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October 27, 2003

To: Performance Audit Committee and Public Safety & Human Services Committee

From: Matt Temmel, Performance Audit Coordinator *MT*

Re: RECOMMENDATIONS ON PUBLIC DEFENSE COST RECOVERY

This memo concerns recent developments relating to recoupment of public defense costs in criminal cases in which the defendant has been given an attorney at public expense.

Public defense services are provided by the Department of Assigned Counsel and funded by the taxpayers, subject to repayment by a convicted defendant if the court so orders. In March 1999, a Pierce County task force of judges, prosecutors, defense counsel, and representatives from other agencies recommended that recoupment should be ordered on a regular basis so that Pierce County would be brought into line with superior courts in other counties that order recoupment in virtually all felony cases.

Much progress has been made since 1999, but a review of recent Judgments and Sentences indicates that recoupment is not being consistently ordered. In 2003, recoupment has been ordered in approximately 55% of Superior Court felony convictions. We believe the rate should be much higher. The recommendations in this memo are directed toward that goal.

## **Background**

In 1998-99, the Pierce County Public Defense Cost Recovery Task Force--composed of representatives from the courts, Prosecuting Attorney, Assigned Counsel, and several other agencies--examined a consultant's recommendations, strengthened them, and agreed to implement a package of recommendations to increase cost recovery. The two major recommendations, agreed by the task force in March 1999, were as follows:

1. Institute recoupment as normal practice in Superior Court and District Court for all cases with Assigned Counsel. The procedure is for the Prosecutor to recommend recoupment and Assigned Counsel to support this practice.
2. The recommended flat fees for recoupment are \$300 for class A felonies, \$200 for class B and C felonies, \$100 for DWI and domestic violence gross misdemeanors, and \$50 for other cases.



The task force agreed that judges should consider ordering recoupment in **all** criminal cases with a court-appointed attorney, without regard to whether the defendant had been declared “Indigent” or “Indigent and Able to Contribute” when found eligible. Case law allows courts to order recoupment for indigent defendants because indigency is not a permanent condition and the person may subsequently acquire the means to pay the obligation.<sup>1</sup>

The task force’s recommendations were implemented in 1999, and there was an immediate and large increase in the incidence of recoupment ordered in Superior Court cases. The rate rose from 11% of felony convictions in 1997 to over 63% in 2001—and then declined to 56% in 2002 and 55% in 2003 (through August). *Attachment 1* shows the monthly rates since January 2001.

In terms of the dollar amount of recoupment ordered in Superior Court, the high point was \$679,000 in 2001. The amount then declined significantly to \$487,000 in 2002. See *Attachment 2*.

*Attachment 3* shows the amounts per case that the Clerk of Superior Court in various counties actually collected in 2002. As can be seen, Pierce County collected \$41 per case in recoupment and a total of \$300 per case for all legal financial obligations (LFOs), including recoupment. Pierce County has made considerable progress recently in collecting LFOs. In fact, of the eight largest counties in the state, comparing the years 1999 and 2002, Pierce County had the largest dollar and percentage increase in LFOs collected.<sup>2</sup> However, as shown in the graph for 2002, the Pierce County amounts collected per case are less than in Clark, Chelan, Kitsap, Thurston, and Snohomish counties.

The two main factors that affect county performance in collecting LFOs are (1) what LFOs the judges order at time of sentencing, and (2) what the Clerk of Superior Court does to collect the amount owed.

**Judicial Orders (Assessments)**. In counties that collect a large amount per case, the judges tend to order recoupment and other LFOs in a very high percentage of cases, and the amounts ordered for recoupment are higher than the \$200 standard amount for a class B or C felony in Pierce County. In Kitsap County, the standard amount ordered for recoupment is \$960, and it is \$660 in Clark County.

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<sup>1</sup> Recent case law on these issues includes the Blank case decided by the Washington Supreme Court: see State v. Blank, 131 Wn.2d 230, 930 P.2d 1213 (1997). See also State v. Mahone, 98 Wn.App. 342, 989 P.2d 583 (1999). From these cases it is clear that a defendant’s right to counsel is not violated by a requirement to pay recoupment.

<sup>2</sup> The figures for Pierce County were \$956,010 collected in 1999 and \$1,339,788 in 2002, an increase of \$383,778, or 40%. The figures are the local share and refer to the ten main LFOs plus interest. On a per case basis, Pierce County's local share over the same period increased from \$258 to \$300, a 16% change; while this was a relatively high increase, the increase was greater in some other counties.

The “mix” of LFOs ordered by the court also influences the amount that is collected to offset taxpayer expenses. For example, it is helpful to local taxpayers if a judge orders recoupment for public defense costs because the county retains 100% of money collected in that category, whereas the county retains only 68% of fines that are collected and the rest goes to the state.

In 2000, the state legislature changed the statute of limitations for collecting LFOs. The obligation to pay now lasts for the defendant’s lifetime, rather than the previous limit of ten years from the date of sentencing. This statutory change should increase recoupment orders because it is nearly impossible to predict inability to pay over a lifetime.

**Collection.** State legislation (ESSB 5990) was enacted earlier this year to transfer collection responsibility for most LFOs from the state Department of Corrections to the County Clerks. The Pierce County Clerk of Superior Court will add two staff members to operate the collection program, which is supported by state funding of \$162,000 this year (through June 2004) and a smaller amount in the following year.

The Clerk has received a large number of accounts from the state Department of Corrections. The Clerk tries to contact the person and establish a payment program. If that is unsuccessful, the account will be turned over to a collection agency. Based on the experience of other counties, we believe that the Pierce County collection program will eventually result in a large increase in the amounts actually collected.

