



PERFORMANCE AUDIT OF THE
PIERCE COUNTY PROSECUTING ATTORNEY'S OFFICE

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EXECUTIVE SUMMARY

A Study of Prosecution in Pierce County The Performance of the Prosecuting Attorney's Office

This study by American Prosecutors Research Institute (APRI) of the Pierce County Prosecuting Attorney's Office (PAO) was designed to understand prosecution in the county and determine the most efficient and effective allocation and management of prosecutorial resources. The study's intent is to highlight where efficiencies might be achieved without comprising the quality of justice administration in the county by focusing on several important areas:

- PAO budget and expenditures,
- Staffing and organizational issues,
- Case processing issues,
- Criminal caseload, and
- Use of outside counsel in risk management cases.

Overall, the Pierce County PAO handles a large volume of felony, misdemeanor, and juvenile cases relative to other counties in the state and is quite efficient in its handling of these cases. APRI did not find any explicit inefficiencies or evidence of ineffectiveness in its examination of the PAO. However, APRI did identify a few areas of possible improvement for consideration by the PAO and by Pierce County.

SUMMARY OF FINDINGS

Over the past 10 years, the PAO has had substantial increases in funding, including increased grant funding, which has supported the hiring of additional staff. While the Part I crime rates have dropped in Pierce County during the 10-year period, the number of cases referred to and charged by the PAO has increased. The increased referrals and charged cases have resulted in average caseloads per attorney that, in most trial teams within the Felony Division and the Misdemeanor Division, are substantially higher than the standards cited by the American Bar Association. Thus, it is reasonable to believe that the PAO is still understaffed; however, as discussed in recommendation #3, additional study of the PAO should be conducted in order to determine the actual resource needs of the office.

Several years ago, the PAO made the decision to automate routine documents and practices. As a result, attorneys are able to do much of the work that was previously assigned to office assistants or legal assistants. The PAO then focused on hiring additional attorneys rather than support staff. This has led to an imbalance in attorneys to non-attorney staff in the trial teams, resulting in higher paid attorneys conducting the work of non-attorney staff. Therefore, APRI recommends that the trial team composition be brought into line with national averages by adjusting staffing priorities to focus on the hiring of additional non-attorney personnel (recommendation #1 below).

The Pierce County PAO has a high homicide rate compared to other counties in Washington. It is typical practice to assign senior deputy prosecuting attorneys to handle homicide cases, and often two attorneys per case. The PAO has a separate homicide trial team with two full-time attorneys. In addition to their caseload, both attorneys have management responsibilities; one oversees the day-to-day operation of the felony division and supervises the trial team leaders in the division, and the other oversees the three criminal divisions. With the volume of homicide cases handled by the PAO, it is clear that two attorneys alone cannot prosecute all the cases; thus, the leaders of the other trial teams in the Criminal Division also handle homicide cases in addition to their own trial team caseload. Given the amount of time typically required to bring a homicide case to disposition, APRI is concerned that the PAO does not have sufficient full-time resources allocated to handle homicides. In addition, it is unclear what impact the assignment of a homicide case to a trial team leader has on his/her own caseload. Therefore, as discussed in recommendation #2 below, APRI believes that the County should consider a more comprehensive study of the PAO homicide workload.

During the on-site interviews, questions were raised about the handling of out-of-custody cases and a backlog of cases in the PAO. While the interviewees noted that the backlog had decreased substantially, the volume of cases handled by the PAO continues to increase. Therefore, if sufficient resources are not available to process the caseload, it could result in a new backlog of cases. APRI recommends that a comprehensive workload assessment be conducted to establish average case processing times, workload measures, and formula for projecting resource needs (recommendation #3).

As indicated in the request for proposals, the County has an interest in developing a greater understanding of the use of outside counsel in risk management cases. In order to document the use of outside counsel, APRI reviewed the docket with the Risk Management Section of the PAO to determine the reasons for use of outside counsel. Also, data were obtained from the Risk Management Department in the County on the costs associated with the use of outside counsel. APRI found no significant issues with regard to risk management cases and the use of outside counsel; however, if the County wishes to track outside counsel usage, APRI recommends the development of a centralized database (recommendation #4).

RECOMMENDATIONS

Listed below are APRI's recommendations to the PAO and to Pierce County, based on the study.

1. **Trial Team Composition:** Balance the composition of the trial teams to include additional investigators, victim/witness assistance specialists, paralegals, and legal assistants. Within each trial team, the ratio of attorneys to other staff should generally approach the following:
 - 3.6 attorneys: 1 investigator;
 - 5.9 attorneys: 1 victim/witness assistance specialist; and
 - 1 attorney: 1 paralegal/legal assistant.

2. Conduct an Assessment of Homicide Workload: The County should consider conducting a study of the time and activity associated with murder, aggravated murder, and capital murder cases. The assessment should examine how time is distributed between an attorney's murder cases and other cases. Such an assessment would allow the PAO to determine if sufficient staff are assigned to handle murder cases, the impact of handling murder cases on attorneys' other caseload, and whether or not additional staff are needed.
3. Conduct a Workload Assessment: To better understand the time associated with case processing and the average length of time required to bring cases to disposition, Pierce County should conduct a comprehensive workload assessment that will produce case weights (average case processing times), workload measures (number of cases that can be handled by an attorney), and a formula for projecting resource needs.
4. Risk Management Case Management Information System. Details about risk management cases, reasons for assigning to outside counsel, and the costs associated with outside counsel are available but from different sources. Cost information is managed by the Pierce County Risk Management Office, while case details are maintained by the Civil Division of the PAO. If the County is interested in an on-going assessment of the use of outside counsel, it should consider the development of a shared information system that allows for the generation of combined expenditure reports and reasons for assigning cases to outside counsel. As currently maintained, specific information is generated by each entity and then must be matched manually.

CHAPTER 1

INTRODUCTION

In early 2002, the Pierce County Performance Audit Committee contracted with The Spangenberg Group to conduct a performance audit of the Pierce County Prosecuting Attorney's Office (PAO) and the Department of Assigned Counsel (DAC). The Spangenberg Group conducted the audit of the Department of Assigned Counsel, the results of which are reported in a separate report. Under a subcontract to The Spangenberg Group, the American Prosecutors Research Institute (APRI) conducted the Prosecuting Attorney's Office audit, which is the focus of this report.

