

**Follow-up Study of
Felony Case Management
in Pierce County Superior Court
Final Report and Recommendations**

Submitted to:

Pierce County Performance Audit Committee

and

Pierce County Superior Court

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by

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To: Performance Audit Committee

From: Matt Temmel, Performance Audit Coordinator

A handwritten signature in blue ink, appearing to read "MT".

Re: Felony Case Management Report

This report is the third study by the Justice Management Institute (JMI) of felony case management in Pierce County Superior Court. In 2001 and 2002, JMI presented two reports on felony case processing. The recommendations had a beneficial effect for a time. Trends in pending criminal cases, case age, and similar measures improved significantly in 2001 and 2002. Performance then fell off sharply. Pending criminal cases are now at a record high, twice the level of 2002, despite the fact that criminal case filings have not increased significantly and two judges have been added to Superior Court.

The main objective of this report is to identify obstacles to prompt resolution of felony cases attributable to policies, practices, and organizational structures in Superior Court, Prosecuting Attorney, Department of Assigned Counsel, and Corrections.

The study was conducted in accord with "Yellow Book" standards for performance audits. Performance audit staff work closely with the contractor on collection of quantitative data, and later verified the contractor's interpretations by reference to the primary sources. The quality control process included review of a draft report for factual accuracy, relevance to the report objectives, and appropriateness and feasibility of the recommendations.

The review of the contractor's draft report (September 2007) exceeded normal standards. Four Superior Court judges, Superior Court administration, Prosecuting Attorney's Office, Department of Assigned Counsel, the Sheriff's legal advisor, and performance audit staff reviewed the draft report. Besides telephone conversations and exchange of written materials, the review process included another JMI visit to Tacoma to discuss the draft report in person. The review confirmed the main findings, resulted in minor factual corrections, and strengthened the report interpretations.

We look forward to working with Superior Court and the other agencies on implementation of the report recommendations. It may be advisable to retain JMI in 2008 to assist in the implementation process and report progress to the Performance Audit Committee and the County Council.

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EXECUTIVE SUMMARY

The Justice Management Institute (JMI) first conducted a management study of felony case processing in Pierce County beginning in 2000. The report recommended a number of changes in structures, policies, and practices designed to establish greater accountability for the resolution of felony cases in a more timely, less stressful, and more effective manner. During 2001 and 2002, the Superior Court implemented several recommendations, with the assistance of JMI. These changes produced measurable results. Fewer felony cases were pending at the end of 2001, and the pending caseload became younger. There was also a reduction in the number and length of continuances of cases set for trial.

The positive impact proved transitory. Since the end of 2002, the handling of felony cases has slowed according to several measures. The number of pending felony criminal cases has steadily risen and is now double the level in 2002. The pace of new filings is unchanged. The proportion of older cases in the pending caseload is larger and the pace of litigation is slower. In response, Pierce County asked JMI to reexamine felony case processing practices and make recommendations that would reverse the continued growth in the pending caseload.

The examination begins by analyzing the possible impact of changes in case filings, procedural laws, or judge and staff resources on the size of the pending caseload. While there have been shifts in the number of filings of those types of cases that required more resources and time to resolve, their contribution to the growth in the pending caseload does not appear to be significant or is difficult to assess at this time. Changes in procedural laws have had a mixed impact. The weakening of the speedy trial rule has slowed the resolution of cases, thereby increasing the pending caseload, but the impact is hard to quantify. The elimination of post-conviction proceedings has reduced the workload. None of the factors examined can account for the significant increase in the pending caseload.

The study focus next looks to how cases were managed and whether case management practices are contributing to the growth in the pending caseload. The organizational structures, policies, and practices for hearing felony cases are examined to identify inefficiencies and unnecessary activities that are contributing to a backlog of pending cases. A number of problems are identified, ranging from a lack of accountability for overall management of felony cases to a loss of control of scheduled court proceedings.

The overarching problem is that no one is taken overall responsibility for moving cases towards a just resolution in a timely manner. The Superior Court should provide the leadership, because it is the neutral party and because it has this responsibility under court rules. The heads of other justice agencies share responsibility, to the extent of ensuring that their staffs follow good case management practices on a day-to-day basis.

One key set of recommendations is that the Superior Court acknowledge its role and take actions to fulfill its responsibility. This begins with the Superior Court adopting an explicit statement acknowledging its responsibility for the management of felony

criminal cases and expressly assigning the day-to-day responsibility to the Criminal Division Presiding Judge. In addition, the judges must agree to manage cases in a consistent and predictable manner. Finally, there needs to be better coordination of judicial absences and case setting levels.

Another fundamental problem is the loss of control of the scheduling of proceedings and what happens at the proceedings. Too many proceedings are being scheduled, more than can be completed in the time available, and not enough of them move cases towards resolution. The number of scheduled court hearings has increased substantially. In 2002, there were a total of 74,116 scheduled felony proceedings in Superior Court. Based on the pace of the first six months, the total will be over 93,400 in 2007, a 26% increase in scheduled hearings since 2002. While there are more scheduled hearings, less progress is being made. The percentage of cases where nothing substantive happens increased from 36% of scheduled hearings in 2002 to 49% of scheduled hearings in the first six months of 2007.

The most critical breakdown regarding scheduled proceedings is the lack of integrity of trial dates. Trial date integrity is lost both when unrealistic trial dates are set and when too many cases are set for trial on a given day. The Superior Court's lax continuance policy further degrades the integrity of the trial dates.

The breakdown is reflected in the numbers. Jury trial settings grew from 10,637 in 2002 to 16,697 in 2006, a 57% increase. In 2007 they are on pace to be 80% higher than in 2002. More significantly, the continuance rate has increased from 37% in 2002 to a staggering 59% during the first half in 2007. It is now more likely than not that a case set for trial will be continued instead of starting trial. The continuances reverberate through the system. There is no point in preparing a case if there is little chance it can go to trial. Without the pressure of going to trial, cases do not resolve, and the pending caseload grows accordingly.

Another set of recommendations seeks to regain control of scheduled proceedings. The goal of the recommendations was to schedule fewer proceedings and make each proceeding more meaningful. A new basic schedule for cases is proposed, one that involves fewer hearings per case and more realistic trial dates. The report also includes recommendations to improve the integrity of trial dates.

One key to the integrity of trial dates is having judges available to try cases on the day they are scheduled. Anything that reduces the number or frequency of open judges delays resolution and contributes to the backlog of pending cases. The report analyzes two problems in judge availability. First, the practice of having judges rotate between hearing civil and criminal cases reduces the number of open judges during the transition. Second, a practice has developed of judges taking more time off when they are scheduled to hear criminal cases than when scheduled to hear civil cases. The Superior Court must adjust its practices to make more judges available to begin criminal cases more often.

Too many hearings and not enough time has engendered bad habits among attorneys regarding preparation of cases. Some attorneys have begun taking care of things when they come up on calendar, rather than preparing in advance for a hearing. The recommendations modifying the typical schedule in felony cases include expectations that attorneys will be prepared for proceedings in ways that make the proceedings meaningful and help move the cases towards resolution.

Because of the current size of the backlog, a recommendation is made to implement a temporary backlog reduction program. The program would initially focus on the older pending cases in order to reduce the age of the pending caseload as well as its size.

Other recommendations address other aspects of the felony case processing system. They were designed to make the most efficient use of judges, lawyers, support staff, and facilities associated with the resolution of felony cases. Included are recommendations for improving the level and quality of information about the performance of the processes. Gathering and reporting statistical data about the handling of felony cases will not only establish better accountability for the operation of the system, but allow the Superior Court, justice system agencies, and the public to assess progress in implementing recommendations. Finally, there are recommendations to make more efficient use of facilities and to minimize time spent handling paperwork associated with felony cases.

The goal of the report and recommendations is to improve the process for hearing and resolving felony cases in a manner that is just, timely, and makes efficient use of scarce public resources. The justice community in Pierce County has the will and capacity to create an exemplary felony case processing system. The objective of this report is to provide guidance as to how this can be accomplished.

ACKNOWLEDGEMENTS

JMI would like to acknowledge the support and cooperation that the project has received from the judges, managers, and staff in Pierce County and the Pierce County Superior Court. No one likes being the subject of a study and hearing recommendations to improve one's operations and performance. Yet everyone we worked with was forthcoming, candid, helpful, and appreciative of what the project sought to accomplish. Particular thanks are due the department heads for their cooperation and that of their staffs: the Honorable Tom Larkin, Superior Court Presiding Judge, Gerald Horne, Prosecuting Attorney, Michael Kawamura, Director of the Department of Assigned Counsel, Andra Motyka, Superior Court Administrator, Kevin Stock, Clerk of the Superior Court, and Paul Pastor, Sheriff. Matt Temmel, the Performance Audit Coordinator, also deserves special thanks for his assistance.

A thank you is also due to Barry Mahoney, JMI's President Emeritus, who reviewed the draft and provided cogent comments and suggestions.

Although this report has been reviewed by a number of people, the contents of the report and the findings and recommendations are JMI's alone. Those who reviewed the draft report are in no way responsible for any errors of omission or commission in the final version of the report. The points of view expressed in this document are those of JMI and do not necessarily represent the official position or policy of Pierce County, any of its agencies, or the Pierce County Superior Court.

I. PROBLEM STATEMENT AND BACKGROUND

A. Introduction

Beginning in 2000, the Justice Management Institute (JMI) conducted a management study of felony case processing in Pierce County. The study focused primarily on the organization and operations of the Superior Court. It also assessed the overall felony case processing system from arrest to resolution. The study's primary objective was to develop recommendations for improving operations so as to achieve greater efficiency without sacrificing the quality of justice. While finding many strengths in the criminal justice system, the final report made a number of recommendations intended to establish greater accountability for the movement of felony cases by developing structures, policies, and practices that would allow the Superior Court and Pierce County criminal justice agencies to resolve felony cases in a more timely, less stressful, and more effective manner.¹

After receiving the report in 2001, Pierce County Council and the Superior Court contracted with JMI to help implement several of the recommendations. The objective was to improve felony case processing, both as to pace and by making more effective use of public resources allocated to resolving felony cases.² JMI provided assistance in five areas:

- ◆ Development of a set of protocols for felony case proceedings describing what was expected of attorneys, the Superior Court, and other criminal justice agencies, both as to preparation for, and actions taken during, proceedings scheduled in court. The protocols reflected the consensus of affected criminal justice agencies and were adopted by the Superior Court in January 2002.
- ◆ Suggesting alternatives as to how the judges of the Superior Court could be organized and assigned cases with the objective of establishing greater court accountability for the movement of felony cases.
- ◆ Recommendations as to court staffing needs to support the new felony case management practices recommended.
- ◆ The need for adequate facilities to house the criminal division calendar courts.
- ◆ A proposed monthly report designed to allow the Superior Court, criminal justice system agencies, and County Council to monitor felony case processing from arrest through sentencing.

During implementation in 2001 and 2002, the Superior Court made significant changes in the handling of felony cases that were approaching trial dates. These changes produced measurable results. Fewer felony cases were pending at the end of 2001, as

¹ JMI 2001 report (see Resources for full citation). The final report, with some appendices published separately, is available at: <http://www.co.pierce.wa.us/xml/abtus/plans/perf-audit/JMI%20Final%20Report%2015FEB01.pdf>. The appendices and an associated report prepared by the WA AOC are available at: <http://www.co.pierce.wa.us/pc/abtus/plans/perf-audit/reports.htm>.

² JMI 2002 report (see Resources for full citation). The final report is available at: <http://www.co.pierce.wa.us/xml/abtus/plans/perf-audit/reports/SCFollow-Up.pdf>.

compared to the end of 2000. The pending caseload also became younger as the Superior Court resolved a greater proportion of the older pending cases. There was also a reduction in the number of continuances of trial dates and a significant reduction in the length of continuances.

However, the positive impact of the changes has not lasted. Since the end of 2002, the handling of felony cases has slowed according to a number of performance measures. The number of pending felony criminal cases has steadily risen since 2002, as shown in Chart 1 on the next page. The top line of the chart records the steady growth of the pending caseload. The bottom line indicates that the pace of new filings is essentially unchanged. In addition, the age of the pending caseload and the pace of litigation have slowed, and the average length of stay of defendants in custody during pretrial stages has risen considerably.³

There has also been a significant increase in the number of court hearings associated with felony cases. In 2002, there were a total of 74,116 scheduled felony proceedings in Superior Court.⁴ Based on the first six months of this year, the total will be over 93,400 for 2007. This represents a 26% increase in scheduled hearings since 2002. But more scheduled hearings do not necessarily mean more substantive work is being done. On the contrary, the percentage of cases where nothing substantive happens⁵ increased from 36% of scheduled hearings in 2002 to 49% of scheduled hearings in the first six months of 2007. Many people now complain that the number of scheduled hearings at which they are expected to appear is preventing attorneys and the court from getting substantive work done.

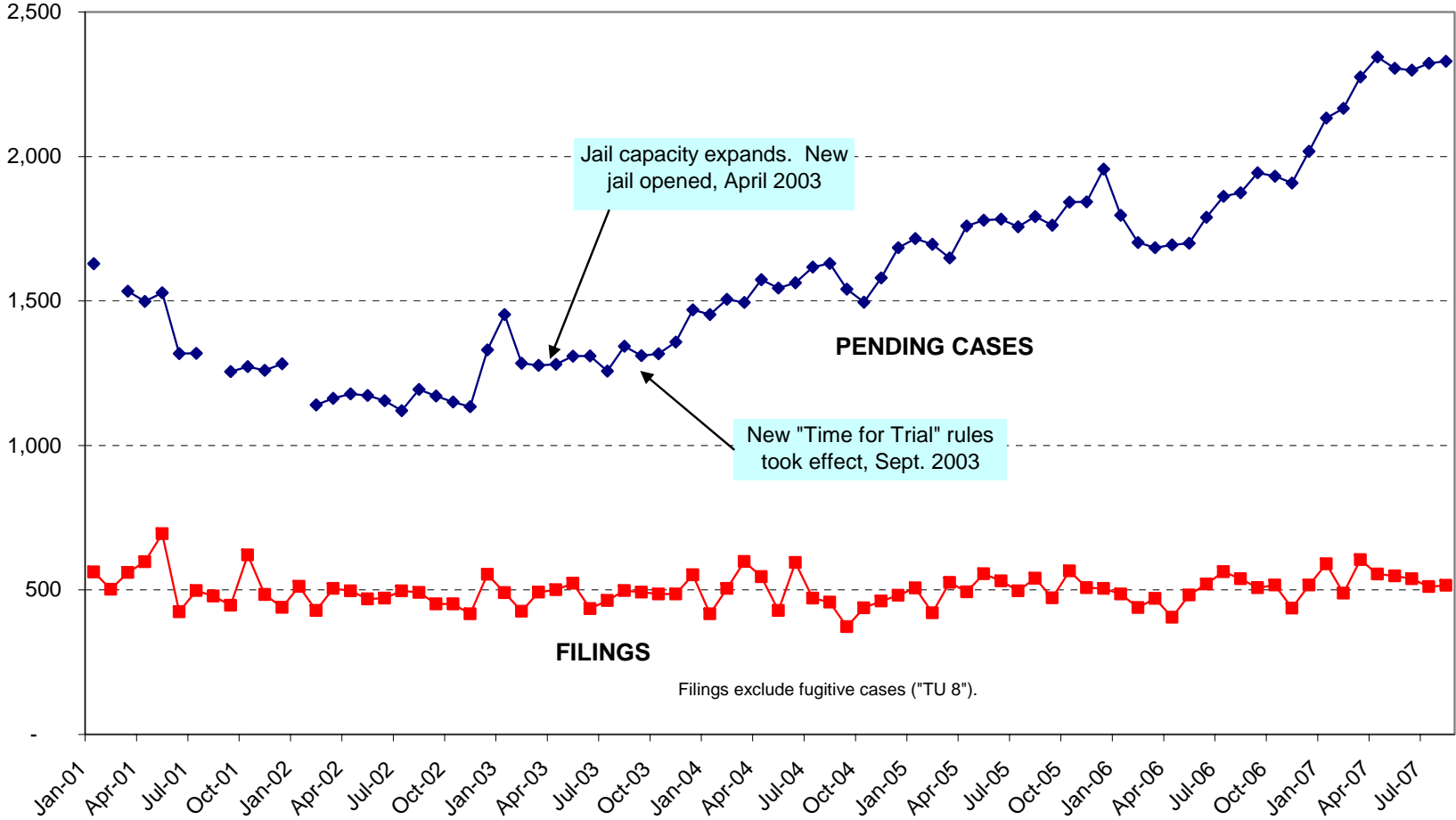
Simply stated, the pending caseload has increased significantly without any apparent increase in case filings. The cases are not being resolved at the same rate as they are being filed or in as timely a manner as they were in the 2001-2002 period.

