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PROGRESS REPORT

Pretrial Release Issues

Report of the Criminal Justice Task Force

to

Pierce County Council

Pierce County Criminal Justice Task Force Pretrial Release Work Group Members

Dick Muri, Work Group Chair
Pierce County Councilmember

Michael Kawamura, Vice Chair
Department of Assigned Counsel

Mark Lindquist and Dawn Farina
Prosecuting Attorney's Office

Judge Jim Heller
District Court

Captain Mark Langford
Tacoma Police Department

Judge Tom Larkin
Superior Court

Chief Rob Masko
Corrections Bureau, Pierce County Sheriff's Department

Al Rose
Pierce County Executive's Office

Harry Steinmetz
Attorney at Law

Matt Temmel
Performance Audit Coordinator

Jeanie Peterson
Citizen, Hilltop/Central Area

Ken Witkoe
Citizen at Large

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Executive Summary

Since October 2008 a work group of the Criminal Justice Task Force has studied Pretrial Release issues, that is, how Pierce County can establish a safe and cost-effective system of pretrial release. This report sketches a proposed pretrial release system in broad outline and is intended to stimulate discussion on a more detailed program design.

CURRENT METHODS OF PRETRIAL RELEASE (pages 1 - 4)

The primary current methods of pretrial release are:

- Book and release by the jail, known as “SIP” (Special Identification Procedure).
- Release on bail from the jail prior to arraignment.
- Release of misdemeanants by jail staff (Pretrial Services) using a risk assessment tool that dates from the 1960’s.
- Release by the court on bail.
- Release by the court on personal recognizance.

According to the available data, release on bail is by far the most common, accounting for approximately 41% of pretrial releases. Imposition of bail creates disadvantages for low-income people and may keep more defendants in jail than needed to protect public safety.

Judges are interested in developing a pretrial release system that would provide objective, verified information about defendants on which to base the release decision. Judges also want to reduce the failure-to-appear rate, which they consider unacceptably high. The Corrections Bureau is interested in developing a pretrial release system in order to reduce the pretrial felony population in the jail, which now accounts for over 60% of total bed days.

PRETRIAL PROGRAMS IN OTHER JURISDICTIONS (pages 5 - 9)

The work group studied pretrial release programs in Allegheny County, Pennsylvania (Pittsburgh) and Multnomah County, Oregon (Portland). These model programs utilize objective and validated risk assessment instruments to provide judges with reliable information on which to base pretrial release decisions. The programs are designed to keep in jail only those who must be kept there to protect public safety. Pretrial staff members provide varying levels of supervision to medium and higher risk defendants depending on the objectively-assessed risk of re-arrest and failure to appear in court.

Performance audit staff collected information on pretrial release programs in six other counties in Washington. These are the largest counties in the state. Defendants charged with felonies are the focus of pretrial release in most of the counties. Of the counties studied, only Pierce County does not conduct pretrial risk assessments of those charged with felonies.

The most successful pretrial release programs have a supervision or monitoring component for those defendants who need it. This component is present in Clark, King, Thurston, and Yakima counties, and not present in Pierce, Snohomish, and Spokane counties.

PROPOSED PROGRAM DESIGN FOR PIERCE COUNTY (pages 9 – 12, 17 – 19)

The main objectives of the pretrial release program should be to:

1. Make well-informed pretrial release recommendations to the court based on the defendant's criminal history, failure-to-appear history, and verified personal and social information.
2. Conduct effective monitoring of the conditions of release that minimizes failure-to-appear rates and reduces the risk of re-arrest.
3. Help to manage the size of the jail population and thus avoid having to build additional jail space for the foreseeable future.

Some of the key characteristics of the proposed system are that: (a) the system would focus on felony cases, (b) felony releases must be by court order, and (c) the new system must include effective ways to monitor the conditions of release and to return the person to custody if the conditions are violated.

Organization: The report says the new program should be located in the courts and headed by a governing body of judges. The program could be located in District Court Probation or in Superior Court, depending in part on the program scope (that is, it would be a pretrial release program for felony cases, misdemeanor cases, or both).

Recommendation: The report recommends (page 11) that Superior Court and District Court consider the issues of program scope and organizational placement and report in writing to the Criminal Justice Task Force by July 31.

Program Operations: The report includes a fairly detailed discussion of how the proposed program would operate, including description of the staff functions and related matters.

Fiscal Impact: Implementing a pretrial release system will require new and/or reallocated resources. It is impossible to estimate the fiscal impact until the program has been designed in detail.

Risk Assessment: Information has been collected on the risk assessment instruments used in other jurisdictions in Washington, but more study is needed before making recommendations on how to proceed in Pierce County. See below, pp. 13-14.

Performance Monitoring and Evaluation: The report suggests potential performance measures for a pretrial release program. These indicators should be reported on a regular basis as part of the "dashboard report" previously recommended by the Criminal Justice Task Force.

COMPLIANCE AND ENFORCEMENT (pages 13 - 17)

The report addresses compliance and enforcement and the related liability issues. These issues were discussed by the Pretrial Release Work Group at one meeting and by the full Task Force at another meeting. More work and more discussion are needed.

The report discusses in detail how Clark, Thurston, and King counties deal with compliance and enforcement issues.

King County revamped its pretrial release program in response to a court case in which the county was found liable for the rape of a six-year-old girl by a pretrial releasee. The program was revamped so that:

- Release decisions in felony cases are made by judges, not staff.
- Staff lost much of their previous discretion in deciding whether or when to file a violation report.
- The Conditions of Conduct court order is specific and clear. It informs the caseworker what to monitor while the defendant is in the program. It also informs the defendant what he or she is responsible for accomplishing and the consequences of non-compliance.

The King County court orders and related documents should be considered as potential models for Pierce County. The key documents are in Appendix 1.

The Prosecuting Attorney's Office is concerned that undertaking pretrial supervision of felony defendants would expose Pierce County to significant liability risks. The main basis for the concern, besides large awards against the state Department of Corrections for negligent supervision of sentenced offenders who are on probation, is a 1999 state Supreme Court case, *Hertog v. City of Seattle*. The court ruled that the City of Seattle was liable for the rape of a child by a convicted offender who was on probation. At the time, he was on pretrial release for a pending felony charge in King County, and the county was also held to be liable. Material from the Prosecuting Attorney's Office appears in Appendix 2.

FUTURE WORK

The Task Force has more work to do on pretrial release issues. Some of the issues to be addressed are:

- Program scope and organization. The judges' report due July 31 is key here.
- Risk assessment instrument.
- Liability issues.

A. WORK GROUP ISSUES AND PROCESS

The Criminal Justice Task Force (CJTF) recommended in its September 2008 report to the Pierce County Council that the county should develop “a more cohesive and comprehensive pretrial release system incorporating objective risk assessment and a richer continuum of supervision and notification options that will minimize failures to appear for court proceedings (FTAs) and re-offending by pretrial releasees.”

To address these issues, a Pretrial Release Work Group was formed with members from the County Council, judiciary, prosecution, defense, law enforcement, Sheriff’s Department, and interested citizens. The Pretrial Release Work Group has met 10 times since its formation in October 2008, and has accomplished its primary objectives:

1. Through the “decision mapping” process, develop a shared understanding of how pretrial release decisions are currently made in Pierce County.
2. Explore promising pretrial release policies and practices of other jurisdictions.
3. Develop recommendations about how Pierce County can establish a new and more cost-effective pretrial release system.

This report reviews the current methods of pretrial release, discusses pretrial release in other jurisdictions, and then proposes a program design for Pierce County. The intent is to sketch the proposed pretrial release system in broad outline, and to stimulate discussion on a more detailed program design.

B. CURRENT METHODS OF PRETRIAL RELEASE

Currently, Pierce County has a variety of pretrial release methods employed by the jail and the courts, but the elements are uncoordinated and do not amount to a system. None of the current release methods has a supervision component – that is, a way to stay in touch with the released persons and encourage them to avoid criminal activity, adhere to the other court-ordered release conditions, and appear at scheduled court proceedings.

The primary ways that Pierce County defendants currently are released prior to resolution of their cases are:

1. Jail “SIP” (Special Identification Procedure) by jail booking staff or arresting officers, also known as “book and release.” This is used only for defendants charged with and having a history solely of minor offenses who can be positively identified.

2. Release on bail (cash or bond) from the jail prior to arraignment using bail schedules established by the courts based solely on current charge seriousness. Almost all defendants are eligible for release on bail if they are able to post it themselves or through a bonding agent.
3. Release on personal recognizance by jail staff (Pretrial Services), using a pretrial risk assessment tool (VERA) that dates from the 1960s. This type of release applies only to misdemeanants.
4. Court release on bail with a standard set of behavioral expectations.
5. Court release on personal recognizance with a standard set of behavioral expectations.

To get an idea of how defendants are released from jail, we studied jail release data from January through June 2008. For that period, the jail had 61 categories of data to indicate the type of release. By grouping the categories, it is possible to get a general picture of how or why inmates are released. Over the six months that were studied, there were a total of 12,748 releases, of which approximately 6,895 (54%) were pretrial releases.¹ Exhibit 1 shows the types of pretrial release.

