

Public Defense Cost Recovery Task Force

**Recommendations to Implement Change
in Indigent Defense Screening and Cost Recovery**

The task force was appointed by resolution of the County Council in July 1998 to assist The Spangenberg Group in evaluating Pierce County's system of indigent defense screening and cost recovery. The task force consists of representatives from 12 entities of county government: Assigned Counsel, Budget and Finance, Clerk of Superior Court, Council, District Court #1, District Court Probation, Executive, Juvenile Court, Pre-Trial Services, Prosecuting Attorney, Sheriff, and Superior Court.

Task force members have reviewed the Spangenberg report (September 1998) at length, with the focus on implementation issues. Of the 10 recommendations made by Spangenberg, some emerged unchanged from the review process, while others evolved into other recommendations that the task force considers more feasible or more aggressive on cost recovery issues. On March 18, 1999, the task force agreed on the recommendations listed below.

Revenue Issues

1. The Council should enact an ordinance authorizing a screening fee.
2. Abolish promissory notes.
3. Institute recoupment as normal practice in Superior Court and District Courts for all cases with Assigned Counsel. The procedure is for the Prosecutor to recommend recoupment and Assigned Counsel to support this practice.
4. The recommended flat fees for recoupment are \$300 for class A felonies, \$200 for class B and C felonies, \$100 for DWI and domestic violence gross misdemeanors, and \$50 for other cases.
5. In Superior Court, adopt a "general order" that revises the payment order to give higher priority to recoupment. This will greatly increase county revenue.
6. For District Court, pursue actions that revise the payment order to give higher priority to recoupment.

Organizational Issues

7. Revitalize PTS Advisory Board to explore the role of Pre-Trial Services.

Administrative Issues

8. Screen more defendants out of custody. This includes defendants in all courts for which screening is conducted.
9. Verify defendant resources on a random or selective basis.
10. Expand the use of interns in Pre-Trial Services.

1 FILE NO. 160 PROPOSAL NO. 99-31

2 Sponsored by: Councilmember Karen S. Biskey

3 Requested by: County Executive/Budget & Finance Department

4

5 ORDINANCE NO. 99-31

6 AN ORDINANCE OF THE PIERCE COUNTY COUNCIL ADOPTING A NEW CHAPTER 9.50
7 OF THE PIERCE COUNTY CODE, "INDIGENT DEFENSE SERVICES
8 APPLICATION FEE"; AND ESTABLISHING A \$25.00 APPLICATION
9 FEE FOR APPOINTMENT OF COUNSEL AT PUBLIC EXPENSE.

10

11 WHEREAS, Revised Code of Washington (RCW) 10.101.005 requires
12 that effective legal representation should be provided for indigent
13 persons and persons who are indigent and able to contribute in all
14 cases where the right to counsel attaches; and

15

16 WHEREAS, RCW 10.101.020 requires the court or its designee to
17 determine whether a person who has a right to counsel and wishes the
18 appointment of counsel is indigent or indigent and able to contribute
19 to the cost of legal services; and

20

21 WHEREAS, RCW 10.101.020 requires that the office or individual
22 designated by the court to make the determination of indigency shall
23 provide a written report and opinion as to indigency, based on
24 information contained in the applicant's financial affidavit subject
25 to verification; and

26

27 WHEREAS, Verification of the completeness and accuracy of the
28 financial information provided by applicants for appointment of

1 counsel as provided in RCW 10.101.020 is necessary to prevent the
2 unconstitutional gift of public funds and to ensure that those
3 wishing the appointment of counsel are entitled to receive this
4 benefit; and

5
6 WHEREAS, Pierce County incurs significant costs in determining
7 the eligibility of persons wishing the appointment of counsel as
8 required by Chapter 10.101 RCW; NOW THEREFORE

9
10 BE IT ORDAINED by the Council of Pierce County:

11
12 Section 1. A new Chapter 9.50 of the Pierce County Code is
13 hereby adopted as set forth in Exhibit "A" which is attached hereto
14 and incorporated herein by reference.