³ Based on analysis by staff to the Pierce County Performance Audit Committee.

⁴ Proceeding data is from LINX, Pierce County's criminal case management system.

⁵ Hearings where the proceeding outcome is "cancelled", "continued", or "not held".

Chart 1
Pierce County Superior Court
Criminal Filings and Pending Cases since 2001



Pending cases exclude bench warrant, Western State evaluation, Drug Court, criminal RALJ appeals, and fugitive ("TU 8") cases.

B. Objectives

In response to these trends, Pierce County requested that JMI reexamine felony case processing practices and make recommendations as to what could be done to address the continued growth in the pending caseload. The goal of the work is to identify impediments to the prompt resolution of felony cases that are attributable to practices, policies, or organizational structures and recommend changes that can reduce the pending caseload. Specifically, the objectives of the project are to:

1. Examine the extent and impact of the implementation of the 2002 felony case protocols and related policies.
2. Examine implementation of the other recommendations in the 2001 and 2002 JMI reports if relevant to current performance.
3. Review the current practices, policies, and organizational structures of the Superior Court and the criminal justice agencies related to felony case processing and case management.
4. Identify impediments to the prompt resolution of felony cases that are attributable to current policies, practices, or organizational structures.
5. Review the Superior Court's utilization and reporting of performance measures, reconcile SCOMIS⁶ to LINX⁷ data, and recommend which performance measures should be tracked and reported on a regular basis.
6. Address other relevant matters based on input from Superior Court, criminal justice community, and Performance Audit staff.
7. Recommend changes to practices, policies, and organizational structures.

A description of the methodology used to gather information to assess the nature and source of problems and prepare recommendations is provided in Appendix A.

C. Superior Court Assignments and the Existing Felony Caseflow Process

Some readers may be unfamiliar with the organization of the Superior Court or the operation of the felony case processing system in Pierce County. This section gives a brief summary of the Superior Court's judicial assignment system and the felony caseflow process to provide a context for the discussion and recommendations that follow. A more comprehensive description can be found in the JMI 2001 Report.

1. Superior Court Assignments

The Superior Court hears all felony criminal, juvenile, family, probate, and mental health matters arising in Pierce County. The Superior Court has concurrent civil jurisdiction with the District and Municipal Courts for civil cases involving less than \$50,000 and exclusive jurisdiction for civil cases involving more than \$50,000.

⁶ SCOMIS is the Washington state case management and management information system supported by the Administrative Office of the Courts.

⁷ LINX is Pierce County's case management and management information system.

The Superior Court has 22 judges and 7 commissioners. The judges have chosen to distribute the cases using the following judicial assignment pattern. The assignments are agreed to a year in advance in order to allow coherent scheduling of cases, particularly civil cases.

- ◆ One judge is elected by the judges to be Presiding Judge (PJ) for a two-year term. In addition to administrative duties, the PJ hears criminal trials.
- ◆ One judge is designated as the Criminal Division Presiding Judge, or CDPJ. This assignment is for one year. The CDPJ calendar moves to the courtroom of the judge taking the assignment. The CDPJ hears the felony criminal trial calendar and proceedings associated with trial dates, in particular, continuances.
- ◆ Two judges are assigned to sit in the criminal division courts (referred to as the CD courts). The function of the CD courts is to hear most of the pre-trial proceedings in felony criminal cases. Assignments of judges to the CD courts rotate each month, a relatively short term. The locations of these two courts are fixed on the fifth floor because of the facility needs for support staff and in-custody defendants.
- ◆ Thirteen judges are assigned to hear civil and criminal trials. Each judge is assigned to a panel that hears either civil or felony criminal cases. The panels can be one to three months in length, but are generally two or three months. In any given month, six or seven of these judges are assigned to the felony criminal panel. These judges hear felony criminal trials assigned by the CDPJ.
- ◆ One judge is assigned to Drug Court for one year and hears all matters associated with defendants in Drug Court.
- ◆ Two judges are assigned to Juvenile Court and sit at Remann Hall. The assignments are for one year and they hear all matters in juvenile cases except the very long hearings, which are heard at the main courthouse.
- ◆ Two judges are assigned to Family Court. The assignments are for one year and they hear matters associated with dissolution of marriage, child custody and visitation, and child support. They are assisted by the commissioners.

2. Basic Felony Caseflow Process

The basic steps in the filing and resolution of an adult felony criminal case are as follows.

A case begins when a person is accused of committing a felony. Based on information provided by law enforcement or others and information obtained about the accused's criminal history, if any, the Prosecuting Attorney decides whether to file charges and what crimes the defendant will be charged with having committed. The prosecutor will prepare an "information" stating the crimes charged, which is filed with the Superior Court.

In many cases, the person is arrested by law enforcement and brought to the jail for booking. If the accused has not been arrested, the Prosecuting Attorney can issue a summons for arraignment or seek an arrest warrant. If arrested, the person is brought to the jail, booked, and, generally, held for court. If the person is not arrested, but appears in

response to a summons, they may be administratively booked, but not necessarily held in custody.

If the defendant is arrested, he or she usually first appears in Superior Court in the afternoon of the next court day after being booked into jail. Those not arrested, or who have been released, first appear on the summons date given to them. At the first appearance, also called an arraignment, a number of actions occur. The defendant is informed of the charges filed against them. A lawyer is assigned to represent the defendant if he or she cannot afford one. The defendant then enters a plea to the charges, almost always a “not guilty” plea. If the defendant is in custody, the judge makes a determination whether the defendant will be released pending resolution of the case on his/her own personal recognizance, known as PR. If not released on PR, the judge sets a bail amount.

Finally, dates for a pretrial conference (PTC) and a trial date are set at the arraignment. The pretrial date is approximately 10-15 days later, with the day of the week selected based on the trial unit to which the case will be assigned in the Prosecuting Attorney’s office. Trial dates are set mechanically by the court 35-45 days from the arraignment.

Prior to the pretrial conference, the attorneys are to gather and share information about the defendant and the case, referred to as discovery. At the pretrial conference, the attorneys should discuss possible resolution of the case without a trial. If the defendant chooses to plead guilty to some or all charges, a plea date is set for entry of the guilty plea and sentencing.

If there is no guilty plea, an omnibus hearing may be scheduled. One objective of the omnibus hearing is to review the status of the case and provide for orderly preparation for trial. Further settlement discussions may occur at the omnibus hearing.

If there are legal issues, such as whether evidence is admissible, a motion hearing will be set to hear the legal issues.

If the case has not been resolved, the next scheduled event is the trial date.

Many circumstances can prevent the trial from starting on the date originally set. If, before the trial date, the attorneys become aware of a reason the trial cannot start on the date scheduled, they can make a motion to continue the trial to a new date. If one of the attorneys is already in trial on another case on the scheduled trial date, the case will be continued. If, on the day of trial, there are more cases set for trial than there are criminal panel judges who can begin a trial, the cases not able to start trial are continued to a new trial date. Generally, when a new trial date is set, a status conference or trial readiness conference is also set.

Additional hearings and trial dates are scheduled until the case is resolved. The case is resolved either when the defendant pleads guilty, the case is dismissed, or the case is sent to a judge and a trial is held.

It is important to understand the common resolution patterns for felony cases. Very few cases start trial. In calendar 2006, according to statistics reported to the state,⁸ only about 5% of felony cases in Pierce County proceeded to trial. 79% of the cases were resolved by a guilty plea. Another 16% were dismissed. Dismissals include cases where the defendant has successfully completed a program (for example, Drug Court) or is referred to a diversion program (such as El Cid), as well as cases where the prosecution declines to pursue the case.

Since most cases are resolved without a trial, it is important to focus on how to structure and manage a caseload process in a manner that will cause non-trial resolutions (guilty pleas or dismissals) to occur at an early stage rather than after multiple appearances. If a case is not pled or dismissed, it must be sent to a trial department to begin trial as soon as both sides are ready. If the case is not resolved sooner, it will be resolved once it is sent out for trial, either by a non-trial disposition in the trial department or with a trial. Thus, how old the case is when it is resolved ultimately is determined by when it can be assigned to a judge for trial. Earlier resolution will both reduce the size of the pending caseload and the age of pending cases.

D. Organization of the Report

The report is organized in four parts. The first part looks at changes that have taken place since the 2002 report and their possible impact on the pending caseload. The second part notes aspects of case processing and resources that have not changed, but which continue to impose constraints on possible new policies and procedures. The third part examines the current procedures and practices to identify inefficiencies and unnecessary activities that might contribute to a backlog of pending cases. Finally, the fourth part makes recommendations intended to reduce the size of the pending felony caseload.

The analysis provided in the report focuses on the following set of questions about the impact of changes that have occurred since 2002 and current practices, policies, and organizational structures on the size of the pending caseload.

- ◆ Is there more work, notwithstanding no growth in case filings? Are there more cases among the new filings that take more attorney and judicial time to prepare and resolve?
- ◆ Has the work become more complicated? Is it harder to do the work in the same time frame? The added work could be due to changes in the law, substantive or procedural, that impact how long it takes to prepare and resolve cases.
- ◆ Are there adequate resources to do the work? Have there been changes in resources (personnel or facilities) that make it more difficult to get the work done efficiently?
- ◆ Are there aspects of the organizational structure, policies, or practices in the way cases are handled, the caseload management practices, which impact the size of the pending caseload? Are there more effective ways to organize and get the work done?

⁸ WA AOC Superior Court 2006 Annual Caseload Report, pages 45, 46, and 47.

II. CHANGES IN WORKLOAD, LAWS, AND RESOURCES

A. Changes in the Composition of Felony Filings

The number of pending criminal cases has grown from a low of 1,120 cases at the end of July 2002 to 2,330 cases at the end of August 2007. All other factors being equal, the pending caseload will grow if a greater proportion of the filings are more complex cases that take more resources and time to prepare and resolve. The question addressed in this section is whether changes in the mix of cases have made a significant contribution to the doubling of the pending caseload.

During the interviews with counsel, several case types were noted as requiring disproportionate resources—homicides, sex crime cases, meth lab cases, and identity theft cases. A review of the characteristics and filings for these case types suggests certain aspects of the case mix have changed in the last five years. For some of these case types there have been more new cases, increasing the workload. But for other case types the number of new cases has fallen, reducing the workload. Although there have been changes in the case mix, there is not sufficient reliable quantitative information from which to assess the extent to which changes in the case mix can account for any significant portion of the growth in pending cases.

1. Homicides

Homicide cases generally take longer to prepare and try than most other case types. Because the potential penalties are more severe, prosecutors and defense counsel spend more time on pre-trial investigation and trial preparation efforts. In addition, the trial rate in homicide cases is generally much higher than in other types of cases because of the severity of the potential sentence. Finally, homicide trials generally take much longer to try, often a month or more. Because of their disproportionate use of resources, the change in homicide filings over the last decade is examined. This report also reviews the workload impact of the “*Andress* cases” returned for re-hearing.

The number of new homicide cases has fluctuated over the last several years. Table 1 indicates the number of new homicide filings each year as reported to the state.⁹ As can be seen in Table 1, the number of new filings was at its lowest in 2003 and 2004. During these years, the number of pending criminal cases was growing steadily (see Chart 1). The steady increase in the pending caseload cannot be attributed to a growth in new homicide filings.

There was a significant surge of homicide filings in 2006. Since most homicide cases are often over a year old when tried,¹⁰ the impact of these filings will be felt in 2007 and 2008. This surge cannot explain the growth in backlog prior to 2007.

⁹ At the state level, homicide cases include cases where the primary charge involves murder, manslaughter, excusable homicide, or justifiable homicide.

¹⁰ The median age of pending murder/manslaughter (Trial Unit 6) cases was 297 days as of July 1, 2007, and the average age was 315 days.

**Table 1
Homicide Filings**

Year	Number of New Homicide Filings
2000	51
2001	53
2002	42
2003	34
2004	38
2005	52
2006	80
Jan-Jun 2007	23

Source: SCOMIS data.

In 2002, the Washington Supreme Court held in the *Andress* case that a felony murder conviction could not be predicated on felony assault.¹¹ One impact of the decision was that all such convictions were vacated and the cases returned to the trial courts for resolution. In Pierce County, 38 cases were remanded as a result of the *Andress* decision.¹² This number almost equals the number of new homicides filed in a year. Since these cases had already been counted as filings when originally filed, they were not counted as new filings, but they were added to the pending caseload count because they were once again unresolved.

The workload impact of *Andress* cases affected the Court and agencies very differently. The prosecutor and defense counsel were required to re-investigate the cases, locate and contact witnesses, and prepare the case for trial as they would any other case, a significant impact. There was also a significant impact on the jail.¹³ The impact on the Court's workload depended on how many of the *Andress* cases went to trial. As of mid-summer 2007, 32 of the 38 cases had been resolved. A new trial was required in only three of these cases.

The *Andress* cases unexpectedly added to the workload and pending caseload. However, the impact on the Superior Court was relatively small. Whatever impact the *Andress* cases had on the pending caseload, it has mostly passed and yet the pending caseload continues to grow.

¹¹ *In re Personal Restraint of Andress*, 147 Wn.2d 602, 56 P.3d 981 (2002).

¹² Information on the number and status of *Andress* cases was provided by the prosecutor's office.

¹³ While the *Andress* impact on the pending caseload may not have been large, the impact on the jail population was staggering. The 38 previously-sentenced prisoners were returned from state prison to the Pierce County jail as result of the *Andress* decision. The jail occupancy figures are available from LINX. The jail bed days used by defendants charged with "Murder 2" tripled between 2002 and 2006.

2. Sex Crime Cases

Cases involving sex crimes¹⁴ also involve more investigation, preparation, and trial time than many other types of cases. There are generally more forensic tests and expert witnesses. The potential punishments are more severe, and have been significantly enhanced in recent years. In addition, the Legislature has added requirements for registration by sex offenders, including new crimes for failure to register.¹⁵ An increase in the number and proportion of sex crimes cases may have contributed to the growth in the pending caseload.