Exhibit 1		
Pretrial Releases, January - June 2008		
	Number	Percent
Bail	2,860	41%
Judge-ordered Release on Personal Recognizance	816	12%
Administrative Release on Personal Recognizance	780	11%
Book and Release (SIP and administrative booking)	1,376	20%
No Charges Filed or Dismissed	1,063	15%
Total	6,895	100%

Source : Performance audit staff analysis of jail release data presented to the Criminal Justice Task Force on August 4, 2008.

¹ Actually, the number of pretrial releases was a little higher, but the number cannot be stated exactly because pretrial releases are buried in some data categories. For example, "Court Order" is a catch-all category for 686 releases. The category includes releases by bail, personal recognizance, charges dismissed, time served, and other things.

Bail is the predominant type of pretrial release. Anecdotal information suggests that bail may be required more often than necessary to minimize failures to appear and protect public safety. Imposition of bail certainly creates disadvantages for people unable to meet the financial requirements and may keep more indigent defendants in jail than needed to protect public safety.

The courts have two main concerns about the current practices. First, apart from the information provided by the prosecution and the defense, judges have little objective, verified information on which to base their decision to release or not release an in-custody defendant at arraignment.² Second, current practice includes no supervision of pretrial releasees, and the failure-to-appear rate is unacceptably high in the Superior Court and the courts of lower jurisdiction.

The Corrections Bureau of the Sheriff's Department is concerned about the high number of pretrial felony inmates – over 60% of the jail's population in recent years. Exhibit 2 shows the trend in pretrial felony bed days as a percentage of the total. To keep down the jail population and comply with the population limits under the federal court order, the Corrections Bureau has urged discussion of felony pretrial release issues and proposed greater use of administrative release.

Administrative releases by Pretrial Services are limited to misdemeanor cases. The numbers have grown from 900 in 2004 to 1,663 in 2008, mainly because the Corrections Bureau raised bail limits for those who may be considered for administrative release. Pretrial Services has a 2009 budget of \$558,000 and includes six screeners. Screening for release on personal recognizance is a minor part of their current duties in terms of the staff level of effort. Most staff time is devoted to running criminal histories for jail classification (21,523 in 2008) and conducting indigency screening for the courts (13,239 screenings in 2008).

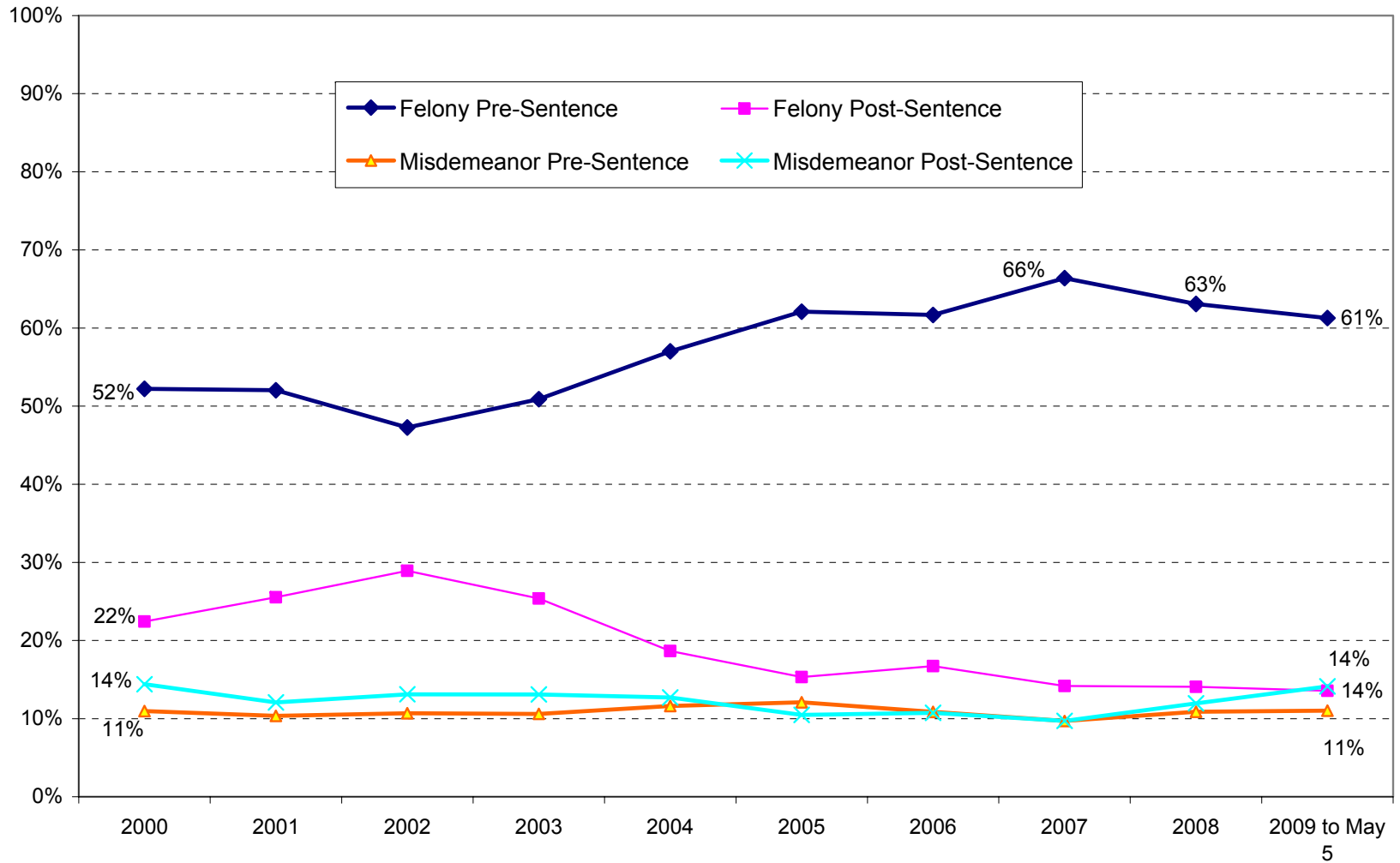
The Sheriff has requested from the Superior Court authority for the Corrections Bureau to make administrative releases of pretrial felony cases, using the same procedures now employed to make administrative releases of misdemeanor cases. The Superior Court has declined to authorize such releases.

After discussion, the consensus of the Pretrial Release Work Group is that administrative releases of pretrial felony inmates could create liability issues for Pierce County.

² In Pierce County, the first appearance is normally the arraignment.

Exhibit 2

Felony and Misdemeanor Cases as Percentages of Total Jail Bed Days



Source: Performance Audit Office analysis of LINX jail occupancy reports

C. PRETRIAL PROGRAMS IN OTHER JURISDICTIONS

The work group discussed pretrial release programs in other jurisdictions, including

- Allegheny County (Pittsburgh), Pennsylvania
- Multnomah County (Portland), Oregon
- Pierce County and six other large counties in Washington State.

1. Other States

Both Allegheny and Multnomah Counties have comprehensive pretrial release programs that utilize objective and validated (shown to be good predictors of FTA and re-arrest) risk assessment instruments to provide judges with reliable information on which to base pretrial release decisions. These are considered model programs.

Some key features of Allegheny County's pretrial release program, which is part of its court system, include:

- Judges participated in its design, and continue to actively monitor and support the program.
- Staff members conduct investigations of all defendants in jail and awaiting initial appearance in court.
- Through face-to-face interviews, staff collect, verify, and electronically provide to judges at arraignment the information that judges must consider in making pretrial release decisions.
- Arraignments are held within 10 hours (on average), and judges are available to do arraignments (all via video) 24 hours a day, 7 days a week.
- Pretrial staff members provide varying levels of supervision to medium and higher risk defendants depending on their objectively assessed risk of FTA and re-arrest.
- The program sends computer-generated reminder notices to all released defendants regarding their impending court hearings.
- Since the County implemented its revamped pretrial release system in 2007, the number of individuals admitted to the jail's long-term housing area has been reduced by 30%.

Multnomah County's pretrial release system has several interesting features:

- The County's Department of Community Justice (DCJ, which is also responsible for probation supervision, screens all new arrestees except those charged with non-person misdemeanors as their most serious offense and provides the court with the results. Defendants with non-person misdemeanors are screened only for warrants.
- Recognizance screeners, who are available 24-7, have been formally delegated authority by the Chief Criminal Judge to make release on recognizance decisions at jail intake. About 30% of those screened are released administratively on their own recognizance prior to arraignment.
- DCJ staff members supervise pretrial defendants referred to them by judges using phone contacts, office appointments, home visits, and/or electronic monitoring as appropriate to their assessed risk level.
- The Sheriff's Office Close Street Supervision unit provides pretrial release supervision to the highest risk releasees (including those charged with Class A felonies) using a combination of home and office visits, GPS and/or electronic monitoring.
- There is a Pretrial Release Advisory Board composed of the Chief Criminal Court Judge, the Court Administrator, and representatives of the Sheriff's Office, the DCJ, the District Attorney's office and the Public Defender agency. This Board monitors the performance of pretrial release and works together to modify policies and practices to improve the process and its outcomes.

2. Other Counties in Washington

Performance Audit staff collected information on pretrial release programs in six other counties in Washington. These are the largest counties in the state. See Exhibit 2 (next page). The programs in Clark, King, and Thurston counties (shaded in Exhibit 2) are of most interest in that they have a supervision or monitoring component and appear to be working successfully.³

³ The Yakima program also has a supervision component, but the program seems to have problems in that the courts tend to disregard the release recommendations.

