Pierce County is a County Council of 7 members, each elected to four-year terms. The executive branch is headed by an elected County Executive. The criminal justice agencies that report to the County Executive are the Sheriff, Department of Assigned Counsel, Clerk of Superior Court, Emergency Management, and Medical Examiner. The head of each agency is appointed by the County Executive. The prosecution of crimes is the responsibility of the Prosecuting Attorney who is also an elected official. The trial level of the judicial branch in the State of Washington is two tiered, with one general jurisdiction court (Superior Court) and several limited jurisdiction courts (District or Municipal Courts) in each county, each hearing different types of cases.³

B. Superior Court for Pierce County

The Superior Court is the general jurisdiction trial court that serves all of Pierce County. It hears all felony criminal matters, all juvenile, family, probate and mental health matters, and some civil matters. It has concurrent jurisdiction with the District/Municipal Court for civil cases involving less than \$50,000 and exclusive jurisdiction for cases involving more than \$50,000.

² "County Population Estimates," Population Estimates Program, U.S. Census Bureau, Internet release date: March 9, 2000. www.census.gov/population/estimates/county/co-99-2/99C2_53.txt.

³ A chart describing the types of courts and types of cases they hear is included in Appendix A.

1. Superior Court Judicial Officers

The Pierce County Superior Court currently has 21 judicial positions and 6 commissioners. The twenty-first judicial position was only recently approved by the County Council (effective October 10, 2000) and has not yet been filled. State statute⁴ authorizes up to 24 judges in Pierce County, subject to the approval of the County Council. The composition of the bench has shifted in recent years, both as to time in service and age. When the twenty-first judge is appointed, nine judges will have been on the Superior Court bench less than five years, and eight for more than ten years. The age grouping is also bimodal, a few are over 60, and many are in their forties. This distribution of service and age means that there are a number of judges who have been a judge for some time, and a large group that are relatively new. This raises issues of transferring knowledge of judging techniques to the newer judges, as well as developing a sense of institution among all judges, including the newer ones.

Superior Court judges are elected to 4-year terms in non-partisan, but possibly contested, elections. All Superior Court judges statewide are up for election in the same year, the most recent election being in 2000. Judges newly appointed to a position must run at the next general election.

2. Distribution Of Cases Among Judicial Officers

The pattern of assignment of the cases filed in the Superior Court among the twenty judges and six commissioners is determined by a majority of the judges. The current pattern of assignments and courtroom locations is as follows. (A chart displaying the assignment patterns for the judges for a two-year period is provided in Appendix B.)

- Three judges are assigned to the criminal division courts (referred to as CD courts), rotating each month. Criminal Division 1 (CD1) is located in Room 560 and Criminal Division 2 (CD2) is located in Room 550 of the County-City Building. These two locations are permanent, requiring the judges to move into these courts for the term of the assignment. The location for Criminal Division 3 (CD3) rotates to the courtroom of the judge sitting in that assignment for the month. The function of the criminal division courts is to hear most pre-trial proceedings and some post-judgment proceedings in felony criminal cases (discussed further below).
- Seven judges are designated as criminal trial departments, sitting in their regular courtrooms on the first, second, fifth and eighth floors in the County-City Building. Until July 2000 these assignments rotated each month. The assignment rotation now lasts three months instead of one month.
- One judge is assigned to Drug Court for one year; drug court cases are heard in the judge's permanent courtroom in the County-City Building.

⁴ The maximum number of Superior Court judges authorized in Pierce County is set by RCW 2.08.061.

- Two judges are assigned to juvenile court. One judge is assigned there for one year, and the second judge rotates every three months. The Juvenile Court is located at Remann Hall (located several miles from the County-City Building) and hears all matters arising under the Juvenile Court laws.
- Seven judges are designated as civil departments, sitting in their regular courtrooms on the first, second, fifth and eighth floors in the County-City Building. Previously these rotated each month, but the rotations became two or three months, rather than one, beginning in July 2000.
- One Commissioner is assigned to Civil Division A. This division hears applications for ex parte and show cause orders, petitions to modify dissolution decrees, probate and guardianship matters, unlawful detainer actions, applications for appointment of a receiver, supplemental proceedings, adoptions and contested show cause proceedings.
- One Commissioner is assigned to Civil Division B. This division is assigned applications for domestic violence hearings, petitions to modify dissolution decrees, uncontested and default dissolutions, contested show cause proceedings, and unlawful harassment hearings.
- One Commissioner is assigned to Civil Division C. This division is assigned applications for ex parte and show cause orders, petitions to modify dissolution decrees, applications for appointment of a receiver, paternity actions and contested show cause proceedings.
- Juvenile Division Dependency Calendar. One commissioner is assigned matters arising under the juvenile dependency laws, and at the request of the Juvenile Court Judge may also be assigned juvenile offender matters.
- Civil Mental Health Division. Two commissioners hear matters assigned to this division, which hears matters relating to the involuntary commitment, treatment and release of individuals alleged to be suffering from a mental disorder or alcoholism. Hearings are conducted at Puget Sound Behavioral Health, Western State Hospital and Veterans Administration Hospital.

When fewer than 20 judges are available, because of vacations, vacancies or other reasons, the criminal or civil trial departments have fewer judges. The court has not yet decided whether to increase the number of civil or criminal trial departments when someone is appointed to the twenty-first judicial position.

Criminal cases are generally scheduled using a master calendar system, i.e., all cases are kept on one list, and assigned to a judge for a particular proceeding when needed. Some murder and some complex criminal cases may be pre-assigned by the CD judge to one judge for all purposes and all hearings. The assignments are made on a rotating basis. Civil cases, in contrast, are scheduled on an individual calendar basis, i.e., a case is assigned to a particular judge upon filing and that judge hears all matters in the case until it is resolved.

CD Court Operations

As noted, pretrial proceedings and post-judgment proceedings in criminal cases are concentrated in three CD courts. Pretrial proceedings include such things as arraignments, pretrial release, omnibus hearings, motions, guilty pleas, and sentencing on pleas. Post-judgment proceedings relate primarily to revocation of probation. Charts showing which types of proceedings are heard in each of the CD courts each day are provided in Appendix C. Motions raising legal issues in criminal cases are heard in CD courts as time permits. Lengthy motions will not be heard in the CD courts, they will be referred to the Court Administrator's Office for assignment to a criminal motion docket in a trial department.

Notwithstanding the high volume of proceedings scheduled in the CD courts, the level of judicial activity does not appear as high. As an example (which is not to be taken as representative) one CD courtroom was observed for one entire morning's heavy docket. A minute-by-minute log of all the in-court activity revealed that, although the judge was present and eager for work, the judge sat on the bench for only 12 minutes during between 8:30 a.m. and 10:40 a.m. (note that during this time the judge may have been doing other judicial work in chambers). At that point the prosecutor announced that, "I believe that's all we have." While there was a flurry of work during that session, only one plea was taken, i.e., only one resolution, with many other matters being continued. A great deal of "work" was done but with very little to show for it. While this anecdote is not necessarily representative of all CD calendars, it provides an example of the inefficient work patterns that have evolved regarding in-court activities.

The Superior Court opened a third criminal department, CD3, on July 6, 2000. The primary purpose in creating the third CD court was to relieve the high volume of proceedings scheduled in CD1 and CD2. Cases from CD1 and CD2 were redistributed so that similar numbers of cases are assigned to each of the three CD courts. The lack of a holding cell in CD3 and the fact that it is on a different floor from the other two CD courts and from the Court Administrator's staff who schedule proceedings has restricted its use to out-of-custody defendants or those in-custody defendants who present less of a security and escape risk. Another primary purpose of opening CD3 was to create more times when pleas could be scheduled. The downside of opening third CD court is one less judge who is available as a trial department.

The Superior Court has expressed considerable concern about the workload and scheduling patterns in the CD courts. The creation of the CD3 court was in response to the burgeoning number of proceedings in the first two CD courts. Based on observations and interviews, it is difficult to say how many CD courts are needed, or specify how many of each type of proceedings should be scheduled in each CD court each day. The problem, described further below, is that there are so many proceedings where there is no judicial action, either because of continuances, cancellations, or because the attorneys are negotiating rather than the court deciding, that there is no basis for setting numbers. The procedures must first be reorganized by establishing expectations as to attorney preparation and judicial actions and minimizing continuances and cancellations, then some realistic setting levels can be established.

3. Superior Court Governance

Governance of the Superior Court is distributed among the Presiding Judge, the Executive Committee and the whole bench. The authority to manage and conduct the court is vested in the Superior Court judges as a whole. As a body the Judges of the Superior Court: 1) establish all policies regarding judicial functions of the court, 2) exercise final authority over any matters pertaining to court organization and operation and over any individual, employee or committee of the Court, except departmental staff (this includes removal for cause of the Presiding Judge and commissioners), and 3) elect an Executive Committee and Presiding Judge.⁵ There are regular monthly judges' meetings where issues are discussed and actions taken. There is an annual judicial retreat, usually in October, for a day and a half to review the status of the court. Informally, most of the Judges gather on Fridays for lunch to discuss current issues and gather information on what is going on in the court.

The Executive Committee is designated by local rule⁶ to 1) decide matters of policy affecting the court on a majority vote basis, 2) recommend the designation and duties of the committees of the court and nominates the members of the several committees, and act in an advisory capacity to the Presiding Judge. Their decisions are final unless modified or rejected by a majority of the judges in attendance at the next regular judges' meeting. On request of any judge, any action taken by the Executive Committee is subject to review at a judges' meeting. The Executive Committee consists of five judges elected by a majority of the judges at the December judges' meeting, and they serve a two-year term beginning on January 1st. The executive committee generally meets every other Monday for an hour and a half. Their meetings include the court administrator and presiding commissioner. Any judge or commissioner may attend any Executive Committee meeting and participate, but not vote.⁷

Reportedly the Executive Committee membership tends to be "mid-career" judges; the older judges having "done their time" and the newer judges are still considered to be in a learning mode. Frustration was expressed by some judges about the actions of the Executive Committee regularly being second guessed by judges who ask that matters decided by the Executive Committee be revisited at the next judges meeting. There were also reports that decisions of the Executive Committee were simply ignored by some judges. Finally, there were comments that, while many judges expressed interest in being involved in the management of the court, they do not volunteer to be involved in the planning work that is required to implement meaningful changes.

The judges as a whole elect the Presiding Judge each year from the members of the Executive Committee.⁸ The election takes place in January of the preceding year, so the judge serves as Presiding Judge-elect for the year before becoming Presiding Judge. There is an expectation that a judge will serve at least one year on the executive committee before being elected as Presiding Judge. He or she generally serves as Presiding Judge for one calendar year, although the previous Presiding Judge served for two years, 1999 and 2000. The duties of the

⁵ Local Rules of the Superior Court for Pierce County, Rule 0.3 A and B.

⁶ Local Rules of the Superior Court for Pierce County, Rule 0.3 D.

⁷ Local Rules of the Superior Court for Pierce County, Rule 0.3 D (6).

⁸ Local Rules of the Superior Court for Pierce County, Rule 0.3 C (2).

Presiding Judge are to: a) direct the business of the court and supervise its operation; b) initiate court policy for presentation to the judges or to the Executive Committee, c) act as official speaker for the court, d) preside at all judges' meetings, and e) chair the Executive Committee.⁹ The Presiding Judge generally sits in one of the civil or criminal trial assignments with no reduction in caseload except that they do not rotate into one of the CD assignments, but may sit in a CD court on a short-term basis. The Presiding Judge also assigns criminal cases for trial following the readiness docket (discussed below).

One of the Superior Court's standing committees is the Criminal Procedures Committee. In addition to judges and key court staff, the committee membership includes representatives of other criminal justice institutions and agencies. The committee addresses problems that arise in the resolution of criminal cases involving the court, prosecutor, defense counsel, or the jail. The committee also reviews new legislation and recommends new procedures or processes to accommodate the legislative changes. The court has given the chair of the committee full authority to investigate problems in the handling of felony cases and propose solutions to make the process run more smoothly and effectively. During the past year the Committee has been successful in resolving a number of issues such as timely transportation of prisoners, addressing paperwork and forms problems, and scheduling conflicts of courts and attorneys. The Committee was also responsible for developing and implementing the CD3 court.

Observations about Superior Court governance:

- This is a weak presiding judge structure -- the bench has not empowered this position. The bench has only recently agreed to reduce the Presiding Judge's trial workload to accommodate administrative duties.
- The executive committee and the Presiding Judge seem receptive to comments and suggestions, but it is apparently hard to persuade the judges as a whole to accept their recommendations.
- Judges are sometimes micromanaging the organization, e.g., overseeing the purchase of judges chairs.
- Judges want a variety of cases and do not want long-term assignments, but this creates a fragmented system when viewed from the perspective of other agencies in the criminal justice systems.
- No one individual or position is responsible for the management of criminal cases.

4. Court Staff

The court administrator is appointed by, and serves at the pleasure of, a majority of all of the judges and works under the direction and supervision of the Presiding Judge. The court administrator meets with the Presiding Judge at least once a week, and on an as-needed basis.

⁹ Local Rules of the Superior Court for Pierce County, Rule 0.3 C (1).

The major duties of the court administrator are to: 1) exercise administrative control of all non-judicial activities of the court, 2) implement all policies regarding judicial functions of the court, 3) supervise all court employees, except commissioners, juvenile court employees and departmental employees (judicial assistants and court reporters), 4) prepare and administer the court's budget, 5) assist the Presiding Judge in meeting with representatives of governmental bodies, and other public and private groups regarding court management matters, 6) prepare the agenda for judges' meetings and act as recording secretary at those meetings, 7) prepare reports and compile statistics as required by the judges or state court administration, and 8) make recommendations to the judges for the improvement of the administration of the court.

Each judge employs one full-time judicial assistant/clerk/bailiff and a court reporter. The Court, as a whole, employs a court administrator and 18 additional staff. Court Administration staff coordinate criminal calendars, schedule interpreters, manage the jury function and provide management support to the court. The administrative staff also perform bookkeeping, accounting and minimal secretarial services for the judges and commissioners. CD1 is staffed by the clerk's office. CD2 is staffed by the court administrator's office. CD3 is staffed by the Judicial Assistant of the judge hearing this assignment for the month.

C. Criminal Justice Agencies in Pierce County

A description of each of the other agencies comprising the criminal justice system in Pierce County is provided below. The description discusses what role the agency plays in the felony criminal system and its organization. There are also comments on the impact of the actions of the agency on other parts of the system, and impacts of other parts of the system on this agency where relevant to this study.