15
16 PASSED this 25th day of May, 1999.

17 ATTEST:

PIERCE COUNTY COUNCIL
Pierce County, Washington

18
19 *Terrill K. Kinnaman*
20 Clerk of the Council

Jan Shabro
Council Chair

21 Approved As To Form Only:

PIERCE COUNTY EXECUTIVE

22
23 *Alan B. B...*
24 Deputy Prosecuting Attorney
Chief of Police

Jan Shabro
Approved Vetoed
this 29th day of May,
1999.

25
26 Date of Publication of
Notice of Public Hearing: May 19, 1999

27 Effective Date of Ordinance: June 8, 1999

2
3 "NEW CHAPTER"

4 **Chapter 9.50**

5 **INDIGENT DEFENSE SERVICES APPLICATION FEE**

6 **Sections:**

- 7 9.50.010 Application Fee Established.
8 9.50.020 Severability.

9 **9.50.010 Application Fee Established.**

- 10 A. A person applying for the appointment of counsel in criminal,
11 juvenile, involuntary commitment, or dependency cases, or in
12 any other case where the right to counsel attaches, shall be
13 assessed a non-refundable application fee of \$25.00.
14 B. Application fees paid shall be used to defray the costs and
15 expenses incurred by Pierce County in making the determination
16 of indigency pursuant to Chapter 10.101 RCW. Such costs and
17 expenses include conducting indigency screening, verifying
18 information, processing applications, and providing a written
19 report to the court.
20 C. The application fee shall be collected at the time of
21 application.
22 D. No defendant will be denied the assistance of counsel because
23 of inability to pay the fee at the time of application. Unpaid
24 application fees shall be reported to the court for
25 consideration at the time of sentencing.

26 **9.50.020 Severability.**

27 If any provision of this Chapter or its application to any person
28 or circumstance is held invalid, the remainder of the Chapter or the
application of the provision to other persons or circumstances shall
not be affected.

From
Pierce
County
Code

Three appendices appear on the following pages:

- Appendix 3** **Superior Court Dispositions 2001 and 2002: DAC Cases with Recoupment Ordered**
(1 page)
- Appendix 4** **Clerk of Superior Court Revenue for Legal Financial Obligations,**
January 1 – October 10, 2002 (3 pages)
- Appendix 5** **Summary of Legal Financial Obligations Collected January 1 – October 10, 2002**
(1 page)

Appendix 3

Superior Court Dispositions in 2001 and 2002: DAC Cases with Recoupment Ordered

| | 2001 Totals | | | | January-September 2002 Totals | | | |
|-------------------------------------------------------|--------------|----------------|-------------------|--------------|-------------------------------|----------------|-------------------|--------------|
| | DAC Staff | Panel Attorney | Contract Attorney | Total | DAC Staff | Panel Attorney | Contract Attorney | Total |
| <u>DAC Representation for Entire Case</u> | | | | | | | | |
| DAC Cases without Substitutions | 4,028 | 425 | 198 | 4,651 | 2,535 | 299 | 207 | 3,041 |
| Number of Cases with Recoupment Ordered | 2,779 | 254 | 151 | 3,184 | 1,545 | 176 | 140 | 1,861 |
| Percentage with Recoupment Ordered | 69% | 60% | 76% | 68% | 61% | 59% | 68% | 61% |
| DAC Withdrawn - Another Kind of DAC Substitute | 0 | 208 | 4 | 212 | 0 | 132 | 6 | 138 |
| Number of Cases with Recoupment Ordered | 0 | 118 | 2 | 120 | 0 | 83 | 1 | 84 |
| Percentage with Recoupment Ordered | | 57% | 50% | 57% | | 63% | 17% | 61% |
| <u>DAC Representation for Part of the Case</u> | | | | | | | | |
| DAC Withdrawn - No Attorney Substituted | 5 | 91 | 22 | 118 | 5 | 34 | 1 | 40 |
| Number of Cases with Recoupment Ordered | 2 | 63 | 16 | 81 | 0 | 18 | 0 | 18 |
| Percentage with Recoupment Ordered | 40% | 69% | 73% | 69% | 0% | 53% | 0% | 45% |
| DAC Withdrawn - Retained Private Attorney | 327 | 44 | 15 | 386 | 201 | 25 | 3 | 229 |
| Number of Cases with Recoupment Ordered | 22 | 1 | 1 | 24 | 23 | 3 | 0 | 26 |
| Percentage with Recoupment Ordered | 7% | 2% | 7% | 6% | 11% | 12% | 0% | 11% |
| Total DAC Cases | 4,360 | 768 | 239 | 5,367 | 2,741 | 490 | 217 | 3,448 |
| Total DAC Cases with Recoupment Ordered | 2,803 | 436 | 170 | 3,409 | 1,568 | 280 | 141 | 1,989 |
| Percentage with Recoupment Ordered | 64% | 57% | 71% | 64% | 57% | 57% | 65% | 58% |