Exhibit 3 Pretrial Release Programs in Washington State, April 2009

	Pierce County	Clark County	King County	Snohomish County	Spokane County	Thurston County	Yakima County
PROGRAM NAME	Pretrial Services	Supervised Release	Community Corrections	Office of Public Defense	Pretrial Services	Pretrial Services	Pretrial Services
ORGANIZATIONAL PLACEMENT	County Corrections (Sheriff)	County Corrections (separate from Sheriff)	Dept of Adult and Juvenile Detention	Separate office. Reports to Executive Director (under County Executive).	Separate office. Reports to board of county commissioners.	Superior Court	County Corrections (Sheriff)
BRIEF PROGRAM DESCRIPTION	Screen misdemeanor inmates and make administrative releases. No supervision.	Screen felony & misdemeanor inmates, recommend to the court who should be released, and do supervision	Wide range of alternatives to confinement -- for felony, misdemeanor, pretrial, and sentenced	Screen felony inmates and recommend to the court who should be released. No supervision.	Screen felony inmates and recommend to the court who should be released. No supervision	Screen felony inmates, recommend to the court who should be released, and do supervision	Screen felony and misdemeanor inmates, recommend to the courts who should be released, and do supervision
PROGRAM SCOPE	Misdemeanor cases	Misdemeanor & felony cases. Prosecutor usually agrees with the recommendation to release. Defense counsel often opposes.	Misdemeanor & felony cases	Felony cases	Felony cases	Felony cases	Misdemeanor & felony cases. Prosecutor tends to oppose PTS recs. In March, 53 qualified for release by District Ct. and court released 28. 60 qualified from Superior Ct, court released 23.
WHO AUTHORIZES RELEASE?	The jail (Pretrial Services)	The court. Jail has authority to release administratively, but seldom does so. Court is held soon after screening.	The court. Most releases are by court order. Also some admin releases for minor charges (538 in 2008), but these numbers are now much lower than in past.	The court	The court	The court	The court
IS THERE A REPORT TO THE COURT?	No	Yes	Yes, but no recommendations	Yes	Yes	Yes	Yes
DOES PROGRAM HAVE A SUPERVISION COMPONENT?	No	Yes	Monitoring of conditions of release, not supervision of the person	No	No	Yes	Yes
NUMBER CURRENTLY ON SUPERVISED PRETRIAL RELEASE	None. Released 1663 inmates on personal recognizance in 2008.	750 (three case managers have caseload of 250 each). Plus one court officer has 25 intensive supervision cases.	Work-education release, electronic home detention, and day reporting have 443 pretrial and sentenced people (April 8). Can't break out pretrial and sentenced.	None	None	218 now (or an average of 54 for the 4 staff members) Last year had total of 770 under supervision (192 per staff member)	Now 130, usually 200
CURRENT JAIL POPULATION	1270 (April 3)	714 (April 3)	2240 (April 8)	Unknown. Capacity is 1226.	Over 1100. Jail was built for 470.	430 (April 6). Felony population on average is 65% of total.	557 local population (April 3). Plus 520 non-local.
NUMBER OF PROGRAM STAFF	6 screeners	Total 9.84 FTEs (per budget). Includes 4.27 FTE for ROR, 2.64 for supervised release, and 2.93 for court investigations	18 PR investigators, 10 community corrections caseworkers, plus admin and support staff	5 screeners	7.5 FTE	4 screeners	5 case managers and 1 supervisor
ANNUAL COST	\$558,422	\$850,000			\$450,000	\$350,000	
ASSESSMENT TOOL	Vera	Local tool	None	None	None	"Static Risk Assessment" tool developed for state DOC by WSIPP	None
CRIMINAL HISTORY SEARCH	NCIC ("Triple I")	Local criminal history			NCIC ("Triple I")	NCIC ("Triple I")	Local criminal history
OTHER MAJOR DUTIES OF SCREENERS besides pretrial release and/or supervision	Criminal histories for jail classification and indigency screening	Indigency screening	Indigency screening	Screen for indigency and manage public defender contracts. Agency head sits as barrel defense attorney in District Court in-custody appearances.	Indigency screening for Superior and District courts	Indigency screening for Superior Court (not District)	None except duties related to pretrial release screening and supervision

Key findings based on Exhibit 3 are as follows.

1. Defendants charged with felonies are the focus of pretrial release in most of the counties that were studied. Of the seven counties studied, only Pierce County does not conduct pretrial risk assessments of those charged with felonies.
2. In the other counties, the norm is that pretrial releases are authorized by court order, and there are no administrative releases. This protects a county from lawsuits in that judges have judicial immunity. Administrative releases, as in Pierce County, leave the county more open to possible lawsuits.
3. The most successful programs have a supervision or monitoring component for those defendants who need it. A supervision or monitoring component is present in Clark, King, Thurston, and Yakima counties, and not present in Pierce, Snohomish, and Spokane counties.
4. Most of the other programs do not have an objective risk assessment instrument, as shown in Exhibit 3. They simply base the release recommendation on local policies and professional judgment. Only one jurisdiction has a current validated risk assessment instrument. Thurston County Pretrial Services uses an assessment tool recently developed by the Washington State Institute for Public Policy, as discussed later in this paper.
5. Organizational placement of the pretrial release program differs in the various jurisdictions. Some are located in the jail, some are in the courts, and some are a separate independent office.

Performance Audit staff visited the Thurston County program. The four screeners are responsible for pretrial investigations and supervision. They screen felony defendants prior to first appearance, verify the reported information to the extent possible, make a report to the court with recommendations for release on personal recognizance or bail, and supervise the defendants who are released by the court and ordered into supervision. The caseload currently averages 54 per staff member. The program focuses solely on Superior Court cases.

In contrast, Clark County employs nearly 10 FTEs. Some staff members are responsible for screening those charged with felonies and misdemeanors and making release recommendations to the Superior and District Courts, while other staff members are responsible for supervising released defendants. Three case managers handle routine cases and have caseloads of about 250 each. Other case managers are court officers and carry a caseload of 25 intensive supervision cases.

Pierce County Juvenile Court developed and has used since 2004 a pretrial release system that is considered a great success. The program uses a validated instrument to assess risk of re-offending or failing to appear in court. The court releases a large number of pretrial juvenile defendants and places them in alternatives to detention, under the supervision of their parents or guardians, with oversight and monitoring by probation staff. The program has reduced the number of juveniles in detention today to 43% of the average monthly population in 2003.⁴

D. PROPOSED PROGRAM DESIGN FOR PIERCE COUNTY

The program should be based on Washington court rules on release of the accused, which presume release in non-capital cases. The court rules state that defendants in both Superior Court and the courts of limited jurisdiction must be released on personal recognizance pending trial unless:

“(1) the court determines that such recognizance will not reasonably assure the accused’s appearance, when required, or

“(2) there is shown a likely danger that the accused:

“(a) will commit a violent crime, or

“(b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.”⁵

A pretrial release program should be designed so that the courts can obtain good information and release defendants on their own recognizance, with supervision when considered appropriate by the court.

The main objectives of Pierce County’s pretrial release program should be to:

1. Make well-informed pretrial release recommendations to the court based on the defendant’s criminal history, failure-to-appear history, and relevant personal and social information that has been verified to the extent possible.
2. Conduct effective monitoring of released person and notification or reminder of court dates that (a) minimizes the rate of failures to appear at court proceedings, and (b) reduces the risk that released defendants will engage in criminal behavior while their case is being resolved.
3. Help to manage the size of the jail population and thus avoid having to build additional jail space for the foreseeable future.

⁴ In 2003, the average daily population in juvenile detention was 147. In 2009 as of May 28, the average daily population in detention is 63, or 43% of the 2003 level.

⁵ CrR 3.2 and CrRLJ 3.2

1. Key Characteristics

- We are proposing a new approach to pretrial release in Pierce County, not an enhancement, extension, or development of current methods of pretrial release.
- To have a meaningful impact on jail population, the new system must focus on felony cases.
- Judicial decision making in felony cases is essential. All felony releases must be by court order.
- The new system must include an effective way to monitor the conditions of release. If the conditions are violated, the monitoring system must include enforcement provisions such as (1) taking the person directly into custody, if that is legal, or (2) arranging for a court appearance so a judge can decide whether to continue pretrial release or order the person to jail.
- As to pretrial release of misdemeanor cases, judges should consider whether administrative release of selected misdemeanor cases prior to arraignment, using criteria authorized by the court, should continue to be an option.

2. Organizational Placement

The pretrial release program should be located in the courts for three primary reasons:

1. The judges are the primary consumers of the information generated by pretrial release staff and should therefore have authority over the staff.
2. A program objective is to reduce the failure-to-appear rate in court, and that can best be accomplished by locating the program in the courts.
3. Legal responsibility for pretrial release, especially for felons, is best placed with the courts.

The pretrial release program could be headed by a governing body of Superior Court and District Court judges.

Representatives from the municipal courts can be added to the governing body at the discretion of the other judges. The judges can also decide whether to include representatives from the Prosecuting Attorney's Office, defense counsel, jail, and others as members of the governing body or include them in some kind of advisory body.

The pretrial release program could be located either in District Court Probation or in Superior Court.

