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**A STUDY OF INDIGENT DEFENSE IN PIERCE COUNTY**

**The Performance of the Department of Assigned Counsel**

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**THE SPANGENBERG GROUP**

Robert L. Spangenberg, President  
Dennis Murphy, Consultant  
David J. Newhouse, Management Information Specialist  
Michael R. Schneider, Of Counsel  
Jennifer W. Riggs, Research Associate

**PARTNERS:**

**AMERICAN PROSECUTORS RESEARCH INSTITUTE**

Elaine Nugent, Director of Office of Research and Evaluation  
Chuck Rainville, Senior Analyst  
James Johnson, Research Analyst

**JUSTICE MANAGEMENT INSTITUTE**

Alan Carlson, President

## EXECUTIVE SUMMARY

This study provides an evaluation of two critical components of the criminal justice system in Pierce County, Washington: the Department of Assigned Counsel, which is responsible for the delivery of legal services to indigent criminal and juvenile defendants, and the Prosecuting Attorney's Office, which is responsible for prosecuting criminal and juvenile delinquency cases in the county. Three firms were involved in the study:

- The Spangenberg Group (TSG), an internationally recognized criminal justice research and consulting firm specializing in the improvement of legal aid and indigent criminal defense delivery systems;
- The American Prosecutors Research Institute (APRI), a widely respected research, training, and technical assistance affiliate of the National District Attorneys Association; and
- The Justice Management Institute (JMI), a widely respected organization that conducts research and provides technical assistance and training in the area of judicial management and the administration of justice.

This report by The Spangenberg Group concerns the performance of the Department of Assigned Counsel. A companion report on the Prosecuting Attorney's Office (PAO) is being prepared by APRI and will be issued under separate cover (scheduled for January 2003).

The report that follows includes a description and analysis of the following:

- DAC organization, staff, policies and procedures;
- Caseloads of DAC attorneys and case dispositions;
- Panel and contract attorney systems;
- Juvenile delinquency and dependency cases at DAC;
- Investigation and expert services;
- Indigent appeals;
- Aggravated murder and capital cases;
- Resource equity between DAC and PAO; and
- Indigent defense in Pierce County and other Washington counties.

### **Summary of Recommendations**

The Pierce County Department of Assigned Counsel (DAC) is committed to its goal of providing both effective and efficient representation to indigent defendants. DAC works hard in fulfilling this goal. DAC is also well aware of its budgetary constraints and operates in a difficult atmosphere in which the provision of public defense services must compete with concerns over public safety and the allocation of county resources.

Over the past five years, DAC's budget has received only slight increases after cost-of-living adjustments. Their total FTE staff has in fact been reduced from 92.7 FTE staff positions in 1998 to a projected 79.9 positions for 2003. Their ability to maintain adequate representation for their clients has been accomplished with some financial support although the opportunities to obtain federal or state grant funds have been severely limited. All of this has occurred at a time when their workload has been on the rise and the complexity and seriousness of criminal procedures has been much more demanding. In our opinion, DAC is at best treading water. They have managed to stay afloat by operating under a number of severe cost-efficient measures and have absorbed some cuts with an unusual forbearance. The significant sacrifices and cooperative measures taken include the following:

1. the creation of a Fast Track program to handle a high volume of felony cases in a shorter period of time;
2. a willingness to use extra-hire positions rather than FTEs for unfulfilled staffing needs;
3. maintaining among the lowest contract attorney fees in the country;
4. allowing legal assistants to be tasked with multiple duties which they cannot properly perform in addition to their clerical functions and for which they lack training and expertise;
5. failure to proactively monitor caseloads which has resulted in excessive caseloads for many staff attorneys;
6. inability to obtain paralegals and other support staff which, in conjunction with the overload of legal assistant duties, has resulted in attorneys performing non-legal work and reducing the overall available time to provide legal representation to their clients;
7. failing to measure some work performed in court by staff attorneys (e.g., arraignments); and
8. failing to provide outside counsel in conflict situations at a number of preliminary proceedings.

The consultants have conducted an extensive review of DAC both in terms of efficiency and quality and have concluded that they have reached a point that may shortly be defined as a crisis for one of the constitutionally-required components of the criminal justice system. Ever mindful of the serious financial condition of the county, we have arrived at two sets of recommendations that if implemented could avoid perhaps for the present a crisis in the entire criminal justice system in Pierce County.

In presenting our recommendations, we want to make it clear that DAC and its Advisory Board can be instrumental in helping to avoid this crisis by addressing many of the issues contained in our first set of recommendations which can be implemented at little or no cost. However, this extraordinary work effort cannot by itself solve the problem without the infusion of some additional county funds as suggested in some of our recommendations which will require or potentially require additional funds to implement.

The level of work set out in the first set of recommendations will be substantial, but we are convinced that they will lead to some additional county funds.

### **Recommendations at Little or No Cost**

1. DAC should publish its policies and procedures in comprehensive manuals for its staff.
2. Investigation and paralegal tasks which legal assistants are performing should be given to interns, law students, and some investigation staff (see below).
3. DAC should develop a more formal supervision program and meaningful evaluation process for its staff attorneys.
4. DAC needs to develop a formal training and mentoring program.
5. DAC and other criminal justice agencies should not be charged for making requests for assistance from LINX programming staff.
6. Pierce County needs to establish common definitions and rules in the Superior and District Courts for counting cases, proceedings, and outcomes. Data entry personnel should be trained on the definitions and rules to ensure consistency in the data.
7. DAC should provide a formal and comprehensive training for attorneys and staff to maximize the use of its technology.
8. DAC needs written policies and standards regarding its handling of conflict cases.
9. DAC should create a brief or motion bank which attorneys can easily access when preparing motions.
10. DAC should track the number of cases and required workload for which it provides representation but does not open a file in the office (e.g., arraignments).
11. DAC, with the assistance of its Advisory Board, should develop some minimum mandatory training requirements and an oversight program for panel and contract attorneys. A training program should also be developed for panel attorneys in capital representation.
12. DAC and its Advisory Board should develop written guidelines regarding the approval and denial of attorney fee requests.
13. The County should consider a closer scrutiny of costs associated with aggravated murder and capital cases and continue to work to recoup costs from the state.

14. The Advisory Board could use more members. In order to add more members, the county ordinance which dictates its membership needs to be amended.
15. DAC would benefit from more outside support. DAC and its Advisory Board should develop a strong indigent defense advocacy group in the county. DAC should also network more with defender organizations in the state and across the country.
16. DAC should be more aggressive in its budgetary requests.

### **Recommendations Requiring (or Potentially Requiring) Additional Funds**

1. DAC attorney-support staff ratios are very poor in some divisions, and DAC needs three or four additional non-attorney FTE's.
2. DAC should consider hiring one or two social workers and two paralegals.
3. More upper level county attorney positions should be funded for DAC.
4. DAC should designate a non-staff conflict attorney to be on call for arraignments, preliminary probation violation hearings, and parole revocation hearings.
5. DAC needs to develop caseload/workload limits and proactively monitor attorney caseloads. A case-weighting study is recommended in this regard. In addition, DAC should use outside counsel more to lighten the high caseloads of its staff attorneys. If this does not prove to be an effective or efficient way to relieve the burden of staff caseloads, then additional staff attorneys should be hired.
6. DAC should review its Fast Track program and criteria to assess the need for additional staff attorneys.
7. The maximum fees for panel attorneys should be raised and should exist only as presumptive caps.
8. The \$250 fee per case for contract attorneys must be increased.
9. The Dependency State Pilot Project should be permanently funded (requiring cost to the state).
10. One full-time staff investigator position should be created at DAC along with the development of a plan to address the future allocation of investigative tasks and resources. In the absence of any in-house investigation staff positions, the case facilitator position in the DAC District Court Division should continue to be funded.

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## CHAPTER 1 INTRODUCTION

### **Scope of the Report**

This report covers indigent defense representation in the Superior, Juvenile, and District Courts in Pierce County. At the District Court level, as requested in the RFP, our focus is on District Court No. 1 since this court handles 85% of the entire District Court caseload. Also pursuant to the RFP, we excluded from our study two kinds of work performed by the Department of Assigned Counsel: (1) contracts for indigent defense with the municipal courts of Tacoma, Fife, Fircrest, Gig Harbor, and Ruston; and (2) civil commitment and legal aid work at Western State Hospital, which is funded by grants from the State of Washington.

Another limitation should be noted. As stated in the proposal, it was not possible to fully compare Pierce County to other jurisdictions because of county differences in counting and tracking data and because of the limited project budget.

### **Methodology**

The three audit partners—The Spangenberg Group, American Prosecutors Research Institute, and Justice Management Institute—followed established protocols for conducting evaluations of local criminal justice systems. The study of DAC included the following elements:

1. Review of budgetary and caseload data and materials provided by the Pierce County Performance Audit office, Department of Assigned Counsel, and Prosecuting Attorney's Office;
2. Review of materials on the criminal justice system in Washington State and previous materials obtained by TSG in preparing previous reports relating to Pierce County's criminal justice system, including prior reports by JMI as mentioned above;
3. Three site visits to Pierce County between January 31 and August 1, 2002: three involving members of the TSG team, two involving members of the APRI team, and one involving Alan Carlson of JMI;
4. Numerous personal interviews with actors in the criminal justice system, including DAC Advisory Board members, managers, attorneys, staff, and members of PAO;
5. Telephone interviews supplementing personal interviews;
6. Court observation;
7. An examination of selected files, pleadings, and forms used by DAC, PAO, and the courts;
8. A review and quantitative analysis of data from the Legal Information Network Exchange (LINX) system provided to us by DAC;

9. An analysis of pertinent comparative data from other Washington counties from telephone conversations with indigent defense agencies and administrators and compilation of information received from a comparison survey sent to the counties' indigent defense providers;
10. Consultation amongst team members; and
11. Preparation of this report.

In our quantitative analysis, we looked at new assignments, open cases, and case dispositions for each staff, panel, and contract attorney and in each division of DAC for the year 2000 and 2001. We also reviewed a number of reports for other time periods relating to crime trends, the number of DAC panel and contract assignments, and staffing levels for those periods. We were able to review time to disposition and number of hearings of each type. We looked at data from the Washington State Courts, Uniform Crime Reports, and the Pierce County budget. We also reviewed additional quantitative reports kept and supplied by DAC.

The three site visits included: a) meetings with the Performance Audit Coordinator and with the Project Advisory Committee; b) in-court observation in District Court 1, the Pierce County Superior Court, and the Juvenile Court at Remann Hall; c) interviews with judges, court administrators and court personnel; d) interviews with PAO staff; e) interviews with staff and administration at the DAC; f) interviews with DAC Advisory Board members; and g) interviews with other actors in the Pierce County Criminal Justice System including the Sheriff, Pre-Trial Services, and the Director of the Department of Budget and Finance.

### **Previous Audits and Reports**

The Spangenberg Group (TSG) has been actively involved in studying and providing technical assistance to the criminal justice system in Washington State over the past decade.

TSG's involvement with Pierce County began in 1998 when it contracted with the county to explore the county's indigency screening and cost recovery practices. This resulted in TSG's September 1998 report entitled *Assessment of the Pierce County, Washington Indigency Screening and Cost Recovery Program*. The report found that the county's cost recovery revenues were notably minimal and proposed ten recommendations, including the implementation of an up-front administrative fee to help offset the cost of indigent defense, increasing the resources and relative autonomy of Pre-Trial Services, improving the unified management information system, and exploring alternatives to incarceration. A second contract with the county mandated TSG to explore the policies and practices that have contributed to the growth of the county's jail population. That contract resulted in TSG's January 1999 report entitled *Jail Issues Planning Study* which identified certain arrests, booking, court scheduling, inter-jurisdictional, probation and

parole-related issues, and sentencing policies which TSG believed contributed to the spiraling jail population.

In 2001, the Justice Management Institute (JMI), one of TSG's partners in this evaluation, conducted a study that resulted in a report entitled *Management Study of Felony Case Process in Pierce County, Washington*. That report recommended certain improvements in court organization and case flow management practices to decrease the number of continuances, make more efficient use of court time, and complete cases in a shorter time-frame. That report also recommended that the relevant practices of the Prosecuting Attorney's Office and the Department of Assigned Counsel be streamlined.

In March 2002, JMI completed a follow-up report entitled *The Superior Court and Felony Case Processing in Pierce County, Washington*. It described the changes in practices, including the adoption of a protocol for the handling of felony cases covering the Prosecuting Attorney's Office and the Department of Assigned Counsel as well as the court. The recommendations in this report included establishing a mechanism for updating the felony proceeding protocols, developing procedures providing prosecutors with timely copies of discovery material, creating case management structures in the court, funding a new staff position to help move and manage felony cases, and remodeling courtrooms where volume calendars are heard.

In King County, Washington, TSG has been involved in a number of the studies of the public defender and criminal justice systems. TSG and American Prosecutors Research Institute (APRI) recently completed an extensive case-weighting study in King County of the Prosecuting Attorney Office and the Public Defender System. That study provides a detailed and quantitative analysis of the current workload needs and staffing for the public defenders and the Prosecuting Attorney's Office.

## CHAPTER 2 PIERCE COUNTY

### Demographics and Trends in Criminal Justice

Established in 1852, Pierce County sits on southern Puget Sound, covers 1,240 square miles (excluding water and federal land), and has the state's second largest population with 713,400 residents. The county has 23 incorporated towns and cities, the largest being the deep-water port of Tacoma, the seat of county government, which has a population of 194,500 (2001 estimate).

Pierce County economy continues to grow steadily. The county also has three military bases all of which have remained stable or grown despite military downsizing in other parts of the country. The cost-of-living index, however, at least in Tacoma, is 8% higher than the national average. In 2000, Pierce County had a 4% overall unemployment rate (6.5% for the civilian labor force alone), and in 1999, 10.5% of Pierce County residents were considered below the poverty line. In 2001, Pierce County had forecasted median household income of \$49,265, approximately \$1,400 below that of Washington State and over \$8,000 below that of King and Snohomish Counties.

Pierce County has the burden of a significant crime rate in recent years.<sup>1</sup> Most strikingly, of the large counties in Washington from 1997 through 2000, Pierce County had the highest rate of violent crime, including murder, forcible rape, robbery and aggravated assault.<sup>2</sup> Appendix A provides a more detailed look at Part I crime rates based on Uniform Crime Reports (UCR) data in Pierce County and other Washington counties from 1997 to 2000. In 2001, the crime rate per resident for "suburban" crimes reported to the sheriff was higher in Pierce County than any other county.

Pierce County has also had a high rate of drug incidents, and some contend that it has the greatest methamphetamine problem in the country. Washington State Court data shows that in 2001, 40% of the felony cases filed in Pierce County were drug or controlled substance offenses. In 2000, the Washington Department of Ecology shut down almost 1,500 methamphetamine labs, over a third of which were in Pierce County. In response to the problem, the Washington National Guard was asked to join the efforts in fighting methamphetamine production, and the state received \$2 million in federal funding to support the fight. However, according to the Pierce County Sheriff's Department, the problem seems to now be leveling off.

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<sup>1</sup> Crime rate refers to Part I crime rate. Part I crime rate is based on the number of certain violent crimes and property crimes reported to law enforcement agencies throughout the country who in turn report the numbers to the United States Federal Bureau of Investigation (FBI). The FBI then calculates the crime rates for various populations (e.g., city, county, state) based on the total number of crimes reported per 1,000 residents. Part I violent crimes include murder, rape, robbery, and aggravated assault. Part I property crimes include arson, burglary, larceny (theft), and motor vehicle theft.

<sup>2</sup> Source: *Uniform Crime Reports*, Washington County Totals, 1997 – 2000.

Due at least in part to the crime rate and drug problem, many Pierce County residents have a strong demand for law and order that helps to drive the criminal justice system. The public demand combines with a powerful law enforcement and prosecution system in Pierce County to create an environment that is “tough on crime”. However, the state places a heavy burden on its counties by creating unfunded mandates in indigent representation and shifting the burden to counties to maintain and fund the criminal justice system.

In 2001, according to a county request to the state for reimbursement, Pierce County’s total criminal justice budget was 59% of its general fund, or \$125,980,242. The county’s general fund budget (total expense budget) was \$212,885,278.<sup>3</sup>

## **The Court System**

Pierce County has a two-tiered trial court system. The county has one Superior Court which is a court of general jurisdiction located in Tacoma and which handles all felony cases. The Superior Court also has a Juvenile Division which is located at Remann Hall, several miles from the main courthouse in Tacoma, which handles all juvenile delinquency and juvenile dependency cases. The Superior Court also has jurisdiction over persons in involuntary commitment proceedings at Western State Hospital. The county has four District Courts which handle misdemeanors and gross misdemeanors in the unincorporated parts of the county.<sup>4</sup> In addition, there are 18 Municipal Courts in the county’s incorporated municipalities that handle both misdemeanors and city ordinance violations.<sup>5</sup>

Appeals from both the District Courts and Municipal Courts are to the Superior Court. The Court of Appeals has appellate jurisdiction in criminal appeals from the Superior Court in felony cases. The Washington Supreme Court hears appeals of all death penalty cases on direct review and of other criminal cases by discretionary review.

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<sup>3</sup> Source: Pierce County Extraordinary Criminal Justice Costs Act Petition, November 30, 2001.

<sup>4</sup> As of December 2002, the four District Courts are being consolidated into one court with eight full-time judges.

<sup>5</sup> DAC contracts to provide indigent representation in Tacoma, Fife, Fircrest, Gig Harbor and Ruston Municipal Courts, but that work is outside the scope of this project.

## Indigent Defense Workload

In 2001, 88.4% of the defendants charged in Pierce County Superior Court were indigent, down from 91.6% in 2000. In 2002, this percentage fell again to 79.5%.<sup>6</sup> As indicated in the table below, however, the indigent defense workload in Pierce County has grown steadily.

### Exhibit 2.0

#### Department of Assigned Counsel Indigent Defense Workload

Court		1998	1999	2000	2001	2002 Estimate	2003 Estimate	Percent Change '98-'03
Superior	Felony Causes	4,918	5,104	5,640	5,812	5,552	5,660	15%
	Misc. Actions <sup>7</sup>	10,459	12,084	13,091	12,952	13,109	13,120	25%
Juvenile	Delinquencies	3,040	2,814	2,628	2,527	2,407	2,470	-19%
	Prob. Violations	1,361	1,159	1,238	1,252	1,410	1,500	10%
	Dependency Hearings <sup>8</sup>	6,307	7,416	9,729	14,555	16,110	17,870	183%
District #1	New Causes	4,635	4,423	4,383	4,795	4,817	4,900	-8%
	Post Conviction	6,458	5,932	4,945	5,297	6,554	6,600	7%
<b>TOTALS</b>		<b>37,178</b>	<b>38,932</b>	<b>41,654</b>	<b>47,190</b>	<b>49,959</b>	<b>52,120</b>	<b>40%</b>

Source: DAC, 2003 preliminary budget using LINX data.

The Department of Assigned Counsel's total indigent defense workload for criminal and juvenile cases in Pierce County is estimated to be 40% greater in 2003 than it was in 1998. In Superior Court, the number of felony causes assigned to indigent defense counsel is estimated to have increased by 15% in 2003 from 1998, and the number of miscellaneous actions (probation violations and fugitive cases) is estimated to have increased 25% in 2003 from 1998.<sup>9</sup> Nearly 70% of the estimated 2003 indigent defense workload in Superior Court is attributed to miscellaneous actions. In District Court 1, the workload has remained relatively steady, while in the Juvenile Division of Superior Court, delinquency cases have actually slightly declined since 1998. By far the most dramatic change in workload is in the area of dependency. The number of

<sup>6</sup> Source: DAC Budget Ratios, Percentage of Charged Felons Represented by DAC.

<sup>7</sup> Miscellaneous actions in Superior Court include probation violations and fugitives.

<sup>8</sup> Includes proceedings in Becca law and Juvenile Criminal Contempt cases.

<sup>9</sup> The new Washington Offender Accountability Act (RCW 9.94A, et al.) authorizes probation violations for defendants whose offenses were committed after July 1, 2000 to be handled as administrative matters by the Department of Corrections rather than by the courts, and this was expected to reduce the number of miscellaneous actions in the Superior Court (see also The Right to Counsel, below).

dependency hearings is estimated for 2003 to be nearly three times what it was in 1998 and almost six-and-a-half times what it was in 1997.<sup>10</sup>

## **The Right to Counsel**

The Sixth Amendment to the United States Constitution mandates that a defendant accused in a criminal prosecution is entitled “to have the assistance of counsel for his defense.” In 1932, the U.S. Supreme Court held that the right to counsel applies through the fourteenth amendment to indigent defendants charged with capital crimes in state court. Powell v. Alabama, 287 U.S. 45. In 1963, this right was extended to all state court defendants charged with felonies in the landmark case of Gideon v. Wainwright, 372 U.S. 335. The right to counsel was further extended to all cases involving imprisonment, Argersinger v. Hamlin, 407 U.S. 25 (1972), and to all juveniles charged with delinquent acts, In Re Gault, 387 U.S. 359 (1970).<sup>11</sup> The most recent expansion of the right to counsel occurred this year when the U.S. Supreme Court held that an indigent defendant may not be incarcerated as a result of a conviction and a suspended sentence for which he did not receive counsel. Alabama v. Shelton, No. 00-1214 (decided May 20, 2002).<sup>12</sup>

In Washington, statutes establish the right to assistance of counsel in “all criminal proceedings for offenses punishable by loss of liberty regardless of their denomination as felonies, misdemeanors, or otherwise.” (Washington Superior Court Criminal Rule 3.1). Washington’s statutory right to counsel is similar to the constitutional right to counsel which attaches at each critical stage of the proceedings<sup>13</sup> and as soon as the defendant is taken into custody or formally charged. Keefe v. State Department of Licensing, 46 Wn. App. 627, review denied, 108 Wn.2d 1018 (1987). By statute, counsel must be provided as soon as feasible after arrest, appearance before a magistrate, or formal charge, whichever occurs first. The right to counsel extends to probation violation matters under Washington Superior Court Criminal Rule

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<sup>10</sup> In 1997, the number of dependency hearings was only 2,865. For a discussion of this workload increase, see the Dependency section of Chapter 6 of this report.

<sup>11</sup> The U.S. Supreme Court has also recognized a right to indigent representation in parental termination proceedings under the Due Process and Equal Protection Clauses of the Fourteenth Amendment. M.L.B. v. S.L.J., No. 95-853 (decided December 16, 1996).

<sup>12</sup> It is important to note here that it appears based on information provided to us that some municipal courts in Pierce County are not adhering to Washington state law regarding the right to counsel and are subject to Alabama v. Shelton violations. We examined this issue in District Court 1 and Superior Court and found no problems in those courts. Although the municipal courts are outside the scope of this study, we do see potential problems. Shelton problems exist in these courts if counsel are not being provided in certain cases or waivers of counsel are not complying with state law requirements. Funding for indigent defense counsel in these courts comes from the municipalities and the issue is not one for the county. However, the issue is one that should be addressed in the future.

<sup>13</sup> Powell v. Alabama, 287 U.S. 45, 57 (1932).

7.6. However, under the new Washington Offender Accountability Act (RCW 9.94A, et al.) defendants on probation for crimes committed after July 1, 2000, no longer have the right to counsel on probation violation matters. Under the act, probation violations are handled as administrative matters by hearings officers from the Department of Corrections, and the defendant is not entitled to counsel at the hearings. In dependency cases, parents have a right to counsel, and children who are without a guardian ad litem have a right to counsel, under Washington Juvenile Court Rule 9.1.

The responsibility of providing and funding indigent defense in Washington lies primarily with the counties. At the trial level, each county is responsible for funding indigent defense services and may choose between a public defender, contract defender, or assigned counsel system. In many instances, Washington counties have opted for a hybrid system in which a public defender provides primary representation supplemented by a contract defender or assigned counsel system to handle conflict of interest cases or case overload.

At the appellate level, the state of Washington is responsible for funding the Office of Public Defense, which contracts with private firms and attorneys in each of the state's three appellate divisions to provide representation in non-capital appeals. For capital appeals, a private attorney is appointed by the Supreme Court and compensated by the Office of Public Defense. Misdemeanor appeals are the responsibility of the counties, except in the rare instance in which the case raises an issue the Supreme Court wishes to address.

Washington State is unique in that it goes beyond merely addressing the funding of indigent defense and requires its counties to adopt standards for the delivery of public defense services (RCW 10.101.030). By law, the counties are required to adopt standards which cover a range of issues, including compensation of counsel, duties and responsibilities of counsel, caseload limits, training, supervision, monitoring, and evaluation. In Pierce County, Ordinance No. 95-148 adopts the Indigent Defense Standards for the county as required by state law.

### **Washington Standards of Indigency**

State law requires that the court or its designee make a determination of indigency for all persons desiring the appointment of counsel in any case in which there is a right to counsel. A determination of indigency must be made upon a defendant's first contact with the court or at the earliest possible stage in a case. See RCW 10.101.020.

By statute, indigent means a person who, at any stage of a court proceeding, is receiving some form of public assistance; is involuntarily committed to a public mental health facility; is receiving an annual income after taxes of 125% or less of the current federally established poverty level; or is unable to pay the anticipated cost of counsel for the matter before the court because his or her "available funds" (liquid assets and disposable monthly net income) are insufficient to pay any amount for the retention of counsel.

## **Agency Structure and Relationship**

Pierce County's policy-making body is the County Council which consists of seven elected members. The executive department is headed by the County Executive, an elected position. The County Executive appoints the heads of the Sheriff's Department, the Clerk of Superior Court, and the Department of Assigned Counsel. These three agencies are subject to the personnel, budgeting, expenditure and other policies established by the Executive who controls the county's finances and delegates this authority to the Department of Budget and Finance.

The head of the Prosecuting Attorney's Office (PAO) is an elected position. The PAO prosecutes felonies in Superior Court, juvenile delinquencies in the Juvenile Courts, and misdemeanors and gross misdemeanors in the District Courts for all offenses committed in the unincorporated parts of Pierce County. The PAO does not prosecute offenses falling within the jurisdiction of the municipal courts, except for Edgewood and University Place where the PAO does so by contract with these municipalities. The PAO is not involved with juvenile dependency cases, which are handled by the State Attorney General's office.