## **Revised Judgment and Sentence**

Earlier this year, a revised Judgment and Sentence form was drafted to improve the quality of information about legal financial obligations and give notice that Pierce County intends to collect them. Our recommendation is:

### **1. Adopt and utilize the revised Judgment and Sentence form in Superior Court.**

We developed a revised J&S by working closely with Bob Dick and Dawn Farina of the Prosecuting Attorney’s Office. The revised form is designed to clarify legal issues and indicate to the convicted defendant that Pierce County will collect LFOs by civil means, that is, by turning delinquent accounts over to a collection agency.

On June 19 this year, the Superior Court Criminal Procedures Committee approved the revised language. As of October 27, however, the revised J&S has yet to be used in court. We would like to hear from Superior Court and the Prosecuting Attorney’s Office as to when the revised form will be used.

## **Recoupment Amounts**

The current recoupment amounts, which were agreed by the county task force in 1999, are \$300 for a class A felony, \$200 for class B or C felony, and \$100 or \$50 for other cases. The task force was aware in 1999 that these amounts do not begin to cover the costs of a court-appointed attorney, but it agreed on the amounts as a starting point to see whether all parties—the prosecutor, assigned counsel, and the courts—could work together to make ordering of recoupment a standard part of criminal convictions. We believe that the amounts should be now raised to a level that is closer to the actual average costs. Our recommendation is:

### **2. Increase the recommended recoupment amounts to the levels recommended by the Department of Assigned Counsel.**

Based on analysis of unit costs, the Department of Assigned Counsel recommends raising the amounts for DAC cases in Superior Court and District Court as well as the amounts assessed for public defense against parents in Juvenile Court proceedings. See *Attachment 4* for a letter from John Hill, Director of Assigned Counsel. Table 1 (next page) summarizes the amounts recommended by DAC.

In reviewing the DAC letter in Attachment 4, readers may notice that the recommended amounts are a little lower than the figures produced by the calculations and that the amounts recommended for Superior Court cases exclude agency administration and overhead costs. In other words, the recoupment amounts recommended by DAC are conservative estimates of DAC costs. We believe the amounts are reasonable and, since a convicted person has a lifetime to pay the obligation, not unduly onerous.

Important conditions may be added:

- The prosecuting attorney should make the amount of recoupment a non-arguable condition of accepting plea negotiations, and
- Clients should be provided with motion for remission forms to submit in cases where it becomes obvious a defendant is unable to pay, provided that remissions are granted only in truly exceptional cases—that is, when it is likely that the defendant will not be able to pay any of the obligation over his or her lifetime.

**Performance Audit staff agrees with the DAC recommendation on recoupment. We ask committee approval of this important recommendation.**

Table 1

**Amounts Recommended by DAC for Recoupment in Criminal Cases**

Note: Recommendations pertain to cases resolved without trial, except where noted

<i>Type of Case</i>	<i>Recommended Amount of Recoupment to be Ordered</i>	<i>Basis for the Recommendation</i>
Class A felony	\$1,500	2004 estimated salaries and benefits for DAC staff attorneys assigned to class A felonies, plus panel fees, divided by the case assignments. Staff attorney salaries and benefits are reduced by 35% to account for estimated trial time. Recommendation excludes other agency costs such as administration, overhead, etc.
Class B and C felonies	\$400	2004 estimated salaries and benefits for DAC staff attorneys assigned to class B and C felonies, plus panel fees, divided by the case assignments. Staff attorney salaries and benefits are reduced by 20% to account for estimated trial time. Recommendation excludes other agency costs such as administration, overhead, etc.
Other cases in Superior Court	\$200	The estimate is based on a combination of the methods for other cases.
Felony trials	Determined on a case by case basis, such as the recommended average plus perhaps \$300 per day.	
Juvenile offender cases	\$450	2004 projected expenditures for the DAC Juvenile Offender program divided by case assignments.
District Court cases	\$150	2004 projected expenditures for the DAC District Court program divided by case assignments.

## Screening Issues

### Background

Defendants who want a court-appointed attorney at public expense are screened for eligibility by Pre-Trial Services, a 12-person unit located in the Corrections Bureau of the Sheriff's Department. Screening for DAC eligibility is thought to comprise about 40 percent of the unit's workload. The other 60% includes various support functions for the courts and the jail that are unrelated to screening for DAC eligibility.

In a letter of January 31, 2003 that was a supplement to the DAC performance audit report (*Attachment 5*), consultant Robert Spangenberg addressed problems in the screening program, such as the following:

- ◆ Only 13% of the persons screened pay the \$25 screening fee, and nothing is being done to collect the money from the other 87%.
- ◆ There is little or no verification of reported income and resources, despite past agreement by the Sheriff's Department to do verification on a random basis.
- ◆ Legally, it is not appropriate to locate the screening function in a police agency. It is very questionable whether defendants can be required to provide confidential information to employees of the Sheriff's Department.

On that basis, Mr. Spangenberg recommended that the screening functions be transferred to Clerk of the Superior Court and, for juvenile cases, to Juvenile Court.

Performance Audit staff agrees with Mr. Spangenberg that organizational change would help to improve performance when screening for Juvenile Court cases. However, the main recommendation was to transfer screening responsibilities for adult cases to the Clerk of Superior Court. We are not sure that approach is feasible or necessary.

As an alternative to Mr. Spangenberg's recommendations, we believe two changes can be made to improve performance, as explained below.