Option 1: District Court Probation should be considered because that office provides case management for convicted misdemeanants and could, with expanded staff, also monitor pretrial felony defendants.

Option 2: The pretrial release program might be located in Superior Court, especially if the program focuses on felony cases. The court has experience operating alternatives to detention for the juvenile pretrial population.

The organizational issue could be influenced or decided by the program scope. As shown in Exhibit 2, a pretrial release program may include:

- felony cases only, or
- those charged with felonies and more serious misdemeanors, or
- all arrestees charged with felonies and/or misdemeanors.

Choice of program scope will have a major impact on the number of staff that are needed and on their work processes. Judges need to consider the options outlined above before the Criminal Justice Task Force can make final recommendations to the County Council.

Recommendation to the Courts

We recommend that the judges of the Superior Court and the District Court consider the issues regarding the program scope and organizational placement of a pretrial release program and report in writing to the Criminal Justice Task Force by July 31 through their representatives on the body.

Besides the program scope and organizational placement, judges may want to weigh in on other issues addressed in this report, especially the discussion of compliance and enforcement issues that starts on page 12.

3. Program Operations

The pretrial release program should be staffed with case managers who have background and qualifications similar to probation case managers. The primary responsibilities of the staff would include:

1. Prior to the first appearance, conduct assessments of the risk of failure to appear and re-offending for newly-arrested defendants.
2. Conduct indigency screening of each defendant to determine eligibility for assigned counsel. Indigency screening requires an interview with the defendant, as does the risk assessment, so the two functions should be kept together (as occurs in Clark, King, Snohomish, Spokane, and Thurston counties).

3. Make pretrial release recommendations to the court based on the accused's criminal history, failure-to-appear history, and relevant personal and social information.
4. If a court chooses to permit, by written policy, pretrial screeners to release selected low-risk defendants charged with minor offenses prior to arraignment, screeners will release such arrestees.
5. Provide case management and monitor those defendants released by the court for compliance with conditions of the release.
6. Submit violation reports for those defendants who have violated the conditions of release so the court can decide whether to continue or revoke pretrial release.

It is unclear whether the same staff should be responsible for all program functions (assessment, screening, and monitoring) or whether certain staff should be responsible for the initial assessment and screening while other staff are case managers and monitor compliance. This issue can be considered and decided later.

Some pretrial programs, such as those in Allegheny and Multnomah County, operate with screeners working on a 24/7 basis. However, it is feasible to accomplish the work with staffing that is not 24/7, but scheduled so as to provide maximum coverage at peak booking days and times. That is the current practice of successful pretrial release programs in Thurston, Clark, King, and Yakima counties.

Screening reports to the court should summarize defendants' criminal history and risk to re-offend. It should also include information on personal and social factors (such as residence, time at that address, family ties, employment, financial status, and other factors as determined by court policy).

Personal and social information would be obtained through interviewing the defendants and verified to the extent possible by screeners. Verification would be primarily through collateral contacts in the community, such as telephoning a family member or other source. The screening report to the court would indicate which items of information have been verified. What constitutes "verification" must be clearly defined in the program policies and procedures (which would be approved by the governing body).

The screening report to the court on each inmate would make a recommendation for the judge's consideration. The "menu" of release options could include:

1. Release on personal recognizance.
2. Release on personal recognizance with monitoring.
3. Release on bail.
4. Release on bail with monitoring. (Some counties have this option, some do not.)
5. No release.

4. Compliance and Enforcement in Clark, Thurston, and King Counties

This section deals with compliance with the court-ordered conditions of release and the related enforcement issues. Four sub-topics are considered: (a) supervision or monitoring, (b) conditions of release, (c) staff discretion, and (d) compliance and enforcement.

Supervision or Monitoring?

The term “supervision” is used often in the pretrial release literature, but it is potentially misleading. The term causes no problem in states that have sovereign immunity and thus cannot be sued for actions by released inmates who are under some form of public “supervision.” However, the state of Washington does not have sovereign immunity for negligent supervision actions, and thus there is greater liability risk at the state and local level compared with other states.

Some Washington counties, such as Clark and Thurston, use the term “supervision” and define it as limited to the conditions contained in the court order. King County, in contrast, uses the term “monitoring.” The term “monitoring” is preferable because it better describes what all three counties actually do in their pretrial release programs. “Monitoring” means a system for monitoring compliance with the conditions of release and taking appropriate action when the defendant is out of compliance.

Conditions of Release

The conditions of release ordered by the court may include one or more of the following: required office visits, telephone calls, electronic home monitoring, release from jail to go to work or school, day reporting, and other possibilities. The court order releasing the person and placing him/her under the pretrial program should indicate how often the defendant is required to report and be very clear on the conditions of release. (See the discussion below on the King County approach.)

The court may also require certain persons released to the pretrial program to comply with certain affirmative conditions. For example, Thurston County Superior Court requires alcohol or drug testing for those with a documented substance abuse problem. Both King and Clark Counties also require drug and alcohol testing for such individuals. While the number of Clark County cases with required drug testing has been reduced as result of a 2008 case,⁶ mandatory drug testing is still a prominent feature of the Clark County pretrial release program for those with a history of substance abuse or chemical dependency.

⁶ *State v. Rose*, 146 Wn. App. 439, 191 P.3d 83 (2008)

Staff Discretion

An important aspect of designing a pretrial release program is to decide whether the program staff members have authority to change the reporting requirements, such as how often the defendant must report, without going back to the court for authorization. It must also be considered whether the program staff members are absolutely required to file a violation report for certain kinds of non-compliance (such as new charges or failure to report) and in what circumstances they have discretion not to do so (such as a failed drug test). It is critical to address these issues in the program policies and procedures approved by the governing body.

Compliance and Enforcement

What happens when a released person violates the conditions of release? The system must be designed so that violations have consequences. The key issues here are:

1. What is the process for deciding whether a violator should be returned to custody?
2. After the decision is made, what are the procedures or mechanisms for actually returning the person to custody?

We discussed the above matters with program authorities, judges, and others in Clark County, Thurston County, and King County. The key facts by county are as follows.

Clark County

Background: Currently, about 750 people are on supervised pretrial release. The program is called “SR,” or “supervised release.” Three supervised release officers carry a caseload of about 240 each. One court officer has a caseload of 25 to 30 intensive supervision cases.

Compliance and Enforcement: The program distinguishes between automatic violations and those in which the supervised release officers have some discretion.

- New arrest charges, changing address without giving notice, missing a required drug test twice, or a failed drug test (in most instances) will result in filing a violation report.
- The supervised release officers have discretion on missed office appointments and on drug test results to some extent. Since drug testing is aimed at detecting “new use,” the officers have discretion when interpreting the results for a person who recently entered the program. Positive test results that could have resulted from old usage are not counted as violations.

The program has about 750 persons under supervision, roughly half felony cases and half misdemeanors. This is a high number of program participants for a jurisdiction of Clark County's size. This suggests that both the Superior and District courts have confidence in the program.

Thurston County

Background: Currently, the program has about 216 people on pretrial release with "supervision." For the four program staff, this makes an average caseload of 54 persons under supervision.

Compliance and Enforcement: Most clients have to report to the court and/or to Pretrial Services about once a week. Some defendants are required to report by telephone, and others in person.

Program policies indicate that supervision is limited to the conditions specifically set by court order. The program manual states that staff "shall report all violations of the court's order."

In practice, it appears that new arrest charges and violations of a protection order are always reported as violations, but staff may have discretion for failed drug tests and missed appointments. If failed drug tests or missed appointments are reported as violations, the prosecutor has discretion whether to pursue the matter. If the prosecutor does so, a hearing will take place and a judge will decide whether to continue the person in pretrial release or order the person back to jail.

The pretrial staff members appear to have some discretion as to how and how often a defendant must report. For example, "telephonic defendants" are required to call every Tuesday. If such a defendant does not call, according to the policies and procedures, the staff are allowed to place him/her on in-person reporting status.

The pretrial release program in Thurston County enjoys a high reputation with the Superior Court judges and administration. They consider it an essential part of doing court business in an effective manner. The program was featured this spring in a presentation at a statewide judicial conference.

King County

Background: In early April this year, King County had 443 people in the three major alternative-to-confinement programs run by the Community Corrections Division. The programs are:

- Work-Education Release: live in the jail, leave during the day for work or education, for pretrial and sentenced inmates.
- Electronic Home Detention: pretrial and sentenced.
- Community Center for Alternative Programs (CCAP). This is day reporting for pretrial defendants and sentenced and offenders. The day reporting can be basic (telephone reporting) or enhanced (in-person reporting, with more stringent conditions), depending on what the court considers necessary for the individual.

In addition to the above programs, King County (like other superior courts) also releases defendants on their own recognizance, with no reporting conditions.

These King County programs can be seen in the context of a case called *Hertog v. City of Seattle*, 138 Wn.2d 265, 292 (1999). While on pretrial release from King County, defendant Krantz raped a six-year-old girl. In the *Hertog* case, the Washington Supreme Court ruled: "We hold that [King] County and [its] pretrial release counselor Lake had a duty to control Krantz to protect others from reasonably foreseeable harm resulting from Krantz's dangerous propensities."⁷

Compliance and Enforcement: In response to the *Hertog* case, King County revamped its pretrial release system in at least two major respects:

- Release decisions in felony cases are to be made by judges, not staff.
- The system of compliance and enforcement was strengthened and clarified. Staff lost much of their previous discretion in deciding whether or when to file a violation report. The staff are now notified of their obligations by court order.