The goal of the performance audit is to determine the most efficient and effective allocation and management of prosecutorial and defense resources. Like most counties across the country, the fiscal outlook in Pierce County is not good. With this in mind, the performance audit is intended to highlight where efficiencies can be achieved without comprising the quality of justice administration in the county. Rather than providing a general overview of the office's operations, the performance audit of the PAO focuses on several important areas:

- Staffing and organizational issues focusing on roles and responsibilities, duplication of effort, and distribution of labor;
- Case processing issues, which include case flow, screening procedures, decision-making regarding case handling, case management, and caseload;
- Technological issues that facilitate or hinder the level of effort associated with case processing and management; and
- Civil matters involving the use of outside counsel and the costs associated with this in risk management cases.

In addition, the performance audit conducted by APRI focuses on the Criminal Division and the Risk Management Section of the Civil Division only. The report does not discuss the performance other units in the Civil Division or the Family Support Division.

METHODOLOGY

APRI's audit of the PAO consisted of both qualitative and quantitative information gathering. During two site visits, APRI staff conducted in-depth interviews with the Prosecuting Attorney; Chief Criminal Deputies; Chief Administrative Deputy; Administrative Manager; Chief of the Civil Division; supervisors of each unit in the Criminal Division and the Risk Management Section of the Civil Division; and line attorneys, investigators, victim advocates, and other office assistants. The focus of these interviews was to understand how the office is organized and operates with regard to case processing.

The interviews also focused on the day-to-day activities of various staff members and perspectives on the office's efficiency.

APRI staff also conducted interviews with representatives of the Pierce County Sheriff's Department, the Tacoma Police Department, Superior Court Judges, and District Court Judges as well as the head of the Risk Management Office. The interviews with the criminal justice personnel focused on how these agencies viewed the PAO and, in particular, the strengths and weaknesses of the office in terms of its efficiency and effectiveness. The interview with the Risk Management Office focused exclusively on the use of outside counsel in risk management cases and the decision-making process for contracting with outside counsel for these cases.

While on-site in Pierce County, APRI staff also spent a number of hours working with the PAO to understand the LINX system and how it is used by the prosecutor's office for case management, tracking, and reporting. Staff also observed proceedings in the Superior and District Courts.

In addition to the on-site work, APRI administered a survey to supervisors and line attorneys in the PAO that focused on how staff spend their time, their roles and responsibilities (both perceived and actual), level of autonomy, decision-making process, handling of in-custody versus out-of-custody cases, handling of "backlogged" cases, training, and supervision. One hundred percent of PAO supervisors and 72 percent of the deputy prosecuting attorneys completed the survey.¹ APRI also conducted a survey of five comparison counties in the state. The comparison county survey focused on case definition; number of referrals, filings, and dispositions; staffing; and annual budget information.

A substantial amount of quantitative data was collected to document the number of cases that are handled by the Pierce County PAO. APRI obtained aggregate case data from 2001, 2000, and 1999 that was broken down by trial unit and disposition. Case data of all cases disposed in 2001 were also drawn from LINX. APRI also worked with The Spangenberg Group to obtain data on jail population and a one-month snapshot of criminal cases open in January 2002. Finally, the Pierce County Sheriff's Department, the Tacoma Police Department, and several municipal police departments provided data to APRI on the number of reported offenses and offenses cleared by arrest.

Information collected on the use of outside counsel for risk management cases included detailed dockets from the Pierce County PAO and detailed risk management expenditures for a sample of cases that had been contracted to outside counsel. APRI also

¹ The following table shows the number of questionnaires that were distributed and returned.

Staff Type	Number Distributed	Number Completed	Response Rate
Supervisory Attorneys	18	18	100%
Support Staff Supervisors	3	3	
Deputy Prosecuting Attorneys (Criminal Division)	68	49	72%

obtained summary information from the comparison counties about their use of outside counsel in risk management cases.

REPORT FORMAT

APRI's performance audit of the PAO focuses on the Criminal Division and the Risk Management Section of the Civil Division only. The report (with the exception of Chapter 2) and our findings deal exclusively with these two entities. Each chapter in the report highlights Pierce County PAO strengths and weaknesses and offers specific recommendations for consideration. The content of the report is as follows:

- Chapter 2 contains an overview of the entire Pierce County Prosecuting Attorney's Office including funding and staffing details and trends, office organization, and division/unit descriptions;
- Chapter 3 examines the PAO staffing including roles and responsibilities;
- Chapter 4 describes the PAO criminal caseload, including a comparison of the Pierce County PAO's workload to other counties in Washington;
- Chapter 5 describes case processing and case dispositions; and
- Chapter 6 focuses on issues related to the use of outside counsel in risk management cases.

CHAPTER 2

OVERVIEW OF THE PIERCE COUNTY PROSECUTING ATTORNEY'S OFFICE

The Pierce County Prosecuting Attorney's Office (PAO) is responsible for handling criminal matters in the county and also serves as legal counsel for Pierce County elected officials, department heads, and various county agencies. With regard to criminal matters, the PAO screens and prosecutes all felonies and juvenile cases in Pierce County and misdemeanors that occur in unincorporated areas of Pierce County.² In addition, the PAO handles certain civil cases such as non-support cases and lawsuits filed against the county. The PAO staff also handles appeals of criminal cases and those civil cases over which they have jurisdiction.