Unfortunately, information is not readily available about sex crime cases that can be used to make a definitive assessment of their impact. The definition of sex crimes for reporting new filings to the state is different from the set of cases handled by the prosecutor's unit that handles this category of cases. The available information also does not distinguish filings for new categories of crimes, such as failure to register, which require different resource levels from the lawyers and from the court, than other sex crimes. Therefore, it is not possible at this time to identify what part of the growth in the pending caseload can be attributed to sex crime cases.

3. Methamphetamine Lab Cases

Cases involving the manufacturing of methamphetamine require more resources and time to prepare and try than many other types of cases for a variety of reasons. They generally involve multiple defendants, large numbers of exhibits and forensic tests, and several expert witnesses. They more commonly have discovery motions and suppression hearings. These cases reportedly also take longer to resolve because the defendants often require a detoxification period after arrest before they can effectively assist their counsel in preparing the case. All of these factors mean these cases use more resources and take longer to resolve, therefore remaining a part of the pending caseload for a longer period.

Although Pierce County experienced comparatively high numbers of meth lab cases earlier in the decade, the number has declined significantly. The sense of counsel is that meth is now being produced out-of-state or out of the country and there is relatively little local production of the type previously seen. The filings have dropped so much that the Department of Assigned Counsel (DAC) disbanded its meth lab trial unit. While meth lab cases may have been a burden on the caseload several years ago, it no longer is seen as much of a problem. If these cases contributed to the growth in the backlog, the decline of filings should have reduced the pending caseload, not increased it.

¹⁴ "Sex Crimes" are defined at the state level as cases where the primary charge involves sexual exploitation of a minor, incest, rape, statutory rape, or indecent liberties. Washington State Courts Superior Court 2006 Annual Caseload Report, p. 9.

¹⁵ See RCW § 9A.44.130.

4. Identity Theft Cases

Identity theft is another category of crimes that is both relatively new and reportedly more time consuming.¹⁶ These cases are considered a crime against a person, as opposed to a property crime, increasing the seriousness and potential punishment. The cases usually involve large amounts of financial records, requiring extensive investigation and discovery and greater use of experts. Consequently, these cases require more resources and time to prosecute and defend and will, therefore, generally be pending longer than other cases in the caseload.

Since identity theft cases do take longer, they may contribute to the size and age of the pending caseload. Unfortunately, it is currently not possible to quantify the impact of these cases. This category of crimes is not separately counted in SCOMIS statistics, so it is not possible to determine the growth in filings or their impact on the pending caseload from SCOMIS. Information obtained from LINX reveals a significant increase in the number of charges for ID theft beginning in 2005. However, information about the number of cases, filed or pending, is not readily available. The number of pending cases and the median age of pending cases in the prosecutor's trial unit that handles these types of cases does not show an increase comparable to the increase in charges filed. Apparently, the impact is obscured by the other categories of cases included in the trial unit's caseload. It is, therefore, not possible to assess how much identity theft cases have contributed to the growth in the overall pending caseload.

5. Summary

While there may have been some new types of cases that required more resources and time to resolve, their contribution to the growth in the pending caseload does not appear to be significant or cannot be assessed at this time. None of the changes in the case mix, by themselves, would appear to account for the large, and continuous, growth in the pending caseload. Instead, the primary problem appears to be that the less serious, less complicated cases are just not being resolved in a very timely manner.

B. Changes in Criminal Procedure Laws

Another set of factors that can contribute to an increase in the pending caseload is changes in the criminal law that increase the workload or time required to investigate, prepare, or resolve cases. The changes may be in the substantive law, for example, new crimes or increased punishments noted above, or changes in the procedural law that governs the processing of cases. During the past decade, two noteworthy changes in criminal procedure law occurred that affect the processing of felony cases. One contributed to longer resolution times, and the other reduced the workload.

¹⁶ See RCW chapter 9.35, effective in January 2000.

1. Change in the Speedy Trial Rule

The most significant change is the revision of the state “Time for Trial Rule” governing the pace of felony cases effective September 1, 2003.¹⁷ The change relaxes the requirement that the Superior Court dismiss cases for failure to comply with the speedy trial deadlines.¹⁸ The general consensus of many judges and lawyers is that the rule change weakens the authority of the Superior Court to compel cases to resolve. The result is a greater willingness to request and grant trial date continuances, thus increasing the age of cases. The change may be more attitudinal than legal, since few cases were dismissed under the prior rule, but the perception of an impact is very real.

It is difficult to quantitatively assess the impact of the change, but it must be credited with at least some of the increase in the number of less serious cases pending for longer time periods. The growth in pending caseload appears to have accelerated when the revised rule took effect. (See Chart 1, page 9 above). The lack of pressure to force a case to trial allows these cases to remain unresolved for a longer period. The lack of firm trial dates, discussed below, exacerbates the effect.

2. Post Conviction Proceedings

A change that reduced the workload of judges and attorneys is the change to administrative handling of most post-conviction violations.¹⁹ The change applies to cases filed after July 1, 2000. It has dramatically reduced the number of post-convictions proceedings in the Superior Court.

For example, in 2001, the Friday morning probation violation calendar held in one of the CD courts was becoming a burgeoning problem.²⁰ In 2002, there were 5,231 scheduled “show cause–revocation” proceedings associated with post-conviction violation activity. In 2006, only 169 such proceedings were scheduled. The proceedings and associated workload have basically been eliminated, freeing up judge and attorney time for work on other cases.

Summary

These two changes in the procedural law governing felony criminal cases continue to impact the pending caseload. The change in post-sentence proceedings reduces the workload. The change in the Time to Trial Rule weakens the authority of the court to move cases. The later change emphasizes the need for the Superior Court to establish and maintain firm trial dates to resolve cases in a more timely manner.

¹⁷ WA Superior Court Rules, Criminal Rules, Rule CrR 3.3. The Time for Trial Final Report is at http://www.courts.wa.gov/programs_orgs/pos_tft/index.cfm?fa=pos_tft.reportDisplay&fileName=Consensus

¹⁸ WA Superior Court Rules, Criminal Rules, Rule CrR 3.3, subsections (a)(4), (b)(5), (g), and (h).

¹⁹ RCW § 9.94A.737, subsections (6) and (7), as amended by Washington 2007 statutes, chap. 483, sec. 305 (Senate Bill 6157).

²⁰ See JMI 2001 report, page 29.

C. Changes in the Number of Judicial Positions

Two judicial positions have been added to the Superior Court since 2000. One was added in March of 2001 and one in December of 2005. At neither point did the Superior Court explicitly increase the number of judges available to hear felony trials.

In September 2003, the Superior Court created a Family Court division. A second Family Court judge was added to the division at the beginning of 2007. Previously, family law cases were assigned to all judges except those hearing juvenile or drug court cases. When the Family Court was created, certain family law cases were consolidated in the Family Court division. Judges were still assigned family law cases and heard trials in those cases that were not considered “high conflict.” However, since family law cases were heard when a judge was sitting in a civil panel, the impact of creating the Family Court division was to marginally increase judge time on civil panels.

There is some benefit, however, to the felony caseload from the added judges since Family Court judges do try felony cases, time permitting. During the last three years, the Family Court judges heard several felony trials. So far in 2007, the two Family Court judges have conducted felony trials for a total of 23 trial days. Unfortunately, there is no historical data about the length of trials by case type or the number of trial days by judge from which to assess the magnitude of this assistance provided to the felony trial calendar.

D. Summary

A number of factors were examined that could either have contributed to the growth in the pending caseload, slowed the growth, or stopped it. While some case types place greater demands on the judicial system, there does not appear to have been a growth of these filings that would account for the growth in the pending caseload. The change in the speedy trial rule probably has slowed the pace of disposition, but need not have, if the caseload was better managed and trial dates were more meaningful. The shift in post-conviction proceedings to the state Department of Corrections reduced the workload, but the reduction did not have a noticeable effect the pending caseload. Finally, the addition of judges to the Superior Court, while not directly assigned to felony cases, has added judicial resources. Again, there does not appear to have been an appreciable impact on the pending caseload.

Thus, factors other than caseload changes appear to be responsible for the steady growth in the pending caseload.

III. OTHER LEGAL AND RESOURCE CONSTRAINTS

It is important to note that certain laws and limitations on resources continue to impose constraints on felony case management, even though they have not changed since 2002. These factors must be taken into consideration when recommending solutions to the growing backlog problem.

A. Judicial Non-involvement in Plea Negotiations

In many states, but not in Washington, judges can be actively involved in plea negotiations, and often do so to encourage earlier resolution of cases. Washington statutes preclude judicial involvement in plea negotiations.²¹ The impact of this restriction is that it is incumbent on the attorneys to negotiate a plea, if there will be one, without judicial involvement. The obligation is on the attorneys to conduct negotiations in a reasonable and timely manner.

The primary pressures the court can exert are to: 1) monitor cases to ensure that the attorneys are preparing the cases and discussing non-trial resolution in a timely manner, and 2) assign a case to begin trial if there is no guilty plea or dismissal. Ultimately, the duty of the court is to provide a judge to try the case in a timely manner. As discussed below, the Superior Court has not discharged this duty in an effective manner.

B. Sentencing Guidelines

Changes in sentencing laws have made some defendants more reluctant to plead guilty, particularly soon after being charged and incarcerated. There are two types of relevant changes. First is the adoption of the determinate sentencing law with its ‘standardized’ sentences. The second change is the significant increases in penalties for some crimes, particular serious or violent crimes. Both changes tended to increase the stakes for defendants charged with certain crimes and facing the prospect of a long prison term. Potential long sentences increase the incentive for such defendants to delay going to trial, since there would be “nothing to lose” even if convicted after a trial. A reluctance to plead guilty means these cases get older, and heightens the importance of having judges available to begin trial early in the life of these cases.

The Sentencing Reform Act of 1981²² changes the way sentences are determined in Washington. The purpose of the change is to develop a system for sentencing felon offenders that structured, but does not eliminate, discretionary decisions regarding sentences.²³ The result is a ‘sentencing grid’ that indicates the presumptive sentence range for various combinations of charges, prior criminal history, and other relevant factors. While narrowing the range of the sentence options may result in greater equality of punishment, sometimes defendants are unwilling, at least initially, to plead to charges that

²¹ RCW § 9.94A.421, adopted in 1981 and revised in 1995.

²² Washington laws of 1981, chapter 137, with new sentences effective July 1, 1984 (RCW § 9.94A.905).

²³ RCW § 9.94A.010.

will result in substantial prison terms. Since local jail time will be credited towards whatever sentenced is finally imposed, the fact that a defendant is in custody, and will remain in custody even after the case is resolved, discourages an early plea, if the defendant is ultimately going to plead guilty.²⁴ Again, the case will often not be resolved until it is sent to a court for trial. Until that time, it lingers in the pending caseload.

Significant increases in sentences for certain types of crimes can also result in a greater reluctance to plead. For example, a defendant can face life imprisonment for a first serious sexual assault offense, or have a significant increase in prison time for possession of a gun in a drug offense. As sentences are increased, either for the underlying crime or through enhancements, one unintended consequence may be to lengthen the time a defendant remains in pretrial status. The prospect of a long sentence where the defendant is in custody can thus delay a plea of guilty.

The disinclination to plead early can be countered by sending a case out to trial as soon as counsel can be prepared. Often, sending a case to a trial department precipitates either a guilty plea from the defendant or a dismissal of one or more charges by the prosecutor because of an inability to meet the burden of proof for a charge or enhancement. The key is having open trial departments on the scheduled trial date. If cases are repeatedly continued, even if the defendant is in custody, the result will generally be more cases pending trial, an increase in the age of cases, and an increase in the average length of stay for in-custody defendants.

C. Availability of Trial Counsel

In addition to having judges available to start trials, lawyers must be available to try the cases, both prosecution and defense. The lawyers must also be prepared to resolve the case, having examined the evidence, talked to witnesses, and studied the applicable law. This takes time, often uninterrupted blocks of time. Anything that reduces the amount of time available to attorneys to prepare their cases, or causes the attorneys to be unavailable, will slow down the resolution of cases and contribute to a backlog of pending cases.

One of the critical problems observed and discussed more below is the number of hearings scheduled in each case and the time spent preparing for and attending hearings, many of which do not move the case toward resolution. Having to prepare for and appear at all of these scheduled hearings has reduced the time lawyers have to prepare cases.

D. Hours of Operation and Length of Trial Days

Another constraint on the operations of the felony case management system is the number of hours that staff are available to work in the courthouse. When staff and others are available affects how long the trial day lasts, which in turn affects how fast trials can be completed and when a judge is available to take the next case.

²⁴ Note that there is an incentive to plead for defendants who will not remain in custody after their case is resolved. The tipping point is when the time they have served prior to resolution equals the likely amount of time they will receive as part of their sentence.

For most employees, including public attorneys, the normal work day is 8:30 AM to 4:30 PM. Although employees can get into the courthouse earlier, public access through security does not open as early, and often involves long lines, which affects when jurors and witnesses are available to begin trials or hearings.

The hours of work also affect prisoner transport, as Corrections transport officers are only available for certain hours. Time needed to get defendants ready and transported to court and getting those in court back to the jail. These activities further shorten the length of work day in courtrooms.

All of this – when staff arrive, when jurors, lawyers, and witnesses can get into the courthouse, and when defendant are available – affects the length of a trial day. Starting on time and minimizing interruptions of trials are critical. The length of trial days determines how quickly a trial can be concluded, which, in turn, determines how soon a court can take the next case. The sooner a trial concludes, the sooner the court is available to take the next case. As discussed below, the availability of judges to start trial is one of the most effective tools for managing the caseload and keeping the pending caseload down. This means that everyone, judges in particular, have to be that much more diligent about using the available time effectively.

E. In-Custody Transport and Security Personnel

A large pending caseload both aggravates, and is aggravated by, shortages of in-custody transport officers. A larger pending caseload means more defendants are in-custody. More pending cases mean more scheduled proceedings, requiring more in-custody defendants to be brought to court. Lack of adequate holding facilities in some courtrooms means only a limited number of in-custody defendants can be in the court at any one time. As a result, Corrections officers bring defendants to court in groups (often referred to as “chains”). This disrupts the flow of the calendar and adds duties to Correction, courtroom, and calendaring staff to coordinate which prisoners will be brought in which group.

Transport policies have also changed in response to an attempted escape several years ago. Defendants considered high security risks are only transported to certain courtrooms where there are adequate holding facilities and officers. Moreover, some classes of defendants require more officers, reducing the number of officers available to transport other defendants to courts, delaying the start of proceedings in those courts.

Only a limited number of transport officers are available on any given day. It thus becomes critical for judges to start trials or hearing as soon as in-custody defendants are brought in. It is also important for judges to be responsive at the end of the day when in-custody defendants must be returned to the jail at the end of the officers’ shift.

F. Facilities – Criminal Division (CD) Courts

Current Pierce County facilities seriously impede the conduct of pretrial proceedings and delay the resolution of felony cases. The current CDPJ court (room 214) does not have adequate prisoner holding facilities. In-custody defendants appearing in the CDPJ court are held in the jury deliberation room. Consequently, only a limited number of defendants can be brought to the CDPJ court at one time. Waiting for in-custody defendants to be brought to CDPJ disrupts the flow of the proceedings, delays hearing non-trial dispositions on the day of trial, and delays the assignment of cases to judges to begin trial. Other courts are disrupted when attorneys who have scheduled appearances in these courts must wait in the CDPJ court for their defendant to be brought down.