Two court orders are required to admit a person into an alternative program:

1. The Commitment Order orders the defendant to the program.
2. The Conditions of Conduct Order tells the caseworker what to monitor while the defendant is in the program. It also tells the defendant, in very specific terms, what he/she is responsible for accomplishing and the consequences of non-compliance.

⁷ Quoted from e-mail message on liability issues from Douglas Vanscoy to Pretrial Release Work Group, May 19, 2009.

The King County court orders and related documents are clear and specific, and they should be considered as potential models for Pierce County.

In cases of non-compliance, King County has specific processes for returning a pretrial defendant to custody. If the defendant is on site and is willing to surrender, a program staff member requests a Remand Order from the Criminal Presiding Judge. This results in the defendant being arrested and booked into jail. If the defendant has violated the conditions of conduct and is not on site, the staff will request a bench warrant.

Appendix 1 of this report includes five documents that explain the King County approach in more detail. The documents are (1) description of the various alternative programs, (2) process for commitment to alternative programs, (3) Conditions of Conduct court order for basic day reporting, (4) Conditions of Conduct court order for enhanced day reporting, and (5) Remand and Bench Warrant Process for Violators.

The pretrial release program enjoys a high reputation with the Superior Court judges and administration in King County.

Our preliminary conclusions on Compliance and Enforcement can be expressed as two points:

1. There are different ways to monitor compliance with the conditions of release and a range of enforcement actions that can be taken.
2. Compliance and enforcement need to be discussed further by the Criminal Justice Task Force and/or the Pretrial Release Work Group.

5. Fiscal Impact

Implementing a pretrial release system as outlined in this report will require new and/or reallocated resources. In the current fiscal environment, it is likely that money for the program would have to come from reallocating resources.

It is impossible to estimate the fiscal impact until the pretrial release program has been designed in detail. If the County Council wants to fund the program, it could adopt a goal of recovering the initial investment within so many years by achieving a similar level of economies in the jail or in other county expenditures. While the investment will be considerable, it would be much less expensive than building another jail and/or fully staffing the current facility.

The Chief Civil Deputy in the Prosecuting Attorney's Office reported to the Task Force that any increase in pretrial release with supervision or monitoring would increase Pierce County's liability under current state law and have a large potential adverse fiscal impact. **Appendix 2** is the material distributed by the Chief Civil Deputy to the Pretrial Release Work Group on May 19.

6. Risk Assessment

Which risk assessment tool should the screeners use to help identify those defendants who should be released?

We found that no one in Washington uses the highly-regarded Virginia Risk Assessment Instrument (VRAI), and many programs have no assessment tool but simply conduct the assessment based on local policies as to who may be released. (See Exhibit 2.) Allegheny and Multnomah Counties are among the few jurisdictions across the country with criminal court (adult) pretrial risk assessment instruments tailored and validated for their exclusive use.

Perhaps the most realistic choice for Pierce County, or at least the first step, is to consider adopting the assessment tool recently developed by the Washington State Institute for Public Policy (WSIPP) for the state Department of Corrections to supervise felony offenders on probation according to their risk for future offending. Thurston County Pretrial Services uses this instrument to help inform its recommendations to the court as to whether a felony defendant should be given pretrial release. A research report by WSIPP on the validity of this risk assessment instrument is available at <http://www.wsipp.wa.gov/pub.asp?docid=07-03-1201>.

The instrument is designed to measure the risk of recidivism for defendants charged with certain types of felonies based on their criminal history. The instrument has “moderate predictive accuracy” for recidivism in most cases.⁸ The instrument was not designed or intended to serve as a measure of risk of failure to appear (FTA) at court proceedings.

In Thurston County, screeners provide the court with two types of information relevant to risk of FTA:

- Information on bench warrants for FTA in Superior and District Courts available via the state SCOMIS and DISCIS data systems, and
- Personal and community ties information obtained by interviewing defendants and verified by third party contacts.

Thus the screeners’ recommendations to the court are not based solely on the WSIPP assessment instrument, but also on the professional judgment of the screeners. Pierce County must ensure that its pretrial screeners are sufficiently trained to conduct both the recidivism and FTA risk assessments and to combine these into a final release recommendation to the court.

⁸ Recidivism is defined as a subsequent conviction in a Washington State Superior Court for a felony offense committed within three years, plus one year allowed for the offense to be adjudicated in court.

7. Performance Monitoring and Evaluation

Pierce County's pretrial release program should be designed with monitoring and evaluation in mind, so that program managers and policymakers can determine whether the program is:

- 1) Operating as intended;
- 2) Achieving its workload (output) goals; and
- 3) Achieving desired outcomes in terms of managing jail population and minimizing FTA and re-arrest of released defendants.

Pierce County policymakers should also agree that if the pretrial release program succeeds in helping to lower jail ADP, every effort will be made to avoid "backfilling" available jail beds through gradual increases in bookings (that aren't related to population growth or increased crime rates or to an increase in the case age of pending felony cases).

Performance measures used to monitor the effectiveness of the pretrial release program should be based on the program's stated goals. Some potential measures include:

- Percent of those released who fail to appear at court hearings.
- Percent of those released who commit crimes while awaiting case resolution.
- Percent of those recommended by the program for pretrial release who are released by the court.
- Percent of jail average daily population that is awaiting case resolution.

When appropriate performance measures are determined, these key indicators should be reported on a regular basis as part of the "dashboard report" recommended by the CJTF in its September report to the County Council.

The County should provide necessary resources (staff time and technology) to support data collection and analysis of pretrial release performance measures, both for the criminal justice system dashboard report and for pretrial release program fine-tuning purposes.

At some point in the future, it may also be advisable to assess the validity of the risk assessment tool(s) that Pierce County chooses to adopt. Validation research is a complex process that requires specialized research design expertise and may necessitate additional data collection efforts beyond the program's routine processes.

Appendix 1

King County Pre-Trial Release Documents

The five documents in this appendix describe in detail the King County pretrial release process, the conditions of conduct, and the enforcement provisions. The documents are:

1. Description of the various alternative programs (two pages).
2. Process for Commitment to Alternatives (one page). Describes the Commitment Order and the Conditions of Conduct Order.
3. Conditions of Conduct Order (two pages) for a person ordered into the day reporting program known as Community Center for Alternative Programs – CCAP Basic. This is a telephone day reporting program for pretrial defendants and sentenced offenders.
4. Conditions of Conduct Order (three pages) for a person ordered into the enhanced day reporting program known as Community Center for Alternative Programs – CCAP Enhanced. This is in-person reporting.
5. Remand and Bench Warrant Process for Violators in the Community Center for Alternative Programs (CCAP) (three pages).

It is notable that the conditions of conduct documents clearly state what the defendant and the program staff members are to do, and clearly state the consequences for violations of the release conditions. The fifth document clearly describes the process for returning violators to custody.

Similar King County documents are available about the processes used in Work-Education Release and Electronic Home Detention.



King County

The Department of Adult and Juvenile Detention Community Corrections Division

Background

- Spring of 2002 - the King County Executive, Chair of the King County Council, Presiding Judge of the Superior Court, Presiding Judge of the District Court and Prosecuting Attorney call for the implementation of a Community Corrections operation
- Working group headed by Chief Deputy of the Prosecuting Attorney's Office, submitted a plan to the Criminal Justice Council
 - Plan called for Community Corrections to continue Work and Education Release (WER) and Electronic Home Detention (EHD), consolidate offender work crews into the Community Work Program (CWP), and establish a Day Reporting Center
- Criminal Justice (CJ) Council approved plan and submitted it to King County Council for approval
 - The working group was reconstituted as the CJ Implementation Group to oversee the implementation of the plan; CJ Implementation groups meets every other week
- December 16, 2002 - County Council passed an Ordinance creating the Community Corrections Division

Community Corrections Programs and Services:

- Work-Education Release (WER)
- Electronic Home Detention (EHD)
- Intake Services Unit (ISU)
- Community Work Program (CWP)
- Community Center for Alternative Programs (CCAP)
- Re-licensing Programs & Services
- Helping Hands Program (HHP)
- Re-entry Programs & Services
- The Learning Center (TLC)

Community Corrections Partners include, but are not limited to:

- KC Superior Court
- KC District Court
- KC Prosecutor's Office
- The Public Defender's Office & Defense Agencies
- County Council staff representing the Law, Justice and Human Services Committee
- KC Department of Judicial Administration
- KC Department of Community and Human Services
- United Way of King County

Community Corrections Program Service Providers include, but are not limited to:

- WA Learning Disabilities (Choices Life Skills Class)
- South Seattle Community College (Life Skills-to-Work)
- WorkSource
- Family Services (Domestic Violence Education)
- Alcoholics Anonymous
- Public Health (Smoking Cessation, etc.)
- Behavioral Investigations Incorporated
- King County/Seattle Public Health (HIV/STD Class)
- Washington State Dept. of Social and Health Svcs.
- Sound Mental Health
- King County Jobs Initiative
- New Beginnings
- People of Color Against Aids Network (POCAAN)

Community Corrections Court Process:

- Defendants are eligible either Pre-trial or Sentenced
- Court orders defendant directly into the program(s)
- Court orders the conditions under which the defendant will participate
- Two orders are required to process a person into a program
- All referrals must be statutorily eligible for the program
- Defendant proceeds to court ordered program for intake

Mission

The Community Corrections Division (a division of the Department of Adult & Juvenile Detention) provides the court system as well as the offender with pretrial and sentenced alternatives to secure confinement aimed at reducing the jail population, decreasing the offender's failure to appear rate, increasing the offender's accountability, and reducing the offender's rate of re-offense.