The head of the Department of Assigned Counsel (DAC) is appointed by the County Executive and confirmed by a majority of the County Council. The current Director was appointed in 1986. DAC employs its own staff attorneys and also maintains panel attorneys and contract attorneys to handle conflict and overload cases. Together, these three components of DAC provide all indigent representation in Pierce County. DAC is responsible for making attorney assignments on indigent cases and for approving and making payments on attorney fees and, subject to a court motion, fees for experts and investigators.

The Pierce County Assigned Counsel Advisory Board is established by ordinance to perform planning, advisory, and administrative functions for DAC and may review all actions of the DAC Director. The Board consists of five members appointed by the Pierce County Executive, subject to confirmation by a majority of the County Council, for a period of one to four years or until successors are appointed, with the exception of the Director of the Department of Budget and Finance, who is a permanent member of the board. The other four members are chosen from a list submitted by the Tacoma-Pierce County Bar Association.

## **Indigent Representation in Pierce County**

Before 1974, *Gideon* requirements of representation of indigent criminal defendants were met largely on an ad hoc basis by the assignment of private attorneys by the courts. In 1974, Pierce County established the Department of Assigned Counsel. The agency employed a small number of attorneys handling arraignments, as well as a director and a small staff to assign the recently arraigned cases to private attorneys on various panels.

Over the past three decades, the system has evolved from a purely assigned counsel model into a more balanced "mixed system" of legal services delivery, with three distinct components:

1. **DAC Staff Attorneys.** DAC staff attorneys (as opposed to panel attorneys and contract attorneys) handle about 85% of the indigent felony cases in Superior Court. In 2001, according to LINX data,<sup>14</sup> DAC staff attorneys were assigned to represent virtually all of the indigent misdemeanor defendants in District Court, 82% of the juvenile delinquency cases, and 66% of juvenile dependency cases.<sup>15</sup> Conflict cases and occasionally overload cases are assigned to DAC panel or contract attorneys.
2. **Panel Attorneys.** DAC maintains six panels of private attorneys who accept assigned cases at specified rates. Most of the cases that panel attorneys receive are cases that would otherwise pose a conflict of interest for DAC attorneys, although they may also receive some overload cases. In 2001, panel attorneys handled 10% of the indigent felony cases in Superior Court. In District Court, panel attorneys receive only conflict cases and in 2001 represented less than 1% of the indigent defendants.<sup>16</sup> In Juvenile Court, the panel attorneys took 18% of the indigent delinquency cases and 34% of the indigent dependency cases. Panel attorneys are compensated at hourly rates which generally range from \$30 to \$60 with maximum fees depending on the case type. (See Exhibit 5.1 in Chapter 5.)
3. **Contract Attorneys.** At any given time, a small number of Class B and Class C felony cases are being outsourced to a small number of contract attorneys. Currently, six attorneys hold formal contracts. In 2001, contract attorneys handled less than 5% of the felony cases in Superior Court and none of the misdemeanor or juvenile cases. Contract attorneys are required to have the same qualifications as staff and panel attorneys and have agreed to accept anywhere from five to ten cases per month at a fixed cost of \$250 per case. In addition to these formal contracts, DAC has also informally contracted with attorneys who orally agree to take a case and receive the contract rate of \$250 at the end of the case.

The tables below show data from the LINX system, provided by DAC. The Legal Information Network Exchange (LINX) system was developed by Pierce County Information Services and allows entry and inspection of court records by various agencies and personnel in the criminal justice system in Pierce County. The tables below illustrate the number and percentage of new felony cases taken by DAC contract, panel, and staff attorneys in 2000, 2001, and through June of 2002. The cases are broken out by felony class. Class A felonies carry a maximum sentence of life imprisonment and a \$50,000 fine; Class B felonies carry a maximum sentence of ten years imprisonment and a \$20,000 fine; and Class C felonies carry a maximum sentence of five years imprisonment and a \$10,000 fine.

The data shows that the percentage of felonies taken by each component has remained relatively constant since 2000, and the use of informal contracts occurred in 2001 only. In addition, the number of Class A felonies rose in 2001 but is dropping half-way through 2002.

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<sup>14</sup> Provided by DAC.

<sup>15</sup> Juvenile dependency figures includes dependency, termination, Becca law, juvenile criminal contempt, and show cause civil contempt cases.

<sup>16</sup> Thirteen of the cases were in District Court 1, and three cases were in District Court 3. Panel attorneys received no cases from District Courts 2 or 3 in 2001.

Similarly, the number of Class C felonies is also dropping slightly half-way through 2002, while the number of level of Class B felonies remains constant.

Exhibit 2.1

**2000 Superior Court, New Cases by Attorney Type**

	Class A	Class B	Class C	Total	Total % of Cases
Staff	310	1,511	2,984	4,805	85.3%
Panel	73	281	174	528	9.4%
Contract	1	142	159	302	5.4%
Informal Contract	0	0	1	1	0%
<b>Total Cases</b>	<b>384</b>	<b>1,934</b>	<b>3,318</b>	<b>5,636</b>	

**2001 Superior Court New Cases by Attorney Type**

	Class A	Class B	Class C	Total	Total % of Cases
Staff	357	1,528	3,076	4,961	85.4%
Panel	80	313	192	585	10.1%
Contract	0	85	159	244	4.2%
Informal Contract	0	4	12	16	0.3%
<b>Total Cases</b>	<b>437</b>	<b>1,930</b>	<b>3,439</b>	<b>5,806</b>	

**2002 Superior Court New Cases by Attorney Type (January-June)**

	Class A	Class B	Class C	Total	Total % of Cases
Staff	151	759	1,433	2,343	84.3%
Panel	36	149	83	268	9.6%
Contract	0	58	109	167	6%
Informal Contract	0	0	0	0	0%
<b>Total Cases</b>	<b>187</b>	<b>966</b>	<b>1,625</b>	<b>2,778</b>	

Source: LINX data.

The above data refer to original assignments. Conflicts of interest may become known later, and the DAC Director then reassigns staff cases to panel attorneys. If we consider case assignments at the end of a case, based on dispositions data, the staff attorneys have approximately 80% of the Superior Court cases, panel attorneys have approximately 15%, and contract attorneys have the other 5%. The percentages have changed little over the past three years.

## CHAPTER 3 DAC STAFF

### **Representation and Outside Assignments**

The Department of Assigned Counsel (staff division) is the primary provider of indigent defense services in Pierce County and represents adults charged with felonies and misdemeanors, juveniles charged with delinquencies, and parents in dependency cases. In addition to indigent defense representation, DAC administration is charged with making the attorney assignments for all indigent criminal defendants charged with felonies, all juveniles charged with delinquency offenses, indigent parents in dependency and termination proceedings, and all criminal defendants charged with misdemeanors or gross misdemeanors in the unincorporated parts of Pierce County.

### **Staff Organization**

Since 1990, DAC staffing has grown at a slightly faster pace than the county average, but not quite as steadily as the PAO, which gained 80 additional staff between 1990 and 1996, and at a considerably slower pace than other criminal justice agencies (see also Chapter 10). However, the number of full-time equivalent positions (FTEs) at DAC has not increased since 1998 (with a minor exception in 2000 of an additional 0.7 full-time equivalent position) and has in fact decreased since then, and DAC has had to rely on extra-hire positions to handle the increased caseload.

DAC has a total of 81.1 full-time equivalent positions.<sup>17</sup> DAC staffs five people in administration, including the Director, a program manager, an information systems manager, a confidential secretary, and an investigations/mitigation specialist. DAC has 62.1 FTE attorney positions (including a deputy director position), and 14 legal assistants whose main function is to provide clerical support. DAC has three attorneys, two paralegals, and one social worker in the Dependency Division who are funded by a state pilot project. As of September 2001, DAC no longer has investigators on staff. Thus, with the exception of the pilot-funded positions in the Dependency unit, the only non-administrative support staff at DAC are the 14 legal assistants.

In addition to the above staff, DAC employs six attorneys (five full-time) and eight other staff in extra-hire positions. Extra hires are temporary employees, are paid on an hourly basis, and receive no fringe benefits. DAC has the following extra-hire positions as of July 2002<sup>18</sup>:

- 2 attorneys in the Municipal Court Division
- 2 part-time document clerks in the Municipal Court Division
- 1 attorney in the District Court Division

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<sup>17</sup> DAC July 2002 staff summary.

<sup>18</sup> DAC July 2002 summary of extra-hires.

- 1 case facilitator in the District Court Division
- 1 attorney in the Dependency Division
- 1 social worker in the Dependency Division
- 2 attorneys in the Superior Court Division, one of whom is part-time
- 1 part-time legal assistant
- 1 part-time runner handling documents and filings
- 2 summertime legal assistants to cover vacations.

DAC staff attorneys are organized into the following divisions:

1) the **District Court Division**, with one supervising attorney, 9 staff attorneys, two of whom are part-time, one part-time extra hire attorney who handles arraignments, and 3 legal assistants. This division handles misdemeanors and gross misdemeanors in District Court 1 in Tacoma. In addition, the division handles cases in District Courts 2, 3 and 4, and the Municipal Courts in Gig Harbor, Fircrest, Fife and Ruston.

2) the **Juvenile Court Division** is broken down into two units:

- a) the **Juvenile Dependency Unit**, with one supervising attorney, 6 staff and extra-hire attorneys (two of whom are part-time), 2 paralegals, 1 social worker, and 2 legal assistants (in addition to 1 staff attorney, 1 extra-hire attorney, and a portion of a legal assistant who handle Becca cases); and
- b) a **Juvenile Delinquency Unit**, with one supervising attorney, 6 full-time staff attorneys, and 1 legal assistant.

3) the **Municipal Court Division**, with one supervisor, 6 full-time staff attorneys, 2 legal assistants, and one receptionist. This division handles cases in the Tacoma Municipal Court only.

4) the **Superior Court Arraignment and Fast Track Division**, with 8 attorneys under the overall supervision of one supervisor, performing distinct functions: a) 2 attorneys handles Superior Court Arraignments; b) 1 attorney handles probation violations at the preliminary hearing stage; and c) 5 attorneys who rotate between handling Drug Court cases and handling a large volume of felonies on an accelerated or “fast track” basis. This division shares 3 legal assistants with the rest of the Superior Court Division.

5) the **Superior Court Division**, which is broken down into three “tribes” or sections, includes one tribe of 6 staff attorneys and 2 supervisors; another tribe of 6 staff attorneys and 1 supervisor; and a tribe specializing in methamphetamine cases staffed with 2 attorneys and 1 supervisor.

6) the **Western State Hospital Division**, which is divided into an Involuntary Commitment Unit, with one supervisor, 4 full-time staff attorneys, and 1 part-time legal

assistant, and a Legal Services Unit, with 2 part-time staff attorneys and 1 part-time legal assistant.

## **Personnel Policies and Procedures**

Under Pierce County charter, DAC is subject to the personnel policies set by the County Executive. However, DAC does have its own internal policies and procedures which apply to all staff, as well as those applying specifically to attorneys and support staff. These policies and procedures are published to staff primarily in the form of circulated memos with the exception of two manuals in the District Court and Juvenile Court divisions. (Policies on conflicts and attorney-client contact are addressed separately at the end of this chapter.)

Juvenile Court attorneys have a manual of policies and procedures regarding their practice. The manual is very comprehensive, covering general policies, procedures and guidelines, trial preparation, case statistics, a panel attorney packet and panel attorney listings, and a breakdown of costs. The manual is an important resource particularly for new attorneys containing additional information about the guidelines for representation at numerous Juvenile Court proceedings.

DAC also has policies covering all support staff which are contained in separate documents which cover overtime, leave time, and flex time. There are also written procedures for support staff regarding opening and handling files, conflicts, screening paperwork, and preparing motions and forms. Support staff in the District Court Division have one manual containing clear instructions and procedures.

## **Job descriptions**

Job classifications and descriptions are set by the Pierce County Executive with input from DAC. Pierce County has written job descriptions for administrative and support staff and for classifications of DAC attorneys, including titles, functions, knowledge, skills and abilities, and recruiting requirements. DAC salaries are standardized by job class, and employees are eligible for periodic step increases after each year of employment.<sup>19</sup>

### Attorneys

(For a discussion of attorney staffing, see Chapter 10 on resource equity and staffing issues.)

DAC has 20.3 full-time equivalent County Attorney 1 (CA-1) staff positions, the majority of which are in the District and Municipal Court Divisions. A CA-1 performs work in Municipal Court, District Court, Juvenile Court, Western State Hospital, and occasionally Superior Court, and represents at in-custody arraignments and at revocation proceedings. CA-1 also supervises

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<sup>19</sup> The study of DAC salaries is outside the scope of this report.

Rule 9 legal interns who, before admission to the bar but after completing at least 2 years of law school, may practice law on a limited basis.

DAC has 26.1 full-time equivalent County Attorney 2 (CA-2) staff positions, the majority of which are in the Superior Court Division and the Fast Track/Arraignment unit. A CA-2 handles Class B and C felonies, occasionally Class A felonies, dependency and termination proceedings, felonies in juvenile court, and civil commitment proceedings. CA-2 must have three or more years of attorney experience, and a CA-2 supervisor must have four years of experience.

DAC has 10.7 full-time equivalent County Attorney 3 (CA-3) staff positions, most of which are in the Superior Court Division. A CA-3 handles the more complex felony cases and may be required to act as a supervisor or a lead attorney. CA-3 must have five or more years of experience.

DAC has 5 full-time County Attorney 4 (CA-4) staff positions. A CA-4 handles the most complex and visible cases, including death penalty cases, acts as lead counsel and supervises other felony attorneys. CA-4 must have eight or more years of legal experience.

#### Support Staff

Pierce County has written job descriptions for non-attorney county positions, including an Administrative Program Manager, an Information Technology Specialist, a paralegal, a confidential secretary, a mitigation specialist, and three levels of legal assistant positions. Each job description sets out job functions, expected knowledge, skills and abilities, and recruiting requirements.

A Legal Assistant 1 is essentially a receptionist and helps with clerical and general office duties. A Legal Assistant 2 provides information to the public and works more with attorneys, maintains files, and prepares legal documents. DAC currently has 5 Legal Assistant 2 and no Legal Assistant 1 staff positions. A Legal Assistant 3 may supervise, assign work, and perform word processing and/or stenography. A Legal Assistant 3 prepares pleadings, reviews cases for conflicts of interests, assigns panel attorneys, and processes fee vouchers. DAC has 9 full-time Legal Assistant 3 staff positions.

A Mitigation Specialist/Investigative Administrator for DAC investigates and performs tasks related to the mitigation of cases involving the death penalty, three strikes, and other complex cases. A mitigation specialist develops and maintains a panel of licensed investigators and assigns cases to investigators. This position involves budget and expenditure decisions as they relate to investigative services. DAC has one mitigation specialist/investigative administrator.

## **Staff Ratios and Work Distribution**

Washington Defender Association (WDA) Standards for Public Defense<sup>20</sup> call for the provision of adequate support staff, including secretaries, investigators, paralegals, and social work staff, and calls such professionals “essential” to the performance of defense counsel. Under WDA standards, a public defender agency should generally have at least one full-time secretary to every four staff attorneys and one investigator to every four attorneys. Further, social work staff should be available.

From 1998 to 2002, DAC lost 7.8 full time equivalent (FTE) positions, including 7 non-attorney positions and 0.8 non-attorney positions. In 1998, DAC had 2.4 attorneys to every non-attorney. In 2002, DAC has 3.2 attorneys to every non-attorney. (See data and analysis in Chapter 10.) Some of the loss of non-attorney positions is due to the release of 6 staff investigators. With the loss of the investigators, the only non-administrative support staff remaining are the 14 legal assistants (not including dependency pilot-funded positions and extra hires). We have a strong concern regarding the low number of legal assistant positions, the variety and number of legal assistant tasks, and the attorney-legal assistant ratios.

### Legal Assistants

The legal assistants perform a wide variety of tasks at DAC. Their work is integral to the daily operation of the program and the support of the DAC attorneys. DAC legal assistants perform a range of clerical tasks, including opening and closing files, imaging discovery, typing letters to clients, processing mail, entering data in Excel spreadsheets and the LINX system, and ordering supplies. Legal assistants are also tasked with helping to alleviate some of the attorney workload by preparing form motions and trial briefs, getting hearings scheduled, and in many cases such as in the Dependency Division, performing initial conflict checks by reviewing the paperwork and looking up names using LINX. In addition to their clerical and support duties, DAC legal assistants are now performing some tasks that investigators and paralegals would normally otherwise perform and which are not in their job description. Examples include going to the jail to read discovery to clients, performing mitigation interviews, preparing subpoenas, conducting background client interviews at the jail, getting trial clothes to in-custody clients, and notarizing documents at the jail. (See also Chapter 7 on investigations.)

We have a concern over the number of tasks that legal assistants are performing, especially those beyond their training and outside their job description. This concern is magnified by the poor attorney-legal assistant ratios in the office. DAC has 62.1 full-time equivalent attorney positions and 14 legal assistants. The overall staff attorney-legal assistant ratio therefore is 4.4:1.

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<sup>20</sup> The Washington Defender Association (WDA) dedicates itself to public defense issues, attorneys and investigators, provides trainings, publications, and resource assistance. WDA has established standards for indigent defense services that have been endorsed by the Washington State Bar.

Among the divisions, however, some ratios fall far below this and raise a serious concern. By far, the worst attorney-legal assistant ratio is in the Superior Court Division which has only one legal assistant to every 9 attorneys, more than double the ratio recommended by WDA. In the Juvenile Delinquency division, the ratio is one legal assistant to every 7 attorneys. In addition, this one legal assistant is also performing work for the Fast Track unit. The best ratio is in the Dependency Division which receives funding for a state pilot project, with one legal assistant to every 2.9 staff attorneys. All other divisions have one legal assistant for every 3.2 to 3.9 attorneys.

The legal assistants are clearly overworked and over-tasked. Although some legal assistants appeared reluctant to complain about their workload, one did admit that they are “swamped”. While this can be explained in part by the recent addition of investigative tasks -- and legal assistants expressed a desire for some in-house investigators for this reason -- the ratios alone in the Superior Court and Juvenile Divisions are enough to be problematic. When legal assistants have so many tasks and numerous attorneys to support, the amount of support they can provide becomes limited. It stands to reason that as legal assistants become overworked and unavailable, attorneys are left to perform much of their own clerical tasks and have less time to perform legal functions.

#### Investigators and Mitigation Expert

As of September 1, 2001, DAC began entirely outsourcing its investigative work and no longer has any full-time investigators on staff. However, DAC has one mitigation expert/investigative administrator on staff. (See Chapter 7 on investigations.)

#### Social Workers and Paralegals

Unlike many defender offices in other jurisdictions, DAC does not have any social workers or paralegals on staff, with the exception of one social worker and two paralegals in the Dependency Division who are funded by the state pilot project. DAC attorneys expressed desire and interest in having social workers and paralegals on staff.

Staff social workers would assist the attorneys and clients in finding and advocating for pretrial release and sentencing alternatives. Without staff social workers, many attorneys are faced with performing this work themselves.

Other than two paralegals funded by a state pilot project in the Dependency Division, DAC does not staff any paralegals who could assist the attorneys in performing legal research and drafting motions and trial briefs. Such services could prove very valuable to DAC attorneys who expressed concern over the lack of out-of-court time in which to do legal research and write motions. In addition, paralegals could alleviate some of the work that is currently tasked to the legal assistants, such as preparing motions and trial briefs.

## **Recruiting and Hiring**

Because of the tight market, DAC staff attorney positions are considered highly desirable and the hiring process is quite competitive. Even the recent hires in the District Court Division are experienced attorneys typically with two or more years of litigation experience.

Entry level positions are in the District Court, Municipal Court, and occasionally the Western State Hospital division. In District Court, the supervisor keeps a running roster of resumes and where the list is deemed inadequate, advertises new positions with local Tacoma and Seattle newspapers, the Washington Bar Association, Washington Association of Criminal Defense Lawyers, and the placement offices at the University of Washington Law School and Seattle University Law School. The District Court and Tacoma Municipal supervisors routinely interview as many as 10-15 candidates for each position, and make offers with the approval of the Director.

## **Turnover and Retention**

Retention rates in the office with respect to upper-level attorneys (e.g., CA-3s and CA-4s) are quite high and upward movement is correspondingly limited. The obvious benefit of such retention is a high level of both experience and commitment within the office.

Although DAC reported that very few attorneys leave after only a year or two, DAC has had difficulty getting approval for more CA-2 positions. Even the highest pay class for a CA-1 position is lower than the lowest pay class for a CA-2. The CA-1 pay classes are the only ones that have no overlap with the higher positions. As a result, there has been a problem with losing some CA-1 attorneys who become frustrated when they are unable to move upwards to a CA-2 position.

Additionally, in looking at the distribution of CA positions within DAC, it is apparent that the office has a disproportionate number of lower level positions. Of the 62.1 attorney positions, only 25% are CA-4 and CA-3 positions (5 are CA-4; 10.7 are CA-3). The remaining 75% are CA-2 and CA-1 positions (26.1 are CA-2; 20.3 are CA-1). Although the pay steps for the positions are in parity with the PAO, the percentage of CA-3 and CA-4 positions at DAC is much lower than that at the PAO, where 56% of the CA positions are CA-3 or CA-4.

DAC is in need of additional upper-level CA positions so that it may both retain attorneys and attract experienced ones. For more on DAC and PAO staffing, see Chapter 10.

## **Supervision and Evaluations**

Pierce County's Indigent Defense Standards, by ordinance, call for "systemic monitoring and evaluation of staff attorney performance based upon published criteria" and review of caseloads, in-court observations, and conferences. Such supervision is to be supplemented by supervising

attorneys seeking input from judges, prosecutors, other defense attorneys, and clients (Standard 11).

At DAC, supervision is largely an informal process with little formal hands-on monitoring of attorney case files, minimal evaluation of attorney performance (other than the relatively minimal county-wide annual evaluation check-off form), and few formal meetings between supervisors and staff attorneys.

In the Superior Court Division, the attorneys meet in “tribes” or teams approximately four times per year to discuss cases, but there is no formal supervision or monitoring.

In the District Court Division, staff meetings take place irregularly but on average about once every six weeks. This helps to make sure that the attorneys have been keeping up with their advance sheets and latest legal developments. In addition, the District Court supervisor, who also carries a caseload including child homicides and other serious felonies, is available to the attorneys who routinely talk to her about their cases. Because of the experience level of the District Court attorneys, DAC does not perceive a need for in-court supervision.

Under Pierce County requirements, DAC completes written formal evaluations of attorneys at their one-year anniversary dates as they relate to salary step increases. These evaluations are completed by supervisors on very basic county forms. The supervisors report that the forms merely require the evaluators to check boxes and there is little if any critical evaluation of attorney performance occurring on the forms. Formal evaluations do not take place apart from the annual completion of these forms.

## **Training**

Pierce County’s Indigent Defense Standards do not have strict training requirements. Under the ordinance, the only clear requirement is that indigent defense attorneys participate in regular training programs on criminal defense law, including 5 hours of continuing legal education (CLE) related to their practice (Standard Nine). Like all practicing attorneys in Washington State, DAC attorneys (including staff, contract and panel attorneys) are required to complete a minimum 45 hours of CLE programs every three years.

In addition, DAC sends a selected number of attorneys each year to continuing legal education programs outside of DAC trainings, including programs in trial advocacy skills and death penalty representation. A few DAC attorneys also attend the annual conferences and seminars put on by the Washington Defenders Association (WDA) and the Washington Association of Criminal Defense Lawyers (WACDL). DAC allows attorneys paid time to attend these and other conferences and pays its attorneys’ WDA membership dues. Attendance at WDA conferences is free to DAC attorneys. DAC reports that the DAC seminars and WDA conference are normally enough to fulfill the attorneys’ CLE requirements.

Unlike most defender programs, DAC has no formal in-house training program for new attorneys. This is explainable in part by the fact that those attorneys hired for District Court work have tended to have a fairly substantial level of legal and courtroom experience. Although new DAC attorneys often start out in the District Court Division, some attorneys in the unit have been with the office for a number of years. While it is common for a public defender organization to begin new attorneys in juvenile and misdemeanor courts, most will rotate the attorneys out after a period of time, leaving fewer experienced attorneys to provide representation in the non-felony cases. DAC has kept some experienced attorneys in the Juvenile Delinquency and District Court Divisions who are able to both provide quality representation in misdemeanor cases and serve as mentors to the newer attorneys in the division. We view this to be a very positive approach.

This being said, new attorneys would benefit from trainings and being mentored by experienced attorneys. In addition, the office would benefit from instituting a Training Plan and designating a staff attorney as Training Director.

## **Data, Technology and Resources**

### Data

In the process of producing this report, The Spangenberg Group made numerous and detailed requests for information from DAC. DAC personnel were able to provide numerous reports from pre-existing queries (called “stored procedures”) on the LINX system to fulfill many of our data requests. For other requests, they were able to query directly from the LINX system in order to provide us with the requested information. Their responses were timely and showed an understanding of the LINX system and the Pierce County criminal justice system. It is critical to attract and retain such knowledgeable personnel in order to maximize the potential of the LINX data system.

The ability to query directly from the LINX system is a distinct advantage that Pierce County has over other Washington State counties. Other jurisdictions do not have direct access to the court data on their own cases and must rely on AOC personnel to perform queries from the statewide system. Based on our experience, we found LINX to be a robust and well managed system that should serve as a model for the rest of the state.

However, LINX does have limitations. First, DAC personnel were reluctant to make requests for assistance from the programmers at Pierce County Information Services (IS) due to the expense involved. Each agency that participates in LINX is charged by the hour for any time that IS personnel spend on requests from them.

Second, in the process of trying to analyze the information provided by DAC, we encountered a number of instances where it was difficult to compare numbers with other parts of the criminal justice system. For example, in counting its case assignments and dispositions,

DAC does not count any cases that are disposed of at arraignment, while other agencies do count such cases. It should be noted, however, that the number of these cases is reported by DAC to be very small.