1. Clerk of Court

The Clerk of Court is responsible for maintaining the record (case files and exhibits) of all cases filed in the Superior Court and for receipt and accounting for all fees, fines, bails, court costs, restitution, trust deposits and child support payments related to cases. Some quasi-judicial duties are also performed by the Clerk, such as the issuance of various writs, orders, subpoenas and warrants. In probate, guardianship, adoption and paternity cases the Clerk of Court office staff enters information about events and documents in each case in the computer case tracking system. In felony cases this work is split, as discussed below. The Clerk of Court's office also: 1) administers the Mandatory Arbitration System, 2) provides information to litigants not represented by an attorney in domestic relations matters about court forms that they may be required to file, 3) provides administrative and courtroom support to the Domestic Violence Program, and 4) provides all services and support for civil commitment proceedings through the Superior Court division at Western State Hospital and other local mental health facilities. In other counties in Washington the clerk of court is responsible for trial juror qualification and summoning; in Pierce County the court administrator handles this responsibility.

One significant duty of the clerk of court is making the record of what happens in court. The record of what happens in court is made by the 'courtroom clerk' in each court. In Pierce

County these duties are split between Clerk of Court staff and Superior Court staff. The Clerk of Court provides courtroom clerks for all commissioners and for the CD1 courtroom. Courtroom clerk activities in all of the other courtrooms are performed by Judicial Assistants who are hired by the individual judge, but have been deputized to serve as the courtroom clerk in that court. Judicial Assistants may perform other work for the judges, such as legal research and secretarial work generally not typically done by courtroom clerks.

While it is not unusual to have the ‘courtroom clerk’ function performed by court staff, as opposed to clerk staff, it is not common. Having the Clerk of Court ultimately responsible for activities performed by staff who report to someone else can be problematic regarding such things as training on proper procedures and new procedures, correcting errors and to whom a courtroom clerk is ultimately responsible for clerk of court duties. While there were no serious problems reported, there were some comments about inconsistencies in data entry and varying attention to courtroom clerk duties attributed to frequent turnover of some Judicial Assistants. The judges prefer this arrangement because they can select the person with whom they will have a close working relationship and because of the availability of the Judicial Assistant to perform functions beyond courtroom clerk work. The structure can also present a problem regarding coverage. There needs to be a pool of staff from whom someone can be drawn to cover an absent courtroom clerk. The Court Administrator’s staff is quite small, relative to the number of Judicial Assistants, making coverage difficult. While the present system is more compatible and flexible for the judges, it has inherent challenges regarding consistency of work product, training, reliability, coverage and lines of authority.

Another significant duty of the clerk of court is entering information about events in each case and all documents filed in each case into the case tracking system. Two case management systems are used in Pierce County to track criminal cases (each of these is discussed below in section C. 7). LINX, the locally developed system, is used to track criminal cases on a day-to-day basis, to produce calendars and other documents, and to produce management reports. SCOMIS, the statewide system, is used to report required management information to the state. Data entry about what happens in court can be done either by the courtroom clerk or staff outside the courtroom from documents prepared by the courtroom clerks. As with ‘courtroom clerk’ work, data entry in Pierce County is split between Clerk of Court staff and Superior Court staff. Most of the data entry into LINX is done by the Judicial Assistants or by staff in the Court Administrator’s office. Clerk of court staff enter information about some criminal proceedings and all sentencings into SCOMIS from the paper records returned from courtrooms. The fact that the two systems have slightly different definitions of what is included in statistical counts and different staff are doing the data entry are the primary sources of the apparent discrepancies between statistics generated from SCOMIS and LINX.

2. Prosecuting Attorney

The Prosecutor's Office is responsible for an array of legal functions for Pierce County and is organized into seven major divisions. The Felony Division reviews all felony complaints and files felony cases for all of Pierce County, from both the incorporated and unincorporated areas. The Juvenile Division handles all criminal cases involving juvenile defendants. The

Misdemeanor and Traffic Division handles all Pierce County misdemeanor and traffic cases filed in District Court (but not Municipal Courts). The Civil Division serves as legal counsel for Pierce County elected officials, department heads, and numerous county agencies. The Family Support Division has the responsibility to judicially establish paternity and support obligations of non-custodial parents. The Investigative Services Division provides support to the Felony and Family Support Divisions. The Justice Services Division manages two programs: Victim Witness Assistance Service, which acts as a liaison between the criminal justice system, victims, and witnesses of crimes, and EL CID, a diversion program for first time adult offenders.

The Felony Division is organized into six "trial teams," each handling specific types of felony cases. Those teams are the Murder/Manslaughter team, the Robbery/Assault team, the Arson/Fraud team, the Burglary/Theft team, the Drugs/Vice team and the Special Assault team (rape and child abuse). There is also an Appeals Unit that handles the appeals of criminal convictions in the State Court of Appeals and Supreme Court. The Investigative Services Division prepares criminal histories, locates hard to find witnesses, serves subpoenas and court orders and provides other support functions necessary for trial preparation. This division also conducts independent investigations of alleged official misconduct, officer involved shootings and complex fraud cases as well as assisting with unsolved homicides. A total of 41 attorneys are assigned to the felony division.

3. Sheriff

The Sheriff's office has three bureaus: Corrections, Operations and Administrative Services. The Operations Bureau provides law enforcement services in the unincorporated areas of Pierce County and in cities that contract with the sheriff for such services. The Corrections Bureau is responsible for maintaining custody of all persons arrested on felony or misdemeanor charges in Pierce County or serving sentences of less than one year upon conviction of a new charge, except for those arrested in those cities that maintain their own jail. The corrections officers in the Corrections Bureau are a different class from deputies in the Operations bureau, so they cannot fill in for each other, or do overtime. The Administrative Services Bureau provides: a) courthouse security, b) service of process in civil cases, c) information technology, budget & personnel services for all Sheriff department units, and d) manages the property room. The Sheriff is appointed by County Executive and is the only non-elected Sheriff in Washington. The Chief of Corrections reports to the Sheriff.

The Sheriff's courthouse security office consists of a sergeant and three officers who provide security for all three levels of courts in the County-City Building: Superior, District, and Tacoma Municipal Courts. "Front door" security and screening is provided through a contractor. Corrections Bureau staff transport prisoners from the jail to the courtroom. Their duties also include providing security while in the courtroom with an in-custody defendant, as there is no regular bailiff in each courtroom.

Judges are alleged to hear cases with in-custody defendants last in order to have Sheriff's Corrections Officers remain in court as security during the entire calendar.

4. PreTrial Services Unit

The PreTrial Services Unit is part of the Corrections Bureau of the Sheriff's Department. The PreTrial Services Unit gathers information on three issues: 1) pre-trial release for non-violent misdemeanants only, 2) criminal histories (for the purposes of jail classification), and 3) indigency screening for appointed counsel. Information is gathered for every defendant regarding jail classification issues and, for every defendant who indicates they cannot afford counsel, indigency.

Defendants arrested on felony charges are not screened for possible release prior to the first appearance. Only those charged with non-violent misdemeanors are screened regarding possible PR release. The unit works from the arraignment calendars generated by the LINX system for each day. The expectation is that they will have reviewed all cases as to indigency and possible release prior to the start of the arraignment calendar at 9:30 AM each day. The work begins in the afternoon for defendants booked that day, but much of the work begins at 6 AM for defendants booked overnight. PreTrial Services prepares criminal history information by queries to the FBI NCIC system, WASIS (the Washington state system), JIS system (Office of the Administrator of the Courts Judicial Information System) and CHRI (the Pierce county criminal history reporting system). Additional Information for the indigency and release determination is obtained from interviews with the defendants in the jail shortly after the defendant is booked.

5. Department of Assigned Counsel

The Department of Assigned Counsel (DAC) is responsible for the delivery of mandated legal services to indigent persons accused of crimes in the Superior Court (felony and juvenile), all District Courts and several Municipal Courts. DAC also provides constitutionally mandated legal services to indigent parents involved in Juvenile Court dependency and termination proceedings, and to persons detained for involuntary civil commitment proceedings at Western State Hospital, the VA Hospital, and Puget Sound Behavioral Health. DAC also provides institutional civil legal services to residents of Western State Hospital pursuant to contract with the State of Washington.

The Department of Assigned Counsel manages the entire range of appointed counsel services. The DAC consists of a "mixed delivery system" of staff lawyers, contracts with law firms, and a panel of lawyers who can be appointed to represent a defendant. The DAC has an Advisory Board that oversees the program, but it is a part of the Executive branch of the county. The head of the DAC reports to the elected County Executive. Eligibility issues and reimbursement issues have come up several times in the past, but there have been no significant changes in the process or structure of appointment of counsel.

6. Law Enforcement Support Agency (LESA)

The Law Enforcement Support Agency, commonly referred to by its acronym LESA, is an intergovernmental agency formed by Pierce County and the City of Tacoma in 1974 to consolidate their dispatch and 911/phone answering services. Over the years several other cities have been added. In addition the services have been expanded to include management and custody of criminal justice information, including local criminal histories, and communication and networking systems that link the public safety and criminal justice agencies in the region. The LESA Records Management Section provides 24-hour information services to criminal justice agencies. The section also prepares Sheriff and Tacoma Police Department monthly crime reports and acts as the custodian of all investigative reports filed by Tacoma Police and Sheriff Department. The Information Services Section maintains a computer network with over 900 users. LESA is governed by an Executive Board that consists of representatives of the executive and law enforcement offices of Pierce County and the City of Tacoma and a citizen appointed by the Board. There are also representatives of other cities who participate as advisory members.

Criminal history information about people who are arrested is available through the LESA system. The system provides access to the 1) FBI NCIC databases (for arrests and convictions from other states), 2) Washington State WASIS database (for arrests and convictions from other Washington state counties) and 3) Pierce county CHRI criminal history database (for previous arrests and convictions in Pierce county).

7. Case Management Information Systems (LINX and SCOMIS)

There are two case management systems that provide case tracking and case management services in felony criminal cases. One is the local Pierce County system called LINX (Legal INformation eXchange) and the other, referred to as SCOMIS, is part of the statewide JIS (Judicial Information System) system supported by the Office of the Administrator of the Courts. LINX was initially developed by the Prosecuting Attorney's office. It has since been expanded significantly and is now used by all of the Pierce County criminal justice agencies. Information about a new case begins with data entered by the Sheriff's staff during booking. Charging data is initially entered by the prosecutor's office. Information about subsequent scheduled proceedings in a case is entered by the court administrator's staff. The prosecutor's staff enters data on the resolution of a case, including sentencing. Data is typically entered on the same day and definitely no later than the next day. Since LINX is the system used by all of the criminal justice agencies on a day-to-day basis to track cases, the data in LINX will be more accurate, reliable, and complete than that in SCOMIS.

SCOMIS is a statewide case management system for Washington's superior courts that is used for civil and other case types as well as criminal. SCOMIS was developed to: 1) manage and track superior court cases and events in the cases, 2) provide judgment or case status, 3) document the amount of a judgment, 4) record if, and when, certain pleadings and documents have been filed, and 5) provide statewide tracking for all felony cases.

Because Pierce County uses LINX to track felony cases instead of SCOMIS, complete information about all proceedings in felony cases is not entered into SCOMIS. The Clerk's office does enter basic information about felony cases and their resolution into SCOMIS so that the required information is passed along to the state for statistical reporting purposes. Information about every criminal proceeding is not entered, as it is not critical to SCOMIS reports relating to filings, resolutions and case aging, and because the case tracking functionality of SCOMIS is not used in Pierce. As a result statistics reported by the state about proceedings in felony cases are incomplete for Pierce County.

D. Criminal Justice Facilities

As it relates to this study, there are two facilities affecting the hearing of felony criminal cases, the County-City Building and the adjoining jails. Aspects of each facility are described below.

1. County-City Building

All of the Superior Court operations, except juvenile court, are located in the County-City Building complex in Tacoma. The courtrooms are located on several different floors and in different parts of the complex of buildings. Two of the high volume criminal court departments are located in the fifth floor of the older part of the building. There is a "tunnel" leading to the jail for the transport of in-custody defendants. The bulk of the courtrooms are located on the second floor, in both the new and older parts of the building.

A number of facilities problems were identified with the County-City Building. There is a lack of space to work for the attorneys who are appearing in the three CD courts, especially for meeting with each other and for defense counsel meeting with clients. Between CD1 and CD2 is an area known as the "fish bowl" that is glass walled on both sides. The "fish bowl" area is small and noisy, but is all that is available to serve the attorneys. Because of the lack of space to consult, attorneys often meet with their out-of-custody clients in the hallways, stairwells and bathrooms to find a quiet, confidential place to consult with them before hearings. The galleries for both CD1 and CD2 are also small spaces making it difficult to separate relatives or friends of the defendant from those of the victim. Often this creates safety problems in the courts, including occasional assaults.

Based on comments and observations courtroom security in CD1 and CD2 is, simply stated, dangerous. There is presently one holding cell on the fifth floor behind CD1 and one holding cell behind CD2. Both cells appear to be too small for the amount of inmates that are held there. To get to the holding cell near CD2 the defendants are walked through the meeting space in between the two courts in very close proximity to the prosecutors and defense attorneys that are preparing for their next case. The lack of space, limited escorts and the need to transport large numbers of prisoners back and forth creates a real security risk.

The location of CD3 changes monthly, to the courtroom of whichever judge is assigned to this calendar. This requires the movement of prisoners through the public hallways to the CD3 judge's courtroom. Since courtrooms do not have holding cells, it also creates greater security problems than are present in CD1 and CD2. Due to the rotation of the CD3 court, and the lack of holding cells and places for attorneys to consult with each other or their clients in most courtrooms, the cases assigned to CD3 are ones with a lower security risk, e.g., where the defendant is out of custody. This reduces the flexibility of assigning and hearing cases. As the CD3 court will generally be on another floor from CD1 and CD2, it is also remote from the court's scheduling staff who are located behind CD1 and CD2.

There are similar transportation and security problems with the drug court, as its location changes each year to the courtroom of the judge assigned to hear drug court cases. Although drug court defendants generally are less of a security risk, if they are in custody, they need to be transported to the drug court department.

The high volume CD courts should all be relocated together to a lower floor in the building, preferably the first or second floor. Having CD1 and CD2 on the fifth floor clogs the elevators, in addition to the security problems, prisoner transportation and holding cell problems described above. Because the workload has outgrown the space, attorneys have no appropriate place to interview or consult with their clients regarding their case or the acceptance or rejection of prosecutor's offers. New courtrooms should be designed to accommodate the high volume of hearings and people under an efficient caseflow management structure. For example, the courtrooms need to be larger, have larger holding cells and spectator areas, and have conference rooms for attorneys to meet with their clients, both those out of custody as well as those in custody. The courtrooms should also be designed so that prisoners could be easily transferred from one CD courtroom to another so that judges could assist one another.