Electronic Home Detention (EHD)

Electronic monitoring system restricts pre-trial and sentenced offenders to their home, except to go to work, school, treatment, employment searches, medical appointments, and Court hearings.

- Participants wear electronic bracelet
- Participants pay intake and equipment fees (sliding scale)

Work and Education Release (WER)

An alcohol & drug free residential program where pre-trial and sentenced offenders go to work, school, conduct employment searches or treatment during the day/evening and return to a secure building at night.

- Participants can participate in limited programming such as AA/NA, religious groups and Life Skills-to-Work at CCAP
- Participants pay an intake fee and room and board (sliding scale)

Community Center for Alternative Programs (CCAP)

Day reporting center provides various treatment & educational programs and services.

- Participants are monitored for drug and alcohol use
- Participants required to attend weekly itinerary of classes and treatment
- Services are provided without cost to the participants

Community Work Program (CWP)

A supervised manual labor program where sentenced individuals and re-licensing candidates are assigned to work crews throughout the county.

- Revenue supported program
- CWP contracts with municipalities and other government agencies to provide landscaping services

Intake Services Unit (ISU)

Screens individuals booked into confinement and provides the information to the Court.

- Information assists Court decision to detain, release or place an individual in an alternative.
- Notification to defendants of their court date; Felony Arraignment Notification
- Facilitates release of individuals under Administrative Court Guidelines

Helping Hands Program (HHP)

Assists persons court-ordered to perform community service find a site to complete their hours of service and monitors compliance.

Re-entry & Education Programs and Services

- Re-entry Case Management Services (RCMS) provides individuals exiting the institution or an alternative program with linkages to health, housing, and social programs and services in the community. RCMS is operated by Sound Mental Health in collaboration with the division and King County DCHS/ Mental Health, Chemical Abuse and Dependency Services Division.
- The Learning Center (TLC) is a collaboration between the division and South Seattle Community College, a higher education institution for the provision of adult education, general education development (GED) preparation, math and science instruction, literacy, life skills, and computer instruction.
- King County Criminal Justice Workforce Development Initiative as a collaboration between King County Department of Adult & Juvenile Division (DAJD) and Department of Community & Human Services (DCHS) to develop an integrated system of vocational training and employment services for the Criminal Justice population. Key partner agencies include King County Jobs Initiative (KCJI) and WorkSource of Seattle-King County.

Process for Commitment to Alternatives

The Community Corrections Division under the Department of Adult and Juvenile Detention is intended to provide the Court with alternatives to secure confinement. These options currently include Work-Education-Release, Electronic Home Detention I and II, the Community Center for Alternative Programs and the Community Work Program.

The new policy of court-ordering defendants into programs represents a system change. This system change was partly a result of the Washington State Supreme Court decision that increased the financial exposure of taxpayers to lawsuits filed against offenders who commit new crimes while out of jail and under community supervision. Instead of the Department making an administrative decision as to eligibility, the Court will directly order the defendant into the program and order the conditions under which they will participate.

As a result, there are two orders that are required to process a person into the program ordered by the Court. The Commitment Form orders the program to take the defendant. The Conditions of Conduct Order tells the program caseworker what they are to monitor.

There are three requirements to process orders:

1. Commitment Order (J&S, orders to confinement/alternatives)

- The judge must write "**defendant is ordered to**" on the commitment form. Don't use terms like defendant is authorized, it's ok, may participate in, etc.
- All "**if eligible**" language must be stricken from the order.

Since there are numerous commitment orders used at this time, it is necessary for all Court staff preparing the order to identify where this language is on the paperwork and strike it from the form. Program staff cannot accept the referral with administrative language such as "if eligible".

2. Conditions of Conduct Order

- This order tells the program caseworker what to monitor while the defendant is in the program. It also tells the defendant what they are responsible for accomplishing and the consequences for non-compliance.

The Conditions of Conduct Order must accompany the Commitment Order and must be signed by the judge and the defendant. Program staff cannot accept the referral without this order because they will not know what the Court has told the defendant to do and can no longer make those decisions. If the Judge orders a split sentence, such as WER and EHD, the appropriate Conditions of Conduct Order must be issued for each program. The Conditions of Conduct Orders were approved through an exhaustive process and cannot be unilaterally modified. Any changes or additions to the Conditions of Conduct Orders must be made using the review and approval process currently in place (CJ Implementation Group).

3. Statutory Eligibility

All referrals must be statutorily eligible for the program.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

STATE OF WASHINGTON,

vs.

Plaintiff

Defendant

NO.
BA NO.
CCN NO.

**Conditions of Conduct for Persons Ordered
by the King County Superior Court into the
Community Center for Alternative
Programs
(CCAP) Basic

(ORDTLRA)**

The following are court imposed conditions of conduct for participation in the King County Community Center for Alternative Programs (CCAP). Compliance with these conditions of conduct shall be monitored by the King County Department of Adult and Juvenile Detention (DAJD), Community Corrections Division, as specified herein by the court. Your continued participation in CCAP is subject to strict compliance with the following:

You have been ordered to CCAP, Basic

1. **You shall report for CCAP orientation on _____ at 9:00 AM. CCAP is located at 400 Yesler Way, Seattle. Enter the Yesler Building on Terrace Avenue which is on the north side of the building.** Failure to report for orientation will result in your removal from CCAP and court-ordered incarceration into secure confinement.
2. **You shall report thereafter by telephone by 10:00 AM daily beginning on the next day following your orientation.** At your CCAP orientation appointment you will be assigned a caseworker and given their telephone number which you will be required to call daily. Failure to report by telephone will result in removal from CCAP and court-ordered incarceration into secure confinement.
3. **You shall commit no crimes.** Department staff shall monitor bookings into the King County Correctional Facility (KCCF) and the Regional Justice Center (RJC) for violations of any local, state or federal law or court order. Any booking into the King County Correctional Facility or the Regional Justice Center will result in your removal from CCAP and court-ordered incarceration into secure confinement.

4. **You shall not purchase, possess or use controlled substances without a valid prescription and shall not consume alcohol beginning from the date of this order.** Any use of controlled substances, other than as prescribed by a physician, will be considered a violation. You will submit to urinalysis testing as ordered, including a baseline urinalysis to determine the levels of THC within 5 days of beginning participation at CCAP and if the THC level does not decrease in your next urinalysis test, this will be considered a violation. You shall submit to random urinalysis and breathalyzer testing as directed by department staff 1 or 2 times every 30 days. Violation of this condition or failure to submit to testing on demand will result in removal from CCAP and court-ordered incarceration into secure confinement.

5. **You shall notify department staff prior to making a change in your residence. You shall keep department staff notified at all times of your current telephone number**

If this order is entered as conditions of a sentence, this order is incorporated by reference into the Judgment and Sentence.

DONE IN OPEN COURT this _____ day of _____, 20_____.

JUDGE

I, _____ have read, or have had read to me, the above court-ordered conditions of conduct for participation in the Community Center for Alternative Programs under the Department of Adult and Juvenile Detention, Community Corrections Division. I understand what is required of me for participation in this program and agree to abide by the conditions as stated herein. I also understand that it is my sole responsibility to comply with these conditions of conduct and that if I fail to comply, with any of the conditions, I may be immediately returned to incarceration in secure confinement. If I am placed in secure confinement as a result of violating this order, I may request a hearing before the Court.

Signature of Defendant _____ Dated _____

Interpreter's Declaration

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands, and I have translated the CCAP Conditions of Conduct order for the defendant from English in that language.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Interpreter Signature _____ Dated _____

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

STATE OF WASHINGTON,

NO.
BA NO.
CCN NO.

Plaintiff

vs.

**Conditions of Conduct for Persons Ordered
by the King County Superior Court into the
Community Center for Alternative
Programs, (CCAP) Enhanced**

Defendant

(ORDTLRA)

The following are court imposed conditions of conduct for participation in the King County Community Center for Alternative Programs (CCAP). Compliance with these conditions of conduct shall be monitored by the King County Department of Adult and Juvenile Detention (DAJD), Community Corrections Division, as specified herein by the court. Your continued participation in CCAP is subject to strict compliance with the following:

You have been ordered to CCAP, Enhanced

1. **You shall report to the Community Center for Alternative Programs by 9:00 AM on _____ and report each weekday Monday through Friday thereafter. You shall remain on the premises until discharged by department staff. CCAP is located at 400 Yesler Way, Seattle. Enter the Yesler Building on Terrace Avenue which is the north side of the building.** Failure to comply with this condition will result in your removal from CCAP and court ordered incarceration into secure confinement.
2. **You shall commit no crimes.** Department staff shall monitor bookings into the King County Correctional Facility (KCCF) and the Regional Justice Center (RJC) for violations of any local, state or federal law or court order. Any booking into the King County Correctional Facility or the Regional Justice Center will result in your removal from CCAP and court ordered incarceration into secure confinement.