PAO BUDGET AND EXPENDITURES

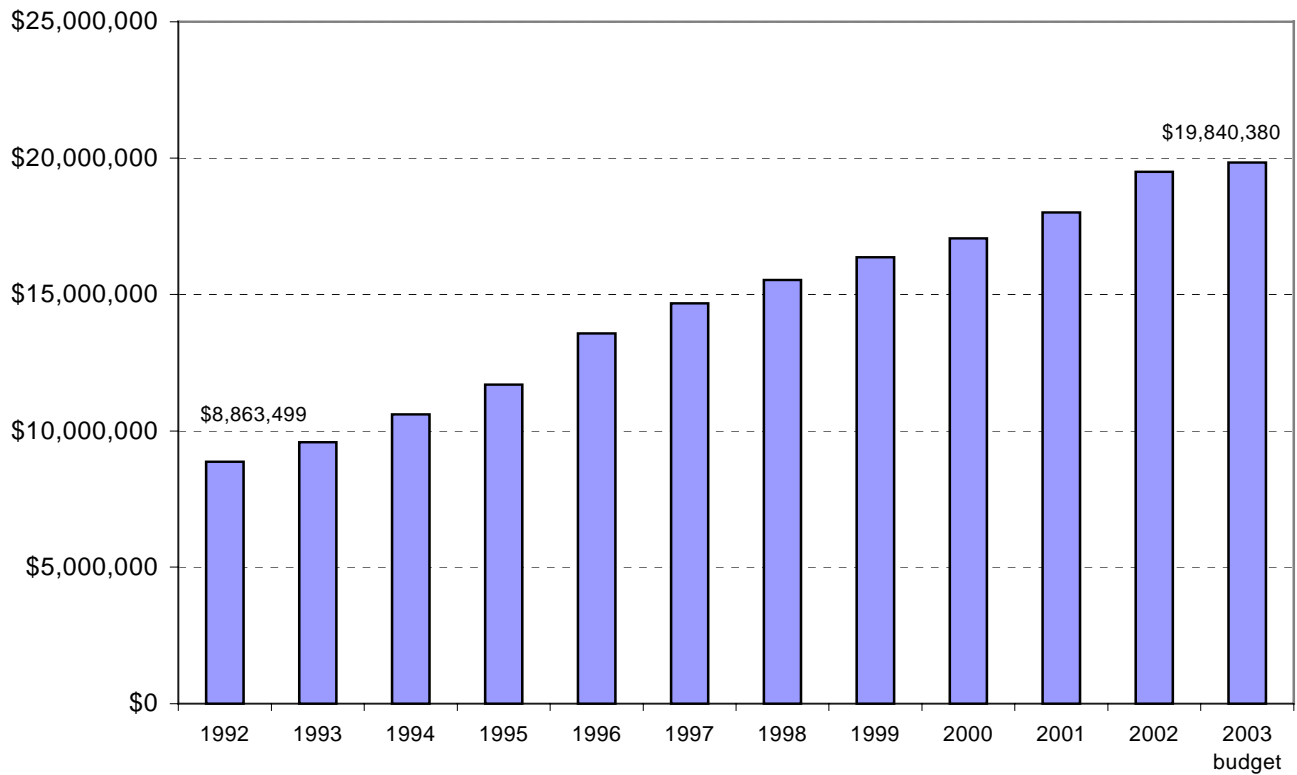
In 2002, the Pierce County PAO had a total operating budget of \$19.5 million. Approximately, 77 percent of their budget is provided through the general fund of the county. Nearly \$4 million (20%) of the PAO budget comes from federal, state, and local grants. These grants provide funding to staff specific types of prosecution efforts such as gun violence and community prosecution. In total, the grant funding to the Prosecutor's office is approximately triple the grants received by the Department of Assigned Counsel. The allocation of total funding for various prosecutorial functions was as follows in 2002:

- 48 percent was for the Felony Division;
- 15 percent was allocated for the Family Support Division;
- 14 percent was allocated to the Civil Division;
- 11 percent was allocated to the Misdemeanor Division;
- 8 percent was allocated to the Juvenile Division;
- The remaining 4 percent was distributed among the Administration Division, Civil Commitment, and EL CID.

Exhibit 2-1 shows the PAO funding levels between 1992 and 2003.

² In Washington, misdemeanors that occur within municipalities are generally handled by a city attorney as is the case in Pierce County. However, the Pierce County PAO contracts with a few municipalities in Pierce County (such as Edgewood and University Place) to handle misdemeanor offenses.