The RFP reported high expenditures for transporting prisoners. However, compared to jurisdictions where prisoners have to be transported by bus or van from a remote jail to the courthouse, these costs are relatively less and there is less court time lost waiting for prisoners to be brought in from a remote jail. Since the jail is adjacent to the courthouse, the concept of video appearances is of minimal value. There would be very little reduction of transportation costs, since the jail is so close. More importantly, use of video appearance would result in a loss of the opportunity to accomplish a resolution in a proceeding because the defendant is not physically present. If a resolution was agreed to as part of a videoconference, another hearing would have to be scheduled at which the defendant would physically appear to put the resolution on the record. A video conferencing ability might be used, instead, to provide more convenient access of defense counsel to in-custody clients.

Finally, with the current assignment structure, the Superior Court reports that there are not enough courtrooms for each judge to have their own "permanent" courtroom. Because the assignments are for only limited time periods, judges do not consider the CD1, CD2 and juvenile courts as permanent courtrooms. Each judge does have his or her own chambers, but there are currently three judges (four with the twenty-first judge) who do not have a permanent courtroom. They hear cases in courtrooms of judges who are on vacation, assigned to CD1 or CD2 or juvenile court, or otherwise not using their courtroom. If no courtroom is available, they must

use a conference room for hearings. Note that, if each judge had a permanent courtroom, at least three courtrooms would routinely be empty while the judge was sitting in CD1, CD2, or juvenile court. These temporarily unused courtrooms could be used by pro tem judges.

2. Jail Facilities

Pierce County currently has two jail facilities, and a third one under construction. The current permanent jail is rated at 772 beds, and is adjacent to the courthouse. A jail-overcrowding suit was filed in Federal Court in the mid 1990s. In response to the suit a temporary jail was built that has 500 beds, increasing the total jail capacity to 1,272 beds. The new jail now under construction has 1,000 beds, with completion scheduled for the fall of 2002. When the new jail is completed, the county will have 1,772 beds, not including the temporary jail.

A lot of numbers have been proffered about what category of defendant uses the bed days in the jail. Defendants can be held in the jail on a number of bases: a) awaiting trial on a misdemeanor or felony charge, b) serving a sentence from a felony or a misdemeanor conviction, c) serving a sentence on a prior case and awaiting trial on a new case, d) being held for state probation, e) being held for an evaluation, and f) awaiting transport to another jurisdiction, including a state correctional facility. Data from LINX for the first eleven months of 2000 indicate that, counting bed days not defendants, 48% of the bed days were for defendants charged with a felony in pretrial status, 10% were serving a felony sentence, 15% were there because of a state probation hold, and the balance were defendants charged with, or serving sentences for, a misdemeanor. It is unclear how defendants who were serving a sentence on a prior charge and also awaiting trial on a new charge were counted in the above figures. A population snapshot for June 26, 2000, showed that 17% of defendants that day were in both a pre-sentence and sentence status, either misdemeanor or felony.

II. Current Felony Caseflow Practices

This section of the report describes each stage in the resolution of a felony criminal case, from arrest to post-sentencing activities. The description notes the agencies involved, the typical practices and procedures, and some of the problems that were observed or related in interviews. Section III provides statistical information about the volume of work and outcomes.

The basic steps in the filing and resolution of an adult felony criminal case are as follows. The term usually used to describe the step is given in bold italics. A case begins when a person is **arrested** on a suspicion that they committed a crime. The person is brought to the jail to be held for court (**booking**). Before their first court hearing information is gathered about the defendant relating to whether he or she can be released or should be held in jail until the case is resolved (**pretrial screening and release**). Based on the information provided by the police and information about the defendant's past criminal behavior, if any, (**criminal history**) the prosecuting attorney decides what crimes to charge the person with (**charging**) and prepares an "information" stating the crimes charged.

The defendant appears in court, usually the next day, (**first appearance**) and is told what crimes he or she has been charged with committing, is assigned a lawyer, if he or she cannot hire one, a determination is made whether the defendant will be held in jail or released pending resolution of the case and the defendant enters a plea to the charges. A date for the next appearance is set. Prior to the next appearance the attorneys gather and share information about the defendant and the case (**discovery**). At the next appearance the attorney begin to discuss possible resolution of the case (**pretrial conference**). If the defendant chooses to plead guilty to some or all charges, a **plea date** is set for entry of the plea and sentencing. If there are legal issues, such as whether evidence is admissible, an **omnibus hearing** is scheduled. Additional hearings may be set to hear the motions on legal issues. If the case is not resolved by a plea of guilty or dismissal, it is scheduled for **trial**.

If the defendant is convicted, either in a trial or based on a guilty plea, the defendant is **sentenced**. If the defendant violates conditions of the sentence, there are further hearings on what will happened because of the violations (**post-sentence proceedings**). A general chart showing the typical stages in criminal cases is included in Appendix D.

A. Arrest and Booking

Most defendants are booked directly into the county jail in Tacoma. Only 3 cities have their own holding facilities, and these can only be used for short periods of time. Most of the felony bookings come from the few, larger, police agencies in the county, in particular the Pierce County Sheriff (45%) and Tacoma (31%). Sheriff's staff indicate they do not turn away even misdemeanants for booking, except misdemeanants arrested on out of county warrants, in which case they call the jurisdiction that issued the warrant to see if they will come pick up the defendant before releasing the person.

The booking is completed in one area of the jail. Police officers bring defendants to the county jail and escort them to the booking area. There Sheriff's Corrections Officers enter the defendant's name and other identifying information directly into the LINX system to begin the electronic file. This information is moved electronically to the Records unit to identify any outstanding warrants and to begin the criminal history search process. The defendant is medically screened and any property is collected and logged. The defendant then changes into jail clothes, and is photographed and finger printed. Fingerprinting is currently inked on cards, although there is an expectation that the Live Scan system will be installed during the next year, which will allow more rapid, and accurate, identification of defendants. Defendants then are taken down the hallway into the main jail holding areas. Based on observations on a typical, but not busy time, the process appears to be effective and quick. Defendants can complete the booking process in less than an hour.

B. Pretrial Screening and Release

There is no formal program for the screening and non-financial release of defendants charged with a felony prior to their first appearance. This is unusual for a jurisdiction as large as Pierce County. The Sheriff, on behalf of PreTrial Services, requested permission to screen class C felonies¹⁰ for possible release recommendations, but the Superior Court declined permission. There is a bail schedule and defendants charged with a felony can be released if they post bail and there are no other holds. If they cannot or do not post bail, they can ask the judge to review the amount of bail, or consider personal recognizance release at their first appearance.

In contrast, there is a formal program for screening and non-financial release for defendants charged with a misdemeanor and heard in the District or Municipal Courts. Release can occur any one of three ways. The arresting Sheriff's deputy or Tacoma Police officer can release a defendant at the end of the booking process if, in their judgment, the defendant is not a danger to the community or a flight risk. These are called Special Identification Process (SIP) releases. The next option is release by the PreTrial Services Unit prior to first appearance, referred to as a PTS/PR (personal recognizance) release. Such a release is at the discretion of the PreTrial Services staff person who does the review, based on specific criteria set forth by the Sheriff's Department. Finally, the District or Municipal Court judge can release the defendant on personal recognizance at the first appearance, or a subsequent appearance. Information provided by the PreTrial Services unit shows that, for the first nine months of 2000, there were 405 SIP releases, 557 PTS/PR releases and 875 Court PR releases. During this time period there were an estimated 10,000 defendants presented for booking charged with a misdemeanor. The failure to appear rate at the first court appearance after release ranges from 24% for Court PR's, 25% for PTS/PR's to 33% for Sheriff SIP's. The District and Municipal Courts are reportedly satisfied with the work of PreTrial Services.

¹⁰Class C felonies are felonies for which the punishment is less than 5 years in prison.

Breaking the Cycle (BTC) Program

The Breaking the Cycle program in Pierce County is part of a federal initiative to develop and test comprehensive strategies for effectively addressing substance abuse among offenders. The research demonstration project is designed to determine whether the incidence of drug use and crime in a community can be impacted by early identification of drug users, assessment of their drug treatment needs, referrals to appropriate drug treatment, regular drug testing and immediate sanctions for drug use. Pierce County was included in the study because of a combination of high levels of drug arrests, particularly involving methamphetamine, high rates of poverty and urban distress, low education levels, and jail overcrowding. The BTC program is focused on integrating the TASC program operated by the Pierce County Alliance and the existing Drug Court program with a new BTC Alternative Center to serve a wider range of offenders.

The program was originally intended to serve as a release program at the pretrial stage. However, the program was overwhelmed by the number of arrestees and is unable to screen everyone who is booked. There was also a problem of insufficient space in the jail to do the screening. Participation is also hampered by the early release of defendants due to overcrowding (discussed below). The program now relies on referrals from court and self-referral by defendants. Generally, where there is some indication of a substance abuse problem, the judge in a CD court will refer the defendant to the program as a condition of release. However, if the defendant cannot post bail, they cannot participate in the program. There are problems with defendant who are referred not appearing and with insufficient staff to manage all of the eligible defendants. Another problem the case managers report is not being able to readily determine later whether a defendant is once again in custody. The program does provide a high level of case management of participants, has structured responses to defendants who are not complying and has the support of the court. Compliance problems are scheduled to be heard in the drug court. Although the program was originally focused on the pretrial stage, the program appears to be evolving into more of a post-sentence alternative to incarceration than a pretrial release alternative.

C. Criminal History Information

Criminal history inquiries are made through the LESA systems. Initial inquiry is based on the identification information gathered by Sheriff deputies during the booking process. When fingerprint identification is confirmed, further, and more complete, inquiries can be made to the various criminal history databases.

Pierce County has suffered a setback regarding its criminal history database that negatively affects criminal case processing, particularly at the pre-trial release and charging stages, but also at resolution. At the beginning of 2000 the county and LESA migrated to a new computer system intended, in part, to address Y2K problems with the old system. The change included a new jail management system, as well as state and local criminal history data access. It appears the cut over was premature. Initially there was even a communications problem with using the system to access federal NCIC and the Washington state criminal history systems, but

that problem has been addressed. More significantly, during the conversion process the data file of local criminal history information was not completely and accurately converted. Part of the problem was that the old local system did not have adequate edit checks, generating records that did not translate properly. Records were combined that should not have been and there were errors in links between related records. LESA has contracted with a consulting firm to recommend steps needed to improve current LESA systems, including the criminal history aspects of the system. The consultant established twelve objectives. They include improving data credibility by improving criminal history data quality, improve timeliness and credibility of data by implementing a train the trainer program, and improve data credibility by making key inquiry tools easier to use. Work is currently underway and has resulted in the clean up of thousands of criminal history records. Although LESA has a plan in place for resolving the problems, and is correcting errors as they are identified, the criminal justice community has lost confidence in the information in the local criminal history database because of the conversion problems. Agencies each do their own criminal history checks in an effort to acquire information they deemed reliable enough to properly exercise their discretion.

The problem manifests itself as follows. The PreTrial Services staff do a criminal history search that is used for jail classification and pre-trial release purposes. They are using the new jail management system, which uses LINX data to pre-fill some of the data fields previously derived from LESA criminal history databases. Unfortunately the LINX data is not as current as that in the LESA criminal history system files. As a result the information appears unreliable, when compared to subsequent checks done through LESA. The prosecutor's office does its own checks, for charging purposes and to be prepared for bail motions at the first appearance, rather than relying on the initial criminal history generated by PreTrial Services. The result is duplication of effort by staff in different agencies, and a delay as to when prosecutors feel they have sufficiently reliable information to make a plea offer. Reliable sentence guidelines calculations also cannot be done as a result of this uncertainty about the defendant's past record. As one attorney noted, "minor errors make for big differences" in calculating guideline scores, a defendant's possible maximum exposure for jail or prison time, if convicted. There is a general fear among all participants, judges as well as prosecuting and defense attorneys, that they may be missing something critical about the defendant's history, and this fear causes hesitancy in resolving cases, particularly at an early stage in the process.

Problems are also reported about the speed of access to criminal history databases. Apparently the new system is noticeably slower than the old one. It is reportedly so slow that there were comments about initiating a request, then going and getting a cup of coffee, and the results still not being there when they return to their desk.

Having no accurate criminal history information available, especially available early, literally freezes the system in its tracks. Judges cannot set bail or take pleas if the defendant's record is not known; prosecutors cannot make settlement offers if they do not know what other crimes, if any, the defendant has committed; defense attorneys cannot calculate correct sentencing guidelines score without an accurate record or be able to advise their clients about whether to accept an offer, go to trial, etc. This problem demands immediate attention if the criminal justice system in Pierce County is to be improved.

D. Charging - Filing of the Information

The Pierce County Prosecuting Attorney has chosen to charge felonies by way of an information filed directly in the Superior Court, without use of a Grand Jury or an initial filing in the District or Municipal Court and a probable cause determination at that court level. The decision on what to charge in the information is made by the prosecutor's office between the time of booking and the first appearance, which is generally the next court day. As described above the prosecutor's office is organized into teams around crime types, paralleling the organization of many police departments. Each team has discretion as to how the charging decision is made, and the team is then responsible for the case until it is resolved.

The charging decision is based on the police reports obtained after the defendant is booked and criminal history information generated by the Investigative Services Unit within the prosecutor's office. Information about the number of cases where the charge to which the defendant plead is less than the original charge suggests that there is no pattern or practice of over-charging by the prosecutor's office, although there were comments that this is often the case with a few deputies than any pattern or practice.

The police reports provided are on paper, most are typed but some are hand written. Generally the police reports are considered adequate to make reasonable charging decisions. A police report will be sent back to the police department if it is insufficient for making a charging decision, but this reportedly occurs infrequently. Usually an attempt is made to contact the officer to get additional information. When a report is returned, there is an indication of what is needed to allow the prosecutor to file charges that can be proved.

Interviews suggest a number of problems during this stage. As discussed above, the prosecutors report problems obtaining reliable criminal histories. It sometimes takes more than 24 hours to get a reliable criminal history. Prosecutors also report problems in getting police reports, particularly supplemental reports. In some cases the prosecutor has to track down the officer to get a report completed on which a charging decision can be based.

E. Probable Cause Determination

Probable cause determinations (is there adequate evidence that a crime was committed and that this person was likely the one who committed the crime) can occur under two scenarios. There must be a probable cause determination within 48 hours of a person being jailed. In order to comply with this on weekends a judge comes to the jail and makes these determinations based on affidavits prepared by prosecuting attorneys. During the week the determination is made at the first appearance. Under Washington law a probable cause determination hearing is only required in cases where there are conditions placed on a defendant's release from custody. However, a defendant can challenge the presence of probable cause after the information is filed. In Pierce County the Prosecuting Attorney's office files a declaration of probable cause with the information. As a result of this practice, if there is a challenge to probable cause, the information on which a judge would rule is immediately available for review.