Even more problematic are the high security defendants scheduled to appear in CDPJ. Their cases must be heard in one of the CD courts because the CDPJ holding facilities are not secure enough. As a result, if a new trial date is approved by the CDPJ, the defendant appears in a CD court to be ordered back. Since the CD courts are on the fifth floor and the CDPJ court is on the second floor, the lawyers must make appearances in two courts for the resetting. This disrupts the smooth flow of calendars in both the CDPJ court and the CD court. It also wastes lawyers' time commuting between courts on different floors.

The construction of new CD courtrooms on the second floor will substantially alleviate these inefficiencies. The design includes more holding space for in-custody defendants and better facilities for attorneys to talk with their in-custody clients. The co-location of all three CD courts on the same floor will also cut down on attorneys having to travel between floors, allowing more calendars to be heard in a timely manner.

The new construction is scheduled for completion in August 2008. In the meantime, the Superior Court must work to minimize the disruption to calendars and the inconvenience to lawyers, in-custody defendants, Corrections, and the public.

IV. CURRENT CASEFLOW PRACTICES, POLICIES, AND ORGANIZATIONAL STRUCTURES

In addition to exploring the possible impact of changes in case mix, the law, and resources on the pending caseload, the current organizational structures, policies, and practices for hearing felony cases are examined to identify inefficiencies and unnecessary activities that might contribute to a backlog of pending cases. The focus is on how cases are managed and whether case management practices are contributing to the growth in the pending caseload.

A. Managing the Felony Caseload

After interviewing lawyers, judges, and court staff and observing court proceedings, it is apparent that no one is taking overall responsibility to see that cases move towards resolution in a just and timely manner. This is reinforced by an analysis of the statistical data and trends for the past six years. While attorneys are attentive to the particular cases assigned to them, they do not, and should not be expected to, make decisions or advocate on behalf of the whole caseload as against one of their clients. At the same time, a delay in one case can delay other cases. Continuing matters to future dates just increases an attorney's caseload and, eventually, reaches a point where the burden of a large caseload can adversely affect the ability of the attorney to adequately represent each of his or her clients.

One of the primary motivations behind the development of the felony proceeding protocols adopted by the Superior Court in 2002 was to establish expectations and responsibility regarding the management of criminal cases.²⁵ The protocols identify what counsel and other agencies should do before a hearing so that the hearing itself can occur as intended with a meaningful outcome. The protocols also identify what should happen at the hearing. The intent of the protocols is to achieve earlier resolutions in cases. However, the protocols are being routinely ignored, by judges and lawyers.

One problem that has developed is a culture of taking care of things when they come up on calendar, rather than preparing in advance for a hearing. For example, rather than arranging to talk to their client before a scheduled hearing, many attorneys wait and talk to their client at the time the hearing is scheduled. The result is that many hearings do not start on time, and very little substantive progress towards resolving the case is made at many hearings.

This bad habit is reinforced when unresolved cases are given new hearing dates. These cases are continued to dates on which other cases are already set. If too many cases are set on a given day, it may not be possible for counsel to be adequately prepared for all of their cases. Cases in which counsel are not prepared must be continued. Cases in which counsel are prepared may be continued because there is just not enough time to complete

²⁵ See the JMI 2002 report, pp. 5-7 and Appendix B. The protocols are available on the Superior Court's Web site at:

<http://www.co.pierce.wa.us/pc/abtus/ourorg/supct/crimlaw.htm#Superior%20Court%20Felony%20Proceeding%20Protocols>.

all the hearings scheduled for a given day. Postponing actions or decisions begins to snowball. When an attorney is in trial, the problem is exacerbated because it is difficult to find time to deal with the other cases in his or her caseload. Everything is postponed until the trial is completed, further snowballing the workload.

1. Need for Superior Court Leadership

The logical entity to exercise case management leadership is the Superior Court. By design, the Superior Court is the neutral in the proceedings. One of the Superior Court's roles is to ensure fairness to all—victims, witnesses, defendants, and the public. Counsel, whether prosecutors or defense counsel, each represent a particular party in a case. It is not appropriate to expect counsel alone to be primarily responsible for the prompt movement of all cases to a just result. The Superior Court's responsibility is explicitly confirmed in the state Time for Trial Rule: "It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime."²⁶ National standards for the management of criminal cases also emphasize the importance of court control over calendars and court responsibility for timely case resolution.²⁷ The Superior Court must monitor the progress of cases and take actions to ensure that cases are resolved in a timely and just manner.

Unfortunately, the Superior Court has so far chosen not to exercise strong leadership regarding the management of felony cases. There are many indicators of the weakness or lack of case management by the Superior Court. The more obvious are cited below. While not all the problems noted reflect the attitude or position of every judge, the pattern is unmistakable. The judges of the Superior Court do not have a collective sense of shared responsibility for the timely resolution of felony criminal calendar. Neither the Superior Court as a whole nor any one judge is exercising leadership or taking responsibility for managing the cases to achieve timely case resolution.

- The Superior Court is regularly referred to as being "continuance friendly." Analysis of hearing outcomes confirms this perception (see below).
- The short terms in the CD courts, changing every month, are not conducive to strong case management or to any sort of accountability for effective case management.
- There is an explicit unwillingness by some judges sitting in the CD courts to follow policies and procedures adopted by the Court, or to follow past practice.
- There are numerous anecdotes of the CD judges not working together as a team—for example, not checking to see if they can help each other before leaving for lunch or at the end of the day. The impression has been created that calendars are operated for the convenience of the judges, not the best interests of the defendants, victims, witnesses, lawyers, or the public.

²⁶ WA Court, Superior Court Rules, Rule CrR 3.3 Time for Trial, section (a) (1) - Responsibility of Court.

²⁷ See, e.g., American Bar Association STANDARDS ON SPEEDY TRIAL AND TIMELY RESOLUTION OF CRIMINAL CASES, Standard 12-4.5.

- The rotation of judges through the CD courts without adequate consideration of whether they have the calendar skills and judicial mindset to manage these high volume calendars effectively.
- The reluctance of some judges to serve as CDPJ, either because of the length of the assignment, a disinterest in the type of work involved, the requirement to regularly say no to attorneys, or potential bad publicity. Conversely, some judges would probably not be effective managers of such a high volume calendar and ought not to be rotated into the position just because it is “their turn.”
- The physical change in location of the CDPJ court every year, as opposed to using one courtroom that works best pending construction of the new CD courtrooms. Again, the movement of the CDPJ court appears to be done for the convenience of the judges rather than the interests of the defendants, lawyers, Corrections, witnesses, victims, and the public.
- The lack of adequate coordination among judges regarding attendance at conferences or being on recess (discussed in more detail below). Judges do not adequately coordinate their schedules and availability with the cases set for trial when they are off. At a minimum, the Superior Court needs to reduce calendars to reflect the fewer number of judges who will be available at certain times.
- The reluctance of judges to maximize their availability to start criminal trials during criminal panel months. Not assigning cases to a judge at the end of a panel or before absences reduces the judge-days available for criminal trials.
- The clear deference to civil cases shown by judges. Notwithstanding the impact on victims and witnesses in criminal cases and the potential on-going loss of liberty to in-custody defendants not yet found guilty, some judges reportedly will decline to take short criminal cases from the CDPJ if it would delay the start of a civil trial on that judge’s individual calendar, even if the delay is only a day or two.
- The setting of too many cases for hearing or trial on any given day in light of the likely availability of judges and lawyers. Also, the use of mechanical limits for lawyers re-setting hearing dates, rather than exercising judicial discretion in selecting dates, is an abdication of responsibility. The setting of dates is one method by which the court can monitor and manage the progress of cases, according to the specific needs of each case.
- The failure of the judges to effectively use Superior Court Administration staff who oversee calendaring (the “DCM” staff). The Superior Court does not take advantage of their ability to monitor cases and setting levels or the assistance they can provide to the judges regarding case assignment and calendaring decisions.
- A perception that the Superior Court frequently makes policy and operational changes unilaterally, without real consultation or collaboration with other justice system agencies to address problems. A good example is “the Blitz” to resolve old cases conducted in early 2005 (discussed below).
- The relatively passive and slow response to the growth of the pending caseload and failure of Superior Court to meet state case processing standards for many years.

2. Attorney Responsibilities

Although the primary responsibility for moving cases belongs with the Superior Court, many aspects of case management are the primary responsibility of the attorneys. These are not always handled efficiently either. Again, while these observations do not apply to all attorneys, there are definite patterns.

- Not starting on time and not being prepared to start on time.
- The prosecution not always providing defense counsel with follow-up discovery in a timely manner. While the initial packet of discovery is generally available at the first appearance, supplemental police reports, forensic results, and similar discovery are not collected and forwarded as promptly as they could be. Concern was also expressed that discovery is produced more slowly in the more complicated or serious cases. There is no indication this is intentional, but it is delaying the preparation of cases.
- Defense counsel waiting until the day of the hearing to talk to in-custody clients, because clients will be brought to court for the hearing. Counsel need to visit their in-custody clients at the jail or talk to them on the phone or by video link. Many defense attorneys regularly do this; more need to.
- Defense counsel setting plea dates ‘defensively,’ without getting the paperwork completed prior to the hearing, and sometimes even in anticipation of a plea.
- A general attitude that there are “just not enough people throughout the system,” accompanied by opposition when a judge attempts to enforce policies and expects attorneys to be prepared and make efficient use of hearings. It is unlikely that just adding more resources would help resolve cases earlier when the processes are so inefficient.

The collective impact of these “not my problem” patterns of practice is that cases are not resolved as soon as they might be. Matters are rolled forward, to be completed some time in the future. The calendars begin to grow, reducing the ability to be prepared on every case, thus increasing the likelihood of further continuances. When cases are not resolved, they accumulate and the backlog of pending cases grows. The Superior Court and counsel must break these habits and establish new habits based on expectation that work will be done as soon as possible and cases will be resolved in a timely manner.

This is not about working faster; it is about working more effectively. The “faster” will flow from the better focus and prompt attention to matters.

B. Case Management Practices

Moving from the management philosophy and style to the specifics, the following discussion examines current case management practices. The objective is to assess whether the processes and proceedings are operating effectively and, indeed, whether they are really needed at all.

The discussion begins with a topic that pervades all proceedings – the paperwork. Then the topics are arranged chronologically following the life of a typical case.

1. The Paperwork

The Superior Court currently uses several multi-part forms to capture the court's decisions during hearings and to document other activities. The most significant documents are the plea of guilty form, judgment and sentence form (J&S), and supporting documents. The completion of the paperwork during a hearing takes significant time, particularly in the CD courts, because of the high volume of cases. More problematic is the time consumed splitting apart multi-part forms. The activity disrupts the flow of the proceedings and misuses attorney time. Only half jokingly, several people stated that the measure of a good attorney is the ability to separate the multi-part forms quickly and without tearing any pages. When the complaint is that there is not enough time to hear all of the cases calendared, it is frustrating to watch court time consumed in separating and collating the pages of the multi-part forms.

The Clerk of Superior Court has explored use of computer-generated orders and has the ability to scan documents into electronic files that can be made available through LINX or sent to anyone who needs the information. There is still a need to produce a signed order to be served on the defendant at the end of the hearing, but a two-part form would accomplish this purpose and not waste so much time “playing with the paper.”

2. Charging and Plea Offers

One of the first steps to resolving a felony case is the filing of an information that accurately reflects what the prosecutor can prove and the criminal history of the defendant relevant to sentencing. One of the final steps is a plea offer that appropriately reflects the available proof and criminal history. Although no pervasive problems are reported, there could be improvement on both points.

The prosecutor does not always have complete criminal history of the defendant at the time of initial charging. What is most commonly missing are details about the disposition of non-Pierce County or non-Washington state arrests. The delay in getting this information delays the resolution of the case because the prosecutor is reluctant to agree to a guilty plea in a case without knowing the complete criminal history and the defendant may challenge priors if it might increase the potential sentence. Obtaining complete criminal history information early is important to resolving cases in a more timely manner. The prosecutor's office must allocate more resources or improve the process for obtaining complete criminal histories earlier in the life of cases.

The second issue has to do with the consistency of plea offers across deputies within trial units in the prosecutor's office. Inconsistency can slow case resolutions when defendants think someone else is "getting a better deal" for the same activity or perceives the offer to be unrealistic or unreasonable. One example of inconsistency is the addition of charges for a defendant's failure to appear and revising the plea offer to reflect the added charge. It is difficult to verify inconsistency claims without a very detailed examination of cases, which was not undertaken. However, the number of comments is too frequent to completely discount this as a factor in why some cases get older before being resolved.

3. Pre-assignments of Cases to Judges

The Superior Court has a practice of assigning complex cases – homicides, for example – to judges sitting on the criminal or civil panels. This option implicitly recognizes the judicial responsibility to manage the progress of the more complex cases. However, there are two aspects of pre-assigning cases that can disrupt the rest of the caseload-setting of trial dates and availability of judges to take criminal trials.

The judge to whom a case is pre-assigned sets all dates in the case. If the judge does not adequately consult with the CDPJ or the court's calendaring staff prior to setting dates, it can have a negative impact on criminal trial department availability. Prior consultation will allow adjustments of calendar settings to reflect the judge's unavailability to hear other criminal cases while trying the pre-assigned case or the reassignment of more judges to hear criminal cases.

As an example, one judge has five pre-assigned homicide cases set for jury trial in the second half of 2007. Effectively, this judge is unavailable to take 'regular' criminal cases from CDPJ. Since the judge is known to be unavailable, the court should either increase the number of judges available to hear 'regular' criminal cases, or proportionately reduce the number of jury trial settings during this period. Another example noted was a time when four pre-assigned long homicides were in trial at the same time, effectively reducing the available criminal trial judges by half.

The negative impact of pre-assigned cases on the calendar can be reduced if the setting of trial dates in pre-assigned cases is done in consultation with court calendar support staff and there is an adjustment of setting levels to match the available judges to hear criminal cases.

4. Scheduling of Proceedings Generally

One characteristic of current case management practices is a growing plethora of scheduled hearings. Table 2 provides information about the number of hearings scheduled and outcomes. The total of 83,705 hearings scheduled in 2006 was 13% higher than the number in 2002, although there had been no corresponding increase in the number of filings. The number of hearings scheduled through June 2007 is on pace to be 26% higher than in 2002. This is attributable to three factors. Most significant is the disproportionate growth in hearings where nothing happens. A second factor is the practice of setting

additional hearings when a trial date is continued. Finally, there is the habit that has developed of continuing matters rather than hearing them.

The number of hearings at which nothing happens has increased dramatically. The last column of Table 2 shows the percentage of scheduled hearings without a substantive outcome—the hearing was either cancelled, continued, or not held. The percentage has risen steadily from 36% in 2002 to 49% for the first half of 2007. This means nearly half of the scheduled proceedings do not contribute anything to the resolution of cases. If the hearing is not cancelled or continued prior to the hearing date, both attorneys and the defendant are required to appear before a judge and drop or continue the hearing. The clerk must retrieve the case file, prepare paperwork which documents that nothing happened and what the new date is, and return the file. Thus, considerable time and resources are wasted on hearings that are continued or dropped.