Exhibit 2-1
PAO Funding, 1992-2003

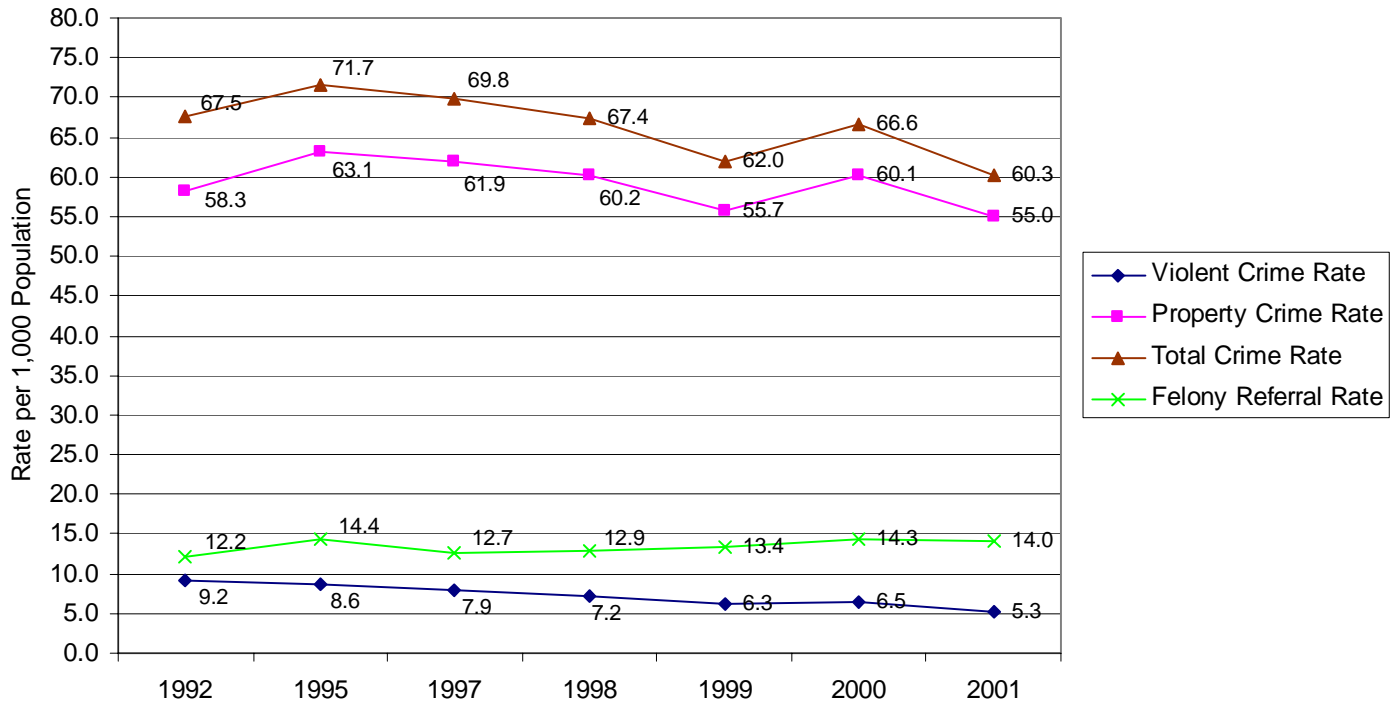


Data Source: Pierce County Budget Books

Between 1992 and 2002, the Pierce County PAO budget increased 120 percent. The budget for 2003 is \$19.8 million—a 124 percent increase since 1992. It would appear that some of the increase is attributable to an increase in grant awards to the Prosecutor’s Office. In the past three years alone (since 1999), grant funding for the PAO has increased by almost 25 percent. It is important to note that the \$4 million in grant funding is generally time-limited (i.e., provides funding for a specific time period such as one year) and for very specific functions. As discussed in the next section and in Chapter 3, the increased funding largely supports staffing costs. Between 1992 and 2002, staffing has increased substantially. In addition, unlike many prosecutors’ offices across the country, the Pierce County PAO has a solid retention history for attorneys, resulting in more attorneys at the County Attorney III and IV level, and thus higher average salaries.

The substantial increase in funding over the 11-year period is not matched with comparable changes in crime rates, as shown in Exhibit 2-2 below.

Exhibit 2-2
PAO Part I Crime Rate and Felony Referral Rate (1997-2000)³



Sources: Uniform Crime Report (UCR) and population data were taken from the Washington Association of Sheriffs and Police Chiefs. The number of felony referrals was taken from PAO annual reports and a message from the Chief Administrative Deputy, and the felony referral rates were calculated based on state population estimates as of June 2002.

Between 1992 and 2001, Pierce County experienced a 10.7 percent decrease in the total Part I crime rate. The violent crime rate fell by 42 percent, and the property crime rate fell by 6 percent. However, the felony referral rate increased by 15 percent between 1992 and 2001, and the number of felony referrals increased by 33 percent. Funding for the PAO during the same period (1992-2001) increased by 103 percent.

PAO STAFFING

Like the funding levels, the staffing levels of the PAO have increased substantially over time. In 2002, the PAO employed 231.72 full-time equivalent (FTE) employees, of which approximately half were attorneys (52%). The remaining 48 percent of staff is

³ Part I crimes are index crimes defined by the Federal Bureau of Investigation. Part I crimes include murder, forcible rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson. Part I crimes do *not* include drug offenses, which account for a large proportion of Pierce County referrals in recent years.

comprised of non-attorney staff (i.e., legal assistants/paralegals/office assistants; legal interviewers; child interviewers/investigators; and victim/witness advocates).

During the past 11 years (1992-2002), the number of staff overall increased by 43 percent. The most significant staffing change between 1992 and 2002 was the increase in county attorney positions from 74 to 118 positions (a 59% increase). Non-attorney positions increased from 84.6 to 110.72 (31%) during the same period.

During this time period, the PAO opted to automate a significant portion of its office operations and to require attorneys to prepare their own pleadings, briefs, and other routine case materials that otherwise might have been given to support staff to prepare. As a result, the PAO requested fewer non-attorney positions in its budget. It has been APRI's experience that increases in attorney positions that are not matched with comparable increases in non-attorney staff positions can have implications for office efficiency. Imbalances in the ratio of attorney to non-attorney staff can result in higher paid staff (namely attorneys) conducting less substantive tasks such as clerical work, particularly when the number of attorneys in an office exceeds the number of non-attorney staff. This is not to suggest that the PAO needs fewer attorneys or that the attorneys are not operating as efficiently as possible—such a determination is outside the scope of the current study—but rather that the caseload burden of attorneys could be lessened by the addition of non-attorney staff.

In the past 11 years, the ratio of attorneys to non-attorney staff has increased by 20 percent. The ratio in 1992 was 0.91 full-time equivalent attorneys to every 1 non-attorney position. In 2002, the ratio was 1.09 attorneys to every non-attorney position. Within the Criminal Division, the ratio of attorneys to non-attorneys is even greater, as discussed later in this chapter. The implications of such a staffing pattern are discussed in Chapter 3 of this report.

The staff in the PAO is organized into three divisions: Administration, Criminal, and Civil. The PAO also has a Family Support Division whose chief deputy reports directly to the elected Prosecuting Attorney. Each division has several different units organized by type of crime, offense, and area of specialization, as well as functional units based on the specific role of the staff in the unit. Each division and the units therein are discussed briefly below.

ADMINISTRATION

The Pierce County's Administration Division has six full-time staff: four administrative personnel and two attorneys including the elected Prosecuting Attorney. The Administration Division is responsible for the management of the PAO including handling financial matters, human resources, and office resources such as computers.

CRIMINAL DIVISION

As the largest component of the PAO, the Criminal Division accounts for 68 percent of the total staff in the PAO. Five divisions and units comprise the Criminal Division:

- ❑ Felony Division;
- ❑ Misdemeanor Division;
- ❑ Juvenile Division;
- ❑ Investigative Services Unit;
- ❑ Justice Services Program, which includes El CID (diversion program for first time offenders) and the Victim/Witness Assistance Services Unit.

Exhibit 2-3 shows staffing of the divisions as well as the trial units in the felony division as of December 2002.