## **Juvenile Court Screening Issues**

The Pre-Trial Services office is within walking distance of the County-City Building and the Pierce County Jail. It is a good location for screening adult cases, or for going to the jail to conduct in-custody screenings. To screen Juvenile Court cases, however, the PTS staff must drive to Remann Hall, a few miles away. That is not an efficient arrangement.

- Pre-Trial Services has a motor pool car to travel to/from Remann Hall. This ongoing expense would not be needed if the screening staff were located at the court.
- Pre-Trial Services staff are collecting the \$25 screening fee in only 8% of Juvenile Court screenings this year, versus 18% in 2000. See *Attachment 5*. The decline may indicate PTS inattention to Juvenile Court screenings.
- Pre-Trial Services staff are often busy with other work and do not always get to Remann Hall on a regular basis. The result appears to be that Pre-Trial Services does not screen approximately one-third of the Juvenile Court cases. In recent years, the Prosecuting Attorney has filed about 3,000 juvenile offender cases per year. The number of screenings has been around 2,000 per year. In other words, the data suggest that Pre-Trial Services misses screening about 1,000 cases per year.

In a high percentage of the unscreened cases, according to Juvenile Court, the judge appoints DAC on the spot in the courtroom after asking a few questions of the juvenile or the parents.

Apart from the DAC eligibility screening by Pre-Trial Services, Juvenile Court staff screen families of juvenile offenders to see how much they can afford to pay in detention costs and other fees. There is no reason to have two sets of screeners operating at Juvenile Court. We believe the screening for DAC eligibility would be done more efficiently, with fewer cases missed, if the function were transferred from Pre-Trial Services to Juvenile Court staff. Our recommendation is:

### **3. Transfer one FTE position from Pre-Trial Services (Corrections Bureau of the Sheriff's Department) to Juvenile Court, so that Juvenile Court can screen to determine eligibility for assigned counsel. The transfer should be made in the 2004 county budget and include a "hold harmless" clause to guarantee that the salary will not decline as a result of the transfer.**

Note (added after the October 27 meeting): The original memo neglected to mention that screening is also done at Remann Hall for dependency cases. Pre-Trial Services does that screening now on a limited basis. Our recommendation (above) was intended to give Juvenile Court the means to screen for assigned counsel eligibility in both Juvenile offender cases and dependency cases.

## **The Screening Form and Categories**

Information on the current screening form is being misunderstood in some cases and used as a reason not to order recoupment on a regular basis. Our recommendation is:

### **4. Revise the screening form to eliminate the obsolete category called "Indigent and Able to Contribute" and rename the other categories "Eligible" and "Not Eligible."**

The current screening process by Pre-Trial Services results in a determination that the applicant for an attorney at public expense is "Indigent," "Indigent and Able to Contribute," or "Not Indigent." (Chapter 10.101 RCW.) The first two labels mean that the applicant is eligible, and the third means not eligible. The three categories do not have a strong empirical basis.

Under RCW 10.101.010 and 020, screeners are to use the Indigent and Able to Contribute category when a person is found to have a sufficient income level and signs a promissory note to repay a portion of defense costs. However, based on a recommendation from the Public Defense Cost Recovery Task Force, Pre-Trial Services stopped writing promissory notes for public defense costs in 1999. Nevertheless, Pre-Trial Services continued to utilize the promissory note category for some of the people found eligible for service.

*Attachment 7* summarizes the screening results from 1998 to 2003 by showing the number of persons placed in each eligibility category. Over the six-year period, Indigent and Able to Contribute is the smallest category (11%). Functionally, it does not differ from Indigent (77%) in that persons in either category were eligible for a court-appointed attorney (total of 88% over six years).

The problem with retaining the Indigent and Able to Contribute category is that the category is open to misunderstanding, and some judges appear to order recoupment only for persons declared Indigent and Able to Contribute. This is standard practice in Juvenile Court, and it also occurs in some Superior Court cases. Thus the effect of retaining the obsolete category is to inadvertently limit the number of cases in which the courts order recoupment. That was never intended by the task force or by Pre-Trial Services.

Our recommendation is to drop the obsolete category, rename the other two categories so that applicants will be found Eligible or Not Eligible, and eliminate use of the term "indigency" on the screening form because the term is widely misunderstood.

The change in nomenclature will not affect the number of people eligible to receive an attorney at public expense. However, we hope the change will tend to increase the number of cases in which recoupment is ordered.

Attachments

## **Committee Action**

The preceding memorandum was discussed on October 27 at a joint meeting of the Pierce County Performance Audit Committee and the Public Safety & Human Services Committee. The joint committees approved three recommendations:

- 1. Adopt and utilize the revised Judgment & Sentence form in Superior Court.**
- 2. Increase the recommended recoupment amounts to the levels recommended by the Department of Assigned Counsel.**
- 4. Revise the screening form to eliminate the obsolete category called "Indigent and Able to Contribute" and rename the other categories "Eligible" and "Not Eligible."**

Recommendation 3 was held over:

- 3. Transfer one FTE position from Pre-Trial Services (Corrections Bureau of the Sheriff's Department) to Juvenile Court, so that Juvenile Court can screen to determine eligibility for assigned counsel. The transfer should be made in the 2004 county budget and include a "hold harmless" clause to guarantee that the salary will not decline as a result of the transfer.**

The joint committees directed performance audit staff to prepare options on Recommendation 3 issues for review and discussion during the County Council's review of the 2004 budget.