Also, certain terms are poorly defined and there is some lack of consistency between the jail, courts, PAO, and DAC as to the definition of those terms. For example, when determining the trial rate, one could count the number of cases for which a jury has been impaneled or evidence was presented in a bench trial, or one could count only those cases which were not dismissed or pled prior to the trial's conclusion.

We also discovered that there might be some inconsistencies in the data entry process. In our attempt to determine trial rates, we looked at the total number of cases with a proceeding type of 'jury trial.' Some of those cases had outcome codes indicative of a disposition before trial, while others had a similar outcome code indicative of a disposition after the commencement of trial. For example, some outcome codes are 'plea and sentence' while others are 'plea and sentence after trial commenced.'

### Technology and Resources

DAC upgraded most of its workstations to 450 Mhz Pentium class computers, each with access to electronic research and word processing. However, in September 2002, Pierce County's Information Services adopted the Windows XP operating system as the new County standard to be implemented by June 30, 2003. As a result, Pierce County Budget and Finance allocated funds to DAC for the transition. As recently as December 2002, DAC received 89 2.4 GHz computers which will allow them to work with a more advanced technology.

As with any public defender organization, it is important to provide attorneys with the resources necessary to perform research and access case law. Most DAC attorneys seemed satisfied with the Premise CD library from which they can access cases, and in May 2002, DAC and Pierce County began a conversion to the Lexis legal research system. DAC also maintains a computer in the Pierce County Law Library at the courthouse that allows attorneys the same access which they have at the office.

We heard some complaints from attorneys that the law library was not sufficiently updated. DAC has indeed downsized its printed hard copy library and only provides current updates for volumes on Washington reports, practice, codes, rules of court, and sentencing guidelines. DAC attorneys must use Lexis for other research material previously provided in DAC's law library.

Training on Lexis has been provided for DAC attorneys and continues to be provided as needed through DAC's contract with Lexis. Pierce County Information Services provides training for other aspects of computer use which is available to DAC staff. While DAC has informally provided other computer training (e.g. LINX, AOC, and Word), it has not provided consistent or formal training in all areas of technology that its staff might utilize.

Some attorneys have found it difficult to find previously prepared motions for use as templates. This is attributable in part to the switch from Word Perfect to Microsoft Word, which has been problematic for some attorneys. Given the low number of support staff, which leaves many attorneys to prepare their own documents, a well-managed and maintained resource for attorneys to use as templates for their own work would greatly enhance their productivity.

## **Conflicts of Interest**

Under the Rules of Professional Conduct (RPC) and Washington state law, two attorneys from the same public defender agency may represent people with *potential* conflicts of interest although they are treated as from the same “law firm” for purposes of the RPC; however, there must be an inquiry into whether an *actual* conflict exists in such representation. State v. Hatfield, 51 Wn. App. 408 (1988), State v. Hunsaker, 74 Wn. App. 38 (1994). An actual conflict between a past and present representation exists if the matters of representation are “substantially related” (factual context of prior and present representations are similar or related) or the attorney in the present representation would be likely to use confidences relating to the prior representation against the former client. Hunsaker.

Because this state precedent permits a public defender agency to represent people with potential conflicts, public defenders are allowed to build what is often referred to as a “Chinese wall” in which attorneys and staff are instructed not to speak about conflict clients or cases in an effort to prevent an actual conflict. This process of building walls can never be entirely effective and therefore always comes with the risk that a potential conflict will become an actual conflict. When a staff attorney believes that there is a high potential for conflict, he or she should withdraw from a case immediately. In many respects, it is more cost-effective to withdraw from a case at such a time rather than be forced to withdraw and require new counsel well into representation when the actual conflict arises. Further, early withdrawal helps to protect a client’s right to speedy trial.

The DAC written policies in the office regarding conflicts consist not of policies but rather procedures for support staff in running checks on co-defendants and complaining witnesses in the LINX system and passing files on to supervisors and/or conflict counsel. In general, the office assigns a case to a panel or contract attorney when its staff attorneys have previously represented a co-defendant or complaining witness. The legal assistants will run checks on the names upon receiving the case files for opening. According to the procedure written for the District Court unit, legal assistants are also directed to write down the reason for the conflict and the name of the attorney accepting the conflict, and to write the case on a conflict log sheet and give a copy to the Director.

DAC also has written procedures for building walls within the office in an effort to prevent a potential conflict from becoming an actual conflict by limiting access to and discussion of the potential conflict case or client. For example, if DAC receives a new case in which it previously represented a witness, it will seal the old file of the witness. Staff are directed not to discuss the

relevant defendant or case. In addition, a memorandum is distributed periodically to attorneys and support staff with a current list of all defendants whom DAC cannot represent for conflict of interest reasons.

The procedure for determining active DAC conflicts in Superior Court begins after the Superior Court arraignment session. At arraignment, the DAC Superior Court arraignment attorneys represent all defendants who do not appear with an attorney. After each session, the defendants' files are brought back to the office, and one of the legal assistants runs a preliminary check in LINX to determine whether any DAC staff attorney has represented any of the co-defendants in a multiple defendant case. The Affidavit for Probable Cause may also be reviewed to determine whether DAC has previously represented the complaining witness. The felony cases in which there has been prior representation of a co-defendant or complaining witness are immediately put aside and referred to the Director for assignment to a panel or contract attorney.

In a conflict case in the District Court unit, either the supervisor or the legal assistant assigns the case to a panel attorney generally on a rotating basis. The misdemeanor panel includes over fifty attorneys. When assigning a conflict, the legal assistant is required to document the reason for the conflict and the attorney to whom the case is assigned and give a copy of the new conflict log to the Director.

At times a conflict of interest will arise after a case has been assigned within DAC. When this occurs, either the DAC staff attorneys or their supervisor will consult with the DAC Director who then decides whether a conflict exists. If the Director determines there to be a conflict, he will require that the staff attorney to withdraw and substitute counsel be appointed when he feels such action is necessary. If the Director feels that court involvement is warranted, he will direct attorneys to present conflict issues in a hearing before the court.

Although DAC has written procedures for determining conflicts, it lacks written policies to inform conflict decisions (e.g., which case to keep and which to assign to outside counsel).

Further, a conflict problem exists in several areas of DAC representation. At Superior Court arraignment sessions, DAC staff attorneys are handling all indigent cases and some non-indigent cases. Staff attorneys are also handling virtually all in-custody arraignments in District Court and all arraignments in Juvenile Court. These attorneys are therefore inevitably faced with handling the arraignment of co-defendants. In addition, only one DAC attorney at a time is present in an arraignment courtroom at one time. Generally, in serious cases, the attorneys will avoid communicating with co-defendants about the substantive facts of such cases and attempt to minimize the problem. However, the attorneys cannot control every situation that may arise and there may be times when a conflict defendant needs to discuss confidential facts of a case with the arraignment attorney. This problem may be most difficult in cases where the prosecutor is seeking a high bail at arraignment based on the allegations and the defense attorney may want to respond to the allegations.

The same situation exists in Superior Court at preliminary probation violation hearings and in Juvenile Court at parole revocation hearings where one DAC attorney represents all the defendants or juveniles who are without counsel. Although probation and parole violations normally do not involve co-defendants, the client may be a co-defendant on the underlying case or on another case, or may be a complaining witness on a DAC case.

## **Motion Practice**

As in most offices, staff attorneys have a wide variety of styles and varying approaches to motion practice. Several attorneys candidly stated that they do not have sufficient out of court time to file motion and trial briefs in all cases where they could be helpful to a case. Filing motions is an essential part of litigating most constitutional and evidentiary issues, and can be a tool to leverage better plea offers from prosecutors. As with any criminal defense practice, the filing of appropriate motions is an important part of defending a criminal case when the attorney has determined that the motion may well have a serious impact on the result.

One reason cited for the lack of motion filing or late motion filing was insufficient out-of-court time. (See discussion in the Dispositions section of Chapter 4.) Some DAC attorneys in the Superior Court Division reported being in court five days a week as a result of new scheduling. DAC would benefit from a plan to ensure out-of-court days.

Besides the lack of office time, the move to Microsoft Word from Word Perfect has created some difficulty in locating the computer files of attorneys' motions for other attorneys to use as templates, and the motion practice has accordingly suffered. An organized motion and brief bank would facilitate the motion practice of DAC attorneys.

## **Attorney-Client Contact**

Some attorneys are consistent about initiating and maintaining client contact either by phone, face-to-face meetings at the courthouse on court dates, visits to the jail, or office interviews for out-of-custody clients. Although it is relatively easy for DAC attorneys to visit their clients at the jail, there appears to be relatively few attorneys who hold face-to-face client interviews, at least until the possibility of a jury trial ripens. This is at least in part due to a very effective system of two-way phone communication between DAC offices and the client's pod at the jail. Historically, certain staff (investigators before they were outsourced, and now legal assistants) have gone to the jail to "read" discovery to the clients. This is not a substitute for attorney contact.

In April 2002, DAC perceived a problem with the timing of initial attorney contact. The Director then issued a formal policy memorandum regarding initial attorney contact with clients in criminal cases. According to the policy, DAC attorneys should contact in-custody clients within two business days of assignment; this contact may be in person or over the telephone and must be recorded in the attorney file. The policy further prohibits initial contact from occurring later than five days from assignment or at the first scheduled court appearance. In addition,

initial letters to clients should be sent within two business days of assignment, providing any necessary preliminary information, the court dates and times, and the attorney's direct telephone number or e-mail address.

While phone communication with in-custody clients is valuable and time-efficient for the attorneys, some face-to-face interaction with clients is essential, especially for an initial interview. In-person contact can help to foster a client's trust and generally strengthen the attorney-client relationship, especially in the case of particular clients in need of closer contact, such as those who are young, do not understand the system, or have disabilities.

### **CHAPTER 3, DAC STAFF RECOMMENDATIONS**

1. Personnel Policies and Procedures. DAC should publish its policies and procedures in comprehensive manuals for support staff and attorneys. It could prove useful for each division to have either two manuals (one for support staff and one for attorneys), or one combined manual to cover policies, procedures, and guidelines for handling cases within that division. General policies and procedures for all staff should also be contained in one office manual.
2. Staff Ratios and Work Distribution.
  - a. Given the current limitations in the county, we believe that the first priority in the area of DAC staffing should be to add three or four additional FTE's in the general non-attorney classification and permit DAC to determine which categories they could best fill.
  - b. DAC legal assistants are overworked and over-tasked. They are performing tasks that investigators and paralegals would typically perform, most of which are not in their job description. These tasks should be re-distributed to interns, law students, and some in-house investigator staff (see also Chapter 6 Recommendations.)
  - c. Attorney-legal assistant ratios are the worst in the Superior Court and Juvenile Delinquency Divisions. DAC needs more legal assistants especially in these divisions and should strive to meet the WDA-recommended ratio of four attorneys to one legal assistant within each of its divisions.
  - d. DAC should consider hiring one or two social workers to support the attorneys and assist the clients. In the long run, carefully devised alternatives to jail and incarceration could amount to savings to the county. Social service placements may also reduce recidivism by helping defendants gain the support and skills needed to stay out of jail in the future.

- e. DAC should also consider hiring two paralegals who could support the attorneys and take over some of the legal assistant tasks by performing legal research, preparing subpoenas, and drafting motions and trial briefs.
3. Turnover and Retention. DAC needs more CA-3 and CA-4 attorney positions. Currently, 33% of its positions are CA-1s, and 75% are CA-1 or CA-2 positions. By contrast, only 44% of PAO positions are CA-1 or CA-2. Upper level positions need to be funded at DAC in order to retain attorneys and attract experienced ones, as well as to create greater parity with PAO. (See also recommendations for Chapter 10 on Resource Equity.)
  4. Supervision and Evaluation. Supervision and evaluation is in need of some clear reform. We feel strongly that DAC should make efforts to formally supervise staff attorneys on a periodic basis, especially ones who are new to the office or a division. DAC should also develop a more formal evaluation process in order to continuously ensure that its standard of representation is being met and to supply the attorneys with both positive feedback in a formal setting and information useful to improving their performance.
  5. Training.
    - a. DAC should provide opportunities for on-the-job training and pairings with senior attorneys for attorneys who have less experience, are new to the office, or are new to a division. DAC should formally mentor and supervise new attorneys by attending hearings with them and by assigning them to second chair or co-counsel cases that are expected to go to trial. In addition, new hires need additional guidance and would benefit from written training materials or manuals (such as the manual provided to attorneys in the Juvenile Court division), coupled with periodic orientation sessions during the first six months or so until the new attorneys feel more comfortable with office, case, and court procedures.
    - b. DAC would also benefit from developing a comprehensive Training Plan and from designating one of its more experienced and skilled attorneys as Training Director or Coordinator. An attorney in this position would need a reduced caseload in order to have time to plan and coordinate training activities within the office. An attorney in this position could also be available to junior attorneys who are looking for assistance and feedback on their cases. Within the next year, we strongly recommend creating this position and, with the cooperation of DAC administration and staff, preparing a comprehensive plan for training.
    - c. DAC should consider holding monthly in-office skills training and brown bag lunches to discuss new cases, statutory changes, and share case strategies.

## 6. Data, Technology and Resources.

- a. Although DAC has a list of stored procedures (pre-existing queries on the LINX system) available for its own use, there are other stored procedures that should be made available to all elements of the system. Participating agencies should be able to make requests for assistance from the LINX programming staff, without being charged for such assistance on a per request basis. This would help to ensure that queries are being formed correctly, and that reports formulated from such requests are accurate and meaningful.
- b. Pierce County should establish common definitions and rules for counting cases in both Superior and District Court to assure that DAC, PAO and the courts develop the same case definition for criminal cases. Common definitions and methods for determining trial rates, case assignments, dispositions, dismissal rates, proceedings and outcomes should be established, and data entry personnel should be adequately trained to ensure that information is entered in the system in a consistent and predictable manner.
- c. Attorneys have few support staff and cannot rely on support staff for document production and information retrieval. Attorneys need a formal and intensive technical training program in order to maximize the use of technology in their practice. Ongoing training in electronic research techniques and word processing would help to maximize the efficient use of the technology currently available to them and is essential as the practice of law migrates towards a greater reliance on computer skills.

## 7. Conflicts.

- a. DAC needs to develop written policies and standards to inform its conflict decisions, such as how to handle co-defendant cases after arraignment. First, it is recommended that DAC not keep any co-defendant cases in house. Second, DAC needs a written policy regarding which defendants DAC will represent in co-defendant cases (e.g., prior clients, the first case in or the most serious case). Third, DAC should develop written policies and procedures regarding the assignment of conflict cases, including how, when, by whom, and to whom they are made. It is important for the office to have formal policies and guidelines regarding which cases to accept, which to conflict out, who makes the conflict decisions in which cases, and procedures for choosing conflict attorneys. Such policies, guidelines and procedures are necessary to support consistency and fairness in the manner in which conflicts are both decided and assigned.
- b. DAC should have a non-staff conflict attorney chosen to be on call for each session where DAC staff is currently representing all persons without an attorney, including: all arraignments, preliminary probation violation hearings, and parole revocation hearings. The need for this is especially great at the arraignments where conflicts more commonly exist between defendants. In addition, court staff should inform DAC prior to the court sessions of any conflict situations of which they are aware.

8. Motion Practice.

- a. DAC attorneys need time and support in order to file more motions when appropriate on their cases. We have a concern that DAC attorneys do not have enough office time in order to prepare their cases and work on motions, and this is supported by data discussed in Chapter 6 on Dependency and in Chapter 4 on Dispositions which showed an increase in the number of hearings. A full analysis on the increase is beyond the scope of this project, but the issue should be explored by Pierce County. (See Dispositions recommendation in Chapter 4, below.) DAC should also assess the issue internally and try to create more out-of-court time for attorneys to the extent that it can through attorney assignments and scheduling.
- b. DAC should create an organized and easily accessible motion and brief bank consisting of motion templates and examples of motions on a number of issues from which other DAC attorneys could work.

9. Attorney-Client Contact. The initial contact policy is a good one and adherence to it should be randomly monitored. However, there is no substitute for a face-to-face attorney-client interview, and initial interviews should be in person, unless special approval is granted by a supervisor. DAC should issue a memo stressing the need for initial face-to-face interviews and requiring initial interviews to be in person for all divisions.

## CHAPTER 4 CASELOADS AND DISPOSITIONS

### **CASELOADS**

#### **Case Counting Method**

A number of methods are available for counting criminal cases, including counting a case by incident, by top charge, by each individual charge, and by defendant. The preferred method recommended for use by the National Center for State Courts (NCSC) is counting by a single defendant and a single incident; that is, count each defendant and all the charges arising from a single incident as one case.<sup>21</sup>

In reporting case counts, DAC generally follows the methods used by each individual court. In Superior Court, cases are counted by filings which are generally according to a single defendant and a single incident (NCSC method). Juvenile Court counts its delinquency matters in the same manner. In the Juvenile Court, dependency matters are counted by the number of hearings. However, the DAC Dependency Supervisor looks at her division's caseload by counting parents.

In the District Court, cases are counted by defendant and cause numbers. Here, a defendant can have multiple cause numbers resulting from a single incident.<sup>22</sup> Although the prosecutor inputs cases into the LINX system, the District Court does not. There is less consistency and confidence in the District Court case numbers than in the other courts. The details relating to the case in District Court are also not as good as they are in other courts because they do not include information on proceedings and court calendars.

DAC counts cases that are reopened when a defendant is brought back to court for a hearing on a post-conviction issue such as violating the terms of a sentence. Such cases are referred to as "other" or "miscellaneous" cases.

Cases that are disposed of at arraignment are tracked by DAC in the District and Municipal Courts, but not in the Superior Court. DAC reports that very few cases are disposed at arraignment in Superior Court. However, DAC does not count all cases that DAC attorneys provide representation on prior to the office opening a case file, such as the cases handled at arraignment. In Superior Court, DAC has two extra hire attorneys that handle arraignments.

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<sup>21</sup> For example, if a defendant is arrested for driving under the influence and during the stop assaults the officer, both charges are counted as one case because they arise from one incident.

<sup>22</sup> For example, a defendant may be charged with a DUI and possession of marijuana from one traffic stop. However, if the two charges are given different cause numbers, then the result will be two cases in the District Court.

## **DAC Internal Assignments and Case Flow**

### Superior Court

In the Superior Court, most pretrial proceedings are heard in one of two departments, referred to as CD1 and CD2. Two of the attorneys in the DAC Fast Track Unit are assigned to serve as “docket” or “arraignment attorneys” in CD 1 and CD 2 courtrooms on the fifth floor of the County City Building. These attorneys handle the arraignments of virtually all indigent (and many non-indigent) defendants in Superior Court.

Paperwork for new cases is brought back to the office after arraignment, and the legal assistants then open the files and check the LINX systems to determine whether DAC has any potential conflicts of interests. The cases are then placed in an inbox, and the supervisor of the Fast-Track Division screens the files for B- and C- level felonies, which are appropriate to be handled by his unit (see Fast-Track section at the end of this chapter). The balance of cases is then given to two supervisors who review the files and select out all cases with co-defendants and all Class A felonies for the DAC Director to assign. Co-defendant cases are assigned to contract or panel attorneys (see Chapter 5). The Director will assign the Class A felonies either to panel attorneys or to DAC staff attorneys, trying to equalize cases assignments in the office and to fairly distribute assignments to panel attorneys who are interested in receiving new cases. The balance of the B and C felonies are assigned by the Deputy Director or one of the felony case supervisors to Superior Court attorneys, or by the Director to contract attorneys.

After receiving an assignment, DAC staff attorneys provide their clients with vertical representation, with some exceptions in the Fast Track unit (see below). The panel and contract attorneys also provide vertical representation. This means that the same attorney provides representation on a case after arraignment (usually within three or four days after arraignment) and remains responsible for the case until disposition.

### District Court 1

District Court attorneys are assigned to one of five courtrooms in District Court 1. Two attorneys are assigned to the Domestic Violence Court, and one attorney is assigned to each of the other four sessions. Attorneys in District Court 1 also handle pretrial conference sessions for half-days and handle morning arraignments. Attorneys handling arraignments will bring back new cases to the office. These new cases are processed by a legal assistant who opens the file in the office.

Cases are then assigned by the District Court Supervisor who prepares a calendar in which attorneys are assigned to particular courtrooms for six-month periods and take all DAC cases that come into his or her assigned courtroom during that time. The District Court case assignments are then made by the legal assistants according to the courtroom assignments. If a case is not resolved during an attorney’s six-month rotation, it will be transferred to the incoming attorney

assigned to that courtroom. For purposes of continuity of representation, attorney-client relations, and efficiency, if an attorney’s case is nearing trial at the time the attorney is to be rotated to another courtroom, it is suggested that the original attorney remain with the case for trial even after the rotation.

### **Caseload Standards and Limits**

The only national numerical caseload standards for defense attorneys were adopted by the National Advisory Commission (NAC) on Criminal Justice Standards and goals in 1973. Subsequently, these standards were commented on positively in Chapter 5 of the American Bar Association’s Standards for Criminal Justice.<sup>23</sup> The Commission’s standards propose maximum annual caseloads, per attorney, per case type.<sup>24</sup> Some state organizations have adopted these standards. The Washington Defender Association (WDA) has adopted some of the NAC standards but has also created some of its own standards.

Exhibit 4.0

#### **NAC and WDA Recommended Annual Cases Per Attorney**

	<b>National Advisory Commission</b>	<b>Washington Defender Association</b>
Felonies	150	150
Misdemeanors	400	300
Juvenile Delinquencies	200	250
Juvenile Dependencies	n/a	60*
Mental Health	200	250
Appeals	25	25

\* This is the recommended number of dependency clients (not cases).

By state law, Washington counties and municipalities are required to establish caseload limits (RCW 10.101.030). Pierce County has not adopted the caseload standards of the NAC or WDA, nor any other numerical standards. According to Standard Three of the Indigent Defense Standards, set by Pierce County Ordinance No. 95-148, the only limitation on caseloads for DAC attorneys is the broad injunction that caseloads remain at a level which does not interfere with the provision of effective assistance of counsel. DAC is responsible for ensuring that assigned counsel and contract attorneys accept no more case assignments “than they can reasonably discharge.”

<sup>23</sup> ABA Standards for Criminal Justice, Providing Defense Services, 3<sup>rd</sup> Edition, Standard 5-5.3, p. 72 (1992).

<sup>24</sup> Maximum annual caseloads assume that the attorney is handling only that particular case type. Further, the caseload standards assume a mixed level of cases for each case type (e.g. Class A, B, and C felonies).

At DAC, attorney caseloads and workloads are informally monitored by the Director and by the division and team supervisors. Case assignments are generally designed throughout the office to maintain roughly equal caseloads among team members appropriate to their level of experience. The District Court Division does not track caseloads per attorney, but it uses a combination of LINX and monthly data to keep track of its caseloads.<sup>25</sup> In this division, attorneys are assigned to courtrooms and are expected to receive all cases during their six-month rotation. There is no procedure to relieve overload in the District Court division, and outside counsel is used only for conflict cases.

In the Dependency division, the supervisor maintains a monthly list of open cases for each attorney and charts the distribution of dependency and termination case assignments. The supervisor also reviews open termination cases with attorneys on a quarterly basis in an effort to determine the workload of those cases (e.g., settlement, trial, or dismissal). The supervisor then uses this information in assigning additional work to the attorneys.

Within the other DAC divisions, supervisors are reactive rather than proactive in looking at attorney caseloads. They will consider redistributing some of the cases in response to an attorney coming forward and complaining that his or her caseload is too high. In the Superior Court Division, there is a general “pride of capacity”. Attorneys will normally handle what is given to them, although sometimes they will decide to assist each other without going through the supervisor. However, attorneys cannot withdraw and substitute a new attorney without going through the Director.

As with many public defender offices, some DAC attorneys will speak up when they feel overloaded, some may always feel overloaded, and some will just grin and bear it. Some attorneys have just “sucked it up” and struggled to get through difficult periods. In this respect, it is all the more important that the DAC supervisors actively monitor attorney caseloads for potential problems. This monitoring is especially critical for new attorneys within each division.

In addition to the need to proactively monitor attorney caseloads, DAC should develop some written guidelines to address caseload limits within the office.

## **DAC Caseloads**

When looking at caseloads, one must caution that the number of cases assigned to an attorney is not necessarily an attorney’s workload. For example, two attorneys may each have ten felony cases; however, if one has ten simple drug possession cases and the other has ten sexual assault cases, the workload of the latter will be much higher than the former. Without some other measuring tool, however, attorney workloads are generally gauged by the number and type of open cases, with consideration of the attorney’s level of experience.

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<sup>25</sup> Note that District Court clerks do not enter case processing data into LINX, even though PAO and DAC do enter their own data into LINX. The result is that LINX does not contain dispositions nor case scheduling information.

One method of developing caseload/workload standards is to conduct a case-weighting study. Such a study would result in statistical and quantitative data regarding actual workloads and average attorney hours per disposition and case type as well as a working formula with which to gauge future workload and staffing levels.

An empirical study to assess actual workload is beyond the scope of this study. Instead, we have looked at annual attorney assignments as one way to assess caseloads. Using data supplied by DAC through the LINX system, we looked at the number of annual assignments received by staff and extra hire attorneys within each division in the office for 2000 and 2001. Attorney assignments were very high for Superior Court and Juvenile Court cases for both years and exceed the standards recommended by both the National Advisory Commission (NAC) and Washington Defender Association (WDA).

Exhibit 4.1

**Superior Court Felony Case Assignments to DAC Staff and Extra Hire Attorneys**

		<b>2000</b>	<b>2001</b>
<b><i>Fast Track</i></b>	Class B and C Felony Cases	1,792	2,333
	FTE Attorneys	6	7
	<b>B and C Cases per FTE</b>	<b>299</b>	<b>333</b>
<b><i>Regular Track</i></b>	Class A Felony Cases	328	353
	Class B and C Felony Cases	2,689	2,281
	Total	3,017	2,634
	FTE Attorneys	18	20
	<b>B and C Cases per FTE</b>	<b>149</b>	<b>114</b>
	<b>A, B, and C Cases per FTE</b>	<b>168</b>	<b>132</b>
<b><i>Both Tracks Combined</i></b>	Total Felony Assignments	4,809	4,967
	Total FTE Attorneys	24	27
	<b>Total Assignments per FTE</b>	<b>200</b>	<b>184</b>

Sources: LINX data and DAC.