**Exhibit 2-3
Number of Staff Office-Wide by Trial Team/Division**

Trial Team/Division	Attorneys	Investigators/ Child Interviewers	Victim/Witness Specialists	Legal Assistants, Office Assistants, & Other Staff
Team 1: Robbery Assault	10	0	1	2
Team 2: Arson/Fraud	6	0	1	2
Team 3: Burglary/Theft	5	0	1	2
Team 4: Special Assault	11	2	3.5	3
Team 5: Drugs/Vice	11	0	0.5	4
Team 6: Homicide*	2*	0	1	2
Team 7: Appeals	4	0	0	5
Criminal Court Unit**	3	0	0	0
Misdemeanor Division	15	0	0	8
Domestic Violence (Misd. Div.)	4	0	4	1
Juvenile	10	1	4	5
Investigative Services Unit	0	3	0	6
Justice Services***	0	0	**	4
TOTAL	81	6	16	44
RATIO OF ATTORNEYS TO OTHER STAFF	N/A	13.5:1	5.1:1	1.8:1
NATIONAL RATIO OF ATTORNEYS TO OTHER STAFF	N/A	3.6:1	5.9:1	1.0:1

Source: Staffing data were provided to APRI by the PAO in their response to the first report draft. It should be noted that one of the attorney positions in the special assault unit and in the drugs/vice unit is grant-funded and will end in 2 years. Two attorney positions in the robbery/assault unit are grant-funded and will end in 2 years.

* The homicide team is comprised of the chief criminal deputy and the assistant chief criminal deputy along with the heads of the trial teams and senior attorneys. The numbers reflect only those designated on the PAO organizational chart as being assigned to this trial team.

** There are 3 deputy prosecuting attorneys assigned to the "barrel" in criminal divisions one and two and in criminal division presiding judge. These attorneys are responsible for handling arraignments, guilty pleas, sentencing hearings, and probation violation hearings for various felony cases.

*** Justice Services includes the victim/witness assistance services unit. V/W specialists are assigned to specific trial teams and have been accounted for in their appropriate trial teams. For the sake of brevity, the Justice Services Division Chief and the 2 EL CID diversion staff are included in the column for Legal Assistants, Paralegals, and Office Assistants.

The Pierce County data can be viewed in comparison with 2001 national survey data collected by the U.S. Department of Justice's Bureau of Justice Statistics from state and local prosecutors.⁴ Nationally, the ratios of attorney to non-attorney staff are as follows:

- 3.6 attorneys to every 1 investigator;
- 5.9 attorneys to every 1 victim/witness specialist; and
- 1 attorney to every 1 support staff position.

As shown in Exhibit 2-3, the Pierce County PAO exceeds the national average ratio of attorneys to investigators and the national average ratio of attorneys to legal assistants, paralegals, and office assistants. This staffing pattern has implications for office efficiency and is discussed in detail in Chapter 3.

Felony Division. The Felony Division has seven trial units organized by offense type: 1) robbery/assault; 2) arson/fraud; 3) burglary/theft; 4) special assault; 5) drugs/vice; 6) homicide, and 7) appeals. The staff members in each of the trial units are responsible for screening, charging, and prosecuting cases. Each trial unit is led by an experienced senior attorney at the County Attorney III or IV level. Attorneys, legal assistants, victim/witness assistance specialists, and office assistants are also assigned to most of the trial teams. In addition, 3 attorneys are assigned to a criminal court unit. These attorneys, known as the "barrel deputies" handle proceedings in three criminal court divisions for various felony cases. Specifically, the barrel deputies handle arraignments, guilty pleas, sentencing hearings, and probation violation hearings.

Misdemeanor Division. The Misdemeanor Division has two trial units: 1) misdemeanor and 2) domestic violence. Staff in the Misdemeanor Division prosecutes all gross misdemeanors and misdemeanors in unincorporated Pierce County and in the incorporated cities of Edgewood and University Place. Domestic violence staff handles misdemeanor domestic violence cases in the domestic violence court. Like the felony trial units, misdemeanor trial units are responsible for screening, charging, and prosecuting cases referred to their units.

Juvenile Division. The Juvenile Division, located at Remann Hall in Tacoma, is responsible for screening, charging, and prosecuting all juvenile felonies and misdemeanors. In addition, deputy prosecutors in the Juvenile Division handle truancy cases and monetary recoupment cases, which are civil proceedings.

Investigative Services Unit. The Investigative Services Unit (ISU) provides support for the felony trial units by locating witnesses, serving subpoenas and court orders, and performing various other support functions for trial preparation. In addition, the ISU staff conducts independent investigations of alleged official misconduct, police-related

⁴ Bureau of Justice Statistics, U.S. Department of Justice (May 2002). *Prosecutors in State Courts, 2001.*

shootings, computer crimes, and complex fraud cases. Investigators also conduct pre-employment criminal background checks on all prospective PAO employees, including custodial staff who work in the PAO offices. The investigators in the ISU are former law enforcement officers. The ISU also includes a criminal history team staffed with legal assistants.

EL CID. EL CID is a diversion program for adult offenders who have committed their first felony or misdemeanor offense. The EL CID charging alternative is generally offered to offenders who have committed a non-violent offense that has had a nominal impact on the victim. The types of offenses most frequently diverted to EL CID are welfare fraud, forgery, employment security fraud, malicious mischief, possession of stolen property, theft 1 and 2, burglary of a business, taking a motor vehicle without permission, and defrauding a public utility.

Victim/Witness Assistance Services. The Victim/Witness Assistance Services Unit provides support for the felony, misdemeanor, and juvenile divisions. The victim/witness assistance specialists handle victim notification, scheduling and notification of victim/witness testimony for trial, crisis intervention, and courtroom advocacy for felony, misdemeanor, and juvenile cases. In the felony division, the victim/witness specialists also prepare and present to the court financial requests for reimbursement for medical bills and loss of property on the victims' behalf. Other activities of the victim/witness assistance specialists in the PAO include conducting outreach and educational activities for crime victims' groups, schools, and community groups in order to help the general public understand the role of the PAO and the victim/witness assistance specialists.

CIVIL DIVISION

The Civil Division, composed of a total of 26 staff (19 attorneys, including the Chief Civil Deputy, and 7 non-attorneys), provides legal services for county agencies. Attorneys in the Civil Division are assigned to specific county agencies. Four attorneys are assigned to a risk management unit and are responsible for handling claims damages and lawsuits filed against the county.

The risk management unit also files lawsuits against other parties on behalf of Pierce County. For tort cases, risk management attorneys handle all aspects of the lawsuit: case preparation, in-court proceedings, and appellate work. Two attorneys in the Civil Division handle public disclosure requests in addition to their litigation responsibilities.

A second civil function, child support enforcement, is handled by the Family Support Division. Currently, this division has 37.5 full-time equivalent employees (13 attorneys; 2 child interviewers/investigators; and 22 other non-attorney staff). The Family Support Division is funded by an ongoing grant from the state.