## RECOMMENDATIONS ON PUBLIC DEFENSE COST RECOVERY

October 27, 2003

### **Attachments**

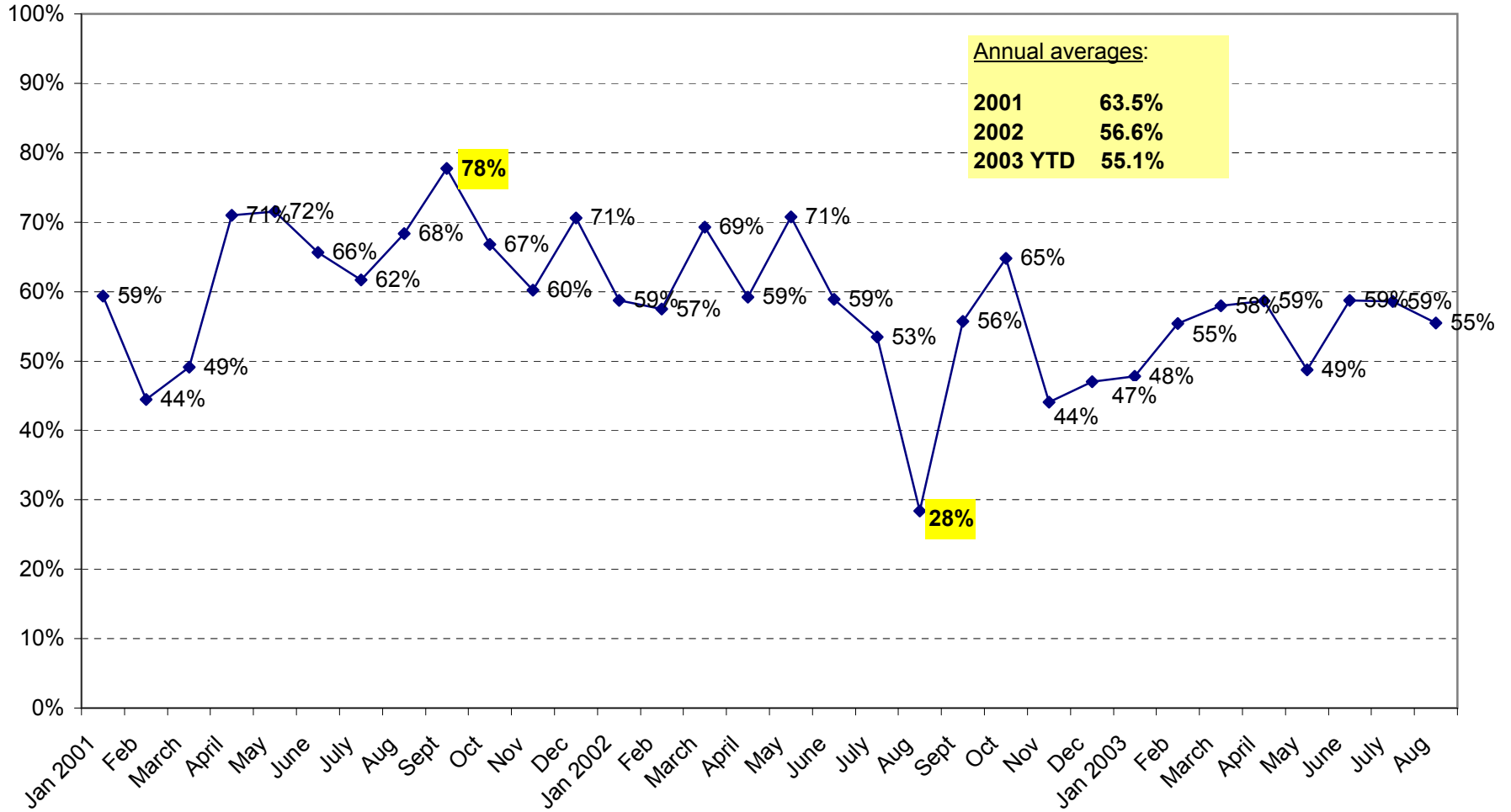
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Number	Title
1	Superior Court Dispositions by Month: Percentage of Assigned Counsel Cases with Recoupment Ordered, January 2001 – August 2003
2	Superior Court Public Defense Recoupment: Amounts Ordered and Collected, 1997 – 2002
3	Amounts Collected by Superior Court Clerks in 2002 per Average Number of Judgments and Sentence
4	Letter from John H. Hill, Director of Assigned Counsel, October 17, 2003, on DAC Recommendations for Determining Recoupment Amounts
5	Letter from Robert L. Spangenberg, President, The Spangenberg Group, January 31, 2003, on indigent defense screening issues
6	Percentage of \$25 Screening Fees Collected since 2000
7	DAC Eligibility Screenings by Pre-Trial Services: Summary across All Courts, 1998 – 2003