Source: LINX data from DAC, March and Sept 2002, and Performance Audit staff analysis.

Appendix 4

Clerk of Superior Court Revenue for Legal Financial Obligations, January 1 - October 10, 2002.

Source: Administrative Office of the Courts, October 11, 2002.

| LFO (and local share percentage) | ---- Clark County ---- | | | ---- King County ---- | | | ---- Kitsap County ---- | | |
|---------------------------------------------------------------|------------------------|-------------------|---------------------|-----------------------|-------------------|---------------------|-------------------------|------------------|-------------------|
| | Local Share | State Share | Total | Local Share | State Share | Total | Local Share | State Share | Total |
| Criminal Filing Fee (54%) | 36,746 | 31,302 | 68,049 | 26,495 | 22,570 | 49,064 | 17,159 | 14,617 | 31,776 |
| Drug Funds (100%) | 189,208 | - | 189,208 | 9,564 | - | 9,564 | 72,537 | - | 72,537 |
| Crime Victim Penalties - Adult (68%) | 187,027 | 88,013 | 275,040 | 661,283 | 311,192 | 972,474 | 73,457 | 34,568 | 108,026 |
| Crime Victim Penalties - Juvenile (68%) | 34,922 | 16,434 | 51,355 | 62,617 | 29,467 | 92,084 | 6,958 | 3,274 | 10,232 |
| Criminal Fines - Adult (68%) | 127,219 | 59,868 | 187,087 | 185,504 | 87,296 | 272,800 | 11,303 | 5,319 | 16,622 |
| Juvenile Offender Fines (68%) | 96 | 45 | 141 | 1,597 | 751 | 2,348 | 34 | 16 | 50 |
| Other Criminal Costs (Court Costs) (100%) | - | - | - | 933 | - | 933 | - | - | - |
| Witness Cost Recoup (100%) | 2,539 | - | 2,539 | 4,789 | - | 4,789 | 840 | - | 840 |
| Public Defender Recoupment- Adult (100%) | 257,240 | - | 257,240 | 26,766 | - | 26,766 | 178,501 | - | 178,501 |
| Public Defender Recoupment - Juv (100%) | 37,702 | - | 37,702 | - | - | - | 12,329 | - | 12,329 |
| LFO Interest (50%) | 72,837 | 72,837 | 145,675 | 56,015 | 56,015 | 112,029 | 15,727 | 15,727 | 31,454 |
| Total | \$ 945,537 | \$ 268,499 | \$ 1,214,037 | \$ 1,035,561 | \$ 507,290 | \$ 1,542,851 | \$ 388,844 | \$ 73,522 | \$ 462,365 |
| Revenue per 3-year average # of Judgments and Sentence | \$583 | \$166 | \$748 | \$187 | \$92 | \$279 | \$348 | \$66 | \$414 |