Another civil function handled by the Civil Division is civil commitments. One attorney and one support staff person handle civil commitments for the Pierce County PAO.

CHAPTER 3

PAO STAFFING

As noted earlier, the PAO employs more than 230 FTE staff. More than half of the staff is assigned to the Criminal Division, which is the focus of this chapter. Within this chapter, issues related to different types of staff (i.e., attorneys, investigators, victim/witness specialists, legal assistants, etc.) are discussed, as well as issues related to the functioning of staff in the different Criminal Division units (i.e., felony, misdemeanor, juvenile, investigative services, and justice services).

JOB CLASSIFICATION AND FUNCTIONS

Attorneys. The county delineates four classifications of deputy prosecuting attorneys, County Attorney I through IV. The requirements for each classification are as follows:

- County Attorney I: Entry-level positions requiring knowledge in criminal law, criminal procedure, civil procedure, legal writing, and trial preparation, responsible for prosecuting misdemeanor and gross misdemeanor offenses in District Court.
- County Attorney II: Same requirements as County Attorney I positions as well as experience and ability to settle cases through negotiation with opposing counsel, to include crimes involving serious impact to the community; responsible for prosecuting offenses in Superior Court, Juvenile Court, or the Court of Appeals.
- County Attorney III: Same requirements and responsibilities as County Attorney II positions but may also take on the added responsibility of serving as the lead attorney on more complex criminal cases involving multiple defendants, cases prosecuted under the homicide statute, and death penalty cases; may also supervise County Attorneys I and II as well as support staff.
- County Attorney IV: Responsible for handling the prosecution of the most serious offenses; supervising trial units or divisions; and working with the elected Prosecuting Attorney to formulate office policy and establish office goals.

At the time of the study, the largest percentage of attorneys (33%) in the PAO was classified as County Attorneys III, as shown in Exhibit 3-1 below.

**Exhibit 3-1
Number of FTE County I-IV Attorney Positions***

Classification	Number of FTE Positions	Percent of Total
County Attorney I	18	16%
County Attorney II	31.5	27%
County Attorney III	37.5	33%
County Attorney IV	28	24%
TOTAL	115	100%

* The figures in the table include the 33 attorneys in the Civil and Family Support Divisions, but not the elected Prosecuting Attorney, Chief Criminal Deputy, or Chief Civil Deputy.

Overall, more than half of the PAO attorney positions are upper level positions, indicating a fairly good retention of attorneys in the Prosecutor’s Office. Seven attorneys (two in the Felony Division, one in Family Support, and four in the Civil Division) have longevity benefits for 19 years or more of service in the PAO.

In addition to normal case processing activities (e.g., screening, plea negotiations, trial preparation, etc.), the deputy prosecuting attorneys report spending substantial time on four types of activities that they believe fall outside the scope of their responsibilities:

1. Research;
2. Victim/witness activities;
3. Training/educational activities; and
4. Clerical activities

Legal research is traditionally a normal part of prosecution, and while many offices have paralegals or legal assistants available to assist with research, it is common for attorneys to conduct their own research. Attorneys are also likely to be involved in some form of training or educational activity (i.e., training other prosecutorial staff or law enforcement officers). There are offices of comparable size to the Pierce County PAO that have separate training units, whose sole function is to train new employees and develop training programs, and still other offices rely on the more experienced attorneys in the office to perform this function.

While attorneys necessarily have substantial contact with victims and witness during the adjudication process and perform various clerical duties in support of case processing, many of the activities that the attorneys cited are often handled by victim/witness advocates or support staff, such as:

- Following up with victims and witnesses on case outcomes;
- Managing victims and witnesses (e.g., for court appearances);
- Explaining the legal process to victims and witnesses;
- Photocopying jury questionnaires and instructions;
- Handling discovery; and
- Preparing/copying court documents.

It should be noted that although attorneys indicated they were performing a number of clerical activities they believe fall outside the scope of their role, the PAO does designate a support person in each trial unit to act as the “trial assistant.” The trial assistant helps attorneys who are in trial by photocopying jury questionnaires and instructions, handling discovery, and preparing/copying court documents.

As previously noted, the ratio of attorneys to other staff throughout the office and within the trial teams specifically is higher than the national average. This imbalance may explain why attorneys spend time conducting investigative, witness management, and clerical activities. Given that the largest percentage of attorneys in the PAO are upper level positions, the use of their time (and the expenditure of their salaries) on such tasks is not appropriate. These tasks are better performed by investigators, victim/witness specialists, and office assistants.

Investigators. The Pierce County PAO is the only office in Washington to have a special investigative unit. The Investigative Services Unit (ISU) was formed in 1988 to function as a liaison with law enforcement. Primarily, investigators in the ISU are responsible for supporting felony investigations such as official misconduct and police-involved shootings as well as assisting with trial preparation. In addition to the three investigators, the ISU includes a criminal history team (3 legal assistants) who conduct criminal history background checks on defendants and prospective employees of the PAO. The ISU also has a subpoena team, which includes two process servers.

According to staff inside and outside the Prosecutor’s Office, the investigators’ investigative skills are not being fully utilized because the investigators spend a disproportionate amount of time conducting background checks for all potential staff in the PAO, including custodial staff. Certainly background checks on employment candidates is an important function; however, information from interviews indicates that approximately 20 percent of investigators’ time revolves around pre-employment checks, although the PAO management maintains the actual percentage of time is closer to 5 percent. Generally, investigators support case preparation by conducting follow-up investigations, locating and interviewing witnesses, serving as a liaison with State crime labs, and assisting with case preparation.

The PAO reports that the bulk of the background checks (including criminal history checks, telephone interviews of references, and credit checks) are performed by legal assistants assigned to the unit. The investigators’ time is spent checking the result of the legal assistants’ work and conducting an integrity interview with the employment candidate. Specific data detailing the types of activities the investigators conduct and the time spent conducting these activities would allow for an objective assessment of the PAO’s use of investigators.

On a related note, it is possible that investigators are not fully utilized because there simply are not enough investigators to provide support to all the trial teams. At the time of this study, the ratio of attorneys to investigators office-wide was 13.5 to 1, which means that one investigator potentially provides support to approximately 14 FTE attorneys. The national average is 3.6 attorneys to every one investigator. The Special Assault Unit has two

child interviewers who perform a specific investigative function (i.e., forensic interviews of child sexual abuse victims), and there is one investigator assigned to the Juvenile Division. The remaining units and divisions in the PAO do not have specific investigators assigned to them. As a result, it is not possible to calculate exact ratios within the trial teams.