F. First Appearance

First appearances are scheduled every afternoon at 1:30 PM in each of the two CD courts. Cases are currently divided between CD1 and CD2 courts according to prosecutor trial team. CD2 hears pretrial proceedings in sexual assault and drug cases, while CD1 hears pretrial proceedings in cases handled by the other teams: (1) robbery and assault, (2) arson and fraud, and (3) burglary and theft. Most murder cases and some other complex criminal cases are randomly preassigned to a judge and these cases may have only one hearing in CD1, at which time the assignment to a judge for all purposes is made. CD1 and CD2 are adjoining courtrooms, which allows the easy transfer of cases between the courts to accommodate differences in workload. In-custody defendants are brought to the CD courts from the jail through a secure hallway. Most are held in one of two secure areas near the courtrooms, but some are kept in one of the meeting areas in the fishbowl between the courtrooms. The number of first appearances scheduled is a function of the number of people arrested the previous day, the ability of the PreTrial Services unit to interview the defendants, and the ability of the prosecutor's office to complete the charging decision. Generally, if the booking occurs before midnight, the defendant's first appearance is set for the next day. If the booking occurs after midnight, the defendant's first appearance is scheduled for the following day. Defendants arrested on the weekend have their first appearance on the following Monday.

There are five basic decisions to be resolved at the first appearance: 1) arraignment of the defendant on the information that has been filed, 2) entry of a plea to the charges by the defendant, 3) appointment of counsel, 4) setting of bail or PR release, and 5) setting of the date for the next appearance. Each is discussed below.

1. Arraignment and Plea

At the first appearance the defendant is given a copy of the information and enters a plea, or the appearance is continued for entry of plea. In Pierce County all defendants enter a not guilty plea at this appearance; guilty pleas are never entered at the first appearance. Although guilty pleas are sometimes entered at the first appearance in other courts, and legally could be entered at the first appearance, there are several reasons this does not occur in Pierce County, primarily related to the short time between charging and the appearance. The defendant is generally not ready to enter a guilty plea at the first appearance because he or she has only just found out what the charges are, may have only met their attorney at, or just prior to the hearing, and there has been no time to establish a relationship, discuss possible defenses, and review all of the defendant's constitutional and statutory rights that must be knowingly waived before entering a guilty plea. The prosecuting attorney is unwilling to discuss a guilty plea at this appearance because of the possibility that there is something about the case or the defendant's past that is relevant to sentencing that they do not yet know, creating a fear the defendant is trying to plead before the information is found out. There is also a statutory requirement to notify the victim of the resolution, which cannot be complied with if the defendant pleads guilty at the first appearance. The court is reportedly also disinclined to accept a guilty plea because of a concern about whether the plea is made competently, knowingly, voluntarily, unconditionally,

unequivocally and on advice of counsel,¹¹ because of a fear of lack of relevant information and because of lack of notice to the victim. Although it is legally possible for a defendant to enter a guilty plea at the first appearance, it does not happen for the reasons cited.

2. Bail/custody determination

As discussed previously, a defendant will not have been released prior to the first appearance unless he or she has posted bail according to the bail schedule. If the defendant has not been released, the defense attorney can request personal recognizance release at the first appearance. Either side can also argue for a bail amount other than the standard bail amount. The PreTrial Services unit gathers information relevant to the court's pretrial release decision and bail setting, as well as eligibility for appointed counsel. However, the court does not always get information from PreTrial Services, and sometimes questions the reliability of the information provided. If the defendant cannot post bail, and is not released on personal recognizance, he or she remains in custody.

3. Appointment of counsel

The appointment of counsel for indigent defendants occurs at the first appearance. In-custody felony defendants are screened for appointed counsel eligibility by PreTrial Services prior to their arraignment. Defendants summoned for arraignment are screened for eligibility in the courtroom on the day of their arraignment. Counsel is appointed at public expense in approximately 92% of all felony cases.¹² A Department of Assigned Counsel (DAC) attorney is present in Superior Court at arraignment to represent all felony defendants appearing without an attorney. The lawyer generally sees the client for the first time during the hour before the first appearance.

The cases of defendants determined to be eligible for DAC representation are brought to the DAC offices for attorney assignment. Selection of an attorney to be appointed for a defendant is not according to an automatic process. Whether the attorney appointed is a DAC staff attorney, a contract lawyer, or a member of a panel is determined by the DAC staff, based on the nature of the case, the experience of the lawyer and a balancing of caseloads. The attorney selected then files a Notice of Appearance with the court.

If a defendant is ineligible for DAC representation and has not retained an attorney, the court will set a "return with attorney" hearing to allow the defendant time to retain his own attorney. The defendant and his attorney must then return for the hearing to advise the court that counsel has been retained. If a defendant has been unable to retain an attorney, the defendant must return on the hearing date and advise the court as to the reasons why he/she has been unable to retain an attorney. The court may then set another return with attorney hearing to allow the defendant more time to retain an attorney, or the court may proceed to appoint DAC to represent the defendant.

¹¹ State v. Martin (Wash. 1980) 94 Wn.2d 1, 4-5; 614 P.2d 164.

¹² Percentage compares number of cases in which DAC is appointed to total new filings. The number may change as cases proceed through various stages, as defendants retain counsel, or retained counsel withdraw and counsel is appointed at public expense because of the defendant's indigency.

4. Setting of Pretrial Conference Date

At the conclusion of the first appearance, a Pretrial Conference date is set in all cases. The date set is less than 15 days later in most cases. There does not appear to be any discussion at the first appearance between the court and counsel about what should occur prior to the Pretrial Conference, or what will happen at the Pretrial Conference if the case is not resolved. The Pretrial Conference is discussed further below.

G. Discovery

In order for the case to be resolved, the defendant needs to know what information and evidence the prosecutor has that substantiates the charges and could be used to obtain a conviction. Not only is the defendant entitled to certain information by law,¹³ the sooner it is provided to the defendant and his attorney the sooner a just and reasonable resolution can be discussed. The prosecutor generally provides some of this information, referred to as discovery, to defense counsel at the first appearance. The discovery typically provided includes those police reports that are available. Discovery materials are reportedly not provided at the first appearance in domestic violence and sexual assault unit cases. The reasons for this are not clear to the defense bar, but the materials are provided soon after the appearance, and generally at, or before, the pretrial conference. There is an ongoing problem with receipt of police reports, particularly supplemental reports, which delays possible resolution of the case. Even though police may submit reports to LESA as required, there is reportedly a breakdown in LESA getting the reports to the prosecutors in a timely manner. This delays getting the reports to defense counsel as well. Some prosecutors report that they go to the LESA office daily to check if any reports have come in during the last day in the cases they are handling. If this occurs on a regular basis, it is a misuse of prosecutor's time, and delays resolution of cases.

Lab reports, particularly in drug cases, are generally not available in a timely manner. Initially there is a heavy reliance on field tests of drugs by the police. A state laboratory does the lab tests. The labs are reportedly so backlogged, that police officers and prosecutors delay requesting reports until it is clear that a plea or other resolution is not forthcoming without it. Unfortunately, the delayed request delays further proceedings in some cases, and causes additional proceedings to be set in cases waiting for the results. The court does not get involved by establishing deadlines for the lab reports or monitoring their arrival in order to minimize delays in a case. Notwithstanding issues as to the capacity of the lab and the high number of drug related cases requiring a test, local costs to Pierce county associated with the delay, particularly jail bed days and extra proceedings and appearances in cases, far exceed the cost of the tests.

¹³ Washington State Superior Court Criminal Rules, Rule 4.7(a).

H. Pretrial Conference

As noted every case is scheduled for a Pretrial Conference approximately 14 after the first appearance. The timing of this is based on a rule of court requirement that a trial date must be set within 15 days of arraignment.¹⁴ Since trial dates are not set at the first appearance, another appearance must be scheduled soon thereafter, at which time a trial date can be set. The Pretrial Conference's are calendared in CD1 and CD2 at various times during the week.

The main purpose of the proceeding is to begin to explore a resolution of the case. This is the first appearance where a discussion about a resolution can realistically take place. By this time the defense attorney has had time to meet with the defendant and to review discovery materials. Although it is scheduled as a court proceeding, it is not really a court proceeding as there is no expectation that the judge will be involved in the discussions. The defendant is present with counsel. The Prosecuting Attorney is usually represented by a deputy from the team to which the case is assigned. It is not clear why these discussions do not occur prior to the pretrial conference, so that the resolution could be entered at the scheduled conference. As with a number of other events, a practice has developed among all counsel of waiting until the day of the hearings to discuss the cases, rather than discussing the case ahead of time, and being prepared to act at the hearing.

Some cases are being resolved at the Pretrial Conference, but it is an insignificant number; there were a total of 16 pleas or dismissals entered at the pretrial conference out of 8,075 scheduled pretrial conferences. If the defendant indicates he or she will enter a guilty plea, a "plea date" is set to enter the change of plea. Over the last couple of years the Prosecuting Attorney and DAC have assigned deputies to review cases, especially drug related and property crime cases, for resolution at the Pretrial Conference stage. This has increased the number of resolutions at this stage, but a lot of cases are still resolved at later proceedings.

If no resolution is agreed upon at the Pretrial Conference, the attorneys agree on a trial date, and, if motions are anticipated, an omnibus hearing date. Further Pretrial Conferences are generally not set. Counsel check with the court administrator's office scheduling staff to make sure the dates agreed to are available and within relevant time limits. Once the dates are finalized, a scheduling order is prepared and presented to the CD1 or CD2 judge for signature.

I. Plea Date

When a defendant agrees to plead guilty, a "plea date" is set. It is at this hearing where the actual plea of guilty is entered. Plea dates are set in CD1, CD2 and CD3. Because of the length of time required to take a plea, there are limits on the number of pleas that are scheduled each day in each department. Usually the plea date is within a week, although, when there are holidays, or lots of pleas, the time can be longer. One of the reasons CD3 was created was to provide more plea dates to accommodate the large number of pleas and reduce the time to a plea date. One glitch with this structure is that if the judge in CD3 is one that routinely requires presentence reports, instead of sentencing immediately, plea dates in CD3 will go unused, while

¹⁴ Washington State Superior Court Criminal Rules, Rule 3.3 (f) (1) .

pleas are “backing up” in CD1 and CD2. Generally a case already has a trial date when the plea date is requested and set. The trial date is kept “as a back-up,” and then cancelled when the plea is entered. Since a majority of cases are resolved without trial (discussed in Section IV below), a lot of trial dates are set that no one ever expects to be real trial dates. This unnecessary setting of trial dates is one of the sources of a large number of cancelled trial dates that makes it difficult for the Court to establish firm and meaningful trial dates.

The judges are not involved in the plea negotiations; the plea agreement is between the defendant, defense counsel and the prosecuting attorney.

A judge can sentence a defendant the same day as the plea is taken, since a presentence report is not statutorily required before sentencing can occur in most cases. This is the normal practice. Sentencing at the time the guilty plea is entered avoids another court appearance. Presentence investigations are required in a few case types, for example sex crimes and where there is a mental health issue.

J. Omnibus Hearing and Lengthy Motions

Omnibus hearings in cases are scheduled for 8:30 AM on Monday through Thursday in both CD1 and CD2. Several activities are supposed to occur at the omnibus hearing.¹⁵ However, the hearings tend to be more negotiation between counsel than hearings. The culture of the court is such that the attorneys do not really arrive until 9 AM, thus not utilizing the time set aside for the omnibus hearings. At 9 AM the Judges are scheduled to take the bench, and some do regardless of whether the attorneys are ready. More times than not, the attorneys are not prepared for a hearing or judge involvement in the matter. They come in late and expect the court to accommodate them, wasting the time of the judges and the corrections officers who bring the in-custody defendants to court.

If there are issues of law regarding admissibility of evidence, witnesses or other, similar legal issues, such motions are usually to be heard as part of the omnibus hearing.¹⁶ Motions are seldom heard at the omnibus hearing, particularly if they require testimony. Instead, a motion hearing is set in a case. Previously these motions were set to be heard on the morning of trial. Objections by judges to the resulting delay in starting trials, and the not infrequent guilty plea or dismissal after a ruling on a motion, resulted in the setting of motion hearings prior to the trial date.

Some hearings are now scheduled on Friday afternoons, in order to avoid interfering with trials on other days. However, it is uniformly reported that many judges are unwilling to hear the motions on Fridays, making their setting meaningless. This is borne out by the data about proceedings. Of the 709 suppression motion hearings scheduled in 2000, only 71 (10%) had hearings, the balance were either cancelled (32%) or simply not heard (50%). The sense that the hearings will not take place, or not start on time, has also resulted in problems with transporting of in-custody defendants to courtrooms where the hearings are scheduled. Several comments

¹⁵ Washington State Superior Court Criminal Rules, Rule 4.5.

¹⁶ Washington State Superior Court Criminal Rules, Rule 4.5(c).

were made that there is little motions practice in Pierce County because of the perceived disinclination of the court to hear them.

K. Trial

Criminal trials are scheduled to begin on Mondays and Wednesdays. Approximately 70 cases are set for trial each day, 35 each in CD1 and CD2. Trial readiness and the priority order for assigning cases to begin trial is determined the day before the trial date: Friday afternoons for Monday trials and Tuesday afternoon for Wednesday trials. The staff in the Court Administrator's office prepares the "readiness docket" of cases still set for trial. They begin with information from the prosecutor's office on which cases that office deems ready to go to trial. Although defense counsel may provide information about pending trials, they seldom do. The staff separates out those that are ready to go to trial and those that are not, suggests a priority order for assigning cases for trial, and presents the list to the Presiding Judge. The Presiding Judge finalizes the priority order of assignment and a waiting list is created.

If there are open courtrooms, cases will be assigned to them the day before based on the priority list. Attorneys find out about courtroom assignments by checking the calendar posted at the court administrator's office or calling on the afternoon before the trial date. Cases assigned out go directly to the courtroom on the morning of trial. Any case requesting a continuance must appear in CD1 or CD2 on the morning of trial for a hearing on the continuance request. Cases on the waiting list must check in with the Court Administrator's office. If a court opens during the day, the court administrator's office sends the next case on the list to the open court.

Too many cases are still pending on the scheduled trial date, and too few of them are resolved. On some trial days there reportedly is a waiting list of cases ready for trial that is 10-12 trials deep. One way to get a good sense of what happens is to review what happens in a week viewed as, "pretty typical." During the week of November 13, 2000, 39 cases were scheduled for trial. Only 2 trials were actually started, 9 last minute pleas were taken, 1 case was dismissed, 1 trial was delayed because of a late motion, a defendant failed to appear in another case and the other 25 cases were continued. A review of all jury trial settings in 2000 shows similar results. Excluding cancelled trial dates where there was a resolution prior to the trial date, there were 6,386 scheduled trial dates. Of these, there was a resolution (guilty plea, dismissal or start of trial) in about 25% of the cases; over 70% were continued. In the balance of the cases the defendant failed to appear. A great deal of apparent activity with very few substantive outcomes.