SAME DATA AS PERCENTAGES OF COUNTY TOTAL

| LFO | ---- Clark County ---- | | | ---- King County ---- | | | ---- Kitsap County ---- | | |
|---------------------------------------|------------------------|-------------|-------------|-----------------------|-------------|-------------|-------------------------|-------------|-------------|
| | Local Share | State Share | Total | Local Share | State Share | Total | Local Share | State Share | Total |
| Criminal Filing Fee | 3% | 3% | 6% | 2% | 1% | 3% | 4% | 3% | 7% |
| Drug Funds | 16% | - | 16% | 1% | - | 1% | 16% | - | 16% |
| Crime Victim Penalties - Adult | 15% | 7% | 23% | 43% | 20% | 63% | 16% | 7% | 23% |
| Crime Victim Penalties - Juvenile | 3% | 1% | 4% | 4% | 2% | 6% | 2% | 1% | 2% |
| Criminal Fines - Adult | 10% | 5% | 15% | 12% | 6% | 18% | 2% | 1% | 4% |
| Juvenile Offender Fines | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| Other Crim Costs (Court Costs) | 0% | - | 0% | 0% | - | 0% | - | - | - |
| Witness Cost Recoup | 0% | - | 0% | 0% | - | 0% | 0% | - | 0% |
| Public Defender Recoupment- Adult | 21% | - | 21% | 2% | - | 2% | 39% | - | 39% |
| Public Defender Recoupment - Juvenile | 3% | - | 3% | - | - | 0% | 3% | - | 3% |
| LFO Interest | 6% | 6% | 12% | 4% | 4% | 7% | 3% | 3% | 7% |
| Total | 78% | 22% | 100% | 67% | 33% | 100% | 84% | 16% | 100% |

Appendix 4

| LFO (and local share percentage) | ----- Pierce County ----- | | | ----- Snohomish County ----- | | | ----- Spokane County ----- | | |
|---------------------------------------------------------------|---------------------------|-------------------|---------------------|------------------------------|-------------------|-------------------|----------------------------|-------------------|-------------------|
| | Local Share | State Share | Total | Local Share | State Share | Total | Local Share | State Share | Total |
| Criminal Filing Fee (54%) | - | - | - | 11,146 | 9,495 | 20,641 | 4,500 | 3,833 | 8,333 |
| Drug Funds (100%) | 7,736 | - | 7,736 | 2,242 | - | 2,242 | 4,117 | - | 4,117 |
| Crime Victim Penalties - Adult (68%) | 451,064 | 212,265 | 663,329 | 204,132 | 96,062 | 300,195 | 122,909 | 57,840 | 180,749 |
| Crime Victim Penalties - Juvenile (68%) | - | - | - | 19,096 | 8,986 | 28,082 | 5,332 | 2,509 | 7,842 |
| Criminal Fines - Adult (68%) | 234,859 | 110,522 | 345,381 | 98,508 | 46,357 | 144,865 | 54,354 | 25,578 | 79,932 |
| Juvenile Offender Fines (68%) | 2,798 | 1,317 | 4,114 | 963 | 453 | 1,417 | - | - | - |
| Other Criminal Costs (Court Costs) (100%) | 144,459 | - | 144,459 | 1,742 | - | 1,742 | 39,893 | - | 39,893 |
| Witness Cost Recoup (100%) | - | - | - | 3,125 | - | 3,125 | 67 | - | 67 |
| Public Defender Recoupment- Adult (100%) | 142,582 | - | 142,582 | 76,677 | - | 76,677 | 17,171 | - | 17,171 |
| Public Defender Recoupment - Juv (100%) | - | - | - | 19,081 | - | 19,081 | - | - | - |
| LFO Interest (50%) | 67,658 | 67,658 | 135,316 | 42,223 | 42,223 | 84,447 | 23,431 | 23,431 | 46,863 |
| Total | \$ 1,051,157 | \$ 391,762 | \$ 1,442,918 | \$ 478,936 | \$ 203,577 | \$ 682,513 | \$ 271,775 | \$ 113,192 | \$ 384,967 |
| Revenue per 3-year average # of Judgments and Sentence | \$235 | \$88 | \$323 | \$286 | \$122 | \$408 | \$178 | \$74 | \$252 |