It should be noted that the Pierce County PAO is unique in Washington by having an investigative services unit. Even with the unit, the PAO continues to work closely with detectives in the local law enforcement agencies on case development and preparation, and has strong relationships with the agencies.

Victim/Witness Specialists. The victim/witness specialists are responsible for notifying victims of court schedules and their rights under the Washington State Crime Victims bill, scheduling and notifying victims' and witnesses' testimony for trials, educating victims about the criminal justice process, providing crisis intervention services, and making referrals to community-based service providers. These services are provided in felony cases, misdemeanor, and juvenile cases. As noted previously, specialists in the felony division have the added responsibilities of preparing financial requests on behalf of the victims for reimbursement of medical bills and loss of property and presenting these requests to the court.

The majority of specialists are assigned to work on specific types of cases (by trial team). In the misdemeanor division, four specialists are assigned to work specifically with victims of domestic violence. The juvenile division has four victim/witness specialists. Exhibit 3-2 shows the victim/witness specialists team assignments and ratios of attorneys to specialists in each team.

**Exhibit 3-2
Victim/Witness Assistance Specialists Assignments and Ratios by Trial Team**

Trial Team	Attorneys	V/W Specialists	Ratio
Team 1: Robbery/Assault	10	1	10:1
Team 2: Arson/Fraud	6	1	6:1
Team 3: Burglary/Theft	5	1	5:1
Team 4: Special Assault	11	3.5	3.1:1
Team 5: Drugs/Vice	11	0.5	22:1*
Team 6: Homicide	2	1	2:1**
Misdemeanor	15	0	n/a
Domestic Violence (Misdemeanor Division)	4	4	1:1
Juvenile	10	4	2.5:1
TOTAL	74***	16	4.6:1

* Because the victim/witness specialist's time is a half-time position, the ratio estimates that she handles the work for twice as many attorneys as there are actually assigned in each unit. The actual ratio is 11 attorneys to a 0.5 (half-time) victim/witness specialist.

** As noted previously, the homicide unit consists of the chief criminal deputy, assistant chief criminal deputy, and the heads of the trial teams. For the purposes of calculating the ratio, APRI only included the Chief and Assistant Chief Criminal Deputies. The victim/witness specialist could serve up to seven attorneys at any one time, if the heads of the trial units are working on homicide cases.

*** The total number of attorneys does not include attorneys in the Appeals Unit or the Criminal Court Unit.

Overall, the ratio of specialists to attorneys is about 22 percent lower than the national average of 5.9:1. However, in many of the trial teams, the ratio is significantly out of balance, which would support reports from attorneys that a substantial amount of time is spent working with victims and managing witnesses. Of particular concern are ratios in the trial teams that handle the most “victim intensive” cases involving crimes against persons such as robbery/assault and homicide.

Legal Assistants, Office Assistants, and Other Support Staff. The legal assistants and office assistants are responsible for performing legal support work, much of which is clerical in nature. Legal Assistant I and II activities include assisting with document preparation, entering case data, maintaining case files and schedules, and answering phones. At the Legal Assistant III level, the staff member assists in collecting records, data, and other materials from government sources, including criminal history records; preparing cases; and setting up courtroom equipment.

As noted earlier, the county attorneys report that a portion of their time is spent carrying out the tasks typically assigned to legal assistants and paralegals. The PAO made a conscious decision several years ago to make use of available technology and automate many of the routine tasks traditionally performed by support staff that with the advent of technology could be performed by attorneys. In doing so, the emphasis for staffing was on attorney positions rather than support staff positions. As a result, the staffing ratios within the trial teams became unbalanced, which is not necessarily in and of itself problematic, but suggests a need to add more support staff to the PAO. Exhibit 3-3 shows the ratios by trial team.

Exhibit 3-3
Ratio of Attorneys to Legal Assistants and Office Assistants by Trial Team

Trial Team	Attorneys	Legal Assistants & Office Assistants	Ratio
Team 1: Robbery/Assault	10	2	5:1
Team 2: Arson/Fraud	6	2	3:1
Team 3: Burglary/Theft	5	2	2.5:1
Team 4: Special Assault	11	3	3.7:1
Team 5: Drugs/Vice	11	4	2:8:1
Team 6: Homicide	2	2	1:1*
Misdemeanor	15	8	1.9:1
Domestic Violence (Misdemeanor Division)	4	1	4:1
Juvenile	10	5	1.1:1
TOTAL	74	29**	2.6:1

* As noted previously, APRI only included the Chief and Assistant Chief Criminal Deputies; the support people might serve up to 3.5 attorneys at any one time, if the heads of the trial units are working on homicide cases.

** The total does not include support staff assigned to appeals, investigative services, or justice services.

Within the Criminal Division, the ratio of attorneys to support staff is more than double the national ratio of 1 to 1. As with victim/witness specialists, the trial teams handling crimes against persons have the highest staffing ratios, particularly if as many as seven attorneys are handling homicide cases at one time.

SUPERVISION, LINES OF AUTHORITY, AND DECISION-MAKING

In general, the Pierce County Prosecuting Attorney's Office has clear lines of authority with appropriate supervision. The structure of the office, lines of authority, and use of division chiefs and supervisory attorneys to oversee deputy prosecuting attorneys and support services supervisors to oversee non-attorney staff are consistent with other offices of similar size to the Pierce County PAO. Each trial team and division is managed by a senior attorney at the County III or IV level. The lead deputy prosecuting attorney in each trial team oversees the workload and performance of the staff assigned to the team and generally makes case assignments.

In each trial team, the head of the team receives and reviews case referrals. In some of the trial teams such as robbery/assault, the trial team supervisor makes the charging decisions for cases and then turns the cases over to trial team members for processing. In other trial teams (e.g., drugs/vice), the trial team supervisor assigns cases to the trial team based on the number of cases the person is handling, experience level of the attorney, and/or expertise of the attorney. In this situation, the deputy prosecuting attorneys are responsible for making the charging decisions.