The crowded calendars and rigid setting level policies trigger requests for overrides of setting levels, spawning a new set of policies regarding overrides. Whatever rationality there was behind the setting levels and policies, the volume of cases and rampant continuances have rendered them meaningless. The Superior Court must regain control of settings and return to more rational policies and practices.

Table 2
Hearings Scheduled and Outcomes

Year	Total Number of Hearings Scheduled	Number of Hearings Cancelled, Continued, or Not Held*	Percent of Scheduled Hearings Cancelled, Continued or Not Held
2002	74,116	26,785	36%
2003	74,199	30,526	41%
2004	76,311	33,456	44%
2005	81,780	37,272	46%
2006	83,705	39,688	47%
Jan-Jun 2007	46,705	22,704	49%

Source: LINX

* Proceeding Outcome was CANC, CONT, or NH.

5. Operation of Criminal Division (CD) Courts

There are several problems with the operation of the CD courts. Judges sitting in the CD courts do not consistently follow policies adopted by the Superior Court or past practices regarding start times, the order for calling the calendar, and the grounds for granting a continuance. This creates unpredictability for the lawyers and defendants, slows down the calendars, and makes the CD courts less efficient.

As noted, the CD judges change every month. Both judges and attorneys report that after a change of judge it is often a week before the CD court runs smoothly. In addition, the level of continuances reportedly rises noticeably during the last week. Together, this represents half of the typical time a judge sits in a CD court.

The lack of consistency and predictability and the uneven level of service diminish the effectiveness of the CD courts.

6. First Appearance and Selection of First Trial Date

The current practice is that dates for the basic future events in the case are set at the first appearance.²⁸ The events scheduled include a pretrial conference and a trial date. By state court rule, the trial date is supposed to be set within 15 days of the actual arraignment in Superior Court or at the omnibus hearing.²⁹ The “Time for Trial” rule says that a defendant who is in custody should have a trial date set that is within 60 days of arraignment³⁰ or within 90 days if the defendant is out of custody.³¹ In response to these time limits, the first trial date is set by the court approximately 35-45 days after arraignment.

The first trial date is selected regardless of the extent of further investigation or discovery needed or the trial schedules of the attorneys. Often defense counsel has not even had time to look at the discovery supplied at arraignment or an opportunity to talk substantively with their client. The first trial date set is essentially arbitrary. It is the first signal that trial dates need not be taken seriously.

7. Early Disposition Docket

In response to a significant number of filings that are less serious and relatively uncomplicated (class B and C felonies), an “early disposition” docket was established several years ago to resolve these cases earlier in the process. A small group of attorneys in the prosecutor and DAC offices staff this program. They are experienced attorneys who can quickly assess a case and know what an appropriate resolution is. They examine cases shortly after arraignment and meet in an attempt to resolve the cases at the pretrial conference. These cases are not assigned to a trial deputy unless they are not resolved in the program, as one of the other objectives of the program is to reduce the caseloads of trial attorneys, allowing them to focus on those cases more likely to go to trial.

The early disposition program reportedly enjoys considerable success. It is estimated that 30-50% of the cases are resolved at the pretrial conference. However, if the defendant does not plead, the case becomes just another case in the pending caseload because there is no pressure to resolve the case. When many cases are pending and too many cases are set for trial each day, a less serious case is not perceived as having priority

²⁸ A basic summary of the life of a case is provided in section I.C.2 above.

²⁹ WA Superior Court Rules, Cr Rule 3.3(d)(1).

³⁰ WA Superior Court Rules, Cr Rule 3.3(b)(1)(i) and 3.3(c)(1).

³¹ WA Superior Court Rules, Cr Rule 3.3(b)(2)(i) and 3.3(c)(1).

to be sent out for trial ahead of other, more serious, or older cases. Often the case would be resolved without trial once it is sent to a judge for trial, reinforcing the importance of maximizing the number of open trial departments available to take cases.

8. Pretrial Conference (PTC)

One purpose of the pretrial conference is to provide an early opportunity to discuss a possible plea. It is also a time to set dates for other proceedings as needed, including reconsidering the trial date set at the first appearance. In practice, however, it is often difficult to have a meaningful discussion about a possible plea. Defense counsel allege they often get a set of supplemental discovery materials right before or at the scheduled pretrial conference, allowing them no time to review and investigate the new information or talk about it with their client. Probably because of their experiences with these hearings, defense counsel commonly have not talked to their client prior to the hearing, instead waiting until the day and time of the hearing.

It is difficult to assess how many resolutions occur as a result of a PTC. If the defendant decided to plead guilty, a plea date would be scheduled at a later date and the outcome of the PTC hearing would show a hearing held, but not a resolution. Very few resolutions occur on the day of the scheduled PTC and most are dismissals. What is troubling is that the percentage of scheduled PTCs where nothing happens (cancelled, continued, or not held) has grown from 18% of scheduled PTCs in 2002 to 23% in the first half of 2007. While the pretrial conference is the first point at which significant numbers of resolutions apparently occur, there is some suggestion that the PTC is becoming less effective and thus contributing to the growth of the pending caseload.

9. Omnibus Hearing (OH)

An Omnibus Hearing (OH) is required by state court rule in cases when a not guilty plea is entered.³² The objective of the hearing is for the judge to assess whether the case is ready for trial and, if not, whether appropriate progress is being made to get the case ready.³³ However, it appears the OH is not substantively moving cases toward resolution, and is essentially a useless appearance. Table 3 (next page) provides information about omnibus hearings and their outcomes.

³² WA Superior Court Rules. Criminal Rules, CrR 4.5(a).

³³ WA Superior Court Rules. Criminal Rules, CrR 4.5(c).

Table 3**Omnibus Hearings Scheduled, Held, and Resulting in a Case Disposition**

Year	Number of Hearings Scheduled	Number of Hearings Held*	Hearings Held as Percent of Scheduled	Number of Dispositions at OH**	Dispositions as Percentage of Scheduled Hearings
2002	6,806	1,386	20%	63	0.9%
2003	8,408	1,746	21%	35	0.4%
2004	9,462	1,923	20%	30	0.3%
2005	10,338	1,835	18%	35	0.3%
2006	11,448	1,875	16%	49	0.4%
Jan-Jun 2007	6,135	898	15%	12	0.2%

Source: LINX

* Proceeding Type OH for which the Proceeding Outcome was HELD.

** Proceeding Type OH for which the Proceeding Outcome was DISM (dismissal), P/S (plea and sentencing), or PLEA (plea, sentencing scheduled for later).

Although the number of OH's scheduled rose 68%, from 6,806 in 2002 to 11,448 in 2006, the proportion in which a hearing was actually held is quite small. Since 2003, the percentage has steadily declined to a low of 15% during the first half of 2007.

Although this is not the primary objective of the hearing, very few case resolutions occur at the OH. The percentage of scheduled OH's that result in a case disposition is less than one percent. Moreover, the number of resolutions dropped further in 2007. The vast majority of these are dismissals, in part because a guilty plea would occur at a later scheduled plea date.

Although OH hearings do not appear to have much value at present, they could be effective in moving older cases to resolution if effectively conducted. According to the court rule, the judge presiding at the omnibus hearing shall, at his or her "own initiative:"

- (i) ensure that standards regarding provision of counsel have been complied with;
- (ii) ascertain whether the parties have completed discovery and, if not, make orders appropriate to expedite completion;
- (iii) make rulings on any motions, other requests then pending, and ascertain whether any additional motions, or requests will be made at the hearing or continued portions thereof;
- (iv) ascertain whether there are any procedural or constitutional issues which should be considered; [and]

- (v) upon agreement of counsel, or upon a finding that the trial is likely to be protracted or unusually complicated, set a time for a pretrial conference.³⁴

If, in fact, the judges engaged in these activities at each omnibus hearing, they would be setting expectations for counsel that would result in earlier non-trial resolution of cases or earlier preparation of cases to begin trial. The judges would be exercising their responsibility to manage the progress of cases towards timely, as well as just, resolution. However, the effectiveness of this case management tool also depends on the existence of firm trial dates, which currently do not exist.

10. Plea Dates

Several major problems are reported regarding plea dates. A plea date is a hearing at which the defendant will change his or her plea to a guilty plea. In many respects, plea dates are the poster child for the breakdown of the calendaring system, reflecting the impact of arbitrary policies and practices, lack of cooperation and preparation, and unintended consequences.

The problem begins with the number of “plea slots” available during a week. A point has been reached where the demand has exceeded the supply, triggering unintended responses. When the next available plea date is days or weeks away, an in-custody defendant spends additional days in jail waiting for the plea date. This delays resolution of cases and increases the size of the pending caseload, in addition to being an unfortunate use of jail bed days.

A related unintended consequence is that defense attorneys have begun setting plea dates defensively. Knowing that there are only a limited number of slots, they set a plea date without having completed all the paperwork, sometimes without assurance that the client will plead guilty, and, reportedly in some instances before they have talked to their client about a possible guilty plea. If they had waited until they had talked to their client, obtained an agreement to plead guilty, and completed the paperwork before requesting a plea date, the next available plea date might be a week or more away and the client may sit in jail waiting.

Another concern is that some attorneys appear at the hearing without having completed the plea paperwork.³⁵ The court must wait until counsel have completed the paperwork and obtained the defendant’s signature. Although the court may hear other cases while this is occurring, the practice is disruptive and contributes to a sense of chaos and inefficiency. If there are a number of such cases, the court can wait with nothing to do. Frustrated at the end of a morning session, some judges have been known to ‘strike’ those pleas not yet done rather than find another judge to take the plea or to continue the hearings to the afternoon. While the intent may be to ‘train’ or punish the lawyers, it actually punishes everyone involved, including the victim, witnesses, Corrections, other counsel, the clerk, and the court itself, as the hearing will just be rescheduled.

³⁴ WA Superior Court Rules. Criminal Rules, CrR 4.5(c).

³⁵ Defense counsel prepares the plea of guilty form. The prosecutor prepares the judgment and sentence form and, if the charges will be changed, an amended information and supporting affidavits.

The breakdown of the plea date proceedings is apparent from a review of the outcomes of scheduled plea dates. Table 4 provides information about scheduled plea dates and the outcome for the last several years.

**Table 4
Plea Dates Scheduled, Not Held, and Involving a Case Disposition**

Year	Hearings Scheduled	Hearings with Plea Outcome*	Pleas as Percentage of Hearings Scheduled	Hearings Not Held**	Not Held as Percentage of Scheduled Hearings
2002	5,630	3,544	63%	1,556	28%
2003	5,507	3,106	56%	1,809	33%
2004	5,846	3,132	54%	2,047	35%
2005	6,336	3,249	51%	2,236	35%
2006	6,610	3,439	52%	2,508	38%
Jan-Jun 2007	3,781	1,948	52%	1,488	39%

Source: LINX

* Proceeding Outcome was P/S (plea and sentence).

** Proceeding Outcome was CANC (cancelled), CONT (continued), or NH (not held).

From 2002 to 2006, the number of plea dates scheduled increased 17%, from 5,630 in 2002 to 6,610 in 2006, whereas the number of guilty pleas at a plea date dropped 3% (from 3,544 to 3,439). The number of plea dates that resulted in a plea dropped from 63% in 2002 to 52% in the first half of 2007. Conversely, the number of plea dates cancelled, continued, or not held rose from 28% of scheduled plea dates in 2002 to 39% in the first half of 2007. Thus, the trend is to have more plea dates, but fewer pleas as a percentage of the scheduled plea dates.

The integrity of plea dates needs to be restored. The number of plea slots must be increased to meet the demand. More importantly, plea dates must be available on a short-term basis. Steps must also be taken to reduce the number of proceedings not held because the attorneys are not prepared. For example, it seems reasonable to require the plea paperwork to be completed before getting a relatively immediate plea date.

11. Operation of the Criminal Division Presiding Judge (CDPJ) Court

The manner in which the CDPJ department is operated has a major impact throughout the courthouse, lawyers’ offices, and the jail. This should be the central control point for managing the entire pending caseload. A well-managed CDPJ department will make maximum use of available trial departments and keep the entire caseload moving to resolution. It is an intricate task, part art and part management science. It involves the integration of information from a variety of sources and requires significant collaborative

and persuasive skills. A poorly managed CDPJ court can become overwhelmed, bog down the entire system, and contribute to the growth of the pending caseload.

The CDPJ court, as currently conceived and operated, fails to achieve its potential. Fundamentally, this is a matter of policy. The Superior Court has not explicitly stated what the role of the CDPJ is – namely, whether the CDPJ has overall responsibility for the entire criminal caseload or just those cases that appear on the CDPJ’s calendars.

The current CDPJ operation is also not operated as efficiently as it could be. The current practice is to call the full calendar each morning, regardless of why a case is on calendar. This can result in a case ready to go to trial waiting an hour or two before being sent out to an open courtroom, thereby wasting the trial attorneys’ time and the time of the trial department. The methodical calendar call also delays other calendars, particularly in the CD courts, because attorneys are tied up waiting in CDPJ. Other departments may also have to wait for in-custody defendants to be brought to court because officers are tied up with defendants appearing in CDPJ with its limited and non-secure holding facilities. These problems are aggravated when the calendar becomes longer as a result of setting too many cases and then having to spend time to continue them to a future date.

12. Trial Date Integrity

The major breakdown in felony case processing is the lack of integrity of trial dates. Trial date integrity is lost both when unrealistic trial dates are set and when too many cases are set for trial on a given day. Problems resulting from the initial setting of unrealistic trial dates have already been noted. When trial dates are unrealistic, attorneys cannot be prepared on the scheduled trial date, inevitably resulting in a continuance request. A lax continuance policy further degrades the integrity of the trial dates.

When too many cases are set for trial on a given day, some will have to be continued for lack of courtrooms. There are just not enough courts available to start all the trials. During the six-week period from mid-April through June 2007, for example, 24 murder cases were set for trial. There was no possibility of trying or otherwise resolving that many murder trials in that time period. When this happens repeatedly, the oversetting begins to be self-perpetuating. If lawyers do not think they will be assigned out for trial, they will soon stop spending the time to prepare for trial in every case set. The cases for which they are not ready will have to be continued. When cases are going to be continued because there is no courtroom to send them to, there is no ability for the court to hold counsel accountable for being prepared to go to trial on the date set. It also makes little sense to inquire into the basis of their request for a continuance, as the case will be continued for lack of a courtroom regardless of whether counsel are ready, and why, if they are not ready.

This has been institutionalized in the current CDPJ practice of routinely approving a continuance of a trial date if both attorneys agree to the continuance. The court effectively loses control of these cases, because there is no monitoring of the need for a continuance, the length of the continuance, or to avoid double setting attorney for trial.

An analysis of what happens to cases set for jury trial confirms the nature and extent of the problem. Table 5 indicates how many cases are set for trial and what proportions are continued and resolved in CDPJ.

Table 5
Cases Set for Jury Trial and Outcomes

YEAR	Number of Jury Trial Date Settings	Number of Trial Date Continuances	Percentage Continued	Percentage Terminated in CDPJ
2002	10,637	3,967	37%	8%
2003	12,659	5,749	45%	10%
2004	13,793	6,727	49%	7%
2005	14,979	7,824	52%	6%
2006	16,697	9,506	57%	5%
Jan-June 2007	9,565	5,636	59%	4%

Source: LINX.