We first looked at the Superior Court Division as a whole, combining Regular Track attorneys and Fast Track attorneys but excluding arraignment attorneys whose cases are not tracked by DAC. The overall number of felony assignments (Fast Track and Regular Track combined) increased from 4,809 in 2000 to 4,967 in 2001.<sup>26</sup> However, the number of DAC staff attorneys and extra-hire attorneys also increased from 24 to 27 between 2000 and 2001. While the assignments per FTE dropped slightly in the same period, they are currently clearly still at a high level.

<sup>26</sup> As of June 30, 2002, according to LINX data, the overall number of felony case assignments to DAC attorneys (Fast Track and Regular Track combined) was 2,343.

Although DAC does not maintain data on the number of cases they handle at Superior Court arraignments, they should. Providing representation at arraignment is a requirement for DAC and is an important part of their work which is not being measured. We also understand that DAC provides some other representation in cases that are not counted, such as cases that survive arraignment but are dismissed in a short period of time or cases where retained counsel appears for the defendant after arraignment.

In reviewing case assignments within the Superior Court Division at DAC, we separated Fast Track cases from Regular Track cases in order to get a more accurate picture of individual attorney caseloads. We first excluded Class A felonies which are assigned to Regular Track attorneys so that a more accurate comparison could be made to Fast Track attorneys who only take Class B and C felonies.

The Fast Track unit is intended to carry a higher load of cases which are predicted to be more readily disposable as a way of relieving the rest of the Superior Court Division (see Fast Track, below). Between 2000 and 2001, the Regular Track Class B and C felony assignments per FTE dropped by 35, while the Fast Track assignments rose by 34. The annual assignments in the Fast Track unit are excessive and double that which is recommended by the NAC and WDA standards. The standards of no more than 150 felonies per FTE attorney assume a mix of felony cases, and although a caseload of over 150 of the more routine felonies such as those handled by the Fast Track attorneys is not by definition excessive, a caseload of twice that amount is excessive.

In the Superior Court and Juvenile Court divisions of DAC, caseloads are high. We cannot recommend specific caseloads per attorney without an empirical study such as a case-weighting study. However, we can say that the caseloads are double the recommended standards in the Fast Track unit, double the standards in the Juvenile Delinquency unit, and more than double the standard in the Dependency unit. (See Chapter 6 for DAC workload in Juvenile Court.) Clearly these caseloads are excessive and the issue should be addressed.

### **District Court Cases**

Next, we looked at the caseloads for DAC attorneys who handle District Court No. 1 cases. In District Court #1, DAC staff attorneys accept all cases that come through his or her assigned courtroom during a six-month rotation, and there is no procedure for handling overload.

After reviewing data from various sources, it was unclear to us how many District Court cases are assigned to DAC. Different sources provided different counts of new cases and cause numbers. It was also unclear to what extent post-conviction matters are included or not included in the reported total District Court cases assigned to DAC. Faced with these data problems, which are further discussed below at page 42, we were unable to make any determination about the adequacy of DAC staffing for District Court cases.

## Fast Track

In an effort to adjust to the increase in PAO staff and the corresponding increase in DAC attorney caseloads in the Superior Court Division, and to handle the pressures created by the speedy trial rule, DAC created the Fast Track unit by moving staff from the District Court to the Superior Court Division and selecting certain felony cases such as “routine” drug and property offenses for representation on an accelerated basis. DAC chooses the cases that it believes are not overly complicated and likely to be resolved fairly quickly. Although there are no formal criteria, the cases likely to be fast-tracked generally include simple property and drug crimes, possession of stolen property, theft, forgeries, simple possession of drugs, escape, bail jumping, and identity theft. The PAO has agreed to the eligibility criteria for the fast-track cases.

When a felony case comes into the office after arraignment, DAC’s Fast Track Supervisor reviews the charges, the probable cause affidavit, and any incident reports in the file, but he does not have a criminal history to consider. If the case falls within the informal guidelines and does not appear to have any significant issues requiring litigation, then it will be assigned to the DAC’s Fast Track unit. Co-defendant and conflict cases are not considered for fast-tracking.

The Fast Track unit has two sections. One section handles arraignments, probation violations, and general coverage. The attorneys here are two staff attorneys (CA-1 and CA-2), one full-time extra-hire, and one part-time extra-hire. The full-time extra hire attorney handles all probation violation cases at the preliminary hearing stage in Superior Court. Many of these cases are settled by negotiated agreements at this stage, and those that are not resolved are set for hearings at which the same attorney or one of the DAC arraignment attorneys provides representation.

The second Fast Track section has six experienced attorneys who handle expedited pleas and Drug Court cases.<sup>27</sup> Four of the attorneys are assigned to Drug Court one week each month on a rotating basis. Drug Court is a pre-disposition program in which eligible candidates are identified, required to stipulate to the facts against them and then complete a one year program to address their drug use. In order to enter the program, defendants give up their rights to speedy trial, jury trial, to confront witnesses, to testify at trial, and to contest the constitutionality of a stop, search or statement. The defendant must also agree to stipulate to the facts in the police reports and laboratory reports, and if he is terminated from the program, to proceed to a bench trial on the stipulated facts. In addition, the defendant agrees that he may be incarcerated for violating the terms of the program. Upon successful completion of the program, the charges are dismissed with prejudice. Defendants who do not successfully complete the program face the maximum allowable sentence for their offenses.

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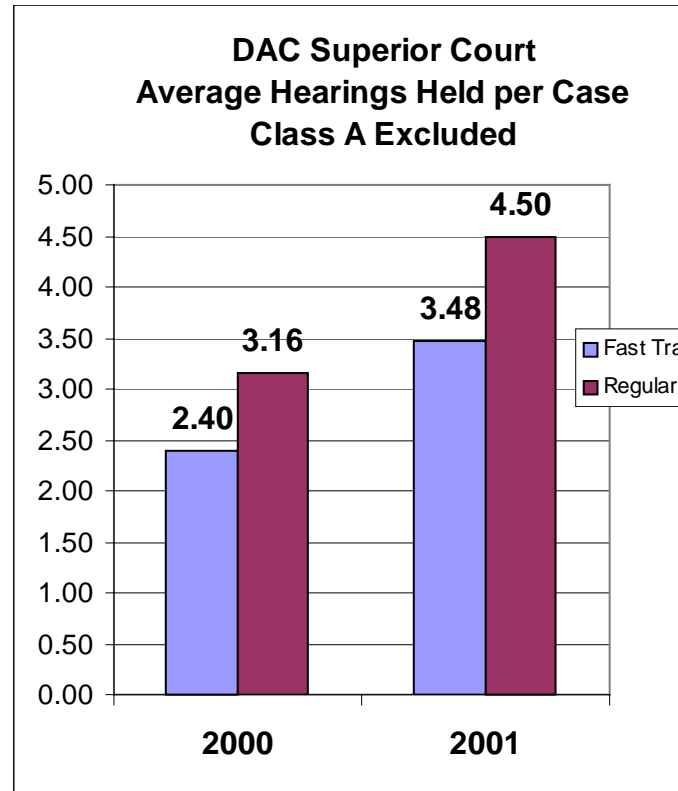
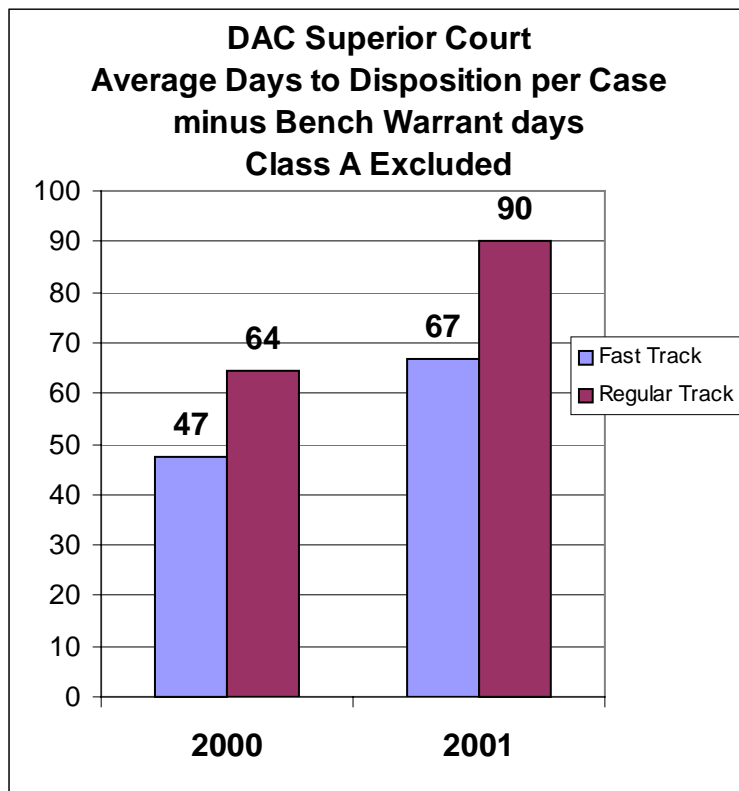
<sup>27</sup> According to data from the Washington State Courts, in 2001, 6,550 felony cases were filed in Pierce County Superior Court, and 40% of these cases were drug (controlled substance) offenses. By comparison, this percentage is greater than that of King County (38%), Clark County (27%) and Spokane County (21%).

Plea offers in Fast Track cases often involve alternatives to incarceration, and most Fast Track cases are handled as guilty pleas. Occasionally, a case in the Fast Track unit will head towards trial, and that case may stay with the Fast Track attorney for trial or be reassigned to an attorney in the Superior Court division. One Fast Track attorney reported having had three trials in the month of January, while another attorney had only four trials over the course of the last year.

Exhibit 4.2 on the next page provides an analysis of the number of days to disposition and number of hearings per case for DAC Fast Track attorneys versus Regular Track attorneys. The comparison excludes Class A felonies since those cases do not qualify for the Fast Track program. Both the number of days to disposition and number of hearings per case are 30 to 40 percent lower for cases in the Fast Track unit. This is consistent with the unit's purpose, which is to take a large volume of cases away from the rest of the Superior Court Division and assign them to attorneys who attempt to resolve the cases sooner.

Exhibit 4.2

**Superior Court Average Number of Days to Disposition and Number of Hearings Held  
Original Attorney, Class B and C Felonies, Bench Warrant Days Excluded  
DAC Staff Attorneys Only**



Source: LINX data.

In the Fast Track Unit, caseloads are very high, and representation is correspondingly limited. In 2000, the Fast Track attorneys made up 25% of the felony FTE attorneys and handled 37% of the felonies assigned in-house to DAC. In 2001, they made up 26% of the felony FTE attorneys and handled 47% of the in-house felonies. The average assignments per attorney in the Fast Track Unit was 299 in 2000 and 333 in 2001, not including the representation provided by arraignment attorneys at all Superior Court arraignments. (See Caseloads, above, for further analysis.) Due to the high volume, the attorneys in this unit can give only limited attention to their cases and clients. While DAC sees this fast-tracking as one of the few means available for addressing overall system-wide caseloads and budgetary constraints, it is likely that some cases are not getting the full attention they deserve. A high volume of these cases is screened very early on, with limited information, and it is likely that some defensible cases slip through the cracks in this fast track system.

## **DISPOSITIONS**

### **Speedy Trial and Continuances**

In Washington, speedy trial rules require in-custody defendants to be tried within 60 days of arraignment, and out-of-custody defendants to be tried within 90 days of arraignment (Superior Court Criminal Rule 3.3). These are among the shortest speedy trial periods in the country and add to the pressure of disposing of cases quickly. The right to speedy trial has become especially controversial in Pierce County where recently a series of highly publicized cases against seemingly violent defendants have been dismissed with prejudice because of “technical” speedy trial violations. DAC created its Fast Track Division in part because of the speedy trial concerns.

In March 2002, the Washington Supreme Court established a Time For Trial Task Force to review the state’s speedy trial rules and to offer recommendations for change by October 2002. The recommendations were published in November 2002 and are now being considered at the state level.

### **Timeliness of Dispositions and Number of Hearings Held**

We looked at the number of hearings and the length of time it takes to dispose of a case, both of which are factors that affect attorney workload. If attorneys are attending more hearings, less time is available for out-of-court work. If cases are taking longer to be resolved, this may be an indicator that attorneys are overworked and therefore in need of more time and continuances, or that cases are requiring more work and preparation and by their nature are taking longer to resolve. It may also be an indicator of defense attorneys not receiving discovery or plea offers in a timely manner.

In 2001, The Justice Management Institute (JMI) studied issues surrounding felony case processing and the problem of rolling continuances occurring in Pierce County.<sup>28</sup> JMI’s report indicated that the number of proceedings in Superior Court had increased dramatically over time to a point where the court was “losing control of cases” as the number of proceedings and jury trials that were continued increased to a point in 2000 where almost 33% of all proceedings and over 83% of trial dates were continued or cancelled. Since JMI’s report, the Superior Court worked to address the problem of rolling continuances. One responsive action the court took was to require all motions for continuances to be heard by the Criminal Division Presiding Judge (CDPJ), a new assignment. This judge now has plenary power over all criminal case trial calendaring. The introduction of the CDPJ in March 2001 and new protocols in January 2002 were supposed to reduce the number of hearings. JMI reports that the court was making progress

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<sup>28</sup> *Management Study of Felony Case Processing in Pierce County, Washington*, The Justice Management Institute (February 15, 2001).

in this regard on this towards the end of 2001. At that time, fewer felony cases were pending than at the end of 2000.<sup>29</sup>

We looked specifically at the average days to disposition and the number of hearings held for cases in the Superior Court in 2000 and 2001 for staff, panel, and contract attorneys. (See [Appendix B](#) for full data.) The number of days to disposition and number of hearings per disposition nearly doubled between the beginning of 2000 and early 2001, before leveling off toward the end of 2001. This data confirms reports by DAC felony attorneys that the attorneys have lost out-of-court time, although the full effects of the Superior Court changes cannot be gauged from the data at this time because the Superior Court changes which were implemented took place in the late spring of 2001 and changes continued to take effect in early 2002.

While the days to disposition appear to have increased, data provided by DAC from the LINX system regarding the number of Superior Court continuances reveals that there has in fact been a steady decline in the number of criminal trials continued since 2000. 2001 saw 418 fewer trials continued than the previous year. Half-way through 2002, the number of trial continuances (1,861) is about 200 less than half the trial continuances in 2001 (4,129). In 2002, the number of days in which trials are being continued appear to be consistent with 2001. However, there has been a larger drop in the category of continuances of 91 days or more. (See [Appendix C](#), Superior Court Trials Continued.)

## Superior Court Dispositions

We looked at the dispositions in the Superior Court in 2001 in order to calculate rates of trials, pleas, and dismissals. An extreme note of caution is given here because inconsistencies were found in the LINX data provided by DAC. The inconsistencies likely relate to the data entry process and the use of different outcome codes. For example, a jury trial might be coded as a “jury start” or a “jury verdict” (see Chapter 3 Data section). With this in mind, we found the following with regard to the LINX data provided for Superior Court dispositions in 2001:

- 3.4% of the cases were tried to completion (223 trials: 95 bench/128 jury)
- 2.6% of the cases began jury trial proceedings
- 2% of the cases were tried to completion before a jury
- 25% of the homicide cases were tried to completion
- 91% of the cases that went to trial resulted in a conviction
- 84% of the cases were disposed of by guilty pleas
- 12.3% of the cases resulted in a dismissal
- Drug cases comprised:
  - 44% of the Superior Court dispositions
  - 45% of the guilty pleas
  - 78% of the bench trials

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<sup>29</sup> *The Superior Court and Felony Case Processing in Pierce County, Washington*, The Justice Management Institute (March 14, 2002).

- 22% of the completed jury trials
- 32% of the cases dismissed without a trial.

(See full table in Appendix D, 2001 Superior Court Dispositions.)

The majority of Superior Court cases are disposed of by guilty pleas. A number of factors can affect the timing and quality of plea negotiations. Some factors can be attributed to the defense, such as case strategy and preparation, including defense motions, and willingness of the defendant to seek or consider an offer. The prosecution, however, generally determines whether and at what stage to make an offer, as well as whether the defense has been provided enough information about the case to consider an offer.

Negotiations with the PAO in felony cases was generally described as difficult and, with the exception of the DAC fast-track cases, occur relatively late in the case process. While the PAO in Pierce County was generally credited with turning over the initial police reports in a timely fashion, attorneys complained that the police and prosecutors were slow in turning over Special Assault Unit reports, police reports in domestic violence cases, and supplemental reports. In addition, the state lab has reportedly been extremely slow in producing drug certificates. This has sometimes resulted in delays in DAC attorneys holding realistic discussions about plea offers with their clients, in addition to resulting in some unnecessary continuances, in the costs of investigation being shifted to the defense who must prepare for trial without offers, and in delays in case dispositions. In its 2002 report, during the course of our study, JMI found similar problems addressed above.<sup>30</sup>

## **CHAPTER 4, CASELOADS AND DISPOSITIONS RECOMMENDATIONS**

### CASELOADS

#### 1. Case Counting Method.

- a. DAC does not count cases where it does not open a file, including all cases in which they appear at arraignment. While DAC has two attorneys covering all Superior Court arraignments, none of the attorneys' work is credited in DAC's workload. Until or unless a case-weighting study can be conducted which would count all attorney time spent on DAC cases, including arraignment time and time spent on cases before a private attorney is retained, DAC should begin tracking the number of these cases on which it provides representation but does not open a file. Providing representation in such cases is a requirement for DAC, but the workload is not currently being measured.

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<sup>30</sup> *The Superior Court and Felony Case Processing in Pierce County, Washington*, The Justice Management Institute (March 14, 2002).

## 2. Caseload Standards and Limits.

- a. DAC supervisors should proactively monitor attorney caseloads within each division of the office, including the District Court Division which currently does not address any overload issues. In light of the high attorney caseloads, this is especially important and will help to guard against job dissatisfaction, burnout, and ineffective assistance of counsel issues.
- b. DAC should develop written guidelines for caseload/workload limits. The best method for developing such standards is to conduct a case-weighting study which develops workload standards from empirical data. In the absence of such a study, DAC needs to create its own written caseload limits based on DAC and Pierce County practice. DAC should seek assistance from its Advisory Board in this regard.

3. Caseloads. Staff attorney caseloads are very high. We strongly recommend that as soon as possible DAC develop written caseload standards, proactively monitor caseloads, and consider using outside counsel more frequently to lighten the load of the staff attorneys. It is also recommended that Pierce County employ a case-weighting study to develop workload standards. Such a case-weighting study was recently completed in King County for both the prosecuting attorney and public defender offices. If these measures do not result in reducing staff caseload, then the county must seriously consider adding additional FTE staff attorneys. Whatever methods are employed to address the workload levels, remedying the issue will clearly result in some additional cost to the county.
4. Fast Track. Caseloads in the Fast Track Unit are very high. We have a strong concern that, due to the high volume, some cases and clients are not receiving the attention they deserve because they have been assigned early on, at a stage where limited information is available on a case, as suitable for fast track representation. We strongly recommend that DAC conduct a careful review of the fast track criteria in light of this study to assess the need for additional attorney staff.

## DISPOSITIONS

1. Timeliness of Dispositions and Number of Hearings Held. A dramatic increase occurred in both the timing to disposition and the number of hearings held between 2000 and 2001, but it leveled off toward the end of 2001. This data supports attorney concerns over the loss of out-of-court time. However, full effects of the Superior Court changes cannot be assessed from this data, and Pierce County Council should designate a person or agency to oversee a further analysis of complete 2002 data into 2003 in order to assess the impact of Superior Court changes on attorney time. Although conclusions may be drawn from such data, an empirical case-weighting study is required for an accurate reflection of attorney time spent in court and on time spent on felony cases until disposition.

## DISTRICT COURT

1. We strongly recommend that a small working group be formed under the direction of the Performance Audit Committee to address case counting issues in District Court and to develop reporting requirements that are consistent among all of the involved agencies. The work group should consist of representatives from DAC, PAO, District Court, Budget and Finance, and others as needed.

During the course of the audit, we found it difficult or impossible to analyze DAC case assignment or disposition data regarding District Court cases. The confusion, we believe, is primarily due to different reporting protocols used by the various agencies involved in misdemeanor cases. We encountered the following problems:

- ◆ We are not able to report accurately on the number of cases or causes filed by the Prosecuting Attorney's Office in the District Courts each year.
- ◆ We are not able to report accurately on the total or percentage of these cases assigned to or disposed by DAC.
- ◆ Nor are we able to report accurately the number of total cases assigned to or disposed by DAC staff attorneys who work full-time in the District Courts.
- ◆ We are also not able to identify with a high degree of confidence the number of new misdemeanor cases and the number of post-conviction matters.

## CHAPTER 5 PANEL AND CONTRACT ATTORNEYS

### Panel Attorneys

The second largest providers of legal services to indigent criminal and juvenile defendants at DAC are the panel attorneys. Panel attorneys handle 10% of the indigent felony cases, 18% of the indigent delinquency cases, and 34% of the indigent dependency cases, but rarely handle any misdemeanors out of District Court. There are six panels: misdemeanors, felonies, capital cases, juvenile delinquency cases, and appeals, some of which are further broken down by case types (see fee chart, below).

### Qualifications

In order to be included on the panel, an attorney must submit a short application to DAC stating the number of years of experience practicing law, briefly describing the attorney’s criminal practice, and stating the approximate number of felony and misdemeanor cases and trials the attorney has handled.

The qualifications for all Pierce County indigent defense attorneys, including panel and contract attorneys, are set forth in the Indigent Defense Standards ordinance. DAC does not maintain a list of qualifications independent of these standards. The base requirement for indigent defense attorneys is that each satisfy the requirements to practice law in Washington (45 CLE hours every three years) and complete a minimum 5 CLE hours per year related to the practice of indigent defense. The following chart provides a view of additional qualifications under the ordinance according to case types:

Exhibit 5.0

### Attorney Qualifications

	QUALIFICATIONS
Death Penalty	<ul style="list-style-type: none"> <li>◆ 5 years of criminal trial experience</li> <li>◆ prior experience as counsel in at least 5 jury trials of serious or complex cases, at least 2 of which were 1<sup>st</sup> or 2<sup>nd</sup> degree murder cases tried to completion</li> <li>◆ served as lead or co-counsel in at least one capital jury trial; and</li> <li>◆ completion of at least one death penalty seminar in the last 2 years, or maintain contact with an attorney support group during the progress of an assigned death penalty case</li> </ul>

	QUALIFICATIONS
Felony - Class A	<ul style="list-style-type: none"> <li>◆ two years of experience as a prosecutor or public defender with a felony caseload; or</li> <li>◆ served as trial counsel alone or with co-counsel and handled a significant portion of the trial in cases submitted to the jury</li> </ul>
Felony - Classes B and C; Probation/ Parole Revocation	<ul style="list-style-type: none"> <li>◆ one year of experience as a prosecutor or public defender; or</li> <li>◆ served as trial counsel alone or with co-counsel and handled a significant portion of the trial in cases submitted to a jury</li> <li>◆ each attorney shall be accompanied by a supervisor at a first felony trial</li> </ul>
Misdemeanor	<ul style="list-style-type: none"> <li>◆ satisfy the minimum requirements for practicing law in Washington and have 5 CLE hours each year in the area related to public defense</li> </ul>
Juvenile Delinquency - Class A Felony	<ul style="list-style-type: none"> <li>◆ one year of experience as a prosecutor or public defender; or</li> <li>◆ served as trial counsel alone in juvenile Class B and C felony trials; or</li> <li>◆ is qualified under the standards for any adult felony representation</li> </ul>
Juvenile Delinq. - Class B and C Felonies	<ul style="list-style-type: none"> <li>◆ each attorney shall be accompanied at a first juvenile trial by a supervisor unless qualified for adult felony representation</li> </ul>
Dependency	<ul style="list-style-type: none"> <li>◆ for handling termination hearings, six months of experience handling dependencies or significant experience handling complex litigation</li> </ul>

Source: Pierce County Indigent Defense Standards, Ordinance No. 95-148.

There are no qualifications for attorneys handling juvenile delinquency misdemeanor cases. There are also no qualifications for attorneys handling dependency cases unless they become termination cases, at which time they must have been either handling dependencies for six months or have experience handling complex litigation. Attorneys handling adult misdemeanors need only satisfy 5 hours of CLE related to indigent defense each year.

Although the qualifications purportedly apply to all Pierce County indigent defense attorneys, the requirement that an attorney be accompanied by a supervisor at a first felony or juvenile trial appears to apply only to DAC staff attorneys. Unless a panel or contract attorney works under a senior attorney in his or her private practice, it would be difficult for that attorney to fulfill this requirement.

## Fees

Fees for panel attorneys are set by the DAC Director in consultation with the Advisory Board. When the attorneys apply to DAC for inclusion on the panel, they are required to agree to the fee schedule and payment procedures.

The panels are comprised of a large number of local attorneys. The largest panels are the adult misdemeanor, Class B and C felony, and juvenile misdemeanor panels. Some attorneys are on multiple panels. However, according to DAC supervisors who assign the cases, not all attorneys on the panels are taking cases or are being assigned cases by DAC.

The following table sets out the attorney fees and the current number of attorneys on each panel:

Exhibit 5.1

### **Panel Attorneys - Rates and Panels**

<b>Panel</b>	<b>Hourly Rate</b>	<b>Maximum Fee</b>	<b>Attorneys on the panel</b>
Death Penalty	\$60	n/a	34 (Agg. Hom.)
Felony - Class A*	\$50	\$1,000 non-trial \$5,000 trial	54
Felony - Classes B and C *	\$40	\$550 non-trial \$5,000 trial	78
Post-Conviction <sup>31</sup>	\$40	\$250	n/a
Misdemeanor	\$35	\$300	82
Juvenile - Class A Felony	\$40	\$400 non-trial \$800 trial	38
Juvenile - Classes B and C Felonies	\$30	\$300 non-trial \$500 trial	64
Juvenile – Misdemeanor and Gross Misdemeanor	\$30	\$180	75
Juvenile - Declination Proceeding	\$40	\$600	47

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<sup>31</sup> Representation at post-conviction proceedings must be approved by the DAC Director.