SAME DATA AS PERCENTAGES OF COUNTY TOTAL

| LFO | ----- Pierce County ----- | | | ----- Snohomish County ----- | | | ----- Spokane County ----- | | |
|---------------------------------------|---------------------------|-------------|-------------|------------------------------|-------------|-------------|----------------------------|-------------|-------------|
| | Local Share | State Share | Total | Local Share | State Share | Total | Local Share | State Share | Total |
| Criminal Filing Fee | - | - | - | 2% | 1% | 3% | 1% | 1% | 2% |
| Drug Funds | 1% | - | 1% | 0% | - | 0% | 1% | - | 1% |
| Crime Victim Penalties - Adult | 31% | 15% | 46% | 30% | 14% | 44% | 32% | 15% | 47% |
| Crime Victim Penalties - Juvenile | - | - | - | 3% | 1% | 4% | 1% | 1% | 2% |
| Criminal Fines - Adult | 16% | 8% | 24% | 14% | 7% | 21% | 14% | 7% | 21% |
| Juvenile Offender Fines | 0% | 0% | 0% | 0% | 0% | 0% | - | - | - |
| Other Crim Costs (Court Costs) | 10% | - | 10% | 0% | - | 0% | 10% | - | 10% |
| Witness Cost Recoup | - | - | - | 0% | - | 0% | 0% | - | 0% |
| Public Defender Recoupment- Adult | 10% | - | 10% | 11% | - | 11% | 4% | - | 4% |
| Public Defender Recoupment - Juvenile | - | - | - | 3% | - | 3% | - | - | - |
| LFO Interest | 5% | 5% | 9% | 6% | 6% | 12% | 6% | 6% | 12% |
| Total | 73% | 27% | 100% | 70% | 30% | 100% | 71% | 29% | 100% |

Appendix 4

| LFO (and local share percentage) | ----- Thurston County ----- | | | ----- Yakima County ----- | | | ----- Chelan County ----- | | |
|---------------------------------------------------------------|-----------------------------|-------------------|-------------------|---------------------------|------------------|-------------------|---------------------------|------------------|-------------------|
| | Local Share | State Share | Total | Local Share | State Share | Total | Local Share | State Share | Total |
| Criminal Filing Fee (54%) | 29,458 | 25,094 | 54,553 | 12,510 | 10,656 | 23,166 | 8,922 | 7,600 | 16,522 |
| Drug Funds (100%) | 100,155 | - | 100,155 | 15,152 | - | 15,152 | 11,638 | - | 11,638 |
| Crime Victim Penalties - Adult (68%) | 147,119 | 69,232 | 216,351 | 54,559 | 25,675 | 80,234 | 43,680 | 20,555 | 64,235 |
| Crime Victim Penalties - Juvenile (68%) | 25,080 | 11,802 | 36,882 | 18,456 | 8,685 | 27,142 | 12,112 | 5,700 | 17,812 |
| Criminal Fines - Adult (68%) | 2,693 | 1,267 | 3,961 | 47,732 | 22,462 | 70,194 | 20,087 | 9,453 | 29,540 |
| Juvenile Offender Fines (68%) | 526 | 247 | 773 | 652 | 307 | 959 | 850 | 400 | 1,250 |
| Other Criminal Costs (Court Costs) (100%) | 4,292 | - | 4,292 | - | - | - | 250 | - | 250 |
| Witness Cost Recoup (100%) | 158 | - | 158 | 5,049 | - | 5,049 | 26 | - | 26 |
| Public Defender Recoupment- Adult (100%) | 38,252 | - | 38,252 | 59,995 | - | 59,995 | 25,981 | - | 25,981 |
| Public Defender Recoupment - Juv (100%) | - | - | - | 11,513 | - | 11,513 | 27,472 | - | 27,472 |
| LFO Interest (50%) | 31,897 | 31,897 | 63,794 | 17,795 | 17,795 | 35,591 | 14,021 | 14,021 | 28,041 |
| Total | \$ 379,629 | \$ 139,540 | \$ 519,170 | \$ 243,414 | \$ 85,581 | \$ 328,995 | \$ 165,038 | \$ 57,728 | \$ 222,766 |
| Revenue per 3-year average # of Judgments and Sentence | \$323 | \$119 | \$442 | \$204 | \$72 | \$275 | \$557 | \$195 | \$752 |