Everyone is frustrated by the inability to send all trial ready cases out to a trial department. The criminal bar complains that the large number of cases set for trial and relatively small number of open trial departments results in continuances, lost attorney time in wasted preparation, and witnesses losing time. The civil bar also complains that the emphasis on criminal cases "spills over" and prevents civil cases from getting to trial in a timely manner. The continuances also have an impact on the police departments and sheriff. Time on the street is lost and overtime incurred when police officers are summoned repeatedly to appear for trial, only to be continued. The sheriff also has costs in repeatedly bringing in-custody defendants to court for trials that do not start.

It is reported that a culture of continuances began with a tremendous amount of waivers of speedy trial rights, both of those in custody and of those out of custody. The out of custody cases with private representation would literally waive forever. The court of appeals stepped in and told Pierce County to solve the problem of continuances because there were over 1,500 cases past the speedy trial deadlines. Judges worked with the prosecutor's office and the DAC to create plea teams in order to get cases resolved more quickly. The success of the program, and large number of pleas generated, was one of the reasons the third CD court was created. However, the creation of CD3 reduced the number of trial departments by one, thereby reducing the number of possible open trial departments available to start a jury trial.

L. Sentencing

Once a defendant has been convicted, either following a guilty plea or conviction at trial, the judge may sentence him or her immediately. This is possible in large part because there is very little judicial discretion left under the sentencing guidelines. Although there is no requirement for a pre-sentence report in every case, some judges are reported to have adopted a routine practice of ordering reports in most cases. The ability to sentence immediately saves another appearance for sentencing, and avoids jail bed days spent waiting for the presentence report (unless the defendant is out of custody, or released pending sentencing).

A significant factor in the court time required to accept a plea and sentence a defendant is the paper work associated with the plea and sentence. The plea form and judgment and sentence form are now so long (9 pages and 14 pages, respectively) and complicated that it often requires more time to fill out the forms than to take a plea. The forms are cumbersome, confusing, and highly technical. Although significant time is spent by counsel and the judge in reviewing the form for completeness and compliance with relevant laws, even more time is spent separating the multi-part forms and making sure everyone has a copy of all pages than in reviewing the substance of the plea and sentence. The form grows every year, in response to actions of the Legislature or appellate court decisions. This is important because pleas now "back-up," like trials. If the high volume CD courts are expected to achieve a high volume of resolutions early in the life of a case, the process must be made as efficient as possible. King County is said to have developed its own forms. Pierce County should do the same although ideally, the Supreme Court should streamline its form.

Unearned Early Release

In response to a cap on the jail population established in a federal lawsuit, the Pierce County Sheriff has instituted an "unearned early release" program. The current cap is that no more than 1,272 persons can remain in custody in the two jail facilities. Each day after the Sheriff processes all court releases, there is a count of the number of offenders in custody. The Sheriff must then release defendants until the population is below the cap. There are restrictions on the authority to release defendants. A policy decision of the executive branch restricts the Sheriff from early releasing people convicted of domestic violence or driving while intoxicated crimes. These crimes are gross misdemeanors, not felonies. One result of this is that while people convicted of these crimes must remain in jail, people convicted of felonies can be released early and do not have to serve their complete sentence. This policy decision has also

resulted in the anomaly of certain convicted misdemeanants serving more time than those convicted of a felony.

A better-managed pretrial process could avoid this predicament and the inherent compromise of the punishment stage. Early releases of sentenced felony defendants could also be reduced by pretrial screening and early release of those charged with felonies who do not present a risk to the community and are likely to appear for court proceedings. The delay in resolution to the day of trial also consumes bed days that, if managed more effectively, would be available for inmates to serve their full sentence.

There are a few small programs that are alternatives to jail or state prison. Several judges noted that there ought to be more alternatives, or greater participation in existing programs. The defendant must pay the cost of participating in the programs, creating an imbalance of options based on wealth. A brief description of each program is given below.

1. Home Monitoring

One alternative sanction is an electronic home monitoring program. Participation in the program can be ordered by the Superior Court upon request of the defendant. The defendant then contracts directly with a private provider to participate, and must pay the cost of participating in the program. The Sheriff is not involved. County involvement is reportedly limited because of fear of liability issues, whereas the court has immunity.

2. Work Release

The Superior Court also has the power to sentence offenders to work release. Under this sentence the offender contracts directly with the private provider, Progress House, and pays for the cost of participating in the program. There are only ten beds available. Again, the Sheriff is not directly involved in this program, in part because of a lack of bed space. Comments were made in several interviews that defendants decline to use this program because they have to pay. They choose jail instead because it is free. It has been reported that judges would like the county to pay for this program, but the county has declined.

M. Post-Sentence Proceedings

On 1 July 2000, a law was enacted that shifted probation violations issues to a Department of Corrections administrative hearing process rather than the Superior Court. However, the new law only applies to the crimes committed after 1 July 2000. It is unclear how much work will be moved from the Superior Court as a result of this change, nor how soon the impact will show.

Revocation proceedings for defendants sentenced prior to July 1, 2000 are heard by the court. Revocation hearings are scheduled on Friday mornings in CD1. Because of several large jury verdicts in the fall of 2000 in lawsuits alleging lack of due diligence in supervising probationers, the number of violations where probation officers are filing violation petitions and requesting arrest warrants has increased substantially. The problem is reaching crisis proportions. As many as 150 hearings can be set on each Friday morning. Most are resolved by an agreement reached between the probation office and the defendant. As with many other

proceedings in the Superior Court, the agreements are worked out on the day of the hearing, requiring in-custody defendants to be brought over from the jail to meet with defense counsel, the prosecuting attorney and Department of Corrections staff. A large part of the judge's time on this calendar is spent reviewing the stipulated agreements and signing the forms. During one session 160 violation hearings were on the docket, only 6 were contested, the other 154 had an agreed order. As with pretrial conferences, this is a scheduled court event where the main activity is lawyers and the defendants meeting to try to resolve the case, rather than a scheduled event where a judge hears and decides a matter. It would be a better use of court time to scheduling events with the expectation that the attorneys will have met prior to the hearing, and be prepared to proceed at the hearing if a resolution is not agreed to earlier.

The setting of hearings on these violations should also be reviewed, particularly if the defendant is in custody. Currently the hearings are scheduled two weeks out for a custody case and three to four weeks out for a non-custody case. Recently, of 408 defendants in the county jail charged with violation of probation, 104 are in jail for probation violation only (the other 304 had other charges also pending). Considering the jail population cap and the overcrowding problem, violations should be heard as quickly as justice will allow. A time standard for violations should also be established, such as arraignment on the warrant the day following arrest and contested hearings should be held within five business days of arrest.

N. Drug Court

The Pierce County Drug Court became operational in 1994. Admissions are limited to defendants diagnosed as substance abusers, but whose offenses do not include violence, sex, or weapons-related charges. The capacity of the program is about 300 defendants, with 242 defendants admitted in 1999. Eligibility for drug court generally is addressed at the Pretrial Conference stage, although defendants can be referred later. It typically takes 15 to 18 months to complete the program and about one-third of participants have graduated during the last two years.

III. Workload, Outcomes and Performance

In order to complete the picture of what is happening in felony criminal cases in Pierce County, the Justice Management Institute gathered and analyzed quantitative information about what is happening in the Pierce County criminal justice system. The objective was to determine both the existing condition of the system, a snapshot perspective, and the trends over time. Information was obtained from reports from both the LINX system and the JIS/SCOMIS system. LINX data is available only from 1994 forward.¹⁷ SCOMIS data is therefore used to look at longer-term trends.

A lot of comments were heard about variances in numbers obtained from the two systems that should be equal. It appears that most of the differences are the result of slightly different definitions as to what is included in a number. For example, differences in felony filings appear to be attributable to SCOMIS including in its count cases where no charges were filed and appeals from lower court, whereas a filing count from LINX does not. Another problem is that the two systems do not get their data from exactly the same source. As noted above, data in LINX is entered by court administration staff and data in SCOMIS is entered by clerk of court staff. These differences are probably quite small. There is no evidence that differences in numbers are an attempt by anyone or any agency to obscure poor performance. What these comments and discussions actually tend to do is obscure a substantive analysis of what is really happening. It is more important to look at what the numbers suggest about what is happening and the trends of figures over time, rather than focusing on why there are minor differences in numbers.

A. Growth

Pierce County's population has grown considerably in the last ten years. Pierce County is ranked 40th in the nation and 3rd in Washington State for the population growth between 1990 and 1999.¹⁸ During this time period the population in Pierce County rose over 19%.¹⁹

The number of judgeships has not increased as dramatically during the 1990's, but it did grow significantly in the 1980's. In 1980 there were 11 judgeships. In 1990 four judgeships were added, raising the total to 19. The Superior Court presently has 20 judges on its bench, with the 21st recently authorized, but not yet filled. State statute authorizes up to 24 judgeships.²⁰ The need for additional judgeships is better measured by changes in the caseload than population. The growth of the felony caseload is discussed in the next section.

¹⁷ Court staff reports that the LINX system was put into operation in May 1993. Data entry, and system operation, during this first year was inconsistent and therefore the information generated for calendar year 1993 provides an incomplete representation of the court situation for that year.

¹⁸ "Numeric and Percent Population Change for Counties: Within-State and National Rankings, April 1, 1990 to July 1, 1999," Population Estimates Program, U.S. Census Bureau, Internet release date: August 30, 2000. www.census.gov/population/estimates/county/co-99-6/99C6_53.txt.

¹⁹ Pierce County 2000 Budget in Brief, p.3.

²⁰ See footnote 4 above.

One observation from interviews is that, although the court, and county, has grown rapidly, the mentality of the court is still that they want to retain the sense of a small court, or, at least, that they do not want to become a big, impersonal court. The jurisdiction has transitioned from a semi-urban to an urban status, and the caseload is that of a large court. The court, and its case management philosophy and practice, has not yet adjusted to this change. Case volumes are now much larger and the former, more individualized, pace typical of a small court can no longer be maintained. The continuances, jail crowding and frustration suggest the quality of justice has eroded overall, if not in individual cases. There is nothing small-town about continuing thousands of proceedings each year because the system cannot seem to get to them each day. The court's caseload has reached a new quantum level, suggesting a different structure, one with more specialization, and less of an "everyone does everything" approach. The purpose of a more structured case management system recommended below is not just speed; it will allow the court to provide the same high quality of justice, overall as well as individually, it felt it provided with a smaller caseload. Establishing and enforcing reasonable expectations about what needs to happen between events and what should happen at the next court event will allow judges to focus their attention at each court hearing on achieving justice, rather than just scheduling new dates in cases.

B. Filings and Resolutions

1. Volume of Filings and Resolutions

Table 1 and Chart 1 on the next page show the number of total felony filings each year for the past eleven years for both Pierce County and for the entire State of Washington. The count is of new felony cases, excluding appeals from District or Municipal courts and excluding arrests where no felony charges were filed. Growth of filings from 1990 to 2000 in Pierce County has been slightly ahead of population growth, 22% vs. 19%, and it has been much slower than the growth of statewide filings, 22% vs. 47%. The filings have also fluctuated year to year, with the latest rise beginning in 1996. This is a good example of the differences in perspective. The caseload rise from 1996 to 2000 is almost 32%, but the ten-year increase is only 22%.

The table and chart also show the number of resolutions each year. In every year except 1995 and 2000 the number of resolutions has been less than the number of filings, although the difference is small. This indicates a slow buildup of the pending caseload. In 2000 the resolutions exceeded the filings, resulting in a reduction in the pending caseload noted in interviews. This was attributed to a concerted focus on earlier resolution in drug related and property cases.

Table 1 – FELONY FILINGS AND RESOLUTIONS FOR THE LAST ELEVEN YEARS IN PIERCE COUNTY AND THE STATE OF WASHINGTON

	CALENDAR YEAR											10 YEAR
Felony Filings*	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	GROWTH
Pierce	5,006	4,707	4,881	4,802	4,885	5,224	4,626	4,923	5,486	5,817	6,108	22.0%
State	26,914	27,503	28,529	28,032	28,728	32,296	31,035	34,103	37,592	37,995	39,684	47.4%
Felony Resolutions**	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	1990->2000
Pierce	4,303	4,195	4,353	4,613	4,822	5,253	4,427	4,894	5,475	5,647	6,338	47.3%
State	24,795	25,519	25,966	28,191	28,561	31,823	31,557	32,970	38,263	39,356	39,109	57.7%

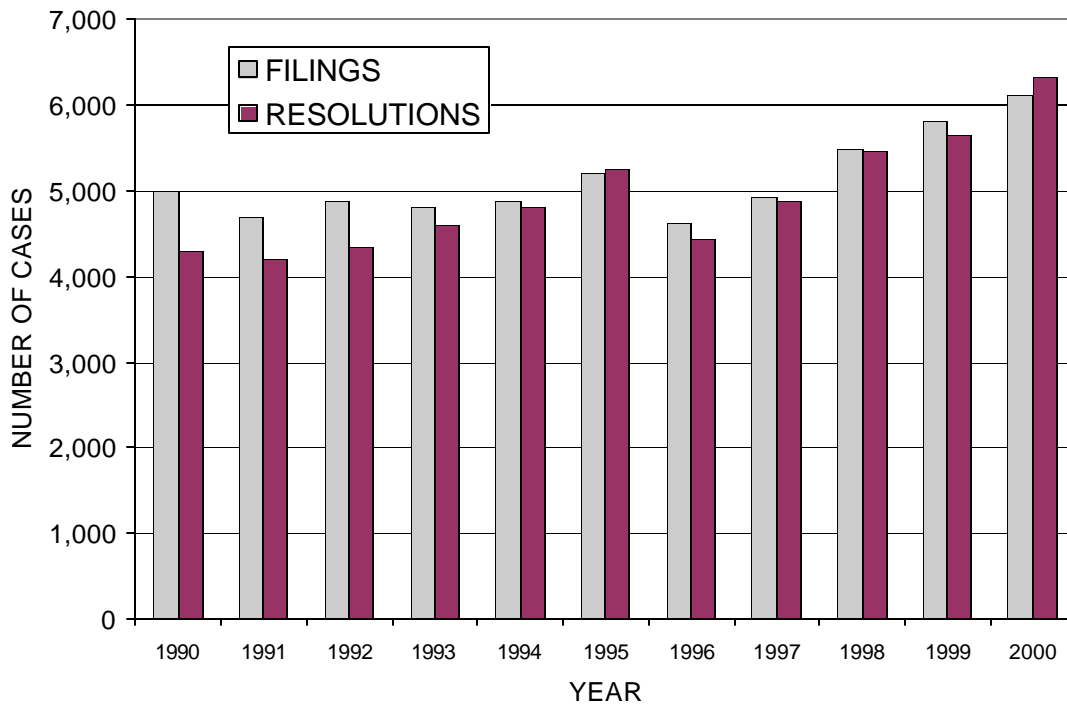
SOURCE: SCOMIS

* Filing numbers only include new felony filings, not arrests where no charges were filed, nor appeals from lower courts.