3. **You shall not purchase, possess or use controlled substances without a valid prescription and shall not consume alcohol beginning from the date of this order.** Any use of controlled substances, other than as prescribed by a physician, will be considered a violation. You will submit to urinalysis testing as ordered, including a baseline urinalysis to determine the levels of THC within 5 days of beginning participation at CCAP and if the THC level does not decrease in your next urinalysis test, this will be considered a violation. You shall submit to random urinalysis and breathalyzer testing as directed by department staff 1 or 2 times every 30 days. Violation of this condition or failure to submit to testing on demand will result in removal from CCAP and court ordered incarceration into secure confinement.

4. **You shall perform _____ hours of community service, which may be in the form of work crew, on a schedule assigned by department staff.** Violation of this condition will result in your removal from CCAP and court ordered incarceration into secure confinement.

5. **You shall obtain the treatment evaluation(s) checked below. If you are determined as needing treatment, you shall enter at the next available opening and maintain reasonable progress in the recommended treatment program. You shall provide a Release of Information to department staff to verify your compliance.** Department staff shall contact the therapy and treatment providers 1 or 2 times every 30 days to verify compliance beginning 21 days from the date of this order. If you are ordered to enter an education program, you must begin immediately and make reasonable progress in such education program. Failure to comply with this condition will result in your removal from CCAP and court ordered incarceration into secure confinement.
 - Drug/Alcohol**
 - CCAP Domestic Violence Education Program (Pre-trial)**
 - Mental Health**
 - All treatment as ordered in the Judgment and Sentence and any modification orders.**
 - Other _____**

6. **You shall attend all CCAP programs and all CCAP caseworker appointments.** You will be given a schedule on the first day of programming which specifies dates and times of your CCAP programs and CCAP caseworker contacts. In addition to the schedule, CCAP staff may set additional meetings that you are required to attend. Unexcused absences will result in removal from CCAP and court ordered incarceration into secure confinement. Three written warnings in a 30 day period for being less than 60 minutes late will result in your removal from CCAP and incarceration into secure confinement. One incident of being 60 minutes late or more will result in your removal from CCAP and court ordered incarceration into secure confinement.

7. **You shall not forge a document or provide false information to department staff.** Such activity, if actually known to department staff, will result in removal from CCAP and court ordered incarceration into secure confinement.

8. **You shall participate in CCAP programs as directed, complete program assignments and follow department staff directions while participating in CCAP. You shall not behave in a threatening, assaultive or harassing manner.** Failure to comply as directed by department staff will result in written notification to the Prosecuting Attorney and the Defense Attorney. Failure to comply also may result in your removal from CCAP and court ordered incarceration into secure confinement.

9. You shall notify department staff prior to making a change in your residence. You shall keep department staff notified at all times of your current telephone number.

If this order is entered as conditions of a sentence, this order is incorporated by reference into the Judgment and Sentence.

DONE IN OPEN COURT this _____ day of _____ 20_____.

JUDGE

I, _____ have read, or have had read to me, the above court-ordered conditions of conduct for participation in the Community Center for Alternative Programs under the Department of Adult and Juvenile Detention, Community Corrections Division. I understand what is required of me for participation in this program and agree to abide by the conditions as stated herein. I also understand that it is my sole responsibility to comply with these conditions of conduct and that if I fail to comply, with any of these conditions, I may be immediately returned to incarceration in secure confinement. If I am placed in secure confinement as a result of violating this order, I may request a hearing before the court.

Signature of Defendant _____ Dated _____.

Interpreter's Declaration

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands and I have translated the CCAP Conditions of Conduct Order for the defendant from English in that language.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Interpreter
Signature _____ Dated _____.

Remand and Bench Warrant Process for Violators of the Community Center for Alternative Programs (CCAP)

CCAP participants are court ordered to the program. They are also ordered to comply with the CCAP Conditions of Conduct Order. When a violation occurs on a Superior Court case, CCAP staff is directed to revoke their program participation and the offender must be returned to secure detention. Since CCAP is a non-confinement option, the participants are not active in the jail Subject in Process (SIP) system and cannot be placed in custody. CCAP must obtain a Remand Order or request that a Bench Warrant be issued in order to change the offender's custody status which would allow them to be placed in secure confinement.

A. REMAND ORDER

If the offender violates, is on site at the Yesler Building and is willing to surrender, CCAP staff will request a Remand Order from the Criminal Presiding Judge in Seattle.

When requesting a Remand Order, CCAP staff will prepare the following paperwork:

- 1. Order Remanding CCAP Defendant to the Department of Adult and Juvenile Detention (Jail).**
- 2. Superform.**
- 3. Jail Booking Information for CCAP Violator** form (DAJD, F-670). This form has the number of days ordered or sentenced to CCAP, the underlying charge and the number of days completed in CCAP prior to the violation.
- 4. Notification of CCAP Violation** form (DAJD F-668). This form describes the violation.

After preparing the preceding four documents, CCAP staff will fax the following to the Criminal Presiding Judge in Seattle at fax #296-9221.

Agency Function:

1. Remand Order – Order Remanding CCAP Defendant to the Department of Adult and Juvenile Detention for the judge's signature.
2. Notification of CCAP Violation form describing the violation.
3. CCAP staff will e-mail the court @ Criminal.Presiding@MetroKC.Gov to alert court staff the Remand Order has been faxed.

Court Function:

1. The Criminal Presiding Court will fax the signed Remand Order to CCAP staff and file the original copy with the Dept of Judicial Administration.

Arrest Process

When CCAP staff receive the signed Remand Order from the judge, they will begin the arrest process as follows:

1. CCAP staff will contact Court Detail at 206-296-4113.
2. Court Detail will send an officer to the Yesler Building, first Floor, Room 140.
3. The Court Detail officer and CCAP staff will prepare the offender for transport by securing the offender's personal property which will be placed into a bag.
4. The Court Detail officer will be provided with a copy of the Remand Order, the Superform, Jail Booking Information for CCAP Violator form, the Judgment and Sentence, if applicable, and the offender's personal property.
5. The officer will then transport the offender to the King County Correctional Facility for booking.

Booking Process

A function of the jail booking recap is to prepare court calendars and schedule in-custody offenders for court hearings. When an offender is booked for violating CCAP conditions, the following jail codes will be used to identify the case on the jail booking recap.

Pre-Trial cases will be entered in SIP as follows:

In the charge field (Chrg), the officer will enter the charge/CCAP Violation.

Example: Theft/CCAP Violation

Chrgstat: CAT (charge awaiting trial)

Sentenced cases will be entered in SIP as follows:

In the charge field (Chrg), the officer will enter the charge/CCAP Violation.

Example: VUCSA/CCAP Violation

Chrgstat: SJS (serving jail sentence)

CCAP staff will notify the defense attorney and prosecutor that the offender has been remanded. CCAP staff will fax the following documents to the defense agency point person and prosecutor's records department.

1. The signed copy of the Remand Order.
2. The Notification of CCAP Violation form.
3. The Jail Booking Information for CCAP Violator form.
4. The CCAP Conditions of Conduct Order.

B. BENCH WARRANT

When an offender violates the CCAP Conditions of Conduct Order and is not on-site at the Yesler Building, CCAP will request a bench warrant be issued by the Prosecuting Attorney.

CCAP staff will fax the following documents to the Prosecuting Attorney at 296-0955 and make sure all appropriate boxes are checked:

1. Notification of CCAP Violation form (DAJD F-668)
2. Jail Booking Information for CCAP Violation form (DAJD F-670)
3. CCAP Conditions of Conduct Order

CCAP staff will fax the following documents to the Defense Agency Point Person and make sure all appropriate boxes are checked:

1. Notification of CCAP Violation form (DAJD F-688)
2. Jail Booking Information for CCAP Violation form (DAJD F-670)
3. CCAP Conditions of Conduct Order

The Prosecutor Attorney Record's section will fax a copy of the Bench Warrant to CCAP and the Defense Agency Point Person.

Appendix 2

Liability Concerns

As mentioned above on page 17, the Chief Civil Deputy in the Prosecuting Attorney's Office reported to the Task Force that any increase in pretrial release with supervision or monitoring would increase Pierce County's liability under current state law and have a large potential adverse fiscal impact. This appendix is the material distributed by the Chief Civil Deputy to the Pretrial Release Work Group on May 19.

Undertaking pretrial supervision of felony defendants would expose the County to significant liability risks. RCW 4.24.760, which since 2007 has provided some protection to District Court probation (except in cases of "gross negligence"), does not apply to supervision of persons charged with felonies. Attorney General Rob McKenna has used the words "especially problematic" to describe offender-related liability in this state:

Liability for crimes by released offenders is an especially problematic liability. The conceptual basis for the liability is that post-release and probation systems give the government control over offenders, rendering the government liable for their crimes. Other than Washington, every jurisdiction that has considered this liability appears to have judicially or legislatively rejected it, except in narrow circumstances. This liability is costly because governments are codefendants in cases with offenders who have committed heinous crimes or caused tragic accidents, leading to punitive verdicts. The increasing potential for catastrophic liability claims in this area is a threat to our correctional and court systems.