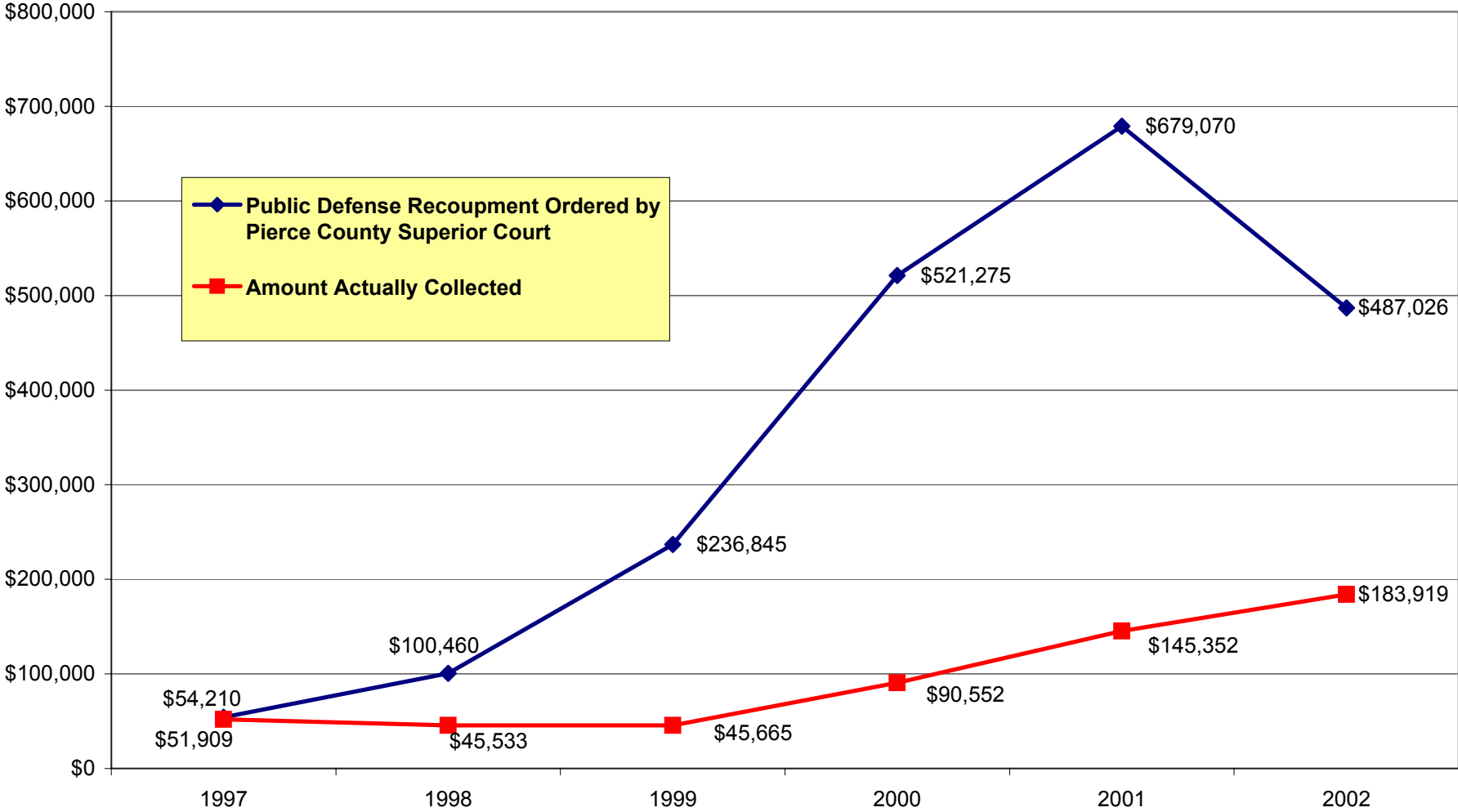
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## Attachment 1: Superior Court Dispositions by Month