SAME DATA AS PERCENTAGES OF COUNTY TOTAL

| LFO | ----- Thurston County ----- | | | ----- Yakima County ----- | | | ----- Chelan County ----- | | |
|---------------------------------------|-----------------------------|-------------|-------------|---------------------------|-------------|-------------|---------------------------|-------------|-------------|
| | Local Share | State Share | Total | Local Share | State Share | Total | Local Share | State Share | Total |
| Criminal Filing Fee | 6% | 5% | 11% | 4% | 3% | 7% | 4% | 3% | 7% |
| Drug Funds | 19% | - | 19% | 5% | - | 5% | 5% | - | 5% |
| Crime Victim Penalties - Adult | 28% | 13% | 42% | 17% | 8% | 24% | 20% | 9% | 29% |
| Crime Victim Penalties - Juvenile | 5% | 2% | 7% | 6% | 3% | 8% | 5% | 3% | 8% |
| Criminal Fines - Adult | 1% | 0% | 1% | 15% | 7% | 21% | 9% | 4% | 13% |
| Juvenile Offender Fines | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 1% |
| Other Crim Costs (Court Costs) | 1% | - | 1% | - | - | - | 0% | - | 0% |
| Witness Cost Recoup | 0% | - | 0% | 2% | - | 2% | 0% | - | 0% |
| Public Defender Recoupment- Adult | 7% | - | 7% | 18% | - | 18% | 12% | - | 12% |
| Public Defender Recoupment - Juvenile | - | - | - | 3% | - | 3% | 12% | - | 12% |
| LFO Interest | 6% | 6% | 12% | 5% | 5% | 11% | 6% | 6% | 13% |
| Total | 73% | 27% | 100% | 74% | 26% | 100% | 74% | 26% | 100% |

Appendix 5

Summary of Legal Financial Obligations Collected from January 1 - October 10, 2002

This is a summarized and re-formatted version of the Appendix 4 data
 Ranked by right column, Local Share per Judgment and Sentence

| Superior Court | ---- D O L L A R S ---- | | | S H A R E S | | Local Share per Judgment and Sentence (a) |
|----------------------|-------------------------|-----------|-------------|-------------|-------|-------------------------------------------------|
| | Local | State | Total | Local | State | |
| Clark County | \$945,537 | \$268,499 | \$1,214,037 | 78% | 22% | \$583 |
| Chelan County | 165,038 | 57,728 | 222,766 | 74% | 26% | \$557 |
| Kitsap County | 388,844 | 73,522 | 462,365 | 84% | 16% | \$348 |
| Thurston County | 379,629 | 139,540 | 519,170 | 73% | 27% | \$323 |
| Snohomish County | 478,936 | 203,577 | 682,513 | 70% | 30% | \$286 |
| PIERCE COUNTY | 1,051,157 | 391,762 | 1,442,918 | 73% | 27% | \$235 |
| Yakima County | 243,414 | 85,581 | 328,995 | 74% | 26% | \$204 |
| King County | 1,035,561 | 507,290 | 1,542,851 | 67% | 33% | \$187 |
| Spokane County | 271,775 | 113,192 | 384,967 | 71% | 29% | \$178 |

(a) Based on average number of judgments and sentence over three years (state FY 1999, 2000, and 2001).

Source: Data from Administrative Office of the Courts, 10/11/02, analysis by Performance Audit staff.