Juvenile Dependency	\$40	\$400 fact-finding proceedings	48
Termination of Parental Rights	\$40	\$1,500	50
Appeals	\$40	\$600	72 - Misd. 84 - Felony

\*These case types have minimum fees of \$100.

Sources: DAC panel application and interviews with panel attorneys.

When a case is resolved, the panel attorney submits a case closing sheet to DAC documenting the closing date and the disposition. In this way, DAC is able to monitor at least the outcome of the panel attorneys' cases. In order to receive payment, a panel attorney submits a petition to the DAC Director within 45 days of a case's final resolution. Any itemized costs over \$75 must have prior written approval of the Director. In the event of a dispute as to fees, a panel attorney may request the DAC Advisory Board to review the petition by writing a letter to the Director.

Members of the Board report that they do on occasion cut back on billed attorney fees, although panel attorneys rarely seek payment beyond the maximum fees. Board members expressed a concern with the lack of policies or guidelines for making fee decisions. Without direct knowledge of a case for which an attorney is seeking additional fees, the Board is left to make decisions using their judgment but with little information and no guidelines. In addition, although death penalty cases are very costly, there are no maximum fees and the Board does not always feel comfortable cutting fees in such cases. The development of some objective criteria to assist the Board in making future decisions would be very beneficial and encourage consistency in their decisions.

#### Monitoring (Supervision and Training)

DAC does not supervise or monitor the panel attorneys. While there is a mechanism for registering complaints with the Director of DAC, there is no regular mechanism or process for evaluating the work of panel attorneys. The oversight process has been largely an informal one.

DAC also does not have a required or structured training program for panel attorneys. Members of the DAC Advisory Board expressed a desire for development of a more structured training program for the DAC panel attorneys, in particular for the new and less experienced attorneys. Others outside DAC also expressed a concern about the experience level of the felony panel attorneys. A required and structured training program could improve the quality of panel attorney representation and give the Board additional confidence about the necessity and quality of an attorney's work when reviewing fees. Another suggestion was to require the newer attorneys to work with an experienced mentor until he or she gains experience.

## **Contract Attorneys**

DAC maintains individual contracts with four to six attorneys at any one time. Each handles five to ten Class B and Class C felony cases per month at a rate of \$250 per case. Most of the DAC contract attorneys are also panel attorneys. The rate for the contract attorneys is among the lowest in the country.

The Director reports that he projects DAC's need for contract attorneys on an annual basis. For the most part, DAC utilizes its contract attorneys in an effort to be more cost efficient. Although not a written policy, because of the low rate of fees on the contract cases, the Director will make efforts to assign any cases that appear complex or problematic up-front to panel attorneys. Typically, he will assign the contract attorneys cases that look like they might plead, including many drug possession cases.

Occasionally a contract attorney will notify the Director after receiving a case that the case will require more work than can reasonably be expected under the fee arrangement. If the Director is notified early on and agrees with the attorney's assessment, he will remove the case from the contract list and place it on the panel list, and the attorney will be compensated by the panel attorney fees and not the contract fee. Attorneys are generally expected to adhere to the terms of the contract but may petition the Director for an increase in fees, and the decision on that petition is made by the DAC Advisory Board.

### Qualifications

Contract attorneys are held to the same qualification requirements under the Indigent Defense Standards as DAC staff and panel attorneys who represent on Class B and Class C felonies (see above).

### Fees

The attorneys who have been called on by DAC to handle these cases often put the word out informally that they are interested in handling cases by contract and the decision to grant such contracts is equally informal. The contracts are for one calendar year, with no renewal option. The contractor agrees to provide representation in 60 Class B and C felony cases, at approximately 5 cases a month, for a fixed rate of \$15,000, payable at a rate of \$250 per case in monthly installments of \$1,250. Although the contractor agrees to take 60 cases under the contract, it is not always required. Under the contract, a case is counted as all charges naming the same defendant, including charges arising from separate incidents and charged in separate documents. Thus, a contractor could be required under the contract to represent a defendant in two or more distinct cases involving separate incidents, yet still only be paid a total \$250, which even for one case is extremely low. Further, if the contractor withdraws from a case prior to final resolution, the attorney will be paid only if the withdrawal is authorized by the court after notification to DAC and the attorney spent more than four-and-a-half hours of work on the case.

In addition to the formal contracts, DAC at times utilizes an informal contract system where the Director, in an effort to save money, will try to “contract” a case out through making an oral agreement with an attorney to accept a case. An informal contract attorney is also paid \$250 per case but does not receive payment until the case is resolved.

The current contract fee of \$250 per case is remarkably low and serves as a disincentive to performing out-of-court work, especially when the contract attorney has privately retained cases. If a case were to require extensive motions or a trial, for example, a contract attorney would actually lose money by putting in many hours for which he or she is not being paid and losing private billing hours at the same time. While we saw no evidence that the quality of contract attorney representation is poor<sup>32</sup>, several individuals that we interviewed on site raised this problem. We have a strong concern that the low fees promote less than zealous advocacy from the contract attorneys. Further, the Director reported a high turnover on the contracts, with most attorneys lasting only one year, some up to two years. The Director also reported that recently it has become more difficult to find qualified contract attorneys.

### Monitoring

As with the panel attorneys, there is no formal monitoring, supervision, or training of DAC contract attorneys, again reflecting a general policy of letting attorneys handle their cases once they have been deemed qualified. The need for supervision and training exists with the contract attorneys as with the panel attorneys.

### **Caseload Distribution**

In looking at the distribution of cases among the attorneys, we looked at the average number of annual dispositions per attorney for DAC staff, panel, and contract attorneys using LINX data provided by DAC. In 2001, DAC staff attorneys disposed of an average of 116 Superior Court cases per attorney. Panel attorneys disposed of an average of 6.8 cases per attorney, and contract attorneys disposed of an average of 16.3 cases per attorney, although the actual numbers vary widely. Of the 90 panel attorneys with one or more dispositions, only 8 attorneys had more than fifteen dispositions, and none had more than 25. 53% of the panel attorneys disposed of 5 cases or less. While there were four contract attorneys with more than 30 dispositions, the remaining 20 attorneys disposed of fewer than 25 cases each. Contract attorney case types were a mix of 41% B felonies and 59% C felonies, while panel attorneys handled 11% A felonies, 55% B felonies and 33% C felonies.

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<sup>32</sup> In order to judge the true quality of an individual attorney’s performance, one would need to take in-depth look at his or her cases, case files, and courtroom performance, as well as interview the attorney, colleagues, opposing parties and judges. Such an in-depth study is beyond the scope of this project.

It is apparent that many panel attorneys are available to handle cases, but are not being used to reduce caseload at DAC. Similarly, contract attorneys are being used to handle a fair number of class B and C felonies, but are not being used as a replacement for staff attorneys.

We also looked at the number of open cases for each attorney type at a given time during the years 1999 to 2002 for both Superior Court and Dependency cases. See tables in Appendix E for a summary of this data.

## **CHAPTER 5, PANEL AND CONTRACT ATTORNEYS RECOMMENDATIONS**

1. Panel Attorney - Qualifications. It is important for all attorneys handling indigent defense cases to have had at least some training, if not experience, in the area of their practice. The clients and the courts would benefit from some minimum mandatory training requirements for the panel attorneys, especially in areas for which no experience is required, including adult and juvenile misdemeanors and dependency cases. The need is especially strong for new solo practitioners who do not have the support system of a public defender office or a law firm with experienced attorneys to provide guidance.
2. Panel Attorney – Fees.
  - a. The maximum fees on all case types are too low. DAC and its Advisory Board should work together to assess the case categories in light of their estimated workload in Pierce County and raise the maximum fees on all cases accordingly. In addition, the maximum fees should exist as presumptive caps which can be waived in appropriate circumstances.
  - b. DAC is extremely fortunate to have a strong Advisory Board which includes several highly experienced private criminal lawyers. However, much of their time recently has been spent reviewing vouchers of court appointed attorneys. The DAC and the Board should work together to develop guidelines and policies regarding the payment and denial of fee requests in an effort to reduce the time spent considering such requests and support the fairness and consistency of their decisions. These guidelines could be published to the panel attorneys as well.
3. Panel and Contract Attorneys – Monitoring (Supervision and Training):
  - a. There is no regular mechanism for monitoring or evaluating the work of panel or contract attorneys. The program could benefit from overseeing panel attorneys in a more structured way, such as occasionally monitoring performance either through observation or feedback from other attorneys, judges, and prosecutors in cases not involving co-defendants. DAC may also want to consider establishing a program in which experienced panel attorneys offer some supervision or mentoring to new attorneys.

- b. DAC and the Advisory Board should consider some mandatory and structured training for new panel and contract attorneys. While there is a concern that requiring some training would be a disincentive for the attorneys, it would help towards the goal of providing quality representation. They should also strongly consider requiring newer attorneys to work with an experienced mentor until he or she gains experience.

4. Contract Attorneys.

- a. The decision to refer cases to the contract attorneys or panel attorneys in non co-defendant cases is currently made by the Director of DAC. We question whether making such decisions is the best use of the Director's time and suggest that the Director consider delegating this task to another senior member of the office.
- b. The contract fee of \$250 per Class B or C felony case should be increased. The current fee is extremely low and, based upon our experience all over the country, is among the lowest we have seen. It is fair to note that in the last 10-12 years, a number of appellate courts around the country have found such fees to be unconstitutional in several cases based upon the denial of sixth amendment rights or a fifth amendment taking of contract attorneys' property. In addition to an increase in fees, the definition of a case in the contract should be amended so that an attorney representing a defendant with two cases, arising from separate incidents, be paid for two cases.

## CHAPTER 6 JUVENILE REPRESENTATION

### **DELINQUENCY**

DAC juvenile attorneys represent juveniles charged with felony and misdemeanor offenses. Panel attorneys are also used for overflow and conflict cases. DAC maintains separate lists for panel attorneys willing to take juvenile Class A felonies, declination proceedings<sup>33</sup>, Class B or C felonies, and misdemeanors.

The Juvenile Division of DAC has one supervisor, one lead attorney, and five staff attorneys, all of whom carry a caseload. The lead attorney is responsible for individual training of the staff attorneys. DAC has a positive approach to juvenile work where, unlike some defender offices, it is not seen as a way station to Superior Court. For the most part, the attorneys working in the juvenile sessions have chosen to specialize and are committed to working in this area, with some attorneys having five years of experience. The division also has one legal assistant, but no social workers.

#### **Assignment and Conflicts**

The Supervisor of the Juvenile Division is responsible for reviewing and assigning the cases to staff attorneys and for keeping records of assignments to both staff and panel attorneys to ensure equitable distribution of cases. The supervisor is responsible for determining when there is a conflict, which can often be done by asking the legal assistant to check a potential co-defendant conflict in LINX. If a conflict is discovered after a case has been assigned to a DAC attorney, the legal assistant substitutes a new panel attorney by using LINX. The supervisor generally uses about a dozen panel attorneys in making outside assignments.

#### **Case Flow (timing, procedures, dispositions)**

Arraignments are handled by Juvenile Court staff attorneys on a rotating basis. Each attorney is required to cover arraignments for a period of one week every six weeks. The arraignment attorney is also responsible for advising all juvenile parolees who are being held downtown at the Pierce County jail and for handling any parole revocation hearings. As with DAC representation at Superior Court arraignments and preliminary probation hearings, the DAC juvenile attorney provides representation to all juveniles and thus inevitably to some co-defendants, again giving rise to a concern about DAC conflict representation.

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<sup>33</sup> A declination is the process by which the Juvenile Court declines jurisdiction over a juvenile offender, and thus sends the juvenile to be tried as an adult in Superior Court. Declination hearings are held separately from adjudicatory hearings and in the case of felonies, are held within 14 days after the information is filed.

DAC juvenile attorneys (delinquency and dependency) travel about 5 miles from their offices to Remann Hall where the juvenile cases are heard, and attorneys reported problems with travel time and waiting time at court.

Juvenile attorneys normally meet their clients for the first time after arraignment. Under the new office-wide initial contact policy, attorneys are now required to meet with or contact their in-custody clients within two business days of being assigned a case and their out-of-custody clients prior to the pretrial conference that takes place one week after arraignment.

Data provided by DAC also shows that a very high percentage of delinquency cases are being resolved at the pretrial or scheduling conference (before a probation officer becomes involved in a case). Juvenile Court judges reportedly do not like to see the percentage of resolved cases fall below that of the previous month. The percentage is currently about 80% and raises a concern that some cases that have issues worth investigating or litigating are instead getting disposed of at a very early stage, due (at least in part) to a desire for expediency and efficiency. The following table, taken from DAC data, illustrates the large and rising numbers of cases resolved at the pretrial or scheduling conference stage:

Exhibit 6.0

**Delinquency Cases Resolved at Scheduling Conference**

	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002*</b>
<b>% of Cases Resolved</b>	64	70	77	82	80	81

\* through June 30, 2002.

Source: DAC.

Attorneys can access their clients in detention at any time by telephone, although they have agreed not to call during two half-hour periods of the day. At Remann Hall, a total of 18 conference rooms are available for attorneys to meet with in-custody and out-of-custody clients. However, these rooms are shared with the dependency attorneys and there are occasionally problems with availability.

Juvenile probation officers are assigned to misdemeanor and felony cases and play a strong role in Juvenile Court. We received some reports that the probation officers, who are funded through the Juvenile Court budget, can sometimes carry more power than the prosecutor or the juvenile in determining the outcome of a case, and that they at times will use funds from their budget to hire private attorneys to represent the probation department's position in a case. This raises a serious concern for us that the probation officers, who are not truly a party to the case and who are under the wing of the Juvenile Court at least in funding, are allowed to play too large a role in the outcome of delinquency cases.

At the beginning of a case, probation officers frequently meet with parents and family members of the juvenile. When juveniles are detained, a probation officer performs a role similar to pretrial services, interviewing the juvenile and making an initial determination as to whether the juvenile should be released or continue to be detained. The probation officers will also consider whether diversion is appropriate for the juvenile, although eligibility criteria are dictated by state statute. Diversion is an out-of-court process involving an agreement between the juvenile and the diversion unit in which the juvenile will have certain requirements to fulfill, such as community service or counseling. If the requirements are met, the charges are not pursued. Juveniles eligible for diversion must be informed of the right to consult with an attorney prior to being interviewed by the diversion unit. The juvenile may either waive or request counsel at this stage. DAC juvenile attorneys are required to inform their clients and the parents about the Juvenile Court diversion process.

Beginning in October 2002, a new Juvenile Drug Court will begin operation. The court will begin by taking up to 25 juveniles, and the prosecutor will determine which juveniles are eligible.

**Caseloads**

Without an empirical study, we cannot recommend a particular number of cases that should be handled by Pierce County delinquency attorneys. NAC standards recommend 200 juvenile cases and WDA standards recommend 250 juvenile delinquency cases per attorney per year. We looked at the annual assignments per FTE in the Delinquency Division and found that DAC staff attorneys are handling a large volume of delinquency cases. The annual assignments per full time equivalent staff attorney have hovered around 300 assignments for the last two years, 50-100 cases over the recommended standards.

Exhibit 6.1

**Delinquency Assignments per FTE**

	<b>2000</b>	<b>2001</b>
Assignments	2167	2067
FTEs	7	7
<b>Assignments per FTE</b>	<b>310</b>	<b>295</b>

Source: LINX data.

## **DEPENDENCY**

### **Representation**

In dependency matters, the Washington State Office of the Attorney General represents the state. The court must appoint counsel for indigent parents, and for indigent children who are without a guardian ad litem, under Juvenile Court Rule 9.1. The DAC dependency attorneys represent only parents and will not represent more than one parent in a case. If there is more than one parent involved in a case, DAC treats this as a conflict and assigns a panel attorney to the other parent. Children are usually appointed a guardian ad litem (GAL) whose role is to represent what they believe to be the child's best interests. Although in other jurisdictions GALs are most often attorneys, Pierce County GALs are court employees and not attorneys.<sup>34</sup> Counsel may be appointed to represent the child from a list of attorneys who have agreed to provide pro bono representation, but usually no counsel is appointed at all.<sup>35</sup> This lack of legal representation for the child is an area of strong concern. Without an attorney appointed for the child, there is no one whose role it is to represent and advocate for the child's wishes. A GAL represents a child's best interests and cannot fill this role. In dependency cases, where one is dealing with the potential termination of rights and ties between a child and parent(s), it is critical for a child to be provided counsel.

The DAC Dependency Division has one supervising attorney (CA-3), 6 staff attorneys (CA-2 and CA-1), 2 paralegals, 1 social worker, and 2 legal assistants. Three of the attorney positions, the paralegal positions, and the social worker are funded by a state Pilot Project. The remaining positions are funded by Pierce County. The pilot project funding is now authorized through October 2002, and DAC expects the funding to continue until the end of the year. While there has not been much turnover within the unit, DAC has found it difficult to recruit and hire people in this unit with pilot project funds because those positions can never be guaranteed in the long-term.

DAC also provides representation for children in Becca law cases, including Children In Need of Services, At Risk Youth, and Truancy contempt cases. Prior to 1997, attorneys in the Dependency Unit provided this representation. Since that time, DAC has received state funding for Becca cases. The DAC staff who exclusively handle Becca cases consist of a 0.7 staff attorney, an extra hire attorney, and a portion of a legal assistant. In 2001, these DAC attorneys were assigned 120 At Risk Youth cases, 17 Child in Need of Services cases, and 494 Truancy cases, for a total of 630 Becca cases.

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<sup>34</sup> Increasingly in Pierce County, the role of GAL is being filled by a CASA representative, who is usually a person who has volunteered his or her time to serve as GAL after attending CASA training.

<sup>35</sup> A DAC attorney reported that counsel for the child is often not appointed because the GAL recommends against the appointment. We view this as a problem wherein the GAL is charged with representing a child's "best interests", but without an attorney, the child has no one to represent his or her actual interests.

## **Assignments and Conflicts**

Cases in the Dependency Division are assigned by the calendar office at DAC. Within the division, one legal assistant is responsible for conflict checks on incoming cases and has written procedures to follow when doing so. The conflict checks begin by entering the parent's name in the LINX system and skimming the petitions for additional information such as previous dependency cases and criminal charges. Checks are also run in LINX on the other parent and on any children who are at least ten years old who may have a status offense against them, such as a truancy. The Dependency Division Supervisor is notified of any apparent conflicts and is responsible for making the conflict and assignment decisions. All conflicts are assigned to panel attorneys. However, not all attorneys on the panel are actively accepting cases, and there is a core group of six to eight attorneys taking the conflicts. Often the decision of who to assign a conflict comes down to a matter of availability, although other factors relating to an attorney's practice and experience are also considered.

## **Dependency Proceedings**

Dependency and termination proceedings must occur within strict time frames set by the federal Adoption and Safe Families Act (AFSA) and state laws (Chapter 13.34 RCW). Within 72 hours of a child's removal from the home by the Washington State Department of Social and Health Services (Department), a Shelter Care Hearing occurs in which the parents may contest the removal. Within 75 days of the filing of the dependency petition, a fact-finding hearing is held to determine whether the child is dependent. Disposition hearings are held within 14 days of fact-finding to determine the child's placement. Within 60 days of the Department assuming responsibility for providing services on a case, it must develop a permanency plan, including outcome goals. Within one year of placement, a permanency planning hearing is held.

Due in most part to the expediency requirements of AFSA, there is a pressure to move quickly towards terminating parental rights in Pierce County, and there is a high rate of terminations and termination trials. Termination proceedings may occur at any stage of a dependency case and will determine whether all rights between the parent and child will be severed. A petition to terminate parental rights must be filed within one year of the child's placement out of the home unless compelling reasons exist for further delay. The court in Pierce County moves quickly to terminate parental rights and permanently place children outside of the home of their biological parents. Since the beginning of the state Pilot Project, however, the number of reunifications between parents and children have increased (see Pilot Project, below).

## **Dependency Drug Court**

A Methamphetamine Services Dependency Court (Dependency Drug Court) program has been in operation since April 2001 and is funded by federal funds given to the Washington State Methamphetamine Initiative, and is a cooperative effort of law enforcement, social service and community programs. The Dependency Drug Court program is split between two courts, with

the dependency proceedings taking place in the Dependency Court and the drug court proceedings taking place in the Drug Court in Superior Court. The DAC Dependency Supervisor provides representation in the Drug Court portion of the program while another staff attorney provides representation in the Dependency Court portion of the program.

The program is intended to be completed in one year and is available to parents who meet the eligibility criteria (including use of methamphetamine and no history of domestic violence, a serious felony or sexual offense). The Attorney General Dependency Division Chief first reviews dependency petitions to see which parents might be appropriate. Then at the Shelter Care Hearing, parents who might be eligible for the program receive an order by the Juvenile Court to be screened to determine eligibility. Admission must also be approved by the Drug Court. A parent's entry into Methamphetamine Family Services program is voluntary, and if a parent wants to contest dependency, his or her admission into Drug Court is deferred.

In order to enter the program, the parent agrees to the possibility of incarceration by sanction through a civil contempt process for non-compliance with the program. Although the parent can respond to allegations of violations, the parent gives up the right to a jury trial and to any evidentiary hearing. Success in Dependency Drug Court helps to ensure that a parent's rights will not be terminated, and there is an agreement that the Juvenile Court will not proceed with termination during the parent's successful participation in the program. DAC sees the program as a large success.

### **State Pilot Project**

In 1999, the Legislature directed the Washington State Office of Public Defense (OPD) to recommend ways to provide for equitable payment for indigent defense costs in dependency and termination proceedings. In 2000, the Legislature directed OPD to establish a defense representation pilot program in 2001 in one eastern and one western Washington juvenile court. The pilot was instituted in Pierce County and in Benton-Franklin County. OPD has requested an extension of the pilot through 2003 in order to measure the longer-term impacts of the improvements on the timeliness and length of cases, parents' access to court-ordered services, and outcomes for the parties involved.

The five requirements of the pilot project are to: (1) reduce the number of continuances requested by pilot attorneys; (2) establish a maximum caseload requirement of 90 dependency and termination cases per full-time attorney; (3) implement enhanced defense attorney practice standards, including case preparation and client advice; (4) use investigative and expert services where appropriate; and (5) ensure implementation of indigency screenings of parents, guardians, and legal custodians.

The pilot project was instituted in Pierce County for the first time between July 2000 and June 2001. The stated purpose of the pilot program was to enhance the quality of representation and reduce the number of continuances requested by contract attorneys. OPD gave DAC a

yearly budget of \$321,000 to provide indigent dependency and termination defense services for approximately 320-370 open cases at any one time.<sup>36</sup> Monthly attorney expenses were paid in the amount of \$18,750, and fees for investigative, social work and expert services were capped at \$96,000. The monthly payments were to supplement, not supplant, Pierce County payments to DAC for dependency and termination representation. A major purpose of the pilot was an attempt to achieve parity in legal services resources between the defense and the state in dependency and termination cases. In June 2001, an addendum to the contract for the pilot project allowed for an increase in reimbursement for a caseload exceeding 370 cases and for DAC to bill OPD for additional attorney services up to \$28,900.

In July 2001, OPD contracted with DAC again to provide defense services through June 2002 for approximately 350-450 open cases at any one time. The yearly budget was increased to \$350,567, with monthly attorney expenses of \$21,946, and fees for investigative and social work services of \$72,214. Expert services were capped separately at \$15,000, but an additional amount for expert services was left open for future agreement.

An OPD evaluation of the pilot done in February 2002 revealed that pilot attorney caseloads increased by 20% during the pilot reporting period, due in part to an increase in dependency and termination filings, particularly in Pierce County.<sup>37</sup> The report found, when comparing the first quarter of the pilot to the next year of the pilot, that court-ordered reunifications between parent and child increased by 60%. Currently, OPD reports a 57% increase from the first three months of the pilot.<sup>38</sup> The report also found that when reunification was not possible, court orders allowing parent-child visits or correspondence increased in 44% of the termination cases from December 2000 to May 2001 and in 55% of the termination cases from June 2001 to November 2001. In addition, in looking at the work performed by social workers and paralegals, the report concluded that the services provided by them are enhancing the representation of parents under the pilot.

Prior to the pilot project, continuances due to attorney over-scheduling were reported to be a major problem. According to the most recent OPD evaluation, pilot attorneys have reduced their continuances caused by over-scheduling so that they are now only 4% of the reported continuances. This reduction is attributed to a reduction in attorney caseloads during the pilot project. The evaluation also found that between August 2000 and November 2001, 16% of all hearings resulted in continuances. Of these, only 15% were caused by pilot attorneys and parents; 19% were caused by the AG and the Department; 20% were caused by the court; and 43% were attributed to other reasons (e.g., more information was required by the court, a parenting plan or written response was requested by the court, the need for an attorney or GAL appointment, or unavailability of non-pilot attorneys).

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<sup>36</sup> A case is defined as the representation of a parent, legal custodian, or guardian, and may involve a number of children; the filing of a termination is a new case.

<sup>37</sup> Dependency and Termination Parents' Representation Pilot: Evaluation, February 2002, Washington State Office of Public Defense.

<sup>38</sup> OPD reports that this increase is a true reunification increase as it takes into account the increase in case filings.

Pilot funds are also clearly making a difference in the services being sought and provided to dependency clients. In 2000, DAC spent \$3,786.12 in business fees on dependency cases, including fees for expert testimony, medical records, psychological exams, and transcripts. In 2001, this amount more than tripled to \$14,181.95. DAC reports that the increase is attributable to the provision of pilot project funds earmarked for these services. However, the use of experts and investigators by dependency panel attorneys, who do not have access to pilot project funds, is almost non-existent. While staff attorneys are clearly using pilot funds for investigations and experts, panel attorneys must file their requests for such services with DAC, and the funds are taken from DAC's budget. In 2001, although panel attorneys received almost half of the dependency cases, they spent only 3.6% of the dependency business fees.