### Percentage of Assigned Counsel Cases with Recoupment Ordered

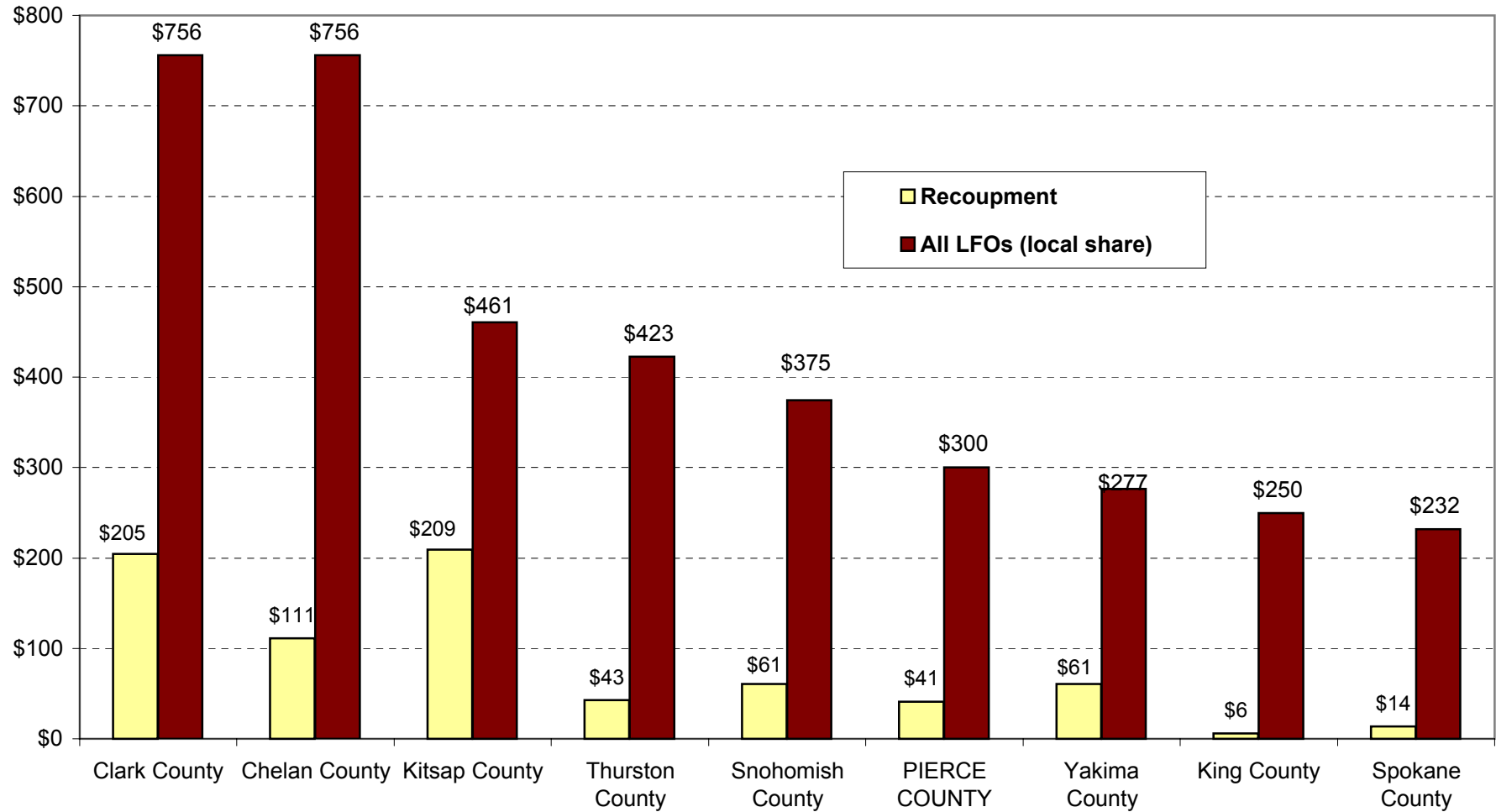


## Attachment 2 Superior Court Public Defense Recoupment: Amounts Ordered & Collected



Source: Clerk of Superior Court records from SCOMIS/JASS.

**Attachment 3**  
**Amounts Collected by Superior Court Clerks in 2002**  
**per Average Number of Judgments and Sentence**





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October 17, 2003

Matt Temmel  
County Council Performance Audit Coordinator

Re: DAC Recommendations for Determining Recoupment Amounts in Superior and District Courts and assessing Indigent Defense Costs to Parents in Juvenile Court proceedings.

Dear Mr. Temmel:

The following information is offered to assist in determining recoupment amounts for DAC cases in Superior Court and District Courts as well as amounts assessed against parents in Juvenile Court proceedings.

**A. FELONY CASES RESOLVED WITHOUT TRIAL**

1 **Class A Felonies:**

- **\$1,500 per case** (suggested recommendation)
- Above is based on calculation of the actual 2004 DAC staff salaries and benefits assigned to Class A felonies (\$788,744) divided by the number of projected Class A felonies assigned to DAC staff (320) reduced by the percentage of time DAC staff spends on A cases resulting in trial (conservatively 35%) which equals an average of \$1,602 per case. When that is averaged with the actual average cost DAC pays to panel attorneys per case (\$1,701) the final average cost for panel and DAC staff expenditures for attorney fees is \$1,651. No calculations were made to factor other DAC actual expenditures (e.g., support staff, investigation, experts, supplies, etc.) or other overhead. No reduction of panel attorney time for trials was made because it is believed they will be offset by a 15-25% increase in panel attorney fees during 2004.

2. **Class B and C Felonies:**

- **\$400.00 per case** (suggested recommendation)
- Calculations were made in the same manner as A (1) above. \$1,800,376 (Salaries and benefits) divided by 4,760 (projected B/C



felonies assigned to DAC staff) equaling an average of \$378.23 per case and reduced by 20% for time devoted by staff to B/C trials calculates to an average of \$302 per case. When this is averaged with panel B/C felony average fee payments (\$565) the final calculation equals \$403 per case.

3. **Other Cases** (e.g. misdemeanors)
- **\$200 per case** (suggested recommendation)

**B. FELONY TRIALS**

- Determined on a case by case basis - perhaps the recommended average plus a daily amount - e.g. \$300/day?

**C. JUVENILE COURT** (Cost assessment to eligible parents)

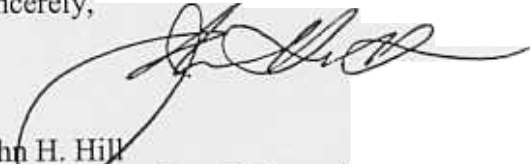
- \$450 per case. 2004 projected total DAC Juvenile Court Division expenditures (\$1,066,920) divided by total projected DAC felony and misdemeanor case assignments for 2004 (2,935 - total felonies and misdemeanors) equals \$484 average per case.

**D. DISTRICT COURT**

- \$150 per case. (suggested recommendation)
- Based on 2004 projected total DAC District Court Division expenditures - \$1,164,400 divided by 2004 total projected DAC cause assignments in 2004 (6,500) equals \$179.

Other recommendations regarding making recoupment cost effective are: 1) the prosecuting attorney should make the amount of recoupment a non arguable condition of accepting plea negotiations, and 2) that clients be provided with motion for remission forms to submit in cases where it becomes obvious a defendant is unable to pay.

Sincerely,



John H. Hill  
Director of Assigned Counsel

JHH:kc

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January 31, 2003

**RECEIVED**

**FEB 03 2003**

Pierce County  
Performance Audits

**Matt Temmel**  
Pierce County Performance Audit Coordinator  
955 Tacoma Ave. South, Room 302  
Tacoma, WA 98402

Dear Mr. Temmel:

The Spangenberg Group submits this letter, at the request of the county, as a supplement to our performance audit report on the Pierce County Department of Assigned Counsel (December 12, 2002). At the start of the project, in November 2001, Pierce County issued Request for Proposals #680. The RFP, at page 4, indicated that the auditors should review indigent defense screening issues because eligibility determination is a main driver of DAC workload. We did extensive work on screening issues during our site visits to Pierce County, but the topic was omitted from the audit report in December. We now present our results here.