As shown above, the number of jury trial settings grew 57%, from 10,637 in 2002 to 16,697 in 2006, and is on pace in 2007 to be 80% higher than in 2002. The continuance rate has increased from 37% in 2002 to a staggering 59% during the first half in 2007. Thus it is now more likely than not that a case set for trial will be continued. At the same time, the number of cases resolved in CDPJ has dropped, from a high of 10% in 2003 to 4% in the first half of 2007. If there is no point in preparing a case, there will be fewer case resolutions. More trial dates beget more continuances, which beget more trial dates.

The Superior Court must regain control of the trial setting process. Trial setting levels need to take into account the likely number of available trial departments. There need to be more realistic trial dates, and fewer trial dates in any one case. When a case is continued because the attorney is already in trial, the new trial date should take into account when counsel states they can realistically be ready to try the next case. This includes recognition that attorneys should not be expected to begin a trial immediately upon the conclusion of another trial, that some preparation time is required.

When the Superior Court restores the integrity of trial dates (that is, when a case set for trial is more likely than not to be resolved or assigned to a department for trial on the date set), then it is reasonable to require counsel to provide valid legal justification for a continuance. These steps will permit the Superior Court to monitor the progress of cases in a manner that respects the professional responsibility of counsel.

13. Continuance Policy

The Superior Court has adopted a detailed continuance policy indicating who may grant continuances, how long they can be for, and what other hearings must be scheduled if a continuance is of a certain length.³⁶ As noted in the previous section, the level of continuances is spiraling upwards. Several aspects of the policy are troubling.

- It requires continuances to be limited to 30 days if the case is more than 270 days old, regardless of the basis for the continuance or the calendars of the attorneys.³⁷
- Continuance requests are allowed to be “off the record” if the case is young enough or the continuance is for a short period.³⁸
- The first continuance can be heard by any CD judge, not just the CDPJ judge,³⁹ further implying that the first date is not realistic to begin with.
- The Superior Court’s continuance policy allows an attorney one free continuance of up to 30 days. However, the trial calendar is so clogged there are no trial dates available in less than 30 days. Moreover, the 30-day period bears no relation to why the case needs to be continued or for how long.

The Superior Court’s continuance policy needs to be more sensitive to the court’s and attorneys’ calendars, and the basis of continuances needs to be more transparent to the lawyers and the public.

14. Availability of Judges for Criminal Trials

Since judges are not actively involved in resolving cases through plea negotiations, their primary role in reaching just and timely results in criminal cases is to be open and available to start criminal jury trials. The crux of the problem is resolving the routine cases. If the defendant is not willing to plead and the prosecutor is not willing to reduce the charges or dismiss the case, the appropriate response is to try the case. Beginning trials in a timely manner is also important to prevent cases in which no further preparation is needed from becoming even older and stale, with the risk of loss of evidence or witnesses.

The impact of an open judge cannot be underestimated. An analysis of court proceedings during the last five calendar years indicates that for cases sent to a trial department there was an average of 0.85 non-trial dispositions⁴⁰ for every one jury trial disposition in a trial department. In addition, there were an average of 1.85 non-trial dispositions in the Criminal Division Presiding Judge (CDPJ) department on the scheduled trial date for every one case that ended with a jury verdict.

³⁶ Pierce Superior Court, Criminal Case Continuance Policy, effective January 10, 2005. Although it does not explicitly say so, the policy appears to apply only to continuances of trial dates.

³⁷ *Ibid.*, section I.D.3.

³⁸ *Ibid.*, section I.E.1.

³⁹ *Ibid.*, section I.C.

⁴⁰ Non-trial dispositions include guilty pleas and dismissals.

Adding these totals together, there were, on average, 2.7 non-trial dispositions on the day of trial for every one trial started. This vividly demonstrates the power of an open trial department.

The key, then, is to have open judges available to try the cases. Anything that reduces the number or frequency of open judges can delay resolutions and contribute to a backlog of pending cases. Judge availability has two aspects: a) how many judges are assigned to hear criminal trials at any given point of time, and b) how often these judges are open to begin a trial.

a. Judicial Assignments

How many judges are available for criminal trials depends on how the cases are allocated among the judges. The Superior Court has chosen a case assignment structure that has most judges hearing both civil and criminal cases.⁴¹ When a civil case is filed, it is randomly assigned to a judge for all purposes. In contrast, criminal cases, other than homicides, are kept on a master calendar and only assigned to a judge when the case is ready to begin trial. Each month, judges are assigned to sit on either a civil or a criminal “panel.” Each judge’s term on a panel is typically three months long, but it can be for only one or two months.

There are several ways that the shifting between panels and the length of panels can interfere with the assignment of trials. When judges are about to shift from a criminal to a civil panel, or vice versa, there may be inefficiencies resulting from the transition. If a criminal panel judge becomes open and can start a trial, but is scheduled to transition to a civil panel in a few days, there is reportedly a reluctance to begin a trial that may last more than the few days available. As a result, these short time periods are often ‘lost’ for purposes of trial, reducing the availability of trial departments.

The same is reportedly true for a judge that becomes open shortly before a conference or other scheduled judicial absence. While it is disruptive to assign a judge in this situation a long criminal trial, it is reasonable to assign a criminal trial anticipated to last only a few days into the civil panel time, at least while the Superior Court is experiencing a criminal backlog problem.

b. Judicial Conferences and Recesses

When judges are sitting on a criminal panel, it is critical that they maximize their availability to start trials and trigger associated non-trial dispositions. Based on comments, observations, and review of information, it does not appear that all judges are as conscientiously meeting this need as they could be. There appear to be at least two problems regarding judges’ availability to start criminal jury trials. One concerns the scheduling of trial dates when there are conferences or judicial training events. The other has to do with scheduling of recess and other leave by individual judges.

⁴¹ See discussion under section I. C. 1. above. This structure was the subject of one of the prior JMI reports (See JMI 2002 report, pp. 8-11 and Appendices C and D). However, no significant change in the structure was made as a result of the 2002 report.

The dates of judicial conferences are known well in advance. When judges are away at conferences, they cannot start trials. The Superior Court should ensure that an adequate number of judges is available to try the felony cases set for trial during the conference periods, or it should reduce the number of cases set for trial to reflect the reduced number of trial departments likely to be available. There appears to be no inclination to keep an adequate number of judges at the court to try those cases set, resulting in large numbers of continuances and inconvenience to all involved. The point is not that judges should not attend conferences, but rather that the judicial assignments or calendars should be adjusted to reflect their absence.

Judicial recesses and other leave also reduce the number of judges available to start trials. Table 6 indicates how many judges were absent from the court on a sample of 29 days during a 10-week period between July 2 and September 7, 2007.

Table 6
Judges on Recess, Leave, or Other Absence

Week	Number of Court days in Week	Number of Days Sampled	Average Number of Judges on Recess, Leave, or Other Absence	Percentage of Judges Absent
July 2-6	4	2	12.5	57%
July 9-13	5	4	8.4	38%
July 16-20	5	5	8.8	40%
July 23-27	5	4	7.0	32%
July 30-Aug 3	5	1	3.0	14%
Aug 6-10	5	1	4.0	18%
Aug 13-17	5	4	6.0	27%
Aug 20-24	5	3	5.2	24%
Aug 27-31	5	3	4.0	18%
Sept 4-7	4	2	7.5	34%
Total for all 10 weeks	48	29	7.0	32%

Source: Superior Court department rosters posted daily in the County-City Building.

As indicated in the last row of Table 6, 32% of the judges were away on the days sampled. As this period represents the height of summer vacation time, the proportion of days unavailable for trial is substantial. Moreover, the fluctuation of percentage, from a low of 14% to a high of 57%, suggests there is no coordination of judicial absences by the Superior Court to balance the impact on calendars.

The sense of the justice community is that judges are more prone to schedule their recesses when they are sitting on criminal trial panels. This is occurring notwithstanding the state court rule giving preference to criminal cases over civil cases.⁴² A review of the court days sampled suggests there is merit to this complaint. During the 29-day sample, a total of 638 judge-days were available from the 22 judges. Eight judges were scheduled to sit in a criminal trial panel, implying that a total of 232 judge-days were available for criminal trials.⁴³ However, criminal panel judges were in recess a total of 97 judge-days, representing 42% of the available days. This compares with a 22% absence for judges sitting on civil panels. In other words, it was almost twice as likely that a judge on a criminal panel was on recess. Clearly, criminal trial department availability suffered a greater impact from the recesses during this time period.⁴⁴

Again, the point is not that judges should not take vacations or leave. Rather, judicial absences should be coordinated so they do not impact available criminal trial departments so disproportionately. This is especially relevant when the Superior Court experiences a growing backlog of criminal cases awaiting trial.

The lack of judges available to accept felony trials has definitely contributed to the pending caseload. Every time a judge is unavailable, whether due to conferences, transitions to a civil panel, or recess, fewer cases are resolved. Unresolved cases remain part of the pending caseload, clogging up the trial calendar and slowing down all cases. The Superior Court needs to change its habits and practices so as to maximize the number of judges sitting on criminal panels who are available to start felony trials. It may also be necessary at least temporarily to increase the number of judges on criminal panels and reduce the number on civil panels until the pending caseload reaches an acceptable level.

15. Old Cases

a. Highlighting Old Cases in CDPJ Court

The state standard is that 100% of felony cases should be resolved within 270 days.⁴⁵ Chart 2 shows the number of pending cases over 270 days old beginning in 2001. Although the number dropped in 2001 and then remained relatively constant, it began to rise dramatically in mid-2004. There was a drop in early 2005 attributable to “the Blitz” described below. Another drop occurred in early 2006, followed by a steep rise and a doubling of the number of old pending cases in 2007. At the end of August 2007, there were 295 pending cases over 270 days old, representing 13% of the total pending cases. Clearly, the Superior Court is not meeting the state standard.

⁴² WA Superior Court Rules, Criminal Rules, CrR 8.5 - Calendars: “In setting cases for trial, unless otherwise provided by statute, preference shall be given to criminal over civil cases, and criminal cases where the defendant or a witness is in confinement shall have preference over other criminal cases.”

⁴³ Eight judges times 29 days equals 232 judge-days.

⁴⁴ The court hires pro-tem judges for civil cases but not for criminal cases, thus exacerbating the difference.

⁴⁵ Advisory Case Processing Time Standards for the General and Limited Jurisdiction Trial Courts of Washington State, endorsed by the Board for Judicial Administration Court Management Council, May 15, 1992, revised September 1997.

In recognition of the standard and the growth in the number of old cases, the court's calendaring staff began to place a list of all cases over 270 days old on the counsel table in CDPJ in 2006. The list includes basic information about the case, such as the case age, number of prior continuances, and the names of the trial attorneys. The lawyers expressed resentment that the list includes cases where the defendant is in Western State Hospital on a mental competency hold, has absconded, or is otherwise not within the court's or attorney's control. However, making the number and identity of old cases more transparent does serve a purpose. The objective should be to get these old cases ready and send them out for trial on their next trial date, but not do so in a manner that collectively offends counsel.

b. "The Blitz"

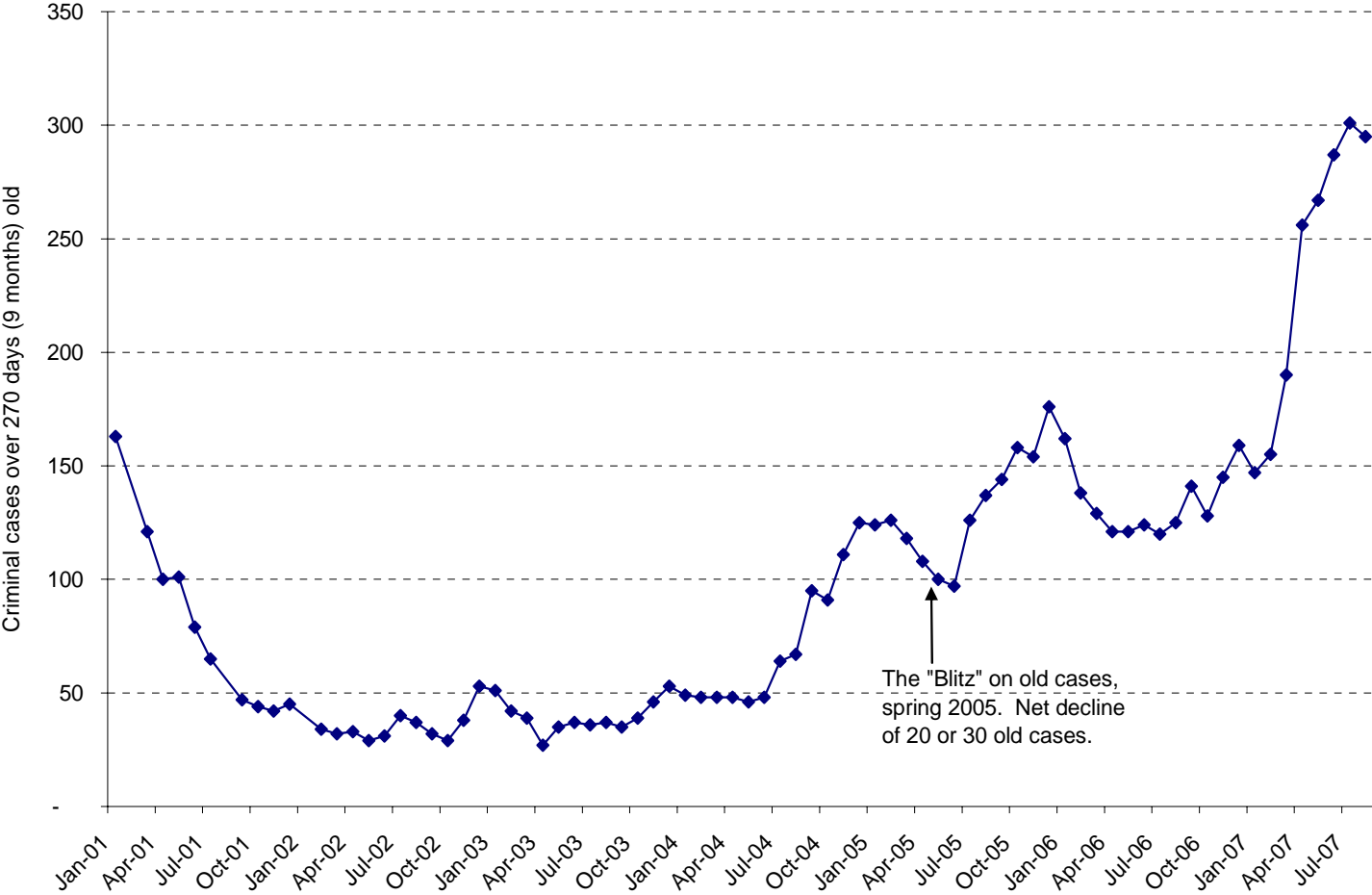
In the spring of 2005, the Superior Court conducted what is referred to as the "Blitz" to resolve old cases, defined as over 270 days old. Although some old cases were resolved, the program had very limited success. As indicated in Chart 2, the number of old cases dropped temporarily and then began to climb again.

There were a variety of reasons for the limited success. First, the Superior Court did not conduct an adequate review of why a case was old. Some may have been old, but there was a reason why they were not ready to go to trial. For example, when preparing the case for trial, defense counsel discovered they had a conflict, so the case had to be reassigned and the trial date continued to allow new counsel to become adequately prepared. Second, there were not enough open trial departments to make the threat of trial meaningful. Moreover, some trial departments reportedly continued cases assigned to them rather than starting trial. Third, giving preference to old cases when sending cases out for trial just meant the 'regular' cases were continued, pushing a bulge of younger cases to the period after the program ended, on top of cases already set. Fourth, the effort was ill timed. The program began just after a conference, so not everyone was prepared. Finally, the attorneys felt that the court had imposed "the Blitz" on them, without adequate consultation and planning, which contributed to some of the problems noted.