** Resolution numbers includes felonies resolved by conviction of a misdemeanor or gross misdemeanor.

Resolutions numbers do not include resolutions in lower court appeals.

Chart 1 – FELONY FILINGS AND RESOLUTIONS FOR THE LAST ELEVEN YEARS IN PIERCE COUNTY SUPERIOR COURT



2. Composition of Filings

The composition of the caseload is as important as the number of cases in determining workload. Some cases, for example murders, take more court time to resolve than others. If the caseload has more of the severe or complicated cases, they will take more court time to resolve than a similar number of cases that are less complicated. According to the perceptions within the court, the caseload is heavier than in the past and heavier than other large courts. This is attributed to:

- Increased drug problems—particularly methamphetamine use;
- Increased numbers of murders—particularly in 1996 and 1997;
- A large number of aggravated murder cases; and
- Dramatic increases in sexual crimes.

Table 2 provides information about the composition of felony filings in Pierce County in calendar 2000, and compares it to statewide figures, as well as figures for several other counties in Washington.

Table 2 - COMPOSITION OF NEW FELONY FILINGS* – 2000

Nature of Charges	# of Cases	PERCENTAGE OF CASES						
	PIERCE	PIERCE	STATE	KING	SPOKANE	SNOHOMISH	CLARK	THURSTON
Total Number	6,108	6,108	39,684	10,620	2,785	2,057	2,309	1,824
Homicide	51	0.8%	0.8%	0.6%	1.5%	1.0%	0.3%	0.2%
Sex Crimes	241	3.9%	5.2%	4.0%	4.3%	7.0%	5.9%	7.0%
Robbery	193	3.2%	3.0%	3.9%	4.6%	3.2%	3.2%	1.8%
Assault	632	10.3%	12.6%	12.6%	20.4%	9.4%	12.8%	13.7%
Theft, Burglary	1,198	19.6%	22.4%	18.1%	24.0%	26.0%	29.9%	27.4%
Motor Vehicle Theft	47	0.8%	2.7%	5.5%	1.9%	1.8%	1.3%	1.1%
Drug related	2,866	46.9%	34.5%	40.6%	20.6%	32.8%	25.4%	30.9%
Other Felony	880	14.4%	18.9%	14.6%	22.7%	18.8%	21.5%	17.9%

Source: SCOMIS

* Excludes misdemeanors and gross misdemeanors, appeals from lower courts, and non-charge filings.

As is indicated in Table 2, Pierce County certainly has the highest percentage of drug related cases, compared to the state as a whole and other Washington counties. Pierce County law enforcement has recently cracked down on drug use, specifically methamphetamine labs, which has greatly impacted the court system (47% of filings are drug-related cases). The proportion of homicides is not higher than other jurisdictions, and is the same as the state average.²¹ The sex crimes proportion is lower than the state figure, and lower than all other large courts. Note that the high number of drug related cases might obscure a high homicide or sex crime rate, if expressed on a per population basis, instead of as a proportion of the caseload.

²¹ Note that the table does not separately indicate the number of aggravated murder cases that consume significantly more system resources than other cases.

C. Resolutions

1. Pattern of Resolution

Table 3 indicates how felony cases were resolved in 2000, overall and for each major charge category (defined by the trial units established in the prosecuting attorney's office). The first row indicates the results for all cases, and subsequent rows indicate the resolution pattern for each major category of crime.

**Table 3 - CASE RESOLUTIONS IN 2000,
BY TYPE OF RESOLUTION AND CHARGE**

CHARGE TYPE*	PERCENTAGE OF RESOLUTIONS				NO. OF CASES
	DISMISSED	GUILTY PLEA	COURT TRIAL	JURY VERDICTS	
ALL CASES	14.1%	81.6%	2.5%	1.8%	6,260
Robbery, assault (TU-1)	22.1%	73.2%	0.7%	3.9%	863
Arson, fraud (TU-2)	20.0%	79.2%	0.3%	0.5%	912
Property crimes (TU-3)	13.2%	85.0%	1.0%	0.8%	972
Special assault (TU-4)	11.9%	82.6%	0.8%	4.7%	596
Drug related, vice (TU5 & TU5D)	10.8%	83.7%	4.6%	1.0%	2,889
Murder, manslaughter (TU-6)	3.6%	64.3%	0.0%	32.1%	28

Source: LINX

*Charge Type categories correspond to distribution of cases to trial units in the prosecutor's office, not the same categories that are used in Table 2.

The highlights of this table are:

- The guilty plea rate for all cases is 82%, not over 90% as is the common perception. The plea rate ranges from a low of 64% in homicides to a high of 85% in property crime cases.
- The jury verdict rate²² is 1.8%, which is on the low side of the range of jury verdict rates for larger courts nationally. The number is not so high as to suggest an undue burden on judicial resources from criminal jury trials.
- For drug related cases the guilty plea rate is high, and the jury trial rate low, suggesting case management practices for these cases should focus on early resolution, not preparation for trial.

²² The number, and rate, of jury trials reported by SCOMIS is of jury trial starts, as opposed to jury verdicts. The SCOMIS number/rate is higher because some cases are dismissed after trial begins and some end with the defendant changing his or her plea to a guilty before the trial concludes and the jury reaches a verdict.

2. Age of Resolved Cases

Table 4 provides information about the age of cases that were resolved in 2000. The first row provides information about all cases, and subsequent rows provide information about cases in each of the major crime categories. The data is presented using several time measures. The first column indicates how many cases were in each group. The second column indicates the median age, for example, for all cases, half of the cases were 56 days old or younger when resolved, and half were over 56 days old. The next column indicates the age of the 75th percentile, the time within which 75% of the cases were resolved. The fourth column indicates the 90th percentile age, the time within which 90% of the cases were resolved. The fifth column indicates the age of the oldest case resolved in that category. The next four columns indicate the percentage of cases that were resolved within the time frame noted at the top of the column.

Table 4 - AGE FROM ARRAIGNMENT TO RESOLUTION - 2000

CHARGE CATEGORY	No. of Cases	Age in days				Percentage resolved within			
		Median Age	75th %ile	90th %ile	Oldest Case	120 days	180 days	270 days	365 days
ALL CASES	6,263	56	115	241	4,888	76.1%	85.4%	91.7%	94.9%
Robbery, assault (TU-1)	863	60	112	186	1,006	77.4%	89.5%	96.3%	98.6%
Arson, fraud (TU-2)	913	51	99	215	4,888	79.5%	87.7%	92.8%	95.8%
Property crimes (TU-3)	973	43	84	163	3,122	84.4%	91.7%	96.3%	98.7%
Special assault (TU-4)	596	61	129	237	972	72.7%	84.6%	93.3%	95.8%
Drugs related, vice (TU-5)	2,705	54	109	230	3,354	77.5%	86.2%	92.3%	95.8%
TU-5D (drugs, vice)	185	427	533	676	1,006	11.4%	18.4%	28.1%	36.8%
Murder, manslaughter (TU-6)	28	210	268	468	586	14.3%	35.7%	75.0%	85.7%

Source: LINX

The highlights of the information are as follows:

- The median age for all cases, 56 days, is one of the fastest median first appearance to resolution times reported in national studies of the pace of felony cases in urban courts.²³
- The median age for all cases is driven by the age of drug related cases, since they represent 46% of all resolutions.
- The court is not meeting applicable state time standards. One Washington state time standard is that 90% of the cases should be resolved in 120 days, far less than the 243

²³ See EFFICIENCY, TIMELINESS, AND QUALITY: A NEW PERSPECTIVE FROM NINE STATE CRIMINAL TRIAL COURTS, by Brian J. Ostrom and Roger A. Hanson, National Center for State Courts, 1999, p. 14; EXAMINING COURT DELAY, THE PACE OF LITIGATION IN 26 URBAN TRIAL COURTS, 1967, by John Goerd, with Chris Lomvardias, Geoff Gallas and Barry Mahoney, National Center for State Courts, 1989, p. 55; CHANGING TIMES IN TRIAL COURTS, CASEFLOW MANAGEMENT AND DELAY REDUCTION IN URBAN TRIAL COURTS, by Barry Mahoney and others, National Center for State Courts, 1988, p. 31; and JUSTICE DELAYED, THE PACE OF LITIGATION IN URBAN TRIAL COURTS, by Thomas Church, Alan Carlson, Jo-Lynne Lee and Theresa Tan, National Center for State Courts, 1978, pp. 94-97.

days it takes to resolve the 90th percentile case in Pierce County. Only 76% of cases are being resolved within the standard of 120 days. A second standard is that 98% of cases should be resolved in 6 months, whereas Pierce only resolves 85% in that time period. Finally, the third standard expects 100% of cases to be resolved within 9 months, and Pierce only resolves 92% in that time period.

- The oldest cases are not homicides, and are very old (one over 13 years old), suggesting a focus on older cases, and tracking of the oldest cases more closely. Washington state standards seek to have 100% of cases resolved in 270 days whereas only 92% are being resolved in 270 days now.

D. Pending Caseload

1. Composition of Pending Caseload

Table 5 indicates how many felony cases were pending at the end of calendar 2000 for each of the major charge categories listed in the first column. Defendants enrolled in drug court are not included in these figures. The rightmost column indicates the percentage of each category of crime among the total pending caseload.

**Table 5 - DISTRIBUTION OF PENDING FELONY CASELOAD
BY CHARGE (as of December 29, 2000)**

CHARGE TYPE	NO. OF CASES	ROW %AGE
ALL CASES	1,720	
Robbery, assault (TU-1)	229	13.3%
Arson, fraud (TU-2)	248	14.4%
Property crimes (TU-3)	174	10.5%
Special assault (TU-4)	224	13.0%
Drugs, vice (TU-5)	816	47.4%
Murder, manslaughter (TU-6)	29	1.7%

Source: LINX

Several findings can be seen in this table:

- The total number of pending cases, 1,720, is not large, compared to total annual filings of 6,108 cases in 2000;
- Almost 48% of the pending cases are drug related (versus 47% of filings), confirming the reported reluctance of defendants to plead early in these cases and suggesting the need for getting lab reports earlier;
- Although murder/manslaughter cases are only 0.8% of filings, they comprise 1.7% of all pending cases. This is to be expected because these cases tend to take longer to prepare and to resolve than other types of cases.

2. Age of Pending Cases

Table 6 provides information about what portion of the cases in each crime category are beyond certain time frames. For example, 61.9% of all pending cases (first row) are less than 90 days old, 38.1% are 90 days or more old, 18.1% over 180 days old, and 4.3% are over a year old.

Table 6 - AGE DISTRIBUTION OF PENDING CASES BY CHARGE
(as of December 29, 2000)

CHARGE TYPE	NO. OF CASES	PERCENTAGE OVER CERTAIN TIME LIMITS			
		UNDER 90 DAYS	OVER 90 DAYS	OVER 180 DAYS	OVER 1 YEAR
ALL CASES	1,720	61.9%	38.1%	18.1%	4.3%
Robbery, assault (TU-1)	229	64.6%	35.4%	14.8%	1.7%
Arson, fraud (TU-2)	248	62.9%	37.1%	20.2%	6.0%
Property crimes (TU-3)	174	71.8%	28.2%	13.8%	1.7%
Special assault (TU-4)	224	58.9%	41.1%	18.8%	4.5%
Drug related, vice (TU-5)	816	61.2%	38.8%	17.6%	3.9%
Murder, manslaughter (TU-6)	29	17.2%	82.8%	62.1%	34.5%

Source: LINX

The data in Table 6 indicates:

- A large percentage of drug cases have been pending a considerable time, almost 40% are over 90 days old, and almost 18% are over 6 months old. This further suggests greater attention to getting lab tests and any legal issues resolved earlier in drug related cases.
- Although the number of pending murder/manslaughter class cases is very small, they are disproportionately represented in the older cases.
- The oldest pending cases are in the drug related, arson/fraud and special assault categories, not homicide. These cases need to be examined to determine why they are so old.

E. Court Proceedings

The most telling data about the problems that have developed in Pierce County is information on scheduled court proceedings. Table 7 shows how the number of proceedings has changed over the last 6 years. The table shows total proceedings of all type, pretrial proceedings (first appearance through sentencing), continuances of any proceeding, and continuances of jury trial dates. As the last row indicates, the growth of proceedings gets progressively worse across these measures. Since 1995 there has been an 17% growth in new felony filings, a 37% growth in pretrial proceedings, a 117% growth in continuances, and 133% growth in continuances of jury trial dates. This suggests that the court is losing control of cases and that the criminal justice system would surely benefit from firm court control of felony cases.

Table 7 – CHANGE IN NUMBER OF PROCEEDINGS OVER TIME

YEAR	All Proceeding Types	First Appearance through Sentencing	Post-Sentencing	Continued (CONT)	Jury Trial Continuances (JT – CONT)
1995	52,082	39,593	10,889	5,402	1,926
1996	50,123	36,721	12,073	5,967	2,339
1997	57,929	40,217	16,225	7,303	2,829
1998	62,415	44,036	16,927	8,457	3,499
1999	69,044	48,677	18,889	10,174	4,078
2000	76,577	54,413	20,965	11,721	4,491
6 year growth	47.0%	37.4%	92.5%	117.0%	133.2%

Source: LINX

Tables 8 and 9 show what happens in proceedings from arraignment through sentencing scheduled in Pierce Superior Court for calendar 2000.²⁴ The objective is to determine the patterns of what happens at each type of scheduled pre-trial event in cases. This information will not only provide insights as to what is happening, or not happening, but suggest where improvements in case management will have the most impact. The tables reflect the most current data, including all changes that were made in practices in 2000. In interpreting this table, remember that this is a count of proceedings scheduled, not cases, that is, each case can have several proceedings. Note that a typical case will have a minimum of four scheduled proceedings, a first appearance, pretrial conference, a trial date, and a plea and sentence date.