M. Tardif and R. McKenna, "Washington State's 45-Year Experiment in Governmental Liability," 29 Seattle U. L. Rev. 1, 49 (2005)(footnote omitted)(emphasis added). See, for example, the Washington Supreme Court's holding in *Hertog v. City of Seattle*, 138 Wn.2d 265, 292 (1999): "We hold that [King] County and [its] pretrial release counselor Lake had a duty to control Krantz to protect others from reasonably foreseeable harm resulting from Krantz's dangerous propensities." While on county supervision, Krantz had raped a 6-year-old girl.

[Attached] is a "Decision Package" produced by the Washington State Department of Corrections in connection with the 2007-2009 budget period. Although the conclusion is that the Department "anticipates a significant reduction in premium rates for the state's Self-Insurance Liability Program", the comments concerning liability for offender supervision at page 2 are as follows:

During the last six years, approximately 85 percent of the Department's paid liability arises from claims alleging negligent supervision. . . . [L]osses from negligent supervision swing from a low of \$66,000 in Fiscal Year 2004 to a high of \$13,800,000 in Fiscal Year 2001. . . . It is likely negligent supervision will continue to be the single significant liability facing the Department. . . . [T]he Department has had limited successes in defending against claims of negligent supervision. . . . [T]he legislature continues to take a hard view of proposed legislation that limits liability.

Under recent legislation, the Department of Corrections is in fact in the process of reducing its levels of offender supervision. ESSB 5288 (2009 Laws Ch. 375).

**State of Washington
Decision Package**

Agency: 310 Department of Corrections
Decision Package Code/Title: 9X Self-Insurance Premiums

Budget Period: 2007-2009

Budget Level: PL – Performance Level

Recommendation Summary Text:

The Department anticipates a significant reduction in premium rates for the state’s Self-Insurance Liability Program.

Agency Total

<u>Fiscal Detail</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
Operating Expenditures			
001-1 - General Fund - Basic Account-State	(\$5,900,000)	(\$5,900,000)	(\$11,800,000)

Staffing	<u>FY 2008</u>	<u>FY 2009</u>	<u>Annual Average</u>
FTEs	N/A	N/A	N/A

Program 600-Interagency Services

<u>Fiscal Detail</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
Operating Expenditures			
001-1 - General Fund - Basic Account-State	(\$5,900,000)	(\$5,900,000)	(\$11,800,000)

Staffing	<u>FY 2008</u>	<u>FY 2009</u>	<u>Annual Average</u>
FTEs	N/A	N/A	N/A

Package Description

Washington State is self-insured for tort liability. The Department’s tort liability arises from a number of areas including allegations of negligent supervision, vehicle accidents, injury to offenders or visitors, loss or damage to property, and employment related claims. The Department participates in the state self-insurance liability program and pays annual premiums based on past claims activity and reserves on pending claims. In exchange for premium payments, the Department’s tort liabilities are paid from the self-insurance liability account or from the excess commercial insurance. Beginning in Fiscal Year 2001, defense costs were included in the self-insurance program.

The premium allocation methodology was changed for the 2005-2007 Biennium. The changes removed a limit on losses and allocates premium based on losses using a pro-rata share (prior was based on positions).

Self-Insurance Liability Program Premiums*:

<u>2001-2003 Biennium</u>	<u>2003-2005 Biennium</u>	<u>2005-2007 Biennium</u>	<u>2007-2009 Biennium</u>
\$20,586,494	\$28,831,411	\$39,229,276	27,427,199

**Self insurance premiums include defense costs.*

The Department's premium for the 2007-2009 Biennium has decreased by \$11,800,000 due to reduction in losses of the Department and to a lesser degree, a reduction of the State's overall losses.

Loss Trend Information:

	<u>FY01</u>	<u>FY02</u>	<u>FY03</u>	<u>FY04</u>	<u>FY05</u>	<u>FY06</u>
Neg Sup*	\$13,895,000	\$3,367,500	\$8,781,000	\$ 66,000	\$4,988,287	\$8,256,993
Other	<u>\$ 1,207,38</u>	<u>\$ 491,210</u>	<u>\$1,817,056</u>	<u>\$1,049,886</u>	<u>\$ 456,826</u>	<u>\$1,425,957</u>
Total	\$15,102,384	\$3,858,710	\$10,598,056	\$1,115,886	\$5,445,113	\$9,682,950

**Negligent supervision claims are allegations that an offender on supervision in the community was not properly supervised and as a result a member of the public was seriously injured or killed.*

During the last six years, approximately 85 percent of the Department's paid liability arises from claims alleging negligent supervision. The remaining 15 percent of the paid liability results from all other claims of liability against the Department including employment claims, injury to offenders or visitors, vehicle accidents, and loss or damage to property. Losses for claims other than negligent supervision swing from a low of \$500,000 to a high of \$1,800,000, while losses from negligent supervision swing from a low of \$66,000 in Fiscal Year 2004 to a high of \$13,800,000 in Fiscal Year 2001.

Future Loss Trends:

It is likely negligent supervision will continue to be the single significant liability facing the Department. There are several reasons for this continued trend.

First, there are approximately 15 pending negligent supervision cases arising from events that occurred from 1998 to present.

Secondly, the Department has had limited success in defending against claims of negligent supervision. The Department's Court of Appeals overturned a \$15,000,000 verdict in a case alleging negligence in supervision of an offender only on supervision for collection of debt. The result of that case is the Department does not have liability for the actions of offenders who are only on supervision for collection of debt. In another less favorable case, the Supreme Court while reversing a verdict of \$22,500,000, reaffirmed that the Department could be liable for the actions of offenders even where there is no clear nexus between the criminal activity and those for which the offender was under supervision.

Finally, the legislature continues to take a hard view of proposed legislation that limits liability.

An area of non-tort liability facing the Department arises from risk associated with failure to properly comply with public disclosure rules. The Department is experiencing increases in the number of requests, particularly from offenders. Also, requests are more complex and broad requiring more staff time and diligence.

Risk Management Goals and Measures/Recap:

The Department will use the following strategies to mitigate/preclude losses from occurring in the future:

- Emphasis on re-entry of offenders into society following incarceration.
- Implementation of a Reception Diagnostic Center platform where offender needs will be assessed and a plan developed to address needs as the offender progresses through the corrections system.
- Report and review critical incidents and implement corrective actions where necessary
- Continue development and implementation of the automated Offender Management Network Information.
- Use of the Government Management, Accountability, and Performance platform to identify and address critical needs and to focus on risk.
- In partnership with the Office of Financial Management (OFM) – Risk Management Division and Office of the Attorney General, aggressively manage tort cases.
- Annual review of all Department policies.

Risk Management Executive Order:

The Department has taken the following actions to comply with the Risk Management Executive Order:

- The Secretary of the Department serves on the Risk Management Advisory Committee.
- Enhanced the Department Risk Management program by elevating the risk management program to report directly to the Department Secretary.
- Participate on the Loss Prevention and Risk Finance subcommittees of the Risk Management Advisory Committee.
- Identified the highest areas of risk through trend analysis.
- Focused resources to those offenders that pose the highest risk of harm to the public, as directed by OAA.
- Provided thousands of hours of staff and management training.
- Allocated resources to the greatest extent feasible to community corrections programs where the greatest liability risk exists.
- Annual review of policies.

Agency Risk Management Goals, Performance Measures, and Progress:

- Focus on risk through GMAP process.
- Mitigate risks associated with public disclosure, construction, and community supervision.
- In partnership with OFM Risk Management and the Office of the Attorney General conduct early case assessments and develop case strategies.
- Participate in early case resolution when appropriate.
- Review of incidents and development of action plans to address areas needing improvement.

Narrative Justification and Impact Statement

How contributes to strategic plan:

This request is critical to agency activities, the strategic plan, and statewide results. The request ensures that the Department has the necessary resources to maintain current levels of service and performance.

This request is required to sustain the agency activities *Core Administration*. The resources identified will be directed to support the agency objectives to meet the business administration needs of the agency. The strategy is to deploy new business practices and technology systems. These objectives and strategies move the Department closer to meeting its high-level organizational goals developing improved business practices and tools that are responsive, effective, and efficient. These high-level goals are intermediate outcomes and assist the Department in achieve statewide results that will reduce re-offense behavior and improve the safety of people and property.

Performance Measure Detail

No measures were submitted for this package.

Reason for change:

The reason for the change is due a-reduction in losses of the Department and to a lesser degree, a reduction of the State's overall losses.

Impact on clients and services:

The reduction will not affect the Department's ability to maintain its current level of service.

Impact on other state programs:

N/A

Relationship to capital budget:

N/A

Required changes to existing RCW, WAC, contract, or plan:

N/A

Alternatives explored by agency:

None. The Department is required by statute, RCW 4.92.130 and RCW 4.92.160 to participate in the Self-Insurance Liability Program.

Budget impacts in future biennia:

The funding reductions will continue into future biennia.

Distinction between one-time and ongoing costs:

The costs are ongoing.

Effects of non-funding:

N/A

Expenditure Calculations and Assumptions:

Requested reduction was provided by the Office of Financial Management.

<u>Object Detail</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
E Goods and Services	(\$5,900,000)	(\$5,900,000)	(\$11,800,000)
Total	(\$5,900,000)	(\$5,900,000)	(\$11,800,000)