While the concept of focusing on old cases was sound, and the Superior Court was attempting to address the problem, the planning and implementation was not as effective as it could have been.

Chart 2

Superior Court Pending Criminal Cases over 9 Months Old



C. Management Information

Both the 2000 and 2002 JMI reports recommended preparation of a monthly report summarizing the status of the felony cases from arrest to disposition.⁴⁶ The objective was to provide the criminal justice community and the County Council a regular report that summarizes the overall activity and performance of the felony criminal justice system in relation to key operational and performance goals. Having the report, and reviewing and discussing the meaning of the numbers, is important to identifying problems, such as a growing pending caseload, before it becomes too egregious or more difficult to solve. The premise of the recommendation is that planning, both strategic and operational, will be more successful if it is informed by reliable and consistent quantitative data.

The recommended management report has never been produced. Neither the Superior Court nor any agency offered to or was designated as the one to collect and compile the data from the involved agencies. One of the stated reasons was the lack of staff to prepare the reports. Superior Court has requested funding for a data analyst, but the County Council has not approved the request. Consequently, there still is no single source of quantitative information about the overall status of felony case processing. The Superior Court does provide a statistical report each month at the Criminal Procedures Committee meeting at which representatives from most sectors of the criminal justice system are present. However, the report only covers Superior Court activities.

When preparing the report for this project, there were types of information that were not available, but would have been useful in assessing the condition of the felony calendar and the impact of changes that had occurred. Although information about filings and the age of pending cases is available by trial units in the prosecutor's office, it is not readily available for specific categories of charges, for example identity theft.

Another critical missing data set is information about how many days each judge actually spends conducting felony trials each month. Without this information it is difficult to assess whether an adequate number of judges is available to try the felony cases set for trial. Knowledge of the typical lengths of trial (particularly by charge category) is also needed to assess the impact of changes in caseload such as those discussed above.

Another problem is that it is difficult to tell from existing data exactly how many cases are assigned to trial departments from CDPJ, and what happens to the cases. The manner in which LINX transfers cases from CDPJ to a department for trial on the day of assignment prevents recording an outcome for these cases in CDPJ. Once a case is assigned to a trial department, it is hard to distinguish it from pre-assigned cases in a trial department, thus obscuring what happens to cases assigned from CDPJ. While the number is small, the information is critical to assessing the effectiveness of CDPJ, the trial departments, and potential system changes.

Lack of comprehensive caseload information hampers efforts to detect and solve felony case management problems. It is another indicator of the failure of Superior Court, or any other agency, to take responsibility for the overall management of felony cases.

⁴⁶ JMI 2001 Report, p. 46 and JMI 2002 Report, p. 16. Appendix E of the JMI 2002 Report recommended a format, data definitions, and source reports for the report.

V. RECOMMENDATIONS

There is no ‘magic bullet’ available that will effortlessly or painlessly eliminate the backlog and bring the pending caseload to a more appropriate level. But a number of changes can be made through the joint effort of the Superior Court and other justice system agencies that cumulatively will reduce the pending caseload. While the changes may require additional work for some, they should dramatically reduce the number of scheduled proceedings and appearances for everyone. The recommendations will require changes in attitude by all, as well as changes in several policies and practices.

The following recommendations address the entire felony case processing system. They are designed to make the most efficient use of judges, lawyers, support staff, and facilities associated with the resolution of felony cases. Another goal of the recommendations is to make court proceedings more meaningful.

Several recommendations are designed to reduce both the total number of proceedings scheduled and the number of proceedings that do not move cases towards resolution. There are also recommendations to rationalize the setting levels of hearings, particularly trial dates, by taking into account judge and lawyer availability.

Other recommendations are designed to make trial dates more realistic and meaningful. Recommendations are also made for an approach designed to reduce the number of older cases in the pending caseload. Finally, there are recommendations to make more efficient use of facilities and to minimize time spent handling paperwork associated with felony cases.

The recommendations indicate the concepts of what should be implemented, without extensive details. When the Superior Court and justice agencies agree which recommendations should be implemented, the details can be worked out in meetings of the Superior Court and other justice system entities.

A. CASE MANAGEMENT AND COURT PROCEEDINGS

A significantly different proceeding schedule is proposed below. The proposal is based on two key concepts:

- ◆ A court appearance is where work is completed, not started.
- ◆ No court appearance will be scheduled when there is no need for a judge to be involved. Appearances and court time are to be reserved for cases where judicial attention is needed, either to resolve a dispute or to keep cases progressing towards resolution.

The proposed schedule contemplates that most cases will have four scheduled appearances:

1. First appearance/arraignment
2. Pretrial Conference and Trial Setting hearing
3. Scheduled Trial date, and
4. Plea date, if the defendant decides to plead guilty.

Additional hearings will be scheduled only if needed. These will include motion hearings, continued trial dates, and a scheduling hearing after a failure to appear. One key objective of the proposed schedule is to minimize the number of attorney appearances and give back to the attorneys as much time as possible.

Recommendation 1: First Appearance/Arraignment

At the first appearance or when the defendant is arraigned, a Pretrial Conference/Set Trial Date Hearing will be scheduled approximately two weeks later.⁴⁷ The pretrial conference/set trial hearings will be grouped by prosecutor trial units so as to minimize the number of days on which trial deputies hearing certain types of cases have to appear. No trial date is set at arraignment.

Recommendation 2: Pretrial Conference/Set Trial Date Hearing

The following activities should occur **prior to** the pretrial conference/set trial date hearing:

- The Prosecutor's office will obtain a complete criminal history, including tracking down all Washington state arrests with no disposition and out-of-state arrests with no disposition.
- The Prosecutor's office will contact law enforcement agencies to obtain any additional or supplemental police reports, forensic tests, or evidence and make them available to defense, preferably prior to the hearing.
- The Prosecutor's office will review the discovery then available and the defendant's criminal history to see whether the case is amendable to quick resolution as part of the existing early disposition docket.
- Defense Counsel will review the discovery then available and the defendant's criminal history to see whether the case is amendable to quick resolution as part of the existing early disposition docket.
- Both sides will identify any atypical levels of investigation or discovery needed that would affect the selection of a realistic trial date.

Completing these activities will allow the court and counsel to assess the readiness of the case for resolution, identify activities whose completion should be monitored by the court, and allow setting of a realistic trial date.

The following activities should occur **at** the hearing:

- In a significant majority of cases, the prosecutor makes a plea offer that is communicated to defense counsel before or at the hearing. The defense counsel will discuss the offer with the defendant. Because defense counsel and the defendant will have only just heard the offer, there will not always be sufficient opportunity to reach a plea agreement at the hearing and it is not expected that

⁴⁷ The date must be within 15 days of arraignment to satisfy WA Superior Court Rules, Criminal Rules, CrR 3.3, subsection (d)(1).

many pleas will occur at the hearing. If a plea agreement is reached, defense counsel will set a plea date.

- If there is no guilty plea or dismissal at the hearing, a trial date should be selected based on the likely time required to adequately prepare for trial, the applicable provisions of the Time to Trial Rule, other cases already set involving the attorneys, and the availability of trial departments on the proposed trial date. In order to avoid built-in grounds for requesting a continuance, the court should not let attorneys “double set” cases without some assurance from the attorney that this will not become a scheduling conflict. The setting of the date should be done with the participation and approval of a judge.
- A motion hearing date is set only if defense counsel currently anticipates the need for motions. The date selected should reflect the time needed to complete discovery and investigations needed to adequately prepare and file motion papers.
- If the discovery or criminal history is still incomplete such that the counsel are unable to set a realistic trial date, a hearing to review the status of case preparation and setting of the trial date would be scheduled so that a judge can monitor the preparation of the case for trial or resolution.⁴⁸ The timing of this hearing should be based on the amount of time that counsel indicate is needed to become adequately prepared.

This approach will require judge time to hear what the attorneys have to say about an appropriate trial date. If the attorneys are allowed to select a trial date by mutual agreement and without judicial oversight, the risk is the setting of trial dates beyond what is necessary. Although the judge is involved, it is expected that the hearing would be very short in duration in the vast majority of cases.

The proposed approach has several advantages. The expectation is that the attorneys and the court will set more realistic trial dates to begin with. Each case will have fewer trial dates, and there will be fewer continuances of trial dates, reducing the snowballing effect. Any request for a continuance will have to be more specific as to why the initial trial date selected is no longer realistic.

Recommendation 3: Plea Date

It is the responsibility of defense counsel to meet with their client before, during, and after the pretrial conference, communicate the plea offer, and discuss the defense. If the defendant is in custody, the defense counsel should discuss the offer with the defendant, by either visiting the defendant at the jail or using the video link capabilities in the jail. DAC counsel should take advantage of their direct phone system into the jail. The jail should facilitate defense counsel visits where the objective is to talk with their clients or to complete plea paperwork.

- If a plea agreement is reached, defense counsel will set a plea date. The plea date will generally be within two to three days if the defendant is in custody (enough time to be able to notify Corrections to transport the defendant and for the clerk to

⁴⁸ WA Superior Court Rules, Criminal Rules, CrR 3.3(d)(1).

prepare calendars and pull files) or within one week if the defendant is out of custody. The plea date may need to be set farther out if there is a requirement to give notice to the victim about the plea date.

- Pleas should be set in departments where they will be taken, and at times that minimize the impact on Corrections for transporting in-custody defendants and counsel. Options include the CD courts, the CDPJ court in the afternoon, in any court on Fridays, or before a pro tem judge.⁴⁹ It may also be useful to consider different schedules for in and out of custody defendants and for different trial units, to take into account prisoner transport issues and scheduling limits.
- The plea date should be set at a time which maximizes the likelihood that the prosecutor and defense counsel will be able to appear, for example, not at the same time as the trial calendar. Counsel have an obligation to inform the department as soon as a problem becomes known if they cannot appear at the set time, and indicate when they will be available that day.
- Before the plea date arrives, defense counsel must complete the plea form and obtain the defendant's signature, and the prosecutor must prepare the judgment and sentence form and any other necessary documentation.
- On the plea date, if the plea paperwork is not completed, the plea will be continued one day for completion of the paperwork.
- No plea will be struck because of the judge's inability to hear all the pleas set. If the judge is not able to hear all the pleas, the judge should contact the CDPJ and arrange to reassign the pleas so that they are taken on the day scheduled, if logistically feasible.

The objective of the proposed approach is to streamline and speed up the entry of guilty pleas. Plea dates should only be set when there will be a plea and very few plea dates should be stricken. The success of this approach can be easily measured by the expected very low number and percentage of plea dates that are cancelled, continued, or not held.

Recommendation 4: Day of Trial

The Superior Court must manage the trial calendar in a manner that minimizes the need for continuances and maximizes the number of case resolutions occurring as the result of an open trial department. This recommendation addresses changes in the management of the trial calendar on the day of trial.

- The CDPJ will call the trial calendar first to determine the status of just those cases set for trial that day. This will not take as long if a realistic number of cases set are for trial on a given day. One option is to set the cases scheduled to begin trial at 9:00 AM and all other matters set in CDPJ at 10:00 AM.
- If counsel indicates there will be a plea and the paperwork has been completed, the case will be kept in CDPJ for the plea. If the attorneys have not completed the

⁴⁹ King County Superior Court reportedly uses a pro tem judge to hear plea and sentencing proceedings.

necessary paperwork, they will be expected to do so immediately, with the case held in the CDPJ court and heard when the documentation is ready.

- Any requests for a continuance on the day set for trial will be heard by the CDPJ before cases are sent out for trial.⁵⁰
- Once the list of cases ready to be assigned for trial is known, they should be assigned based on the assignment priorities.⁵¹ However, greater preference needs to be given to those cases that will plead or be dismissed when sent out, which would otherwise linger unresolved. Cases not able to be assigned out initially should be held in CDPJ and sent out if there is a resolution of a case sent to a trial department earlier. Attorneys would not be required to sit in CDPJ awaiting assignment; rather, they would be released on telephone standby.
- Consideration should be given to designating “short trial” courts that would receive cases whose estimated trial length is only a few days. More than one short case could be sent to each such court with the trial court having discretion as to the order in which the cases would be tried.
- After the initial trial assignments are made, the balance of the CDPJ calendar should be called.

This sequence and approach assumes that trial dates are realistic—in terms of the number set each day, the ability of the lawyers to be ready to begin trial, and the availability of counsel. The trial calendar should have fewer cases and fewer attorneys will have to appear, so calling the trial calendar should not take as long.

Recommendation 5: New Trial Dates

The selection of a new trial date in a case that cannot be tried on a scheduled trial date is as critical as the original setting of the trial date to establish integrity of trial dates. The selection of the new trial date should be done by the court in collaboration with the attorneys who will try the case. While the attorneys should not be able to unilaterally select a trial date, the court must respect their professional judgment and scheduling conflicts when selecting a new trial date.

- If a case cannot be tried on the date scheduled, counsel can request a continuance. The request should be made as soon as the information supporting the continuance becomes known. Counsel should not wait until the day of trial if the information becomes known earlier.
- Continuance motions must be supported by facts justifying the continuance,⁵² and be made either in writing or on the record.⁵³ The motion should indicate the

⁵⁰ This must be done to prevent a case from getting a continuance by default by merely asking for one. If the continuance motion is heard after other cases have been sent to all of the open trial departments, there will be no place to send the case if the continuance is denied. This also increases the accountability of counsel to be ready on the day of trial.

⁵¹ See CDPJ Assignment of Civil Cases from the Overflow Docket policy effective March 3, 2003.

⁵² See RCW § 10.46.080 on grounds for a continuance.

proposed new trial date on which counsel will be prepared and available to go to trial. Having the attorneys propose the new trial date makes it harder for them to object to the date later.

- The new trial date selected will be as early as possible in light of the reasons for the continuance, the nature of the case, the likely investigation and preparation needed, applicable Time for Trial restrictions, and the number of cases already set.
- Trial date ‘slots’ need to be reserved on the trial calendar for short-term continuances, that is, only a week or two as opposed to a month or more.
- No trial readiness status conference, pretrial conference, or omnibus hearing will automatically be set before the new trial date.⁵⁴

The objective of this approach is to set realistic trial dates and preserve the integrity of trial dates. Another objective is to manage the cases with due respect for the schedules and workload of all counsel.

Recommendation 6: Cases in Trial

One key to having open trial departments is to have trials completed as quickly as possible. The sooner a trial is completed, the sooner the judge can be available to take the next case.

- Judges and attorneys must work to make the trial day as long as possible and conclude each trial as promptly as possible.
- Corrections needs to bring defendants to trial departments immediately so trial time is not lost waiting for an in-custody defendant.
- Attorneys who are in trial should arrange with those courts in which they have other matters scheduled either to be covered by another attorney or have the matters heard during a recess in trial.
- The Superior Court should consider participating in a “Managing Trials Effectively” workshop for all judges. The goals of the workshop are to assist judges in making more effective use of trial days and to develop uniform and predictable practices for the conduct of trials.