The analysis is based on our interviews in 2002 of the Pre-Trial Services supervisor, review of PTS monthly statistics, review of two follow-up reports on cost recovery by Pierce County performance audit staff, and The Spangenberg Group's experience in numerous other jurisdictions working on screening and eligibility issues.

The Spangenberg Group first worked in Pierce County in 1998 on a project in which we analyzed the county's approach to indigent defense eligibility determination and cost recovery. We presented our report in September 1998. Since that time, Pierce County has developed an ability to work productively on indigent defense cost recovery issues, generally along the lines that we recommended. Performance audit staff have issued two follow-up reports on the status of the audit recommendations (November 2000 and October 2002). The follow-up reports provide documentation of three main points:

1. In 1999, a task force of Pierce County officials reviewed our September 1998 report and formulated a package of ten alternative recommendations to be implemented. The task force recommendations were similar to our recommendations but more aggressive on cost-recovery issues.
2. Since 1997, the amount of money recovered by Pierce County has more than tripled, from approximately \$92,000 in 1997 to over \$300,000 in 2002. The main source of revenue has been collection of legal financial obligations ordered by Superior Court. In other areas, such as the \$25 screening fee, the revenue is lower than expected.

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3. Pre-Trial Services, a unit in the Sheriff's Department, screens applicants and determines their eligibility for a defense lawyer provided at public expense. Some of the information provided to us suggests continued deficiencies in the program.
- ◆ Only 13% of the persons screened actually pay the \$25 screening fee. The percentage has remained static or fallen slightly since the County Council enacted the fee in 1999. The amount of money collected per year declined, from approximately \$67,000 in 2000 to \$55,000 in 2002.
  - ◆ Out-of-custody screenings were approximately 20% of all screenings conducted in 2002, which is a little higher than in recent years.<sup>1</sup> We believe that the proportion of out-of-custody screenings has not changed appreciably in recent years. In part, that is why PTS collects the fee from only 13% of the persons screened because it is much harder to collect the fee when the person is in jail.<sup>2</sup>
  - ◆ According to the Pierce County ordinance, the \$25 screening fee was intended to offset the costs of verifying the completeness and accuracy of the financial information provided by applicants who want a lawyer at public expense. According to Pre-Trial Services, minor verification work was attempted in the past, but nothing is currently being done to check or verify reported income and resources.

One approach to address the issues would be to place the screeners in another agency in an effort to improve performance. In our September 1998 report, The Spangenberg Group recommended that screening and eligibility determination functions be transferred from the Sheriff's Department to another agency, such as Budget and Finance. We continue to believe that it is not appropriate that indigent defense screening and eligibility determination be the responsibility of the Sheriff's Department. Legally, it is very questionable whether defendants can be required to provide confidential information to employees of the Sheriff's Department. To our knowledge, no other jurisdiction places those functions in the police agency.

We believe that the placement of PTS in the Sheriff's Department explains, in part, the less-than-satisfactory performance mentioned above. The energies of the PTS staff in the Sheriff's Department are focused on other work that is important to the Sheriff, such as jail classification, among other responsibilities.

The Sheriff formally agreed with our 1998 recommendation that Pre-Trial Services should check or verify the reported income for every fifth or tenth case. However, the agency has not implemented that recommendation. Nor has it implemented a more general recommendation on verification that was made by the Pierce County task force in 1999. It is also of interest that the task force, rather than endorse a change in organizational placement, recommended that the Pre-

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<sup>1</sup> The small rise in the number of out-of-custody screenings is influenced by counting differences. When PTS screened a defendant who faced charges in Superior Court and in District Court, this was counted as two screenings in 2000 and earlier. It is now counted as one screening. Thus, the overall number of screenings has declined.

<sup>2</sup> In our experience, most other criminal justice systems of comparable size to Pierce County focus on screening out-of-custody defendants, since the rate of out-of-custody defendants found not to be indigent exceeds the rate of in-custody defendants found not to be indigent.

Trial Services Advisory Board be re-constituted to explore the role of Pre-Trial Services. The Sheriff's Department has also not implemented that recommendation.

We have two conclusions.

- ◆ For legal, fiscal, and operational reasons, the function of indigent defense screening and eligibility determination does not belong in the Sheriff's Department. Performance will not improve significantly so long as the current structure is retained.
- ◆ A transfer of responsibility to Budget and Finance, which we recommended in 1998, may not have been the best choice, since that agency is not vitally connected with the court system and has no programmatic duties in the criminal justice system.

We have three recommendations for consideration by Pierce County:

1. Transfer indigent defense screening and eligibility determination functions to the Clerk of Superior Court. That agency has a close relationship with Superior Court and plays a vital role in collection of legal financial obligations. We believe that Pre-Trial Services functions located in the Clerk's office would be better able to provide services to the court system. The "Jail Services" functions that are currently performed by Pre-Trial Services should remain in the Sheriff's Department.
2. In Juvenile Court cases, transfer responsibility for indigent defense screening and eligibility determination to Juvenile Court. (Performance audit staff suggested this recommendation in the October 2002 follow-up report, and we agree.) To screen juvenile cases and determine whether they are eligible for assigned counsel, the Pre-Trial Services staff must travel from their downtown office to Remann Hall. That arrangement, by its nature, is inefficient. Juvenile Court staff is responsible for other kinds of screening and could easily take over indigent defense screening.
3. To protect the interests of employees, legislate the transfer of positions and include a "hold harmless" clause in the ordinance. In the hold harmless clause, the ordinance would provide legal assurance that pay rates for the transferred positions will not be reduced.