With the help of the pilot funds, DAC has a strong Dependency Division and provides important and quality representation to parents in dependency proceedings. However, continued funding is uncertain, causing difficulty within the division as to stability and ability to project future budgets and workloads. Currently, funding is likely to continue through the end of 2002, but is uncertain for 2003. In addition, the amount of dependency proceedings has increased drastically (see Caseloads, below), creating a further urgency for funds and staff. Without continued funding, the Dependency Division faces a serious problem of an unfunded mandate and great risk to its ability to continue to provide effective assistance of counsel to its dependency clients.

### **Caseloads and Hearings**

The number of dependency cases filed in Pierce County has grown considerably over the past several years. In 1998, 389 dependency cases were filed in Pierce County. In 2001, this figure rose by 31% to 511 dependency cases filed. The rate of termination cases, however, has remained relatively constant.<sup>39</sup>

As indicated in the table below displaying LINX data (see footnote below table), between 2000 and 2001, the number of DAC dependency assignments rose by nearly 200 in 2001 from the previous year; yet because of the addition of the pilot project attorneys, the average assignments per DAC staff or extra hire attorney fell slightly. However, the number of hearings per attorney rose by over 200.

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<sup>39</sup> Source: Washington State Courts Caseloads.

Exhibit 6.2

**Dependency Staff and Extra Hire Assignments and Hearings per FTE**

	<b>2000</b>	<b>2001</b>
Assignments	982	1171
Hearings	9729	14,555
FTEs	6.7	8.7
<b>Assignments per FTE</b>	<b>147</b>	<b>135</b>
<b>Hearings per FTE</b>	<b>1452</b>	<b>1673</b>

Source: LINX data.<sup>40</sup>

Although there are no national caseload standards for dependency cases, the WDA recommended standard, based on clients, is 60 clients per year. The average number of DAC annual assignments, which is equal to the number of dependency clients (since DAC represents only one parent on a case), is over twice the WDA standard. Dependency caseloads cannot be viewed in the same light as criminal and delinquency cases because dependency cases may remain open and not disposed of for years until the child turns 18 or until parental rights are terminated. It is clear, however, that the number of dependency filings, assignments and hearings are on the rise. This data underlines the importance of the pilot project which funds three attorney positions, a paralegal, and a social worker. Without these funds, DAC would not be able to provide the quality of representation it now provides.

In addition to the increase in dependency cases, there has also been a dramatic increase in the number of dependency hearings. The number of hearings is now estimated to be over 18,000, almost six-and-a-half times what it was in 1997, and almost three times what it was in 1998.

Exhibit 6.3

**Dependency Hearings**

<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002*</b>	<b>2003*</b>
2,865	6,307	7,416	9,729	14,555	16,458	18,430

\* Estimate.

Source: DAC, prepared for 2003 Pierce County budget using LINX data.

<sup>40</sup> Included in this LINX data are some Becca law, Juvenile Criminal Contempt, and Show Cause Civil Contempt cases and hearings. Included in the FTE positions are the attorneys handling Becca cases. In addition, when a dependency case becomes a termination case by the filing of a petition to terminate parental rights, the termination case is counted again as a new assignment. (There were 154 termination assignments to DAC staff attorneys in 2000 and 136 in 2001.) It should also be noted that LINX data reflects cause numbers which is related to the number of children, and DAC counts its case assignments by parent.

A number of factors are involved in this dramatic increase of hearings. First, the Adoption and Safe Families Act (AFSA) created shorter timelines and thus a greater need for expediency and pressure to move towards termination. In 1999, \$1,876,000 in state funds were appropriated to increase termination filings and work towards earlier permanency.<sup>41</sup> Cases are now reviewed more frequently by the Court and more motions are being set on cases in an effort to ensure that cases are moving forward. Second, between 1998 and 2001, the Juvenile Court maintained a separate motion docket, as required by the Court Commissioner at the time, thus creating more hearings on motions which previously may have been heard in conjunction with previously-scheduled matters. During that time, the same commissioner also required more hearings in order to create a record in certain matters before signing orders even in cases in which the parties are in agreement. Third, dependency cases are now more likely to involve multiple parties than in the past (e.g., more fathers are appearing now) and may cause additional hearings. Fourth, under a court improvement grant no longer in existence, parents were being screened for indigency by Pre-Trial Services at the court, resulting in more parents thereafter appearing in cases and thus more hearings. Finally, the creation of the pilot project has likely resulted in more proceedings because additional staff created reduced caseload and more opportunity for attorneys to file motions and request more hearings.

## **CHAPTER 6, JUVENILE REPRESENTATION RECOMMENDATIONS**

### DELINQUENCY

#### 1. Case Flow

- a. Delinquency attorneys were concerned with the amount of time they spend traveling and waiting in court. A case-weighting study, previously recommended, would calculate actual time spent in these areas and could be useful in making future decisions about the location of the juvenile attorneys and in working with the Juvenile Court to reduce attorney waiting time.
- b. The Juvenile Court and the county should review the role that juvenile probation officers are playing in delinquency cases. Probation officers are not a party to the case and are funded by the Juvenile Court, yet they are reportedly being allowed to hire their own attorneys and generally play too large a role in determining proposed case resolutions and adjudications.

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<sup>41</sup> Source: Washington State Office of Public Defense, Dependency and Termination Parents' Representation Pilot: Evaluation, February 2002.

2. Caseloads. As in the other divisions of DAC, the caseloads in the Juvenile Delinquency Division are too high. The annual assignments per full time equivalent staff attorney are 50% higher than the level recommended by the NAC and 50 cases over the level recommended by WDA. The issue needs to be addressed by developing guidelines, proactively monitoring caseloads, and using outside counsel more frequently to lighten the load of the staff attorneys.

## DEPENDENCY

1. Representation. When dealing with the potential termination of rights and ties between a child and parent(s), it is critical for a child to be provided counsel. It is recommended that a program be developed in Pierce County to assure that children in dependency matters are provided legal representation and that the lawyers who provide this representation are adequately paid.
2. State Pilot Project. The state pilot project funding is critical to DAC's representation of parents in dependency cases. It has provided DAC with three attorneys, two paralegals, and a social worker, as well as funding for investigation and expert services. Without these funds, DAC could not continue to provide quality representation in light of the increasing caseloads and the extraordinary number of hearings. As indicated in this report, the grant program is exceptional and a possible model for other indigent defense programs in the state. It is our recommendation that the pilot project become permanent. Permanent funding would also allow DAC to attract and keep quality people into staff positions which are now only temporary.
3. Caseloads and Hearings. The numbers of dependency cases filed, cases assigned to DAC dependency attorneys, and dependency hearings are all on the rise, underlining the importance of continued and permanent funding of the state pilot project.

## CHAPTER 7 INVESTIGATION AND EXPERT SERVICES

### **Investigations**

In April 2001, DAC had six full-time investigators on staff but also used some outside private investigators. As of September 1, 2001, DAC began completely out-sourcing all investigative work and has not had any full-time investigators on staff since that date. Although the decision to switch to outsourcing was a difficult one for DAC, it came about as a result of both personnel issues with staff investigators, a resulting tension in the office, and dissatisfaction with the quality of much of the staff investigators' work. Before making the final decision, DAC asked the county to conduct a cost and productivity analysis of staff and outside investigators.<sup>42</sup> The report noted that staff investigators, who took more time to complete their work, were assigned work beyond the investigation of cases, such as performing legal research. The report found, however, that the cost per working hour for staff and outside investigators was about the same. Following the report, DAC made the final decision to terminate its staff investigators. Currently, DAC has no investigators in-house, with the exception of an extra-hire case facilitator who investigates misdemeanors and, along with interns, delivers subpoenas.

DAC now maintains a panel of licensed private investigators who are available to work on DAC cases. The list is maintained by DAC's mitigation specialist/investigative administrator. In establishing the panel, DAC contacted local licensed investigators and asked them to complete an information packet which included information on their experience and training, and the number and types of cases on which they have worked. DAC also performed background checks of all investigators on the panel. The list includes 38 investigators. However, there are currently only between 20 and 25 investigators actively accepting assignments.

To obtain an investigator, the staff, panel, and contract attorneys must complete a form explaining the specific services requested, the amounts requested, the rate of compensation, and the reasons justifying the services. These forms are submitted to the Investigative Administrator/Mitigation Specialist who reviews the forms along with discovery in the case in order to evaluate the request. In co-defendant cases, the requests are normally submitted by contract and panel attorneys to the Director. After evaluating these requests, the administrator makes the final decision as to how many hours to approve and which investigator to assign to each case.<sup>43</sup> While attorneys are rarely denied services outright, some attorneys have been asked to refine or limit their requests.

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<sup>42</sup> Department of Assigned Counsel - Productivity and Costs of Staff and Outside Investigators, A comparative analysis, by John Broughton, Pierce County Budget and Finance (April 2, 2001).

<sup>43</sup> In the Juvenile Division, requests are submitted first to the supervisor and then to the Investigative Administrator/Mitigation Specialist to determine how many hours to approve.

Most attorneys we spoke with were satisfied that their requests were being acted on expeditiously and that needed services were being provided. In capital cases, where the expenses of experts, investigators, and other professional services can be very costly, capital attorneys have typically been directed to file motions with the court requesting judicial review before authorization.

As in most public defender offices, there is substantial variety in the ways and the extent to which attorneys use investigators. In Superior Court, some attorneys use investigators minimally, at least until the eve of trial, while others routinely use investigators from the outset of many of their cases. Some attorneys reported that the extra steps required to obtain an investigator may have slowed them down or deterred them from retaining an investigator and one candidly admitted not using investigators until he “smelled the scent of a [jury trial],” a sentiment which several others echoed.

In the District Court Division, DAC employs a case facilitator who began in the office as an intern and became an extra-hire in January 2002. The case facilitator speaks Spanish and performs investigation work for misdemeanors in District and Municipal Courts. We were told that the staff attorneys in District Court use the case facilitator but rarely use outside investigators. The case facilitator is also available to staff attorneys in the other divisions in the office and, along with investigation interns, fulfills standard subpoena delivery requests within the office. DAC uses a subpoena delivery service for more complicated requests. Although DAC has benefited greatly from the case facilitator’s work, it is in danger of losing full-time funding for the extra-hire position in December 2002.

Outsourcing for investigators has allowed attorneys to choose investigators they feel are best suited to their own professional styles and to the peculiarities of each case. For example, some attorneys select female investigators to interview female sexual assault or domestic violence victims, while others select former police officers or those with some law enforcement experience to investigate crime scenes in high crime areas.

However, the extra steps required to retain an investigator, and the related inconvenience, appears to have had a deterrent effect on the filing of some requests. There is also an additional cost concern with investigations that did not exist when investigators were on staff and compensation for their work was salaried. Just before DAC began entirely outsourcing for investigations, a memorandum was circulated reminding attorneys that outside investigators cost DAC a minimum of \$30 an hour, and unless that expense can be justified, attorneys should turn to a legal assistant for their requests. Some attorneys did report that they considered the costs to DAC before hiring investigators.

In addition, frequently attorneys are unable to provide much if any advance notice for their investigation needs, and this lack of notice is more problematic without staff investigators readily available. In the memorandum to attorneys regarding outsourcing for investigations, attorneys were informed that if they waited too long for their investigation requests, the investigation

might be compromised because it will become extremely difficult to accommodate last-minute requests.

In order to handle the lack of staff investigators, DAC legal assistants are now being used to perform some investigation tasks. These are less substantive tasks and include preparing subpoenas, conducting background client interviews at the jail, taking notes during witness interviews by attorneys, bringing discovery materials to the jail and providing them or reading them to clients, getting trial clothes to in-custody clients, and notarizing documents at the jail. Legal assistants are also performing mitigation interviews of clients at the jail. Although at times the legal assistants enjoy the change of pace in their work, the performance of such tasks can prove very time-consuming and allows less time for them to perform their legal assistant duties. As mentioned above in Chapter 3, the legal assistants are performing too many tasks and supporting too many attorneys. While it may be a cost savings to have legal assistants perform these duties, these investigative tasks are outside the scope of their job description and tasks which they have little or no training. DAC should not assign such tasks to its legal assistants.

DAC could benefit by having in-house full-time investigators available to perform urgent tasks and to provide some in-house investigative support to the attorneys. Some of this investigative support might also be performed by interns from local colleges and criminal justice programs. Many attorneys in both the Superior Court and District Court echoed the view that some in-house investigative capacity would be very useful, even if primary reliance on out of office investigators is retained.

## **Expert Services**

The DAC staff includes one nationally renowned mitigation expert who assists in preparing mitigation packages for sentencing mostly in capital cases.<sup>44</sup> DAC's mitigation expert has been on staff for almost three years and provides critical services in these very demanding cases and serves as a valuable community resource to panel attorneys handling capital cases for DAC.

For all expert services other than the staff mitigation specialist, payment comes directly out of DAC's budget. DAC staff, panel and contract attorneys alike must apply to the Director to request approval for expert services. As with investigation services, DAC determines whether the requested services are necessary in the attorney's representation. In some cases, the Director will ask the attorneys to file a motion with the court in order to gain judicial approval for the expenditure, even though the monies come out of the DAC budget.

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<sup>44</sup> Recently, the Mitigation Specialist worked with two private court-appointed attorneys on *Yates*, a death penalty case. In that case, requests for expert and investigation funds were filed directly with the court, although the court usually consults with the DAC Director regarding the requests.

Even where an expert might make a substantial difference in a case, some attorneys are reluctant to ask for experts outside the local community because they recognize that DAC funding is limited.

### **Conflicts and Requests for Services**

In co-defendant cases, the panel and contract attorneys normally submit their requests for investigation to the Director. This creates at least an appearance of conflict of interest for DAC. The DAC Director, who employs DAC staff attorneys and is responsible for their requests for services, may also review requests from panel and contract attorneys in a co-defendant case. The director may not only become privy to a co-defendant's case strategy, but is also placed in a position of approving or denying services in a case with competing requests to those in a DAC staff attorney's case. In practice, when problems arise, the Director will ask co-defendant counsel to file his or her requests for funds directly with the court. Still, the court may then consult with the Director on the amount for approval. Although reviewing and approving requests in co-defendant cases may not create an actual conflict in practice, it may well create the potential for, and an appearance of, a conflict of interest.

A similar problem was found in the area of requests for expert services. We were told that staff, panel, and contract attorneys all must submit their requests to the Director for approval.

Another area of concern regarding the appearance of conflict could be raised regarding the Director's annual budget submission for each of the three components of DAC, particularly in requesting budget amounts for investigators and experts. However, it is important to note that despite our concern we did not notice a specific problem in this area.

### **Fees and Costs**

Under Pierce County Indigent Defense Standards, the DAC Director is responsible for providing "reasonable compensation" for expert witnesses and other professional services. Under the standards in Ordinance No. 95-148, the Director of DAC is to authorize payment for professional services which are "necessary to provide effective assistance of counsel."

DAC maintains written policies and procedures for the payment of investigators which, according to the county's Indigent Defense Standards, must be approved by the DAC Advisory Board. Panel investigators are paid at \$30 an hour for misdemeanors and Class B and Class C felonies. For Class A felonies and capital cases, payment is at \$35 per hour. Prior to beginning an investigation, a panel investigator is required to give DAC a maximum payment amount on the case (which can be exceeded with further authorization) and receive approval from either the Director or the Investigative Administrator/Mitigation Specialist. In order to receive payment on a case, the investigator must submit a detailed fee statement in tenths of an hour to DAC for authorization. Any out-of-pocket expenses exceeding \$75 need the prior written approval of the Director or Investigations Administrator.

The table below, taken from the 2003 preliminary budget figures, illustrates the costs to DAC for services since 2000.

Exhibit 7.0

**Investigation and Expert Services Costs**

	<b>2000 Actual Costs</b>	<b>2001 Actual Costs</b>	<b>2002 Budget</b>	<b>2002 Costs to Date*</b>
Expert Services	97,154	83,122	68,000	50,519
Polygraph Exams	16,775	22,497	16,500	8,933
Investigation	64,279	143,346	300,000	120,642
Homicide - Expert Services	118,058	80,112	120,000	61,099
Homicide – Investigation	120,697	76,642	125,000	73,900
<b>TOTAL</b>	<b>\$416,963</b>	<b>\$405,719</b>	<b>\$629,500</b>	<b>\$315,093</b>

\* Costs through July 10, 2002.

Source: DAC, 2003 preliminary budget figures.

In looking at investigation costs, it is difficult to make a meaningful comparison with these figures because, although costs appear to have risen dramatically since 2000 before outsourcing, the 2000 and 2001 costs do not include salaries of investigators who were on staff until September 2001. For a breakdown of investigation and expert costs in felony cases by class for 2001, see tables in [Appendix F](#).

The costs for expert services dropped by \$14,000 from 2000 to 2001, and the 2002 budget for such services fell by another \$15,000. The 2002 budget of \$68,000 is not likely to cover 2002 costs.

Costs for expert services and investigations in homicide cases dropped dramatically between 2000 and 2001, but again are on the rise with combined costs already at 86% of the total costs in 2001 half-way through this year. However, again, 2000 and 2001 costs do not include salaries of any staff investigators who may have worked on homicide cases. It should also be noted that while the number of death penalty cases has dropped in the last year, any increase in the future will call for a substantial increase in expenditures for expert and investigative services in this area.

## **CHAPTER 7, INVESTIGATION AND EXPERT SERVICES RECOMMENDATIONS**

### 1. Investigations

- a. Even if DAC continues to rely primarily on outside investigators, DAC has a need for some in-house investigation staff to be available to perform last-minute emergency requests and to take back the investigative tasks that have been given to legal assistants. Some of these tasks could also be performed by investigative interns, but should not be passed on to the legal assistants who are already burdened with supporting too many attorneys.
- b. Consistent with budget constraints, we recommend that one full-time investigator position be created and that DAC develop a detailed plan to address the overall problem of investigative resources and the allocation of required investigative work over the next year.
- c. The case facilitator in the District Court Division provides critical support throughout the office in the area of investigations and subpoena delivery service. This position, which is an extra-hire position, is in danger of being lost. Without any in-house investigative staff, it is our recommendation that funding for this position be continued.

3. Conflicts and Requests for Services. The DAC Director is currently making the decisions in conflict cases on requests for investigations and expert services, and this creates conflict of interest issues. The task should be delegated to someone at DAC other than the Director, and the DAC Advisory Board should work with DAC to further explore this issue.

## CHAPTER 8 APPEALS

### **District Court Appeals**

Appeals from District Court are to the Superior Court in Pierce County. The District Court trial attorney must file a Notice of Appeal to the Superior Court within 14 days of sentencing. Failure to do so constitutes a jurisdictional defect for the Superior Court.

DAC is responsible for perfecting its District Court appeals. Recently, DAC lost a staff attorney who solely wrote the briefs for appeals. DAC has not replaced her but uses both staff attorneys and panel attorneys to file the District Court appeals. The hourly rate for panel attorneys handling appeals is \$40 with a maximum fee of \$600. DAC expressed some concern over the quality of some appeals received from the courts of limited jurisdiction since the loss of the appellate attorney.

### **Superior Court Appeals**

Appeals from Superior Court are to the State Court of Appeals, Division II. To begin the appellate process, the DAC trial attorney files an appeal packet, including a Motion for Withdrawal of trial counsel and order appointing counsel on appeal. A new case is opened in DAC for the appeal and the appellate brief is prepared by the appellate attorney.

An attorney has 30 days from the sentencing to perfect an appeal. Failure to file a notice of appeal and to otherwise perfect an appeal in a proper and timely manner constitutes a defect that negatively impacts the defendant's appellate rights. In the early months of 2001, Division II of the Court of Appeals expressed frustration with DAC for untimely filing of notices of appeal and for the piecemeal filing of the paperwork required to appoint counsel on appeal. The DAC Director prepared a memo to all staff and panel attorneys emphasizing the need to take this problem seriously. The Director reports improvement in this area, and the perfecting of appeals is no longer perceived as a problem.

Although a few DAC attorneys choose to represent their trial clients on appeal, almost all appeals are sent out to contract and panel attorneys. The primary reason for this is that outside attorneys handling DAC appeals are better able to raise ineffective assistance of counsel claims without being concerned about a conflict of interest. The disadvantage is that this deprives DAC of an in-house appellate unit with attorneys who focus solely on appellate practice and keeping abreast of legal issues. In-house appellate attorneys are a great resource to trial attorneys and can provide expertise in many legal issues and support them in writing motions and understanding special issues such as preserving the record for appeal at trial. The lack of an appellate unit may also have a subsidiary impact on the availability of templates that could be used to fashion trial briefs and legal memoranda in cases with complex legal issues.

DAC receives funding from the state Office of Public Defense (OPD) to pay for indigent appeals from the Pierce County Superior Court. OPD has contracts with seven attorneys to provide appellate services. These contracts are managed by DAC who is paid \$100 per case to cover administrative costs in assigning the indigent appeals.

The decision to assign a particular attorney to an appeal is generally made by the DAC Director with the assistance of a legal assistant who makes assignments in the routine cases. In assigning the felony appeals under its contract with OPD, DAC agrees to give preference to the OPD contract attorneys, each of whom have a minimum number of appointments that DAC attempts to fulfill. These minimum appointments range from 38 cases for one attorney, to 8 cases for another attorney. The contract attorneys are subject to the OPD standards regarding representation, including requirements of maintaining client contact. While DAC administers the OPD contracts and makes the appointments, it does not supervise the appellate attorneys. If problems with attorneys arise, OPD contacts the Director.

Under the OPD contract, compensation is based on a case rate of \$2,195. During the month following an appointment, the contractor is paid \$970 per case. Following that payment, the contractor is paid \$1,000 in each case upon the filing of a brief or brief equivalent, and \$225 in each case upon the case closing event. Additional compensation may be approved by the Director of OPD.

## CHAPTER 9 AGGRAVATED MURDER AND CAPITAL CASES

### **Attorney Qualifications**

In the past, according to DAC, the need to assign felony cases outside the office was particularly acute with respect to Aggravated Murder cases as these cases can eat up much of the time of two DAC County Attorneys-4. Capital cases have additional requirements for trial attorneys, thus narrowing the field of counsel eligible to take appointments. Under the Washington Superior Court Special Proceedings Rules in criminal cases, two attorneys must be appointed to every capital case with a minimum of five years of criminal trial experience, and one of the two attorneys must be on a list approved by the Supreme Court (SPRC 2). In addition, Pierce County's Indigent Defense Standards have additional qualifications for capital attorneys which require them to have tried five jury trials in serious or complex cases, at least two of which were first- or second-degree murder trials tried to completion, have tried at least one death penalty trial, and have attended a death penalty seminar or have contact with an attorney support group for death penalty cases.

Currently, DAC has four or five attorneys eligible to take Aggravated Homicides and capital cases. When those attorneys are handling capital cases and other serious cases come in, the serious non-capital cases may need to be assigned to less senior Superior Court attorneys who may not be professionally prepared to handle them. Consequently, DAC has a policy of keeping only one capital case in the office at a time. However, as of 2002, the prosecution appears to be filing death notices less than it did several years ago.

In the last year, the PAO has sought the death penalty in only one case, which was on trial during our last visit in July. Two experienced court-appointed lawyers were representing the defendant along with DAC's mitigation specialist and a highly experienced investigator. At DAC, there is a policy in the past of representing only one death penalty defendant at a time in his office. We feel that this is a wise policy and that DAC should provide direct representation in the next case charged provided that it does not involve a conflict of interest.

### **Overview of Capital Representation**

There is no disagreement regarding the enormous resources required to handle a death penalty case, and state and federal courts have consistently required higher standards and safeguards in potential capital cases. For a capital defense team, this translates into substantially more fact investigation, a team approach to litigation, higher staffing, more outside experts and consultants, more numerous and more sophisticated legal challenges and pleadings, more hearings, longer jury selection and trials. For the most part, this is necessary and inevitable.

One of the most time-consuming and necessary aspects of capital litigation, from the defense perspective, is investigating and gathering evidence for mitigation. This is costly. The scope of mitigation evidence is broad and diverse and might include evidence of childhood trauma, neglect, illness, brain damage, good deeds or character, drug abuse, psychiatric illness, and testimony by family members and friends.

Mitigation investigation must begin immediately for all potential death penalty cases and involves extensive contact with clients, their families and friends, their teachers, counselors and therapists, probation officers, and others. The investigation requires time, travel, and sensitivity by persons with appropriate experience, often an MSW. It involves the identification, collection, and careful review of a client's records (e.g., birth, school, medical, probation, parole, corrections, counseling, mental health, foster care, criminal history, military, and so on). It often involves a careful consideration of the lives of and records associated with family members and other caretakers covering multiple generations, of trauma, cultural mitigation, medicine, and mental health. Appellate courts are not reluctant to reverse or remand cases where attorneys abandoned their responsibility to identify, collect, understand, and present mitigation evidence.

Often a successful resolution of a capital or aggravated murder case is a plea. Normally, though, this will not and cannot be done quickly. It is unrealistic to expect that a typical capital defendant or the defendant's attorney (governed by ethical considerations and office, state, and national standards for handling serious cases, especially capital cases) will be able to enter into a plea without some serious fact and mitigation investigation occurring. Often, capital defendants are initially ill-equipped emotionally to agree to the type of significant sentence on the table. Trust must be developed with counsel, and this takes time. Family members may play an important role in these decisions. That takes time.

Additionally, before making a decision whether to pursue a capital prosecution or whether to plead a capital or aggravated murder case, the Prosecuting Attorney typically wants considerable input from his senior staff, the victim's family, and the defense. A defense presentation may include information of a factual nature about the case itself (e.g., problems with witnesses, forensic evidence, or the quantum and quality of evidence), which often requires serious investigation. It may also include more typical mitigation evidence (e.g., mental health or retardation, childhood trauma).