Table 8 shows the number of proceedings for each type of scheduled proceeding and each possible outcome. There is a column for each type of proceeding described and discussed in section II above. The rows indicate each possible outcome for each proceeding type. The last row of the table indicates the total number of each type of proceeding, for example, there were 6,715 arraignments scheduled. The rightmost column indicates for each outcome the total

²⁴ A few types of proceedings were excluded from these two tables. Post-sentencing proceedings (codes PREB and PREL) were excluded, as were special arraignments (codes ARBR and ARRB). There were a total of 7,174 such proceedings.

number of proceedings with that outcome; for example, there were a total of 8,605 proceedings where the outcome was “Proceeding cancelled.” Table 9 shows the same information, but by column percentage instead of number. For example, Table 8 shows that there were 49 arraignments whose outcome was a “Defendant Failed to Appear.” Table 9 indicates that these 49 proceedings represented 0.7% of all arraignments.

The highlights of the two tables are as follows:

- Almost 33% of all proceedings are continued or cancelled;
- Of the 11,635 scheduled jury or non-jury trial dates, 9,717, or 83.5%, were cancelled or continued;
- If the continuance rate for trial dates was cut in half, there would have been at least 2,200 fewer cases appearing for trial or about 22 fewer cases scheduled per trial date each week.
- Any actions that reduce the number of proceedings, particular where the proceeding is continued, would mean fewer defendants having to appear, fewer prisoners to be transported from the jail, and less inconvenience to police officers, victims and witnesses in cases.

**Table 8 - WHAT HAPPENED AT SCHEDULED PROCEEDINGS
NUMBER OF PROCEEDINGS - 2000**

PROCEEDING OUTCOME Description (CODE)	PROCEEDING TYPE									OUT- COME TOTALS
	Arraignment	Bail Related	Pre-trial Conf.	Omnibus Hearing	Motions (all types)	Plea Date	Non-jury & Jury Trial	Drug Court Related	Sentenc- ing	
Proceeding Cancelled (CANC,CADC)	176	105	158	1,161	701	667	5,204	348	85	8,605
Defendant failed to appear (FTA)	49	14	353	478	29	277	295	780	156	2,431
Continued (CONT)	184	132	554	2,286	263	798	4,513	530	955	10,215
Continued, no courtrooms (CONC)							24			24
Proceeding not held (NH)	138	179	97	2,760	968	835	1	69		5,047
Western State Evaluation (WSE)	54	4	25	16	63	1	14			177
Arraigned (ARR)	5,601									5,601
Drug Court Hearing Held (ACDC,CMDC,FSDC,NADC,ODC)								4,884		4,884
Proceeding Held (HELD,EXOA,EXWA)	509	1,813	6,872	1,583	2,389	463	155		1,010	14,794
Plea & Sentence (P/S)	2	2	3	6	4	3,382	911	3		4,313
Plea (PLEA)	2			2	1		336			341
Dismissal (DISM)		3	13	38	490	22	164		2	732
Hung Jury or Mistrial (HNG,MIST)							18			18
TOTAL NO. OF EACH PROCEEDINGS	6,715	2,252	8,075	8,330	4,908	6,445	11,635	6,614	2,208	57,182

Source: LINX

**Table 9 - WHAT HAPPENED AT SCHEDULED PROCEEDINGS
PERCENTAGE OF PROCEEDINGS OF THAT TYPE - 2000**

PROCEEDING OUTCOME Description (CODE)	PROCEEDING TYPE									OUT- COME TOTALS
	Arraign- ment	Bail Related	Pre-trial Conf.	Omnibus Hearing	Motions (all types)	Plea Date	Non-jury & Jury Trial	Drug Court Related	Sentencing	
Proceeding Cancelled (CANC,CADC)	2.6%	4.7%	2.0%	13.9%	14.3%	10.3%	44.7%	5.3%	3.8%	15.0%
Defendant failed to appear (FTA)	0.7%	0.6%	4.4%	5.7%	0.6%	4.3%	2.5%	11.8%	7.1%	4.3%
Continued (CONT)	2.7%	5.9%	6.9%	27.4%	5.4%	12.4%	38.8%	8.0%	43.3%	17.9%
Continued, no courtrooms (CONC)							0.2%			0.0%
Proceeding not held (NH)	2.1%	7.9%	1.2%	33.1%	19.7%	13.0%	0.0%	1.0%		8.8%
Western State Evaluation (WSE)	0.8%	0.2%	0.3%	0.2%	1.3%	0.0%	0.1%			0.3%
Arraigned (ARR)	83.4%									9.8%
Drug Court Hearing Held (ACDC,CMDC,FSDC,NADC,ODC)								73.8%		8.5%
Proceeding Held (HELD,EXOA,EXWA)	7.6%	80.5%	85.1%	19.0%	48.7%	7.2%	1.3%		45.7%	25.9%
Plea & Sentence (P/S)	0.0%	0.1%	0.0%	0.1%	0.1%	52.5%	7.8%	0.0%		7.5%
Plea (PLEA)	0.0%			0.0%	0.0%		2.9%			0.6%
Dismissal (DISM)		0.1%	0.2%	0.5%	10.0%	0.3%	1.4%		0.1%	1.3%
Hung Jury or Mistrial (HNG,MIST)							0.2%			0.0%
TOTAL NO. OF EACH PROCEED	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	

Source: LINX

IV. Analysis of Caseflow in Relation to Key Elements of Effective Felony Caseflow Management

Research on court delay reduction and caseflow management shows that successful courts and justice systems have had widely varying levels of available resources, used different types of case calendaring and assignment systems, had significantly differing jury trial utilization rates, and followed backlog and delay reduction strategies that differ in a number of ways. Despite this diversity, successful courts share common characteristics. This section of the report analyzes the operations of the Pierce County Superior Court in light of ten key elements of effective caseflow management found in courts that successfully reduce or prevent delays.

A. Judicial Responsibility and Commitment

The judges of the court set the tone for the court, and for the larger criminal justice community. If the judges are not committed to the concept of court responsibility for timely case resolution, then little will be gained from developing goals or mechanisms for tracking cases or establishing expectations about what will happen at court events. Managing the docket must be a primary concern of all judges. One judge remarked, “a lot of judges don’t worry about the calendar – they come to try cases, to be a judge.” Notwithstanding this, in interviews and in open meetings, the judges consistently expressed their concern about problems of backlogs and delays. The problem with that philosophy is that, as in all jurisdictions nationwide, very few cases are tried. In Pierce County the trial rate was 1.8% of total resolutions in 2000. This means that 98.2% of the cases were resolved in some manner other than jury trial. The major problem in Pierce County is that the bulk of the resolutions occur late in the process, near or on the day of trial, rather than earlier, for example at the pretrial conference. This is the result of, and results in, many continuances because so many calendars are “full” and no courts are available. The courts are filled with continuances, “a rolling continuance docket,” rather than with productive hearings and meaningful events. Effective and efficient case management requires every event to be a disposition opportunity; in Pierce County this is not done. By adopting a case management and backlog plan, the judges can move to implement specific policies and practices in each courtroom and the court as a whole.

B. Leadership

In studies of corporate innovation and excellence, as well as of courts and criminal justice agencies that succeed in attaining their goals, leadership is repeatedly identified as a critically important factor. Devising and implementing major systemic changes in processes for handling criminal cases in Pierce will require leadership not only within the court and each agency but by the system’s leaders acting together. The problems are systemic problems, and re-shaping the system to meet the challenges now facing it will necessarily involve a collaborative approach.

The lack of leadership is evident in the following description of the Superior Court's approach to felony case management: "If divided you stand, then together you will fall." Several comments were made to the effect that each judge is a separately elected official, or that the court consisted of '20 separate fiefdoms,' each managing its own affairs. This individuality is certainly reflected in the operation of the court. Every time there is a change in the judge assigned to a CD or other specialty department, all of the players have to adjust to the practices and philosophies of the new judge. The rationalization apparently is that each judge must stand individually for election, so he or she must manage and hear cases appearing before him or her in their own way. Allowing each judge to manage their calendar their own way does, indeed, allow them to be responsible for their fiefdom, but then no one is responsible for the court, or its total caseload.

In contrast, the public perceives the court as one institution. The court is also funded as one institution. The public expectation is that justice is consistent and predictable. When, instead, each judge acts individually, the court appears inconsistent and unpredictable. While this lack of common direction is probably not enough to draw opposition to any single judge in an election (the way it might in an executive branch agency with a single, elected head), it appears to be disorganized, and using resources ineffectively. It leads to a lower level of respect from the public, the media, and the bar. It also translates into a lower level of support from the legislative branch in distributing resources and, sometimes, lower levels of support and cooperation from executive branch agencies.

There are a series of circumstances that have coalesced to make this a prime opportunity to establish needed leadership and change the way the Superior Court and the Pierce County's criminal justice system operates:

- The county has initiated a performance audit process resulting in this study;
- As a result of retirements, elections and a new position, there will be four new judges appointed to the bench between October, 2000 and the appointment of the twenty-first judge, representing almost a 20% change in the bench; and
- Judges are not up for election for another four years (except for a judge appointed to a new vacancy);
- A new presiding judge assumed office in January 2001.

The Superior Court and the County should seize the opportunity and begin to manage the felony cases in a timely manner that makes effective use of available resources.

C. Goals

Meaningful operational goals--standards or benchmarks that provide guidance for justice system leaders and for individual practitioners--are integral to the effective management of the flow of criminal cases, and to decisions about scheduling in individual cases. In the absence of clear goals, judges and other justice system practitioners have no way of measuring their own (or their organization's or the system's) effectiveness in managing caseloads and no guidance in developing expectations for what should take place (and when) in individual cases. Operational goals are needed, for the system as a whole and for the Court and the agencies involved in criminal case processing, in at least the following areas:

- Case processing times, for different types of cases - overall time standards for major case types and time standards for each major stage of the cases.
- Timeliness, accuracy, and completeness of the information recorded and transmitted from one organization to another in connection with criminal case processing.
- Firmness/reliability of court case scheduling—i.e., goals that reflect a high degree of certainty that scheduled court events will take place when scheduled.

There are Case Processing Time Standards established by the Washington State Board of Judicial Administration. The standards are advisory, but important enough that each county's performance in relation to these goals is measured and reported. Advisory Case Processing standards set by the Board of Judicial Administration for the felony criminal cases are:

- 90% in 4 months
- 98% in 6 months
- 100% in 9 months

There are also state speedy trial requirements set by court rule.²⁵ The rule requires in-custody defendants to be brought to trial within 60 days of arraignment and out-of-custody defendants within 90 days, unless the defendant waives the requirement.

Currently the Superior Court has no overall plan aimed at meeting the speedy trial requirements or complying with the time standards. The case processing times demonstrate the court is not now complying with the standards. There have been no real Court or justice system goals with respect to case processing times, pending caseloads, certainty that trials or other scheduled case events will take place when scheduled, or other aspects of effective caseload management.

²⁵ Washington State Rules for Superior Courts, Rule 3.3 (c)(1).

D. Mechanisms for Accountability

If caseloads are to be managed effectively, the court, the judges and the other agency heads must be held accountable for their case management. At present, there is very little accountability for effective caseload management in the Superior Court or in the criminal justice system as a whole. In order to have accountability, it is necessary to have mechanisms by which to establish and measure accountability. These include: (1) clear goals or standards by which to assess performance; (2) information that can be used to monitor performance in relation to goals; (3) an expectation that performance will in fact be monitored by someone in authority (e.g., presiding judge, senior administrator with responsibility for caseload management); and (4) a sense that there will be some recognition of good performance and negative sanctions for poor performance. These elements currently do not all exist in Pierce County.

E. Information

Good information about the details of individual cases and about overall caseloads is essential for managing and measuring system performance as much as for case-level decision-making. Judges, court staff, lawyers, sheriff's staff and law enforcement staff need accurate up-to-date information about case status, case scheduling, and prior history of the case. The court and its senior staff responsible for caseloads need accurate information about the size, composition, and age of pending caseloads, as well as continuance rates, and the time required for completion of different stages of cases. All criminal justice system leaders need information about system performance in relation to time standards and other goals, once performance goals have been established.

The local case management information system, LINX, appears to be very good. The design is sound and the system is very flexible. Although it is capable of producing them, LINX does not appear to be used to regularly produce management information reports that can be used to track the system's performance in relation to case processing time goals or other possible goals (e.g. event scheduling certainty). A proposed monthly report intended to provide this information is provided in Appendix E. The report is organized in the sequence cases follow from arrest through resolution to sentencing. Each criminal justice agency is listed in separate columns to indicate which agency has primary discretion regarding a specific activity or responsibility for managing the activity. All criminal justice agencies, as well as the Council, should agree on the definitions and meanings of the data elements contained in the report, with the understanding that there will be refinements in the numbers and definitions as time goes on to reflect changes in understandings, applicable laws, or procedures.

F. Communications

One of the clear lessons from research and evaluation of successful court and justice system operations is that good communication and broad consultation--within the trial court, within other agencies involved in the process, and between court leaders and key institutional actors such as law enforcement officials, prosecutors, the defense bar, pretrial services, corrections, and general government and community leaders--are essential if significant improvements are to be made. The types of consultation systems and mechanisms for collaboration used in successful justice systems vary widely, but in all of them the channels of communication are open.

Within the Court and criminal justice agencies, steps have been taken to improve communication about case processing issues through the Criminal Procedures Committee. All relevant agencies are participating in the work of this committee, and representation from other agencies is invited, as needed. The organizational mechanism thus exists. What does not yet seem to exist is a tradition and culture that supports court-wide support of the solutions developed by the Committee.

G. Caseflow Management Policies and Procedures

Jurisdictions that handle their criminal cases expeditiously and effectively have generally developed caseflow management practices that enable them to meet their case processing goals. While the combination of techniques vary from jurisdiction to jurisdiction, best practices with respect to managing the flow of criminal cases include the following:

- Rapid preparation of good quality police incident/arrest reports.
- Rapid transmission of the police reports to the prosecutor.
- Rapid lab test turnaround capability--especially for testing suspected drugs seized pursuant to an arrest and, subsequently, for testing for possible drug usage by persons on pretrial release, diversion, or probation.
- Effective early case screening and realistic charging by prosecutors.
- Early appointment of defense counsel for eligible defendants.
- Early exchange of discovery, and prompt transmission to defense counsel of discoverable material not initially available.
- Case scheduling practices that facilitate expeditious resolution of simple cases, enable rapid identification of cases likely to require more attorney time and judge attention, and make good use of limited courtroom and lawyer preparation time.
- Case timetables, set by the judge in consultation with the prosecutor and defense counsel, which are geared to the complexity of the case.
- Meaningful court events, designed to resolve cases or narrow issues.
- Early filing and resolution of motions, including motions involving evidentiary hearings.
- Plea cut-off policies, developed by the prosecutor's office and the court with input from the defense bar.
- Trials scheduled only when needed--after motions have been decided and the plea cut-off date has passed.

Pierce County Superior Court was held up as model court in the early 1990's for its implementation of Differentiated Case Management (DCM). The court was cited often as an example around the country. At some point the program deteriorated. The court needs to revisit this and establish sound and effective policies and practices for managing its cases. A number of the recommendations made below are intended to implement the concepts listed above.