Please present this supplemental information to the Performance Audit Committee and the various agencies involved in cost recovery efforts. I would be glad to provide any further information that is needed.

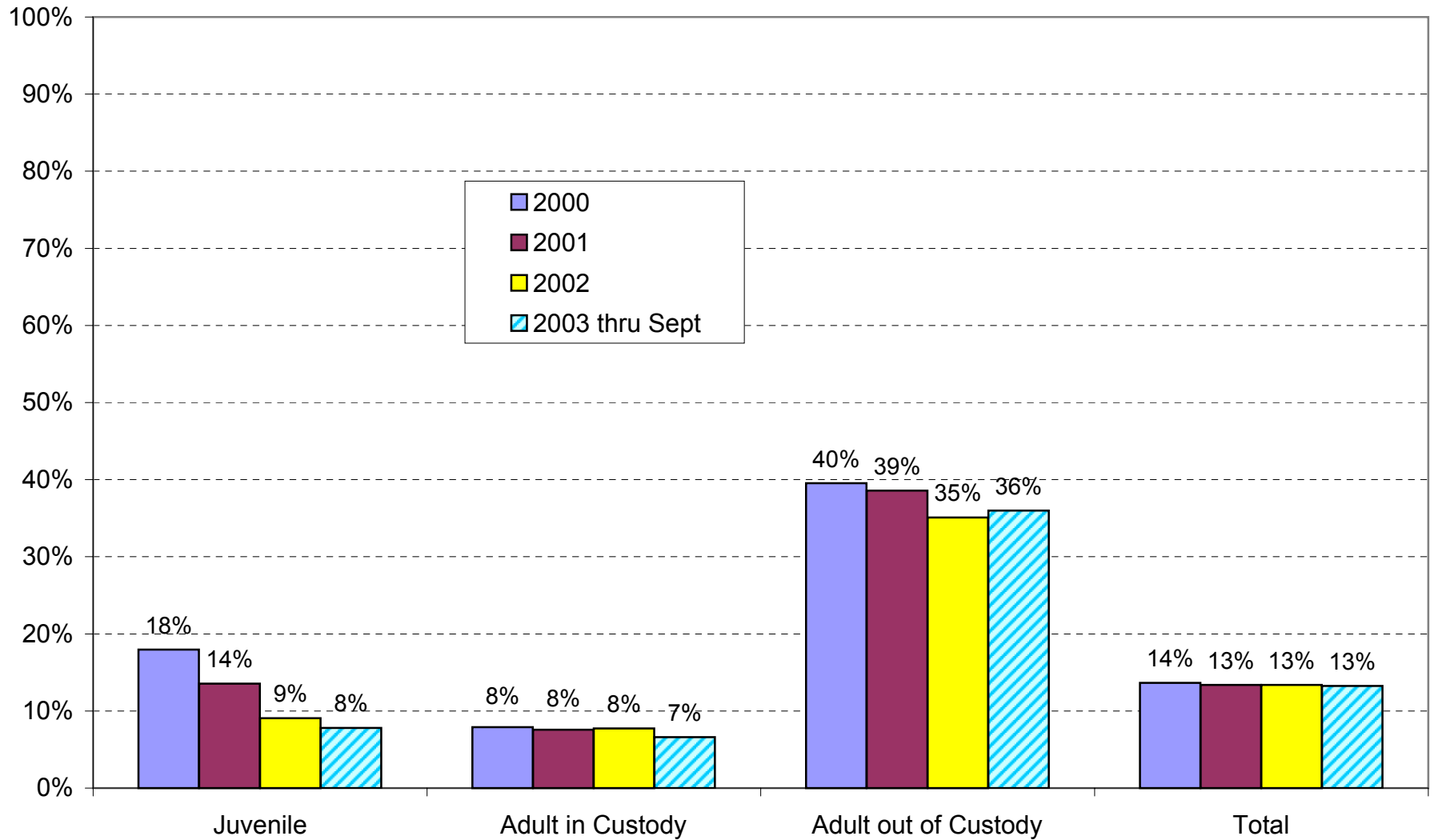
Sincerely,



Robert L. Spangenberg  
President

### Attachment 6

## Percentage of \$25 Screening Fees Collected since 2000



**Attachment 7**

**DAC Eligibility Screenings by Pre-Trial Services  
Summary across All Courts, 1998 - 2003**

NOTE: "Indigent" and "Indigent and Able to Contribute" are eligible for a court-appointed attorney.

	1998	1999	2000	2001	2002	2003 thru Sept	Six-Year Total
Indigent	16,289	13,690	15,467	13,469	12,130	9,428	80,473
Indigent and Able to Contribute	952	1,383	2,260	2,454	2,555	2,114	11,718
Not Indigent	2,696	2,126	2,052	1,914	1,899	1,395	12,082
Total	19,937	17,199	19,779	17,837	16,584	12,937	104,273
<b>Same Data as Percentages</b>							
Indigent	82%	80%	78%	76%	73%	73%	77.2%
Indigent and Able to Contribute	5%	8%	11%	14%	15%	16%	11.2%
Not Indigent	14%	12%	10%	11%	11%	11%	11.6%
Total	100%	100%	100%	100%	100%	100%	100%

Source: Calculated from PTS monthly reports.