## Costs

The Department of Assigned Counsel, through its Director and Advisory Board, appears acutely aware of the issue of the high costs associated with handling aggravated murder and capital cases and has taken appropriate steps to monitor necessary costs.

Requests for most consultant expenses, including those of experts, in these cases are first reviewed closely by the Director and then referred to the trial court for review. DAC staff attorneys, for example, typically face scrutiny and questioning regarding such expenditures. In some cases, the Director may approve an initial outlay (e.g., for initial mitigation) pending a more full review later. It appears that trial judges tend to concur with the tentative DAC approval (or referral).

We have a concern in these cases here, as in other DAC cases, when the Director is making decisions regarding expert fees in conflict cases. Again, while we saw no evidence of actual conflict, there is at least an appearance of conflict when the Director is making decisions regarding co-defendant or conflict cases that deal with case strategy and the spending of limited funds for which staff attorney cases may be competing.

The DAC Advisory Board spends a considerable amount of its time reviewing extraordinary expenses by attorneys and experts in these cases, and does so without any formal policies or guidelines to follow. In looking at the fees, our team found that the Board has shown no reluctance in trimming attorney fees where appropriate. As stated below in the DAC Leadership section of this report, written guidelines on approving and denying fee requests would provide the Board direction and help to ensure consistency during this process, especially in capital cases where the stakes are high. In addition, formal guidelines should help to lessen the amount of time the Board spends on cost decisions, thus allowing more time for policy decisions.

In order to critically assess the use of fees and costs in aggravated murder cases, the TSG team performed a close examination of Individual Cost Accounting and LINX Criminal Case Summary for DAC Aggravated Murders from 1994 to present.<sup>45</sup> The team also examined representative materials supporting the County's requests for reimbursement of extraordinary costs due to aggravated murder cases (this includes court, prosecuting attorney, and assigned counsel costs). In addition, team members interviewed DAC staff and panel attorneys who handled a small number of the aggravated murder cases during the time period (some taken to trial, others resolved through negotiated disposition), reviewed pleadings and other case materials, and considered the statutory framework for handling these cases.

Expenditures for experts and other consultants in capital and aggravated murder cases appear to be reasonable, appropriate, and necessary. The types of experts hired (e.g., experts in

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<sup>45</sup> The TSG team carried with it considerable experience in handling capital cases, from trial through appeal and post-conviction stages, in several states. This includes practical experience in managing capital litigation team time and costs, including expert costs, in the real world of finite financial resources.

eyewitness identification, psychologists and psychiatrists familiar with competency, capital defendants, and brain abnormalities, forensic and DNA experts, mitigation specialists, and courtroom presentation) and the use of investigators were generally appropriate to the needs of the case. Travel costs (typically for attorneys and investigators to do mitigation field work, experts to travel to Pierce County) appear appropriate.

DAC personnel costs for panel attorneys appear appropriate for the needs of the cases involved. While some cases (e.g., Eggleston) have incurred substantial costs, those costs do not seem unreasonable given the circumstances. In Eggleston, for example, there have been three trials, protracted litigation on a number of complex issues, and a great deal of forensics work. New and complex issues require a comparable investment in attorney time. Interestingly, in some cases, the personnel costs appeared quite low. A review of the County's petition for Extraordinary Criminal Justice Costs showed these costs by the Prosecuting Attorneys Office, DAC staff and panel attorneys, and other categories (e.g., jail, jury, sheriff) to be reasonable for the circumstances.

The high cost of indigent defense in capital and aggravated murder cases cannot be viewed in a vacuum. Pierce County has in the past had a large number of capital cases and trials and aggravated murder cases. The Prosecuting Attorney's Office makes the charging decision, which affects costs.<sup>46</sup> Whether pleas are offered (and what kind of pleas are offered) and when they are offered or accepted affects costs. Whether cases remanded by appellate courts for reasons of trial error or misconduct (by trial counsel, the court, jurors, or by the prosecutor) or mis-tried for the same reasons are tried a second or third time affects costs.

Similarly, the cost of providing defense services in capital and aggravated murder cases should be viewed in comparison with the true cost to the county and state in investigating and prosecuting them. When a panel attorney hires his own forensic expert to examine evidence or a crime scene, the prosecuting attorney relies upon a criminalist at the crime lab at no additional cost. When a DAC attorney hires an investigator to do field work and interview witnesses, the prosecuting attorney has already been presented a case more-or-less fully investigated by the Sheriff's Office or other law enforcement agency. When a DAC attorney must perform routine administrative work in connection with a case because the office has so few paralegals and support staff, the Prosecuting Attorney, better staffed, may be able to delegate administrative chores.

DAC attorneys and panel attorneys appear to have a good appreciation for when to attempt to resolve a case short of trial. This is always a judgment call, but death rows in many states are populated by many clients who had a plea offer for a sentence short of death but rejected it. Often this results when attorneys have spent too little time in establishing a relationship with their clients or their families. A related problem is capital attorneys with an unrealistic view of

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<sup>46</sup> The Prosecuting Attorney's Office obviously does retain the charging discretion. The TSG team makes no effort to review the appropriateness of these decisions in particular cases or in the aggregate.

winning a case in front of a death-qualified jury. When the appropriate disposition is a plea, and it does plead, the cost of trial is spared.

DAC attorneys and panel attorneys may not always have cost-efficiency foremost in their minds. There is a natural tension between legal office administrators and line attorneys in terms of cost-control. The lawyer typically wants what is best for the case. Managers need to oversee costs, but attorneys need to learn how they can play a role.

## **CHAPTER 9, AGGRAVATED HOMICIDE AND CAPITAL CASES RECOMMENDATIONS**

1. DAC should undertake to develop training for its attorneys and panel attorneys, perhaps in conjunction with the state association or other defenders, in capital representation<sup>47</sup>. Part of this training should include the proper use and management of resources, including experts.
2. Except in conflict cases, the DAC Director should make final decisions regarding hiring of consultants and experts in these cases. Such decisions should not be deferred to the trial judge, who is put in the position of an apparent conflict. The DAC Director has shown that he is able to monitor these expenditures, defer or cut expenses where necessary. The DAC Advisory Board should consider developing or recommending policy with respect to the use of experts and other significant expenditures.
3. DAC should give consideration to new software available for creating life history and case chronologies, time-lines, and genograms (e.g., CaseMap and TimeMap). This software can assist in case organization and administration.
4. DAC has an excellent in-house mitigation specialist, who should continue to play a coordinating and consulting role to DAC and panel attorneys handling these cases.
5. The County should consider a closer scrutiny of all of the costs associated with these cases, with an eye toward identifying hidden costs (particularly in law enforcement and prosecution) and recouping costs from the state. This also may present the County with a fairer depiction of what serious cases cost all of the parties.

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<sup>47</sup> DAC might also give consideration to the recently promulgated NLADA Training Standards, which, among other things, call for a training plan and a designated training director. It is our impression that, while DAC attorneys are encouraged to attend excellent outside seminars at the state and national level, there is too little formal office-wide training. This could be as simple as “brown-bag” sessions. In-house training might be done inexpensively by using experts involved in DAC cases. Training opportunities should be provided to, and perhaps even mandated for, panel attorneys, some of whom may not have a full appreciation for what it takes to handle a capital case. A local expert “bank” should be developed, perhaps in conjunction with the state association and other defender offices.

## CHAPTER 10 RESOURCE EQUITY, STAFFING, AND BUDGET

In comparing the level of resources and staffing between DAC and PAO below, our intention is to highlight the needs of DAC and not to suggest that PAO is over-funded.

### Resource Equity

Several factors must be considered when comparing the distribution of resources between DAC and PAO and assessing equity. First, the scope of the work performed by DAC and PAO differs. The PAO performs some functions which DAC does not, such as screening cases and making charging decisions. PAO also has an appeals unit, a civil division, and a family support division. DAC handles a large volume of dependency cases that PAO does not handle (AG's Office handles these). DAC handles all civil commitment cases, while the PAO handles a smaller percentage of them. Both DAC and PAO handle some municipal court cases.

Second, the amount of non-county funds received by the offices differs greatly. PAO receives many state and federal grants that provide resources not included in its appropriations. DAC grants and funding are much more limited (see below.) DAC receives state funds for the dependency pilot project and for representation in Becca cases, receives a portion of a grant awarded to the Pierce County Sheriff for Drug Court, and holds a state contract for civil commitment representation and a municipal contract for municipal court representation.

Third, DAC must use its own funds for investigation and expert services. In contrast, PAO has access to state and local law enforcement agencies for investigative services and support in case preparation. PAO also has access to state and federal crime labs, as well as federal law enforcement agencies such as the DEA and FBI. It is important to point out that these substantial additional resources in many instances are in addition to the PAO funds listed in Exhibit 10.0. Of particular note are the substantial and significant resources of the many law enforcement agencies in the county which are not possible to quantify since they are in effect in-kind resources.

The following table sets out the DAC and PAO budgets since 1999.

Exhibit 10.0

### DAC and PAO Budgets

	1999 Actual		2000 Actual		2001 Actual	
	Total Funding	General Fund	Total Funding	General Fund	Total Funding	General Fund
<b>DAC</b>	8,414,660	6,602,499	8,770,866	6,845,749	9,640,350	7,406,898
<b>PAO</b>	16,370,360	12,015,334	17,053,978	12,813,578	18,006,227	13,481,693

	<b>2002 Budget*</b>		<b>2003 Preliminary Budget**</b>	
	Total Funding	General Fund	Total Funding	General Fund
<b>DAC</b>	10,402,410	8,354,410	9,684,780	8,027,990
<b>PAO</b>	19,497,490	13,436,920	19,840,380	13,842,010

\* The 2002 budget figures for DAC are as of December 10, 2002 and include a supplemental appropriation enacted by the County Council on that day. According to DAC fiscal staff, figures may change later by a small amount.

\*\* The preliminary budget book published in October 2002 indicated that the 2003 DAC budget was \$8,027,990. The higher figure shown here in the table is from DAC fiscal staff as of December 10, 2002.

Sources for 1999 – 2003 data: 2002 Pierce County Budget, 2003 Preliminary budget, and DAC fiscal staff.

An analysis of Exhibit 10.0 shows that during the period 1999 - 2000, PAO received about two-thirds of the total funding for PAO and DAC combined, and DAC received about one-third. This ratio was quite consistent from year to year during the entire period. This same two-thirds and one-third division across the two agencies was also quite consistent over the same period in terms of the distribution of county funds.

**Staffing**

Prior to May 1997, the county ordinance on indigent defense standards required DAC compensation and benefit levels to be in parity with the pay classification ranges and benefits of PAO attorneys and staff. However, the prosecutors are represented by a union which objected to the parity requirement. DAC staff are not represented by a union. In May 1997, the ordinance was amended to require DAC compensation to “be set according to the salary and classification plans adopted for county attorneys” and benefits to be set according to county code regarding unrepresented employees together with any other authorized benefits (County Ordinance No. 97-26). Despite this 1997 change, the pay grades of PAO and DAC attorneys are essentially equal as of 2002.

While salary parity reportedly exists between the two offices, the staffing levels that exist strongly favor PAO. Again, however, the differences in representation as discussed above must be considered in making any comparison. In addition, while PAO is independent from the County Executive, DAC is an executive department and is subject to its administrative policies.

Exhibit 10.1

**DAC and PAO FTE Positions**

	1998		1999		2000		2001		2002		Preliminary 2003	
	DAC	PAO	DAC	PAO	DAC	PAO	DAC	PAO	DAC	PAO	DAC	PAO
Attorney Positions <sup>48</sup>	65.7	111	61.8	110	64	114	64.9	114	64.2	121	62.2	120
Non-Attorneys	27	104.6	27	103.7	25.5	105.07	21	107.57	19	110.72	17.7	110.72
Total Staff	92.7	215.6	88.8	213.07	89.5	219.07	85.9	221.57	83.2	231.72	79.9	230.72

Sources: Pierce County 2002 Budget and 2003 Preliminary Budget.

Exhibit 10.1 compares the number of FTE attorney and non-attorney staff provided to PAO and DAC for the period 1998 – 2003. An analysis of attorney FTE’s shows that PAO has received 9.0 additional attorney FTE’s since 1998 and that DAC has 3.35 fewer attorney FTE’s since 1998. A further analysis shows that of the total FTE attorney positions available for the two agencies, since 1998 PAO has received two-thirds and DAC one-third, which is consistent with the ratio of county and non-county funds taken from Exhibit 10.0.

When reviewing non-attorney FTE’s for the two combined agencies, the comparison is stark. PAO has 6.12 more non-attorney FTE’s in 2003 than they had in 1998. DAC, on the other hand, has 9.3 fewer non-attorney FTE’s in 2003 than they had in 1998. Most of the non-attorney FTE’s lost by DAC relate to the elimination of the full-time staff investigators which occurred during the period 2000 – 2001.

What is dramatic are the ratios of non-attorney FTE’s at PAO and DAC since 1998. Of the total non-attorney FTE’s available to the combined agencies, PAO had 79.5% in 1998, 79.3% in 1999, 80.5% in 2000, 83.7% in 2001, 85.4% in 2002, and 86.2% in 2003.

One of the common measures used in assessing workload in criminal justice agencies is the ratio of full-time attorneys to full-time support or non-attorney staff. Exhibit 10.2 sets out these data.

<sup>48</sup> DAC attorney positions include one Director and one Chief Deputy. PAO attorney positions include one Prosecuting Attorney and two Chief Deputy Attorneys.

Exhibit 10.2

**Ratio of Attorney FTE's to Non-Attorney FTE's for DAC and PAO**

	<b>DAC</b>	<b>PAO</b>
1998	2.4:1	1.1:1
1999	2.3:1	1.1:1
2000	2.5:1	1.1:1
2001	3.1:1	1.1:1
2002	3.2:1	1.1:1
2003	3.5:1	1.1:1

The facts are clear in looking at the resource equity between PAO and DAC. The ratio of full-time FTE staff attorneys to full-time FTE non-staff attorneys for PAO has remained steady at 1.1 to 1 since 1998. The ratio for DAC, on the other hand, has diminished in the last several years and for 2003 is more than triple the PAO ratio.

In addition, as the following table illustrates, the number of upper level attorney positions at PAO far outweighs that at DAC. County Attorney 3 and 4 positions comprise 56% of PAO attorney positions, but only 24% of DAC attorney positions.

Exhibit 10.3

**DAC and PAO Attorney Positions**

	<b>DAC</b>	<b>PAO</b>
County Attorney 1	20.3	18
County Attorney 2	26.1	31.5
County Attorney 3	10.7	37.5
County Attorney 4	5	28
Chief Deputy	1	2
Director/Prosecutor	1	1
<b>TOTAL</b>	<b>64.1</b>	<b>118</b>

Source: DAC and PAO.<sup>49</sup>

DAC clearly has fewer positions for experienced staff attorneys. Fewer upper level attorney positions mean fewer places for experienced attorneys to move to and lower salary grades. Given the limited opportunity for promotion and a related salary increase at DAC, PAO is better able to attract and retain experienced attorneys with over half of the positions at CA-3 and CA-4 levels. While DAC has some discretion in changing a CA-2 position to a CA-3 position, it ultimately needs the county's approval for the positions and no additional funds will be provided

<sup>49</sup> These numbers were reported by DAC and PAO in July and September 2002, respectively, and totals are slightly different from those reflected in the Pierce County 2003 Preliminary Budget, above.

for this upgrade. DAC also needs final county approval for the creation of its extra-hire positions which it uses to fill in gaps in staffing.

Although the offices differ in representation, responsibility, and size, PAO fares far better than DAC in staffing levels, attorney positions, and support staff.

### **DAC Representation and Leadership**

DAC's mission is to provide and administer a public defense delivery system that assures effective assistance of counsel to eligible people in a manner that efficiently utilizes public resources. DAC has worked hard in fulfilling its mission of providing effective representation to its clients in an environment with difficult budgetary constraints and a high demand for law and order. DAC is well aware of its financial limitations and is concerned with providing efficient indigent representation in Pierce County.

The organization is administered by a committed professional who cares about the client populations DAC serves and about the constitutional values it seeks to advance. The Director of Assigned Counsel is an experienced attorney and was appointed Acting Director of DAC in 1983; he has been Director of DAC since 1986. The Director runs DAC with an informal managerial style and has an open door policy. DAC attorneys and support staff appear to be competent and committed professionals working to provide quality representation to their clients in an office with a clear caseload and workload overload.

Under the local county ordinance, the Director of Assigned Counsel is supported by an Advisory Board, consisting of four local attorneys who have considerable experience in the criminal defense area, and the Pierce County Director of Budget and Finance. The four attorney members are nominated by the Tacoma-Pierce County Bar Association, appointed by the Pierce County Executive, and confirmed by the County Council. The Advisory Board meets with the Director of Assigned Counsel intermittently on an as-needed basis. It is the Board's role to review expenditures, rule on requests for fees that exceed the regular fee schedules, and assist the Director in setting the fee schedules for the various panels. The Board also has the authority to review and advise on all decisions made by the Director of Assigned Counsel.

In practice, the Board is unable to fulfill its full potential because members spend much of their time reviewing fees. As stated above in our discussion on panel attorney fees, DAC and the Board should work together to develop some formal guidelines to assist them in making fee decisions. In addition, although the number and make-up of the Advisory Board members are dictated by ordinance, additional members could prove useful to both the Board and to DAC.

Apart from the Director, DAC has not developed a strong advocacy group in the county and has not developed a strong network with other defender organizations to support the continued work of DAC. This is an essential unfulfilled need at DAC. While the Director has maintained a good working relationship with the county and the other criminal justice agencies, in our judgment he is not assertive enough in seeking an adequate and fair share of the county's

resources directed to the criminal justice system. In the Director's efforts to work within the system and make the most of the resources he has been given, we believe that DAC has reached a stage where outside support and advocacy is critical if DAC is to move ahead in a positive way. The Advisory Board should join the Director in this approach and play a more active role in the oversight of DAC. In our recommendations we speak directly about some of the ways in which the Board could make more meaningful contributions to DAC and its policies. The time to start is now.

## **DAC Budget**

Under the county charter, all executive departments, including DAC, are subject to the personnel, budgeting, expenditure and other policies established by the County Executive. The Prosecuting Attorney's Office (PAO), on the other hand, does not fall underneath the County Executive, but is an independent department and therefore has more discretion in creating and establishing its budget than does DAC. This independence is established by law in Washington State. The County Council's responsibility is to review and approve a yearly budget.

Each July, DAC submits preliminary budget information to the Budget and Finance department for initial review, who then presents it to the Executive's office for budget decisions. DAC receives an instruction manual prior to the preparation of the budget with a letter describing the fiscal outlook for the upcoming year and the Executive's priorities and expectations. The DAC Director and other department directors also meet with key personnel to discuss the budget preparation process.

Like most indigent defense programs, DAC finds itself caught between its constitutionally and statutorily mandated mission of providing quality legal representation to the indigent, growing fiscal constraints, a great demand for public safety, and the resulting asymmetry in public support and political power vis-à-vis the prosecutorial function.

DAC's position is further complicated by the fact that its principal budget drivers are largely beyond its control. These include: state sentencing laws and guidelines which play a large role in structuring prosecutorial charging practices and defendants' decisions to plead guilty or go to trial; the plea bargaining policies of the PAO which play a large role in determining which cases are resolved early and which cases go to trial; a short speedy trial rule in Washington state; bail, calendaring, and sentencing decisions; the eligibility statutes and indigency screening performed by Pre-Trial Services which determines the size of DAC's client population; the number of case filings, in general; the number of capital cases filed by the PAO; crime trends; and the serious failure of state government to materially supplement county funds for indigent defense. Washington state is near the bottom of all states when it comes to state funding for indigent defense. There are only five or six states in the country whose state contribution is as low as Washington's.

The 2002 budget for DAC was approximately \$10.4 million, including supplemental appropriations through December 10, 2002, as shown below.

**2002 DAC BUDGET**

<b>County General Fund</b>		<b>Percent</b>
Superior Court – felonies	\$5,421,100	52%
District Court – misdemeanors	\$1,090,220	10%
Juvenile Court – delinquencies	\$ 979,620	9%
Juvenile Court – dependencies	\$ 863,470	8%
<i>Subtotal</i>	\$8,354,410	80%
<b>Intergovernmental Contract Funds (Municipal and State)</b>		
City of Tacoma – Municipal Court	\$822,440	8%
City of Fife – Municipal Court	\$ 74,000	1%
Dependency Pilot Program (state grant to June 30, private funding thereafter)	\$395,150	4%
Becca (state)	\$ 70,260	1%
Western State Legal Services (state)	\$174,900	2%
Involuntary Commitment (state)	\$511,250	5%
<i>Subtotal</i>	\$2,048,000	20%
<b>TOTAL</b>	<b>\$10,402,410</b>	<b>100%</b>

Source: DAC fiscal staff. The original budget for 2002 was \$9,485,640. As of 12/10/2002, the budget was raised through supplemental appropriations to \$10,402,410, as shown in the exhibit.

As shown above, approximately 80% of DAC's total budget came from the Pierce County general fund. This percentage has remained relatively steady in recent years.

In preparing the 2003 budget request, DAC (and other county agencies) were directed not to exceed the 2002 funding level by more than 2.5%. For 2003, DAC requested a total budget of \$9,739,600 and was approved for \$9,644,000. DAC did not request additional FTE positions or additional funds for panel and contract attorneys for 2003.

As discussed throughout this report, DAC is a very efficient organization and, in some respects, is overly efficient. DAC has taken a number of measures in an attempt to limit expenses and meet budgetary constraints. These efforts include:

- requiring attorneys to request Authorization for Professional Services before retaining investigators and experts;
- deferring procurement of more advanced technology;
- the termination of in-house investigative staff and the outsourcing of almost all investigative work;

- using in-house legal assistants to perform some investigative tasks;
- staffing low numbers of legal assistants;
- using contract attorneys, both formal and informal, to handle a number of felony cases at a very low cost (too low, in our opinion);
- creating the Fast Track Unit to handle a high volume of cases for earlier plea dispositions; and
- using extra-hires to fill gaps in staffing.

## **CHAPTER 10 – RESOURCE EQUITY, STAFFING, AND BUDGET RECOMMENDATIONS**

1. Resource Equity and Staffing. Although the offices differ in representation, responsibility, and size, PAO fares better than DAC in resources and far better than DAC in staffing levels, attorney positions, and support staff. We raise this not in the context of suggesting that PAO does not need all of the resources and staff available to them, but rather in the context of the needs of DAC. The county should strive for greater parity in these areas, beginning with funding more full-time FTEs for DAC in categories of support staff positions and an increase in CA-3 and CA-4 positions.
2. DAC Representation and Leadership.
  - a. Advisory Board members spend much of their time reviewing fee requests and do not have enough time to provide input to the Director on policies and guidelines regarding DAC and indigent defense in Pierce County. Additional members could prove useful to both the Board and to DAC. Because the number and make-up of the Advisory Board members are dictated by ordinance, the ordinance needs to be amended to allow for additional members.
  - b. DAC and its Advisory Board should develop a strong advocacy group in the county to support the continued work of DAC. We believe that DAC has reached a stage where outside support and advocacy is critical if DAC is to move ahead in a positive way. The Advisory Board should join the Director in this approach and play a more active role in the oversight of DAC and its policies.
  - c. DAC would benefit from networking more with outside defender organizations both in and out of the state. In doing so, DAC would receive outside support, gain additional knowledge of practices and programs in Washington and across the country, and perhaps find new ways to continue to improve its own organization and practice in Pierce County.
3. DAC Budget. When circumstances require it, DAC should be more aggressive with its budgetary requests and seek more assistance in this area from the Advisory Board and the private bar.

## CHAPTER 11 PIERCE COUNTY AND OTHER WASHINGTON COUNTIES

### Comparison Counties

In this section, we look at seven Washington counties and their indigent defense systems. Most of the information in this section was provided by the indigent defense providers themselves in response to an Indigent Defense Survey we sent to them, and we were not able to validate the data provided in their responses. This section should be viewed with extreme caution for comparison purposes. Each county has different populations, crime rates, budgets, concerns, and systems of indigent defense. Further, each public defense provider is different. Systems are organized differently, cases are counted differently, and agencies provide different representation. This must all be kept in mind in viewing the county data.

In addition, in order to place the data into context, one should consider the counties' population size, crime data, and case filings. The following table organizes some of the Uniform Crime Reports data (see [Appendix A](#)) and data from the Washington State Courts for this purpose<sup>50</sup>:

Exhibit 11.0

#### 2000 County Populations and Crime Rates, and 2001 Superior Court Filings

County	Population	Violent Crime Rate	Property Crime Rate	Superior Court Filings	Filings per 1,000 Residents
King	1,737,034	4.3	53.0	10,392	6.0
Pierce	700,820	6.5	60.7	6,550	9.3
Snohomish	606,024	2.4	32.6	2,392	3.9
Spokane	417,939	2.4	32.6	3,187	7.6
Clark	345,238	2.8	36.3	2,331	6.8
Yakima	222,581	2.9	58.2	2,098	9.4
Thurston	207,355	2.7	38.7	1,785	8.6

Sources: 2000 census populations, 2000 UCR crime rates, and 2001 Superior Court filings.

Pierce County, while the second largest in population and less than half the size of King County, has by far the highest violent crime rate and the highest property crime rate. While Snohomish County is the nearest to Pierce County in population, Snohomish has approximately one-third the violent crime rate, one-half the property crime rate, and one-third the Superior Court case filings. It should be added that the Snohomish County crime rates and felony filing rates are considerably lower than the Washington state averages.

<sup>50</sup> Population and crime rates are taken from Uniform Crime Report's 2000 figures. Superior Court filings are taken from Washington State Court's 2001 figures.

## Program Descriptions

As referred to in this section, a public defender program is defined as a salaried staff of attorneys who provide defense services through a public or private nonprofit organization. In a contract program, individual attorneys, bar associations, or private law firms are contracted with to provide defense services. In an assigned counsel program, there is a list of private bar members (also called a panel) who are willing to accept appointments on a case-by-case basis.

King County has four public defender programs. The Office of Public Defense is a county agency which administers four private non-profit public defender agencies which handle all indigent defense cases and conflicts.