Given constraints of the hours of work, and limitations on transport officers, it is imperative to maximize the length of trial day. The sooner cases are concluded, the sooner the next case can be assigned. This will create an expectation of prompt trials and the availability of judges, which, as noted, will induce dispositions and reduce the number of pending cases.

⁵³ This will require repeal of Criminal Case Continuance Policy, section I.E.1, as revised January 10, 2005.

⁵⁴ This requires repeal of Part II and amendment of sections I.B.4, I.D.2, and I.D.3 of the Criminal Case Continuance Policy, as revised January 10, 2005.

Recommendation 7: Old Case Review and Trial

The Superior Court should establish a practice of regularly reviewing the oldest cases in the pending caseload in collaboration with other justice system entities. The PJ or CDPJ, representatives of the prosecution and DAC knowledgeable about the status of old cases, private or appointed counsel representing defendants in the oldest cases, and Corrections should meet on a regular basis, initially weekly, to review the oldest pending cases. The Superior Court calendaring staff would staff the meeting. Some have suggested that this meeting be in open court and on the record.

The definition of an old case should shift, as progress is being made. Initially, all cases over 270 days old should be examined. As the number of such cases is reduced, the definition of ‘old’ should be shifted down. Eventually the review should be of all cases over 120 days old, the state standard by which time 90% of the cases should be resolved.

At the meeting, the list of pending cases would be reviewed starting with the oldest cases and working towards the younger cases. Some cases will not be ready for trial, and some will have conflicts involving attorneys already in trial. Others will be found to be ready for trial, with no outstanding discovery or other issues. They would be flagged to receive preference for assignment to a judge on their next trial date. One alternative is to have the cases identified tried by pro tem judges⁵⁵ who are sitting in departments of judges who are away.

Cases that have serious discovery or other problems should be considered for pre-assignment to a judge who will be responsible for monitoring progress and keeping the case moving towards resolution, including trying the case, if necessary. The program would be continued at least until the pending caseload has reached an agreed level.

The intent is not to force an old case to trial that is not ready, but to identify and resolve those cases that are ready, either by trial or non-trial disposition.

B. BACKLOG REDUCTION

The size and age of the pending caseload must be reduced before some of the recommendations can be completely effective. For example, establishing firm trial dates through realistic setting levels will be easier if fewer cases are pending.

Recommendation 8: Backlog Reduction Program

A separate backlog reduction program should be established.⁵⁶ The objective would be to reduce the number of pending cases, especially the number of older cases.

⁵⁵ The consent of the parties is required for a pro tem judge to hear a case. This may limit the usefulness of this approach, but does not rule it out.

⁵⁶ The ABA Standards on Speedy Trial and Timely Resolution of Criminal Cases provide that one of the essential elements of a jurisdictional plan for effective criminal caseload management is “elimination of existing case backlogs (i.e., cases pending longer than the established case processing time standards), following a backlog reduction plan developed collaboratively by the court, the prosecutor’s office, the

The program would be in addition to, and a precursor of, the old case review recommendation made above.

A team should be assembled to plan, implement and monitor the program. The team should be led by the Superior Court and include representatives of the prosecutor's office, Department of Assigned Counsel, appointed and private defense counsel, and Corrections.

The tasks of the team would be to identify what group of cases the program should concentrate on, develop program goals, identify what additional temporary resources might be needed, arrange for those resources, develop program protocols, oversee implementation of the program, and monitor the success.

Additional temporary resources needed might include trial lawyers for the prosecution and defense, judges (either reassigned from civil panels or pro tem judges), investigative services or support staff to help prepare cases or assist in trial, or forensic tests or experts.

C. COURT ORGANIZATION AND JUDICIAL ASSIGNMENTS

The judges of the Superior Court should explicitly commit to several actions that will demonstrate leadership of the felony case management process.

Recommendation 9: Court Responsibility for Case Management

The Superior Court should adopt an explicit statement acknowledging the Superior Court's responsibility for the management of felony criminal cases and assigning the day-to-day responsibility to the Criminal Division Presiding Judge (CDPJ). The CDPJ would be responsible for the overall management of the criminal caseload, identification of problems, and development of plans to address them.

Recommendation 10: Fixed CDPJ Location

The CDPJ court should be fixed at a location that the court and Corrections determine is the best from the standpoint of size, defendant security, and public safety. This will remain the CDPJ courtroom until the new CDPJ courtroom is available.

Recommendation 11: Consistent CD Policies

All judges should commit to following the policies and procedures adopted by the Superior Court when sitting in the CD courts. The terms of judges sitting in CD courts should be increased to at least two or three months.

defense bar, and law enforcement and other criminal justice agencies involved in and affected by criminal case processing.” Standard 12-4.3 (p).

Recommendation 12: Judges Accepting Cases

Judges should not decline to accept a case assigned to them by the CDPJ without prior consultation with the CDPJ and PJ,⁵⁷ particularly at the point of transition from criminal to civil panels and before conferences, recesses, or other types of leave.

Recommendation 13: Judicial Recesses

The judges of the Superior Court should coordinate their recesses, attendance at educational program, and other types of leave so as to ensure that an adequate number of judges will be available to hear the felony trials set.

Recommendation 14: Trial Setting Levels

Trial setting levels should be adjusted to accommodate known schedules of judicial absences.

The objective of these changes is to explicitly establish Superior Court responsibility for the management of criminal cases, improve the integrity of the trial dates and the consistency of justice, and maximize the availability of judges to try felony cases.

D. REDUCING THE PAPERWORK

Recommendation 15: Multi-part Forms

The court should cease using the venerable multi-part forms in favor of adopting a new two-part form and scanning of paperwork by the Clerk of Superior Court. The original of the two-part form would go into the court file, and the copy would go to the defendant. The agencies should rely on LINX for documents as well as calendar and appearance information.

Recommendation 16: Electronic Filing

The Clerk of Superior Court should continue to implement electronic filing of documents and scan originals of paper documents into electronic files that would be available through LINX or an associated document management system. The clerk should make available all documents to the prosecutor, defense counsel, and Corrections as soon as the image or document is accepted. Each office can then decide whether to print out a copy of documents for their file or rely on the information available through LINX.

⁵⁷ See Pierce County Superior Court Criminal Case Continuance Policy, section I.F, as revised January 10, 2005.

E. EVALUATING THE IMPACT - MANAGEMENT INFORMATION

It is important for the felony criminal justice system in Pierce County to more openly take responsibility for the effective operation of the felony process. In order to do this there must be a capacity to produce relevant information, routine and ad hoc, about operation and performance of the felony case management system. The information will provide a public record of the operation and status of the felony case management system. It will also give managers the ability to diagnose problems and assess the success of the changes implemented in response to the problems.

Recommendation 17: Quarterly Case Management Report

A comprehensive report showing the status of felony cases and the caseload from arrest to sentencing should be produced quarterly. The report recommended in the JMI 2002 Report, Appendix E, should form the basis for this report. A quarterly report is recommended instead of a monthly report because the objective is to periodically assess the state of the caseload, not manage it on a day-to-day basis. The report should be distributed to all judges, all Pierce County criminal justice agency heads, the County Council, and be made available to the media and the public. Producing such a report is an acknowledgment by the Superior Court and other criminal justice agencies that they are willing to be held accountable for their collective performance.

Recommendation 18: Report on Impact of Changes

In addition to the quarterly report, a progress report should be produced that provides a simple scorecard of the impact of changes implemented in response to this report. The progress report would, at a minimum, focus on the size and age of the pending caseload, the number of proceedings scheduled and held, what happens to cases set for trial, what happens to cases sent to trial departments, and the length of trials. It should specifically address the activities of the CD and CDPJ courts, with comparisons to past performance and standards adopted by the Superior Court or the state judiciary. The report should be distributed to all judges, all Pierce County criminal justice agency heads, the County Council, and be made available to the media and the public.

Recommendation 19: Information on Trial Days

The Superior Court should begin collecting and reporting information about the number of felony criminal trials begun and the number of days each trial lasted. The information should be included in the Superior Court's monthly report and the progress report produced pursuant to Recommendations 17 and 18. The information collected about trial days should be sufficiently detailed to allow analysis by case type (most serious charge) and by judge.

Recommendation 20: Data Analysis Capacity

These last three recommendations involve the collection and analysis of data about several aspects of felony cases and scheduled proceedings involving the Superior Court and other justice agencies. As noted, there is currently no central capacity to gather the data and conduct the analysis proposed. The Superior Court and each justice agency

currently has sole authority over the data it enters and maintains in LINX and who can produce reports based on their data. Each produces reports for their use, some of which are made available to other entities (for example, the Superior Court's monthly report).

In order to effectively implement the recommendations made here, it will be necessary to establish a central capacity to produce reports from LINX and provide an analysis of what the reports say. This capacity will involve a position filled by someone who has more than a basic understanding of the felony criminal justice process and the ability to produce meaningful reports, analyze what is happening to felony cases, and effectively communicate findings to criminal justice system managers. The person must also have the confidence of the Superior Court and other justice agencies. The details of the job description and where the position will reside can be developed during the implementation phase.

The objective of this set of recommendations is to provide a means for an ongoing review of the system as well as near term measurement of the success of specific changes.

F. JAIL CROWDING PROBLEM – PRETRIAL RELEASE

This report focuses on reducing the Superior Court's pending caseload. Reduction of the pending caseload should also reduce the jail population, both by lowering the number of in-custody defendants waiting resolution and by decreasing the average length of stay of these defendants in pretrial status. Pierce County could take other actions to reduce the jail population without infringing on public safety.

Recommendation 21: Pretrial Release Impact Study

A significant reduction in jail population levels could be achieved by establishing a robust pretrial release program for felony defendants. A comprehensive pretrial services program would identify and recommend release of felony defendants who, some with appropriate supervision, present a minimal risk to victim, witness, and public safety. In addition to reducing unnecessary pretrial detention, a comprehensive pretrial services program can improve court appearance rates, reduce recidivism, and provide appropriate and effective services to defendants without adversely impacting public safety.⁵⁸ A recent appellate case may require tailoring of the terms and conditions of release, and the need for consent,⁵⁹ but a pretrial release program is feasible and could have many benefits.

Pierce County should engage national experts to conduct a study of the possible benefits of a comprehensive pretrial release program and other alternatives to pretrial incarceration of felony defendants. The study should include comparisons with other jurisdictions, in particular other Washington state counties with felony pretrial release programs.

⁵⁸ For a discussion of what a more comprehensive pretrial services program would involve, see National Association of Pretrial Services Agencies, STANDARDS ON PRETRIAL RELEASE, Third Edition, approved October 2004, available at: <http://www.napsa.org/publications/2004napsastandards.pdf>. See also ABA CRIMINAL JUSTICE STANDARDS, THIRD EDITION: PRETRIAL RELEASE, 2007.

⁵⁹ *Butler v. Kato*, Court of Appeals, Div. I, Docket number 58418-9, decided March 12, 2007.

IV. RESOURCES

Adkins, Ben, Sue English, and Matt Temmel, PIERCE COUNTY PRE-TRIAL SERVICES, prepared for Performance Audit Committee, November 4, 2004, available at <http://www.piercecountywa.org/performance-audit>

Carlson, Alan, George Gish, Barry Mahoney, Julie Hodges, and Ginger Kyle, MANAGEMENT STUDY OF FELONY CASE PROCESSING IN PIERCE COUNTY, WASHINGTON, FINAL REPORT, The Justice Management Institute, February 15, 2001, referred to as the “JMI 2001 Report”, available at <http://www.piercecountywa.org/performance-audit>.

Carlson, Alan, and Aimee Baehler, THE SUPERIOR COURT AND FELONY CASE PROCESSING IN PIERCE COUNTY, WASHINGTON, FINAL REPORT, The Justice Management Institute, March 14, 2002, referred to as the “JMI 2002 Report”, available at <http://www.piercecountywa.org/performance-audit>.

Fitzer, Bertha B., WASHINGTON STATE DEPARTMENT OF CORRECTION POLICIES AND PIERCE COUNTY’S HIGH CRIME RATE, Office of Gerald A. Horne, Pierce County Prosecuting Attorney, February 6, 2007.

Hauge, Russell D., Kitsap County Prosecuting Attorney, MISSION STATEMENT, STANDARDS AND GUIDELINES, Revision Date: May 7, 2007, at: <http://www.kitsapgov.com/pros/StandardsGuidelines2007.pdf>.

Snohomish County Prosecuting Attorney’s Office, CHARGING AND DISPOSITION STANDARDS, Janice E. Ellis, Snohomish County Prosecuting Attorney, Adopted September 1, 2005, Updated September 1, 2006, http://www.co.snohomish.wa.us/documents/Departments/Prosecuting_Atorney/charginganddispositionstandards-september_2006.pdf.

Temmel, Matt, FOLLOW-UP REPORT, PIERCE COUNTY SUPERIOR COURT WORKLOAD AND PERFORMANCE, prepared for the Performance Audit Committee, September 15, 2005, available at <http://www.co.pierce.wa.us/xml/abtus/plans/perf-audit/reports/FinalReportSept152005.pdf>.

Temmel, Matt, Memo to Performance Audit Committee entitled “2007 Work Program, Recommended Follow-up Study of Superior Court Felony Case Processing”, dated December 7, 2006.

APPENDIX A - METHODOLOGY

The findings and recommendations made in this report are based on information collected during site visits to Pierce County, a review of written reports and other documents, and an analysis of quantitative data.

The site visits included extensive interviews and observations of court proceedings. The interviews were with those in leadership positions who could relate the strategies and policies of their court or agency and share their assessments of impediments and needed changes. Unit supervisors and senior staff were also interviewed to obtain greater detail about how policies are implemented and what specific problems they have encountered. All interviewees were asked for suggestions about how to improve the system. Proceedings observed included the key proceedings affecting the movement of felony cases, in particular the CD and CDPJ courts. Several Superior Court Criminal Procedures Committee meetings were also attended.

Those interviewed included Superior Court judges and support staff and managers and staff in the affected criminal justice agencies: the Prosecuting Attorney, Department of Assigned Counsel, Office of the County Clerk, Corrections Bureau, Pre-Trial Services, and Performance Audit. Lawyers in the Prosecuting Attorney's office and Department of Assigned Counsel were interviewed individually or in small groups. Interviews were also conducted with attorneys who were privately retained or appointed to represent felony defendants. Three site visits were made in the Spring and early Summer of 2007.

Reports and prior studies of the criminal justice system or its components were also reviewed. These included prior studies, performance audits, news stories, manuals, and other agency documentation of policies and practices. In addition, Washington state statutes, appellate court opinions, and state and local court rules were examined. These provided valuable background and context for understanding current operations, and indicated legal limitations on recommendations.

Information gathered from interviews, observations and reports was augmented with statistical information about caseload, workload, and performance. Analysis of aggregate statistical data provides a clearer picture of what is happening to the caseload generally. The review and analysis covered information about case filings, pending caseloads, scheduled court proceedings, case resolutions, jail population, and judge availability. The data reviewed was derived from both regularly produced reports and ad hoc reports generated specifically for this project.

A draft report was prepared with observations, findings, and recommendations. The draft report was reviewed by a committee of Superior Court judges and the senior managers of the Superior Court, Prosecuting Attorney, and Department of Assigned Counsel, as well as Performance Audit staff. Separate meetings were held with each of the three entities to go over the findings and recommendations. The draft was modified to reflect the comments and a final report prepared. Finally, a presentation was scheduled before the Pierce County Performance Audit Committee.