H. Administrative Staff Involvement

Much of the work in monitoring criminal cases need not be done by a judicial officer. Trained staff can track the cases, advise judges of problems, and gather and present the information needed by judges to manage the cases to a timely resolution. Interviews and observations suggest that Pierce County has a staff that is ready, willing and able to fulfill this function. Although there is still a DCM staff in place, the staff mainly does data entry and covers for the courtroom clerk in CD2. Management staff have been involved in making recommendations to the court for addressing case scheduling problems over the years. They are also adept at maintaining the data in the LINX system and in making queries to the LINX system for information and statistics that can be used to better manage the felony cases. In implementing the recommendations made below, the court should make use of this staff, and further empower them to assist the judges in managing the felony caseload.

I. Education and Training

If criminal caseloads are to be managed effectively and resources used wisely, everyone involved in the process needs to know what is to be accomplished, why, what is expected of them individually, and have the knowledge and training to allow them to successfully perform their assigned duties. In particular, judges and staff require training in caseflow and trial management concepts and techniques. A few judges have been to a JMI, ICM or NJC course on case flow management, but the majority have not, nor have many staff. As plans are developed for new criminal caseflow management policies and procedures, the leaders and staff of the court and of all of the relevant agencies--each of whose actions can have great impact on the effectiveness of any new program--will need to be educated about the new program and trained in how to perform new or significantly modified tasks.

J. Backlog Reduction/Inventory Control

In order to manage cases effectively and meet applicable time standards, it is necessary for the court to monitor and control its backlog. This requires accurate and timely knowledge of what cases are pending and how long they have been pending. For the oldest cases in the inventory the court should be aware of the reasons for the delay and should have established expectations for actions that will move the case to resolution. While the absolute number of cases pending longer than expected under applicable time standards in Pierce County is small, there are a number of such cases, and the apparent nature of the older cases is not what might be expected. The court needs to develop a plan for identifying the oldest cases, reviewing their status and placing them on a schedule for prompt resolution.

V. CONCLUSIONS AND RECOMMENDATIONS

The intent of the recommendations described below is to create greater accountability for the movement of cases by developing structures, policies, and practices that allows the Superior Court and Pierce County criminal justice agencies to resolve felony cases in a more timely, less stressful, and more effective manner. Ultimately this will result in both a higher quality of justice to litigants and the public and more effective use of public resources. Before making recommendations, however, it is important to note the strengths of the current system. This management audit was undertaken as part of an ongoing management audit of all agencies in Pierce County, not because of massive problems or failures perceived to exist in the criminal justice system. As noted initially, many elements of an effective felony case management system already exist in Pierce County.

A. Strengths of the Existing Felony Criminal Justice System

There are a number of aspects of the Pierce County criminal justice system that are noteworthy and give the county an advantage regarding the prompt resolution of felony criminal cases. These characteristics also provide a strong foundation from which to make meaningful reforms as recommended below. The noteworthy strengths are as follows:

- Direct filing of felonies in the Superior Court – avoiding appearances in the District Court or before a Grand Jury and the delays inherent in these additional steps;
- Prompt determination of eligibility for appointed counsel and appointment of counsel where appropriate;
- Many of the structures and mechanisms are already present that would allow prompt and appropriate resolution of felony cases, e.g., open discovery, pretrial conferences, and omnibus hearings;
- The prosecuting attorney’s office is organized in a way that gives appropriate discretion to trial teams regarding both charging decisions and plea agreements;
- Authority to sentence a defendant on the same day as a guilty plea is entered based on the plea agreement between counsel and the defendant; a pre-sentence investigation and report is not required in every case;
- All courtrooms in which felony matters could be heard are located in the same building, maximizing flexibility of assignment of matters to available judges;
- Jail located adjacent to the courthouse, which minimizes in-custody transportation costs;
- The criminal justice agencies share an information system, LINX, that is well designed and contains reliable information by which the system can be managed and monitored;

- There is no acrimony between the criminal justice system agencies, no turf battles, rather, there is a healthy spirit of cooperation within each agency and the Superior Court;
- A successful mechanism is already present for resolving problems and bottlenecks in the processing of felony cases, the Superior Court Criminal Procedures Committee;
- The judges of the court are sincerely interested in making effective use of judicial resources;
- The court administrator's staff, although small, appears to have the expertise and interest to support the judges in managing felony cases;
- The pace of resolution of felony cases is not unduly slow, though it does not comply with adopted time standards and is slower than other large courts in Washington;
- Overall, there is not a large backlog of pending felony cases (defined as cases pending beyond applicable time standards).

B. Recommendations

The recommendations made below are organized based on who has authority and responsibility to make the proposed changes. The recommendations move from within the Superior Court out to the larger context of the whole felony case processing system. The first set of recommendations involves changes in the Superior Court's governance and organization. The second set is recommended changes to the case management practices within the control of the Superior Court. Next are recommended changes over which other agencies in the criminal justice system have authority. Fourth are recommended changes in the relationships between the participants and stakeholders in the felony criminal justice system, and lastly, there are recommendations about possible changes at the state level.

1. Recommendations Concerning the Superior Court's Organization and Goals with Respect to Criminal Caseflow Management

1. Organize the Superior Court so that it effectively exercises its responsibility to manage felony cases pending before the court and exercises a leadership role in the felony criminal justice system operations.

2. Establish goals for the Court's operations and performance with respect to its felony criminal caseload to guide overall caseflow management and case scheduling in individual felony cases. Goals should be established by the Court, in consultation with other criminal justice system stakeholders, in at least the following areas:

- a. Case processing times, for different categories of cases--overall time standards for major case types and time standards for completion of each major stage of the cases;
 - b. What is expected to occur at each scheduled hearing and what preparation is expected of counsel;
 - c. Firmness/reliability of case scheduling--i.e. standards that call for a high degree of certainty that scheduled court events will take place when scheduled and will be meaningful in resolving the case or moving it toward resolution;
 - d. Elimination of existing backlog, defined as cases which have been pending longer than existing time standards contemplate; and
 - e. Timeliness, accuracy, and completeness of the information entered into court records and into the automated systems that support case scheduling and caseload management.
3. Adopt a case assignment system that increases both the individual and collective responsibility of each judge to resolve cases at the earliest opportunity. This will involve both changes in the length of assignments to criminal related calendars and in the structure of the calendars. If the judges are unwilling to serve for longer times in certain calendars, they must establish and all adhere to policies and procedures that would provide the same consistency, predictability and effectiveness.
4. Develop a system for assignment of the Court's criminal caseload that:
- a. Fairly allocates the felony criminal case workload among the judges of the court or--if the court decides to create a Criminal Division--among the judges of that division;
 - b. Includes the capacity for monitoring the performance of the Court in relation to the goals that are established;
 - c. Designates a single judge as responsible for overall management of the criminal caseload; and
 - d. Provides for adequate staff support for the judge designated as responsible for overall criminal caseload management.
5. Develop a plan to implement major changes in case scheduling philosophy and practice, incorporating principles and techniques of differentiated case management and effective caseload and trial management as recommended here.
6. Consider assigning a commissioner to hear some aspects of first appearances, or cross designating a District Court judge to sit as a commissioner for this purpose.

7. Review the hiring policy and reporting relationship of Judicial Assistants to establish a structure that has appropriate accountability, chain of command, and performance criteria.

8. Educate the County Council, and the public, about the Superior Court's goals, responsibilities, organization, processes, and performance.

2. Recommendations for Changes in the Superior Court's Caseflow Management Practices and Procedures

9. Establish expectations about what should occur at each scheduled hearing, educate the lawyers, and manage their calendars so that attorneys are properly prepared and ready to act at the hearings as expected.

10. Establish case scheduling and continuance policies that will ensure that the Court is prepared to hear all cases scheduled for a given date. This will encourage attorney preparation and readiness for all scheduled events, and will justify sanctions for repeated late requests for continuances. When continuances are granted, they should ordinarily be for short periods and with clear understanding of what is to be done before and at the next court date.

11. Establish and adhere to a practice of commencing court proceedings at the time they are scheduled.

12. Revise case scheduling practices to provide for the scheduling and case management system to focus on early resolution of cases and avoid over-setting of trials, including:

a. Provide for early resolution of motions, including motions that may require evidentiary hearings;

b. Consider establishing a plea cut-off system;

c. Schedule trials only when needed in order to establish a meaningful trial date, subject to requirements of the speedy trial rules. Firm trial dates should be set only when it is clear that possibilities for non-trial resolution have been exhausted, pretrial motions have been heard and decided, and a plea cut-off date has passed;

d. Provide for a trial management conference in cases likely to involve more than one day of trial; and

e. Establish trial readiness procedures and improve procedures for managing witness appearances.

13. Develop management information reports and caseflow management staff support for revised procedures to track performance in relation to goals.

14. When a defendant is rearrested or surrenders on a bench warrant, pick up the proceedings where they left off, where practical, rather than treating the case like a new filing.

3. Recommendations for Changes in the Caseflow Management Practices and Procedures in Other Stages and Agencies

15. Accelerate the implementation of Live Scan fingerprint system to permit more rapid identification of all persons arrested on felony charges, allowing quicker retrieval of comprehensive criminal history information.

16. Continue implementation of whatever needs to be done to correct the criminal history databases maintained by LESA so that the local criminal histories are perceived to be reliable by all Pierce County criminal justice agencies and the Superior Court. Consideration should also be given to expanding the LESA Board to include representatives of the court and agencies who require the information generated by LESA in their work. Accurate criminal history information should be provided to everyone prior to the Pretrial Conference date, if not by first appearance. This will not only strengthen the reliability and predictability of the system, it will avoid current duplicative efforts to obtain reliable criminal histories.

17. Improve the response time for accessing criminal history information through LESA communications systems by giving priority to the changes already planned or underway.

18. Educate police officers and LESA staff about the importance of prompt preparation of police reports, both initial and supplemental, and prompt delivery of these reports to the prosecutor. The portion of the LEADS 2000 project involving use of computers for the preparation of police reports, which can then be electronically transmitted to the prosecutor, will support this objective.

19. Develop and implement policies and procedures permitting pretrial release in felony cases that:

- a. Ensures that persons who could be safely released during the pretrial period are not held in jail solely because of inability to post financial bail;
- b. Ensures that persons who pose significant risks to public safety are not released unless adequate supervisory conditions are established; and
- c. Provides appropriate supervisory options and systems for notifying released defendants of their next court date.

The authority and responsibility of the PreTrial Services agency should be expanded to screen all persons booked into the jail on a felony charge for possible release.

20. Use the first appearance as an opportunity to make initial scheduling and case tracking decisions aimed at bringing the case to resolution as expeditiously as possible, consistent with the complexity of the case. At the first appearance, the judicial officer should:

a. Inquire about the status of providing discovery, the possible need for lab reports or other special reports;

b. Set the case for a pretrial conference/scheduling conference to be held within 15 days after the first appearance; and

c. Make and enter any orders needed to ensure that, prior to the pretrial conference/scheduling conference, the parties will have obtained and discussed the information needed to (1) reach an agreed upon resolution; or (2) set a short schedule for obtaining any needed information and establishing a schedule for motion hearings, final pretrial conference, and trial.

21. Develop a plan for defense counsel to have opportunity for meaningful consultation with the defendant prior to the Pretrial Conference by:

a. Assuring counsel is furnished with any updated charging documents, police reports, lab reports, and available information about the defendant's prior record; and

b. The prosecuting attorney establishing a policy and the necessary procedures so that a plea offer can be communicated to the defendant and his or her counsel prior to the Pretrial Conference.

22. Provide for prompt turnaround of lab tests, especially in cases involving persons arrested on drug charges. The County should consider establishing a local lab to reduce time and jail bed days lost waiting for report results.

23. The Superior Court, Sheriff, Prosecuting Attorney and a representatives of the DAC, at least, should develop a policy as to the early release of inmates because of the jail cap that not only protects public safety and maximizes the likelihood that released defendants appear at court for scheduled proceedings, but also promotes programs designed to rehabilitate defendants and reduce recidivism.

24. Establish the necessary links and protocols to allow electronic uploading of information from LINX to SCOMIS so as to provide consistent and complete data to SCOMIS, and reduce costs of double entry of case data into SCOMIS and LINX.

4. Recommendations Concerning Relationships Between the Superior Court and Other “stakeholders” in the Pierce County Criminal Justice System

The stakeholders include, at a minimum, law enforcement (local police as well as the Sheriff’s office), prosecutors office, criminal defense bar, civil bar (whose cases are bumped and who feel that they do not get sufficient resources allocated to civil and family law cases), victims, witnesses, persons called for jury service, the County Council, the County Executive, the OAC, the Clerk’s office, the Superior Court’s own staff, and the general public]

25. Continue the work of the Criminal Procedures Committee as a vehicle for identification of systemic problems and development of collaborative approaches to addressing them. The committee should meet regularly, with agendas prepared in advance and with minutes prepared of all meetings. The committee membership should be reviewed to ensure it includes representatives of all institutions, agencies and services whose operations affect the felony criminal case process.

26. Develop a monthly management report that indicates new workload, completed work and the status of pending work for the entire felony criminal process (a draft prepared for illustrative purposes may be found in Appendix E). Provide regular written and oral reports to the criminal justice community and County Council concerning: a) actual performance in relation to operational and performance goals, and b) commentary with respect to aspects of system operation that may need attention.

27. Explore ways in which modern information technology can be used to improve the efficiency and effectiveness of criminal justice system operations. Consider, in particular:

- a. Using computers for preparation of police reports to the maximum extent possible, to reduce redundant data entry and facilitate electronic transmission of the reports to prosecutors; and
- b. Using video conferencing to facilitate consultation between prosecutors and police officers and between defense counsel and in-custody defendants.

28. Develop a facility master plan that addresses:

- a. Upgrading the courts and adjoining public waiting and prisoner holding facilities for high volume courtrooms, particularly CD1 and CD2. Serious consideration should be given to relocating CD1 and CD2 to the first or second floor of the County-City Building;
- b. Including a courtroom in the new jail currently under construction for some types of court hearings to reduce prisoner transportation costs and time; and
- c. Providing permanent courtrooms for all Superior Court judicial officers.

5. Recommended Changes In State Laws, Practices, and Procedures

29. Simplify the plea and judgment and sentencing forms to reduce the paperwork associated with them and the in-court time consumed in filling them out and distributing copies to all parties.

30. Consider revision of the court rules that require trial dates to be set within 15 days of arraignment and trial to begin within 60 days of arraignment so as to allow courts to set meaningful trial dates in those cases that are not resolved sooner.

31. Propose an amendment to the State Constitution allowing cross-assignment of all judges to all levels of court to balance workload and maximize use of all judicial resources.