Pierce County has a mixed delivery system. The primary provider is the Department of Assigned Counsel, which has a public defender office, administers a small contract program, and administers an assigned counsel panel program. Contract attorneys are paid a fixed price for a certain number of cases, and panel attorneys are paid hourly fees.

Snohomish County has a public defender program. The primary provider for indigent adults is the Snohomish County Public Defender Association, which contracts with the county's Office of Public Defense for its services. The Office of Public Defense administers an assigned counsel program for conflict cases.<sup>51</sup> The Juvenile Court administers its own indigent system and recently (July 2002) switched to a contract system in which the Juvenile Court contracts with three firms for a fixed amount for a certain number of dependency, delinquency, and Becca cases.<sup>52</sup>

Spokane County has a public defender program. The primary provider for indigent adults and juveniles is the Spokane County Public Defender. Counsel for Defense is the conflict public defender office for felony and delinquency cases. Misdemeanor conflicts are swapped with the City Public Defender's Office. The Spokane County Public Defender also administers three individual contracts for dependency cases, and two individual contracts for felony, misdemeanor, and delinquency cases. In addition, the Spokane County Public Defender appoints private attorneys who affirmatively volunteer to take indigent cases and pays them hourly fees.

Clark County has a contract system. Clark County Indigent Defense contracts with 57 individual attorneys to provide representation in all indigent cases. Contract attorneys in felony cases are paid a flat fee per case, with additional per diem rates for days in trial.

Yakima County, like Pierce County, has a mixed delivery system. The primary provider is the Yakima County Department of Assigned Counsel, which has a public defender office, and oversees contract attorneys and panel attorneys. Contract attorneys are paid a fixed price for a certain number of cases, and panel attorneys are paid hourly fees.

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<sup>51</sup> Data from the Snohomish Office of Public Defense is unavailable.

<sup>52</sup> The Juvenile Court spends approximately \$2 million annually on indigent defense. Further data from the Juvenile Court is unavailable.

Thurston County, like Pierce County, has a mixed delivery system. The primary provider is the Thurston County Office of Assigned Counsel, which has a public defender office, and oversees contract attorneys and panel attorneys. Contract attorneys are paid a fixed annual amount to provide representation in a limitless number of cases, with the exception of a mental health contract attorney who receives an hourly rate. Panel attorneys are paid hourly fees.

### Scope of Representation

In most counties that were surveyed, the primary providers in each county provide representation in capital and non-capital homicides, felonies, misdemeanors, juvenile delinquencies, juvenile dependencies, mental health cases, and probation violations. The Snohomish County Public Defender does not provide representation in juvenile delinquencies, dependencies, mental health cases, or probation violations. The Spokane County Public Defender provides misdemeanor representation in county cases only. A city public defender provides representation in city misdemeanors.

### 2001 Expenditures

The indigent defense programs that responded to our survey were asked to report their county’s overall expenditures for indigent defense services, their program’s budget, and their program’s expenditures. Because of the different ways in which the programs responded, it is not possible to compare total expenditures or cost-per-capita amongst the counties. However, we are reporting the data below in Exhibit 11.1 for informational purposes only. The footnotes attached to each expenditure figure in Exhibit 11.1 should be noted with regard to how each figure was reported and what it represents.

Exhibit 11.1

#### 2001 County Expenditures and Cost-per-Capita for Indigent Defense

County	Population	2001 Expenditures	Cost-per-capita
King	1,737,034	\$28,000,000 <sup>53</sup>	\$16.12
Pierce	700,820	\$7,956,920 <sup>54</sup>	\$11.35
Spokane	417,939	\$5,234,237 <sup>55</sup>	\$12.52
Clark	345,238	\$3,157,110 <sup>56</sup>	\$9.14
Yakima	222,581	\$2,452,479 <sup>57</sup>	\$11.02
Thurston	207,355	\$1,484,196 <sup>58</sup>	\$7.16

Sources: 2000 census populations; expenditure data from indigent defense providers. Snohomish County expenditures were not reported to us.

<sup>53</sup> Approximate figure. Does not include expenditures for Seattle Municipal Court.

<sup>54</sup> This figure represents DAC program expenditures. It does not include funds budgeted for Tacoma Municipal Court or state funds. Sources: Pierce County 2002 Budget and 2003 Preliminary Budget.

<sup>55</sup> This figure was reported as total county expenditures. It does not include the cost of pre-trial services.

<sup>56</sup> Clark County expenditures were not available, and this figure represents the 2001 budget.

<sup>57</sup> This figure was reported as total county expenditures which was equal to the program expenditures.

<sup>58</sup> This figure was reported as program expenditures.

## Case Counting Methods

There are a number of methods for counting criminal cases, including counting a case by incident and defendant, by the filing of the charging document(s), by the cause number assigned by the court, and by top charge. Each method can produce different case count results. In addition, the manner in which the prosecution chooses to charge a case or the manner in which a court assigns cause numbers can affect case count results. Suppose, for example, that a defendant is charged with three offenses arising from one incident. Under the defendant and single incident method, this would be counted as one case regardless of the manner of charging. However, under the charging document method, if the prosecutor charged three offenses separately, this would be counted as three cases. Under the top charge method, this would be counted as one case according to the top charge. Under the defendant and cause number method, it could be counted as one or three cases, depending on the number of cause numbers assigned to it by the court.

In addition to providing representation in different case types, the indigent defense providers in the surveyed counties gave different response in describing how they count cases (see below).<sup>59</sup>

### Exhibit 11.2

#### Criminal Case Counting Methods of the Primary Providers

Case Counting Method	King	Pierce Dept. of Assigned Counsel	Snohomish Public Defender Association	Spokane Public Defender	Clark Contract system	Yakima Dept. of Assigned Counsel	Thurston Office of Assigned Counsel
By defendant and single incident	X	X <sup>60</sup>		X			
By charging document (information or complaint)			X		X <sup>61</sup>		X
By top charge					X <sup>62</sup>	X <sup>63</sup>	
By defendant and cause number		X <sup>64</sup>					

Source: indigent defense providers.

<sup>59</sup> Due to the differences, we have not made an analysis or comparison of caseload data for this report.

<sup>60</sup> Superior Court and Juvenile Court cases are counted by filings which are by defendant and single incident. This may also be categorized under the charging document method.

<sup>61</sup> Clark County indicated that it counts District Court cases in this manner.

<sup>62</sup> Clark County said it follows the approach used by the Administrative Office of the Courts (AOC). Caseloads for the Courts of Washington are counted by the top original charge in criminal cases.

<sup>63</sup> Contemporaneous representation of the same defendant in the same court under multiple cause numbers counts as one case according to the top charge.

<sup>64</sup> Pierce County DAC District Court cases.

The King County public defenders count cases by defendant and single incident. Pierce County DAC follows the case counting methods of the Pierce County courts. Superior Court and Juvenile Court cases in Pierce County are counted by defendant and single incident filings; District Court cases are counted by defendant and cause number. Snohomish County Public Defender counts its cases by the charging document. Spokane County Public Defender counts its cases by defendant and single incident. Clark County’s contract program counts District Court cases by the charging document and Superior Court cases in the same manner as the Washington State Courts, which is by top charge. Yakima County Department of Assigned Counsel also counts its cases by top charge. Finally, Thurston County Office of Assigned Counsel counts its cases by charging document.

**Contract and Assigned Counsel Program Fees**

The self-reporting data received from providers with contract and assigned counsel programs did not appear to provide precise or comparable information that would permit a comparison of fees.

**Public Defender Program Staffing**

For each of the public defenders we surveyed, we asked about the number and type of staff positions currently filled. Using the reported data, the following attorney-support staff ratios were calculated:

Exhibit 11.3

**FTE Attorney to Support Staff Ratios for Indigent Defense Providers**

Pierce County	4.4 : 1
Spokane County	3.8 : 1
Thurston County	2.7 : 1
Snohomish County	2.3 : 1 <sup>65</sup>
Yakima County	2 : 1

Pierce County has the worst attorney-support staff ratio, and the only one that is worse than the WDA-recommended standard of 4 to 1. In addition, although the Spokane Public Defender trails closely behind Pierce’s DAC, Spokane has 8 paralegals to support the attorneys and perform functions such as drafting pleadings which DAC’s legal assistants are currently tasked with. Spokane also has 5 in-house staff investigators, while Pierce’s DAC has none and is currently using legal assistants to perform some investigative tasks. Pierce County’s DAC is clearly in need of additional support staff.

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<sup>65</sup> Assumes a part-time clerical staff position is a 0.5 FTE.

## About TSG and Its Partners

**The Spangenberg Group (TSG)** is an internationally recognized criminal justice research and consulting firm which specializes in the improvement of indigent defense systems. Incorporated in 1985, TSG has conducted research in all fifty states and provides consultative services to developing and developed countries which are reforming their legal aid delivery programs. For over fifteen years, The Spangenberg Group has been under contract with the American Bar Association's Bar Information Program (BIP), which provides support and technical assistance to individuals and organizations working to improve their jurisdictions' indigent defense systems. As the ABA's sole provider of technical assistance relating to indigent defense systems, The Spangenberg Group has worked with judges, bar associations, state and local governments, legislative bodies and public defender organizations in over forty states around the country.

**American Prosecutors Research Institute (APRI)** is the research, training and technical assistance affiliate of the National District Attorneys Association (NDAA). Founded in 1984, APRI is a non-profit, research and program development resource for prosecutors at all levels of government. Since its inception, APRI has become a vital resource and national clearing house for information on the prosecutorial function. It is committed to providing interdisciplinary responses to the complex problems of criminal justice and supporting the highest professional standards among officials trusted with the crucial responsibility for public safety. The institute has assembled a multi-disciplinary staff to meet these demands, including veteran prosecutors and researchers. (See [www.ndaa-apri.org](http://www.ndaa-apri.org) for more information).

**Alan Carlson** is the President of the **Justice Management Institute (JMI)**, which is headquartered in Denver, Colorado. JMI is a non-profit organization that conducts educational programs, technical assistance and research aimed at improving the administration of justice. Since its founding in 1993, JMI's primary focus has been on trial court organization and operations, with particular emphasis on work that involves courts working collaboratively with other organizations and institutions. JMI is governed by a six-person Board of Directors that includes persons nationally recognized as leaders in court improvement. TSG and APRI benefited from the experience gained by Mr. Carlson during his work reviewing felony case processing in Pierce County which resulted in JMI's February 2001 report, *Management Study of Felony Case Processing in Pierce County, Washington*. Carlson also did a follow-up report in March 2002. The follow-up study provided assistance to Superior Court in implementing the 2001 recommendations.

**Appendix A Part 1 Crime, 1997-2000: County Totals**

County (All Reporting Police Agencies)	Year	Population	Index (Part 1 Crimes excl. Arson)	Modified Index (Total incl. Arson)	PART 1 VIOLENT CRIMES					Total Violent Crimes	Violent Crimes per 1,000	PART 1 PROPERTY CRIMES					Total Property Crimes	Property Crimes per 1,000
					Murder	Forcible Rape	Robbery	Aggravated Assault	Burglary			Larceny	Motor Vehicle Theft	Arson				
<b>Pierce County</b>	1997	660,634	39,319	39,586	28	319	1,098	2,955	4,400	<b>6.7</b>	7,234	23,252	4,433	267	35,186	<b>53.3</b>		
	1998	663,304	45,446	45,690	45	335	1,304	3,189	4,873	<b>7.3</b>	8,263	26,809	5,501	244	40,817	<b>61.5</b>		
	1999	667,887	42,714	42,937	20	344	1,111	2,905	4,380	<b>6.6</b>	8,033	24,927	5,374	223	38,557	<b>57.7</b>		
	2000	694,608	46,423	46,726	33	341	1,204	2,962	4,540	<b>6.5</b>	8,272	27,449	6,162	303	42,186	<b>60.7</b>		
<b>Clark County</b>	1997	289,688	12,061	12,102	11	81	241	989	1,322	<b>4.6</b>	2,432	6,746	1,561	41	10,780	<b>37.2</b>		
	1998	320,983	13,825	13,884	6	86	244	883	1,219	<b>3.8</b>	2,322	8,845	1,439	59	12,665	<b>39.5</b>		
	1999	330,799	12,064	12,134	4	107	221	678	1,010	<b>3.1</b>	2,365	7,707	982	70	11,124	<b>33.6</b>		
	2000	345,238	13,336	13,499	5	104	212	633	954	<b>2.8</b>	2,279	9,047	1,056	163	12,545	<b>36.3</b>		
<b>King County</b>	1997	1,630,332	115,205	115,953	82	711	3,202	4,162	8,157	<b>5.0</b>	17,640	75,526	13,882	748	107,796	<b>66.1</b>		
	1998	1,653,953	111,627	112,387	78	811	2,837	4,113	7,839	<b>4.7</b>	15,804	71,752	16,232	760	104,548	<b>63.2</b>		
	1999	1,651,534	104,680	105,423	76	654	2,691	3,872	7,293	<b>4.4</b>	14,438	66,279	16,670	743	98,130	<b>59.4</b>		
	2000	1,737,034	98,839	99,574	60	660	2,642	4,067	7,429	<b>4.3</b>	14,229	60,516	16,665	735	92,145	<b>53.0</b>		
<b>Kitsap County</b>	1997	231,404	10,461	10,529	5	187	101	678	971	<b>4.2</b>	2,201	6,699	590	68	9,558	<b>41.3</b>		
	1998	237,912	9,675	9,784	3	123	131	708	965	<b>4.1</b>	2,134	5,974	602	109	8,819	<b>37.1</b>		
	1999	235,367	9,190	9,257	2	158	122	540	822	<b>3.5</b>	2,148	5,672	548	67	8,435	<b>35.8</b>		
	2000	231,969	10,031	10,110	8	178	127	689	1,002	<b>4.3</b>	2,164	6,422	443	79	9,108	<b>39.3</b>		
<b>Snohomish County</b>	1997	542,125	23,472	23,564	18	377	456	803	1,654	<b>3.1</b>	4,817	14,132	2,869	92	21,910	<b>40.4</b>		
	1998	563,428	22,508	22,677	9	407	411	858	1,685	<b>3.0</b>	4,366	13,370	3,087	169	20,992	<b>37.3</b>		
	1999	585,493	20,962	21,115	11	441	344	719	1,515	<b>2.6</b>	3,739	12,408	3,300	153	19,600	<b>33.5</b>		
	2000	590,157	20,486	20,641	9	417	320	669	1,415	<b>2.4</b>	3,801	12,131	3,139	155	19,226	<b>32.6</b>		
<b>Spokane County</b>	1997	410,845	26,438	26,548	22	182	529	1,287	2,020	<b>4.9</b>	5,928	16,708	1,782	110	24,528	<b>59.7</b>		
	1998	406,536	28,463	28,587	18	152	631	1,453	2,254	<b>5.5</b>	6,156	17,987	2,066	124	26,333	<b>64.8</b>		
	1999	409,659	24,633	24,744	15	127	509	1,248	1,899	<b>4.6</b>	5,532	15,749	1,453	111	22,845	<b>55.8</b>		
	2000	414,181	25,061	25,207	12	121	475	1,141	1,749	<b>4.2</b>	4,676	16,719	1,917	146	23,458	<b>56.6</b>		

**Appendix A Part 1 Crime, 1997-2000: County Totals**

County (All Reporting Police Agencies)	Year	Population	Index (Part 1 Crimes excl. Arson)	Modified Index (Total incl. Arson)	PART 1 VIOLENT CRIMES					Total Violent Crimes	Violent Crimes per 1,000	PART 1 PROPERTY CRIMES					Total Property Crimes	Property Crimes per 1,000
					Murder	Forcible Rape	Robbery	Aggravated Assault	Motor Vehicle Theft			Burglary	Larceny	Arson				
<b>Thurston County</b>	1997	195,992	7,842	7,902	1	98	85	263	447	<b>2.3</b>	1,734	5,033	628	60	7,455	<b>38.0</b>		
	1998	203,183	8,496	8,543	5	88	124	274	491	<b>2.4</b>	1,876	5,473	656	47	8,052	<b>39.6</b>		
	1999	204,640	7,712	7,760	4	110	93	354	561	<b>2.7</b>	1,701	4,958	492	48	7,199	<b>35.2</b>		
	2000	207,355	8,507	8,573	2	117	106	332	557	<b>2.7</b>	1,922	5,481	547	66	8,016	<b>38.7</b>		
<b>Yakima County</b>	1997	218,043	15,314	15,431	15	127	168	496	806	<b>3.7</b>	3,853	9,343	1,312	117	14,625	<b>67.1</b>		
	1998	221,392	15,464	15,587	10	151	216	408	785	<b>3.5</b>	3,893	9,224	1,562	123	14,802	<b>66.9</b>		
	1999	220,634	13,363	13,485	11	121	141	343	616	<b>2.8</b>	3,226	8,229	1,292	122	12,869	<b>58.3</b>		
	2000	222,581	13,495	13,605	14	96	171	366	647	<b>2.9</b>	3,052	8,586	1,210	110	12,958	<b>58.2</b>		
<b>State Total</b>	1997	5,515,396	316,389	318,280	229	2,753	6,376	14,039	23,397	<b>4.2</b>	59,238	203,405	30,349	1,891	294,883	<b>53.5</b>		
	1998	5,610,295	322,539	324,639	216	2,780	6,438	14,412	23,846	<b>4.3</b>	58,513	205,636	34,544	2,100	300,793	<b>53.6</b>		
	1999	5,670,478	295,660	297,614	167	2,645	5,712	12,820	21,344	<b>3.8</b>	53,461	187,737	33,118	1,954	276,270	<b>48.7</b>		
	2000	5,846,705	295,296	297,404	193	2,650	5,742	12,860	21,445	<b>3.7</b>	52,236	187,315	34,300	2,108	275,959	<b>47.2</b>		

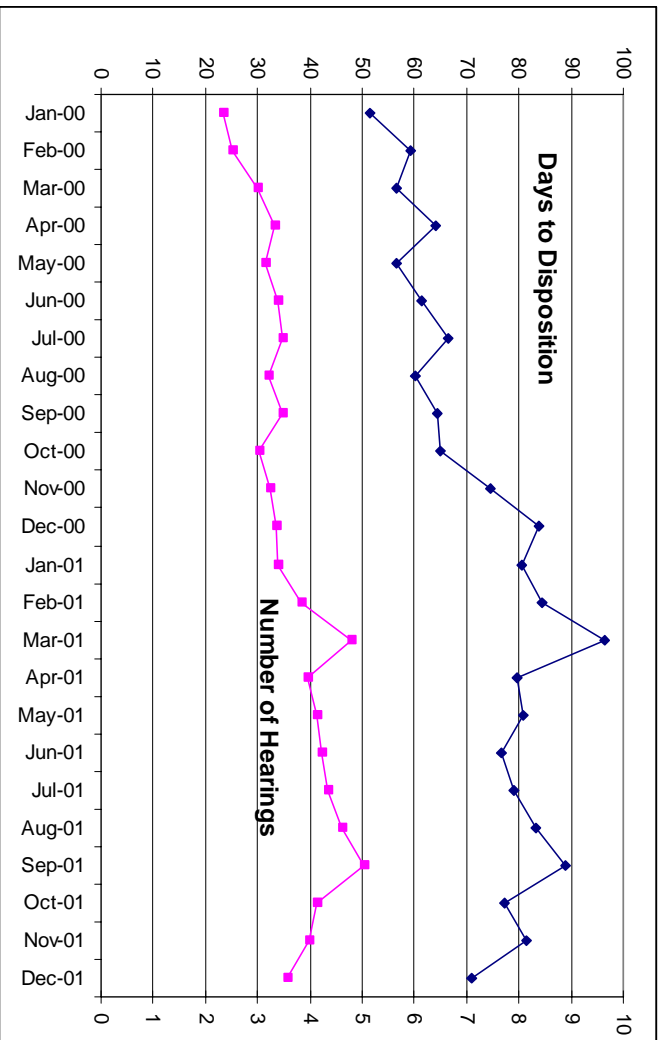
Source: FBI Uniform Crime Reporting (UCR) data collected by The Spangenberg Group, July 16, 2002.

## Appendix B

### Superior Court Cases: Days to Disposition and Number of Hearings, 2000-2001

#### Original Attorney, All Case Classes, Bench Warrant Days Excluded

Year	Month	Staff Attorneys		Panel Attorneys		Contract Attorneys		Total	
		Average Days to Disposition	Average # of Hearings	Average Days to Disposition	Average # of Hearings	Average Days to Disposition	Average # of Hearings	Average Days to Disposition	Average # of Hearings
2000	Jan	50	2.25	79	3.43	39	2.29	51	2.34
	Feb	56	2.37	80	3.52	59	2.45	59	2.51
	Mar	55	2.90	65	3.45	62	3.76	57	3.00
	Apr	59	3.00	91	4.93	69	4.50	64	3.33
	May	55	2.99	83	5.05	56	3.74	57	3.16
	Jun	61	3.36	87	4.86	44	2.46	61	3.39
	Jul	65	3.33	78	4.00	67	4.27	66	3.47
	Aug	59	3.05	83	4.86	56	3.56	60	3.22
	Sep	63	3.36	97	5.75	57	3.05	64	3.48
	Oct	65	3.02	67	3.45	57	2.57	65	3.03
	Nov	72	3.19	86	3.67	75	3.08	74	3.23
	Dec	84	3.28	79	4.27	91	3.21	84	3.36
2001	Jan	80	3.33	75	3.51	95	4.05	81	3.38
	Feb	83	3.63	82	4.25	111	6.33	84	3.83
	Mar	94	4.66	116	5.69	94	4.74	96	4.78
	Apr	78	3.89	105	5.37	62	2.00	80	3.95
	May	81	4.13	77	4.00	86	4.52	81	4.14
	Jun	75	4.04	76	4.57	120	7.00	77	4.23
	Jul	83	4.43	60	3.83	56	3.61	79	4.33
	Aug	85	4.63	80	4.93	58	3.61	83	4.61
	Sep	85	4.85	126	6.90	87	4.55	89	5.03
	Oct	74	4.06	102	5.09	45	2.65	76	4.13
	Nov	80	4.01	90	4.73	47	2.35	79	3.99
	Dec	71	3.47	87	5.06	35	2.05	70	3.55
Grand Total		73	3.63	86	4.56	68	3.61	74	3.72



Source: LINX data.

## Appendix C

### Superior Court Criminal Trials Continued, 2000-2002

# Days Continued	<b>2000</b>			<b>2001</b>			<b>2002*</b>		
	In Custody	Out of Custody	Total	In Custody	Out of Custody	Total	In Custody	Out of Custody	Total
1 to 5	109	201	310	124	189	313	34	107	141
6 to 15	213	444	657	171	351	522	60	152	212
16 to 30	417	391	808	538	399	937	223	204	427
30 to 60	932	442	1,374	1,044	411	1,455	487	253	740
61 to 90	828	179	1,007	507	152	659	188	67	255
91 +	326	65	391	151	92	243	50	36	86
<b>TOTAL</b>	<b>2,825</b>	<b>1,722</b>	<b>4,547</b>	<b>2,535</b>	<b>1,594</b>	<b>4,129</b>	<b>1,042</b>	<b>819</b>	<b>1,861</b>
* January-June 2002									

## Appendix D

### Superior Court Dispositions, 2001

	Robbery, Assault, etc. (TU1)	Arson, Fraud, etc. (TU2)	Burglary, Theft, etc. (TU3)	Special Assault (TU4)	Drugs, Vice (TU5)	Murder, Manslaughter (TU6)	Fugitive (TU8)	<u>Total</u>
Bench Trial: Convict	5	9	2	4	71			91
Bench Trial: Acquit	1		1		2			4
Jury Trial: Convict	24	7	9	40	28	4		112
Jury Trial: Acquit	7	1		8				16
Dismissal/No Trial	70	97	62	61	249	4	233	776
Dismissal after Jury Trial Began		3	2	3	6		6	20
Dismissal after NJ Trial Began				1				1
Guilty Plea/No Trial	641	949	795	564	2,463	14		5,426
Guilty Plea after Jury Trial Began	3	2	2	4	6			19
Guilty Plea after NJ Trial Began					1	1		2
Uncontested Resolution				1				1
Not Guilty by Reason of Insanity	1					1		2
<b>TOTAL</b>	<b>752</b>	<b>1,068</b>	<b>873</b>	<b>686</b>	<b>2,826</b>	<b>24</b>	<b>239</b>	<b>6,470</b>

Source: LINX reports

## Appendix E

### Superior Court Open Cases, End of Year, 1999-2002

and

### Dependency Open Cases, End of Year, 2000-2001

#### Superior Court Open Cases at End of Each Period Original Attorney Only

		1999	2000	2001	1st Q 2002
STAFF	Fast Track	351	542	439	381
	Regular Track	670	707	620	438
<b>STAFF Total</b>		<b>1021</b>	<b>1249</b>	<b>1059</b>	<b>819</b>
PANEL		131	136	95	84
CONTRACT		102	83	99	81
INFORMAL CONTRACT		9	2	2	1
<b>Grand Total</b>		<b>1263</b>	<b>1470</b>	<b>1255</b>	<b>985</b>

Source: LINX data.

#### Dependency Open Cases at End of Each Period Original Attorney Only

	2000	2001
<b>Staff</b>	<b>1189</b>	<b>1275</b>
Panel	732	939
Contract	69	48
<b>Grand Total</b>	<b>1990</b>	<b>2262</b>

Source: LINX data.

## Appendix F

### Costs of Retaining Investigators and Experts, 2001

#### INVESTIGATORS

	<b>Hours Billed</b>	<b>Cost</b>
Felony A	934.89	\$90,941.55
Felony B	378.15	\$31,905.02
Felony C	171.16	\$11,248.19
<b>TOTAL</b>	<b>1,484.20</b>	<b>\$134,094.76</b>

#### EXPERT TESTIMONY

	<b>Hours Billed</b>	<b>Cost</b>
Felony A	29.80	\$46,971.49
Felony B	9.00	\$5,409.53
Felony C	5.00	\$775.00
<b>TOTAL</b>	<b>43.80</b>	<b>\$53,156.02</b>