Guidance for charging decisions is provided to all PAO attorneys as part of their policies and procedures manual, which follows the Washington legislature's charging guidelines (RCW 9.94A.411 and .450). Specifically, the PAO's charging standard (consistent with the Washington Association of Prosecuting Attorneys' *Recommended Prosecuting Standards for Charging and Plea Dispositions*) is based on the existence of sufficient admissible evidence, which "when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder."⁵ In addition to providing charging guidance, the PAO policy and procedures manual for the Criminal Division outlines all of the office's policies and procedures related to the handling of criminal cases, such as discovery policies, guidelines on the handling of evidence, procedures for specific aspects of case processing, case definition, case tracking, and case management.

CONCLUSIONS

The Pierce County PAO is a highly structured office, organized generally by offense type. This organizational structure is very common in prosecutors' offices, as it allows attorneys to "specialize" in the nuances associated with prosecuting specific types of crimes, particularly more challenging cases such as child abuse or domestic violence.

⁵ WAPA, *Recommended Prosecuting Standards for Charging and Plea Dispositions* (p. 3), adopted by the Pierce County Prosecuting Attorney's Office on July 19, 1994.

Overall, the lines of supervision are clear and the staff understands their roles and responsibilities. The PAO has an extensive policies and procedures manual that is provided to all deputy prosecuting attorneys. The manual provides detail about all aspects of criminal case handling along with other office procedures on such items as employment, use of equipment, public relations, and document development.

Deputy prosecuting attorneys have the opportunity to rotate throughout the office, but there is no formal rotation system. When attorneys transfer to different trial teams or divisions, no formal training effort is in place for them before they begin handling cases in that team. This does not however, appear to have had an impact on their ability to succeed.

The primary concern with the staffing and organization of the office is the composition of the trial teams. Many of the deputy prosecuting attorneys report that they perform a number of tasks that are better performed by investigators, victim/witness assistance specialists, or legal assistants. As many of the attorneys in the PAO are at the County Attorney III or IV level, this means that higher paid senior attorneys may be doing clerical work or victim/witness work. In examining the ratios of the trial teams, there is a disparity in the number of attorneys compared to other staff, which in most instances results in ratios that are much higher than the national average.

Therefore, as shown below in the *Recommendations* box, APRI recommends that the staffing levels be adjusted in the trial teams to provide more balance and help to ensure that attorneys have the support necessary to allow them to focus on case processing. Any adjustments to be made to the trial teams should emphasize the hiring of additional non-attorney personnel rather than the reallocation of existing attorneys between teams to balance the ratio.

STAFFING RECOMMENDATIONS

1. Trial Team Composition: Balance the composition of the trial teams to include additional investigators, victim/witness assistance specialists, paralegals, and legal assistants. Within each trial team, the ratio of attorneys to other staff should generally approach the following:
 - 3.6 attorneys: 1 investigator;
 - 5.9 attorneys: 1 victim/witness assistance specialist; and
 - 1 attorney: 1 paralegal/legal assistant.

CHAPTER 4

PAO CRIMINAL CASELOAD

To this point, much of the audit focus has been on staffing issues. Generally, decisions regarding staffing are largely related to the volume and array of cases handled by the prosecutor. This chapter provides detailed information about the volume of cases handled by the Pierce County PAO, comparisons of caseload between Pierce County and other large counties in Washington, and caseload per attorney. A critical aspect of this analysis is the determination of how cases are defined and counted in Pierce County.

CASE DEFINITION AND COUNTING METHOD

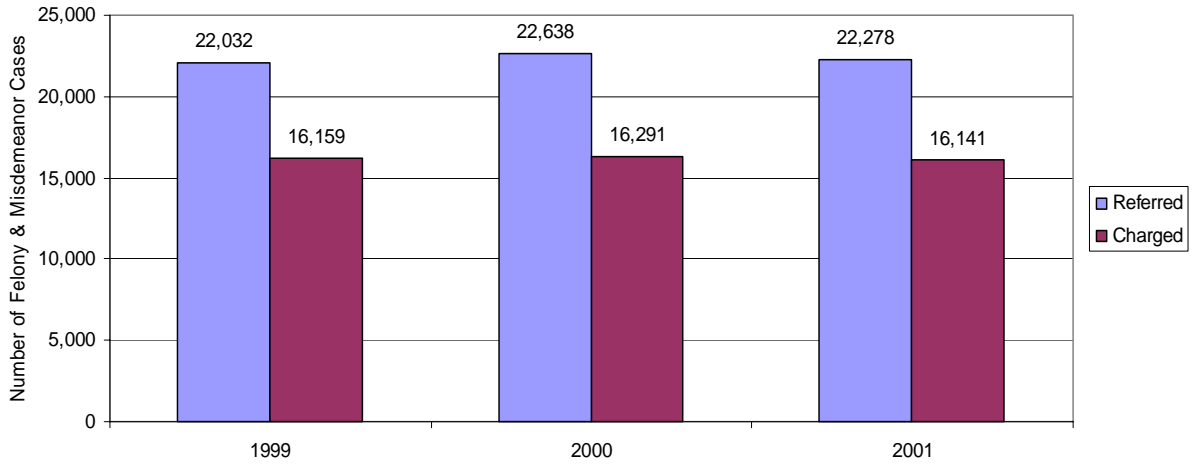
Nationally, no standard definition exists for what constitutes a case, nor is there a standard method for counting cases. Individual states often delineate what constitutes a case, and the states that have a central governing body to collect court data (e.g., an Administrative Office of the Courts) often have established guidelines to determine how criminal cases are counted. Nevertheless, prosecutors generally have the discretion to count cases as they deem most appropriate.

In the Pierce County PAO, a criminal case is defined as any violation of Washington State law brought to the attention of the PAO by law enforcement referral or arrest. The PAO counts cases by defendant. Therefore each cause number represents a single defendant and generally a single incident. According to the PAO, it is possible that a single cause number contains more than one incident; however, this is not common. The circumstances under which this could occur are if the incidents are related or more than one law enforcement agency is involved.

VOLUME OF CASES HANDLED BY THE PAO

The total number of felony and misdemeanor cases (i.e., defendants) referred to and charged by the PAO form the volume of cases handled by the PAO, as shown in Exhibit 4-1 below. (Juvenile cases are discussed separately later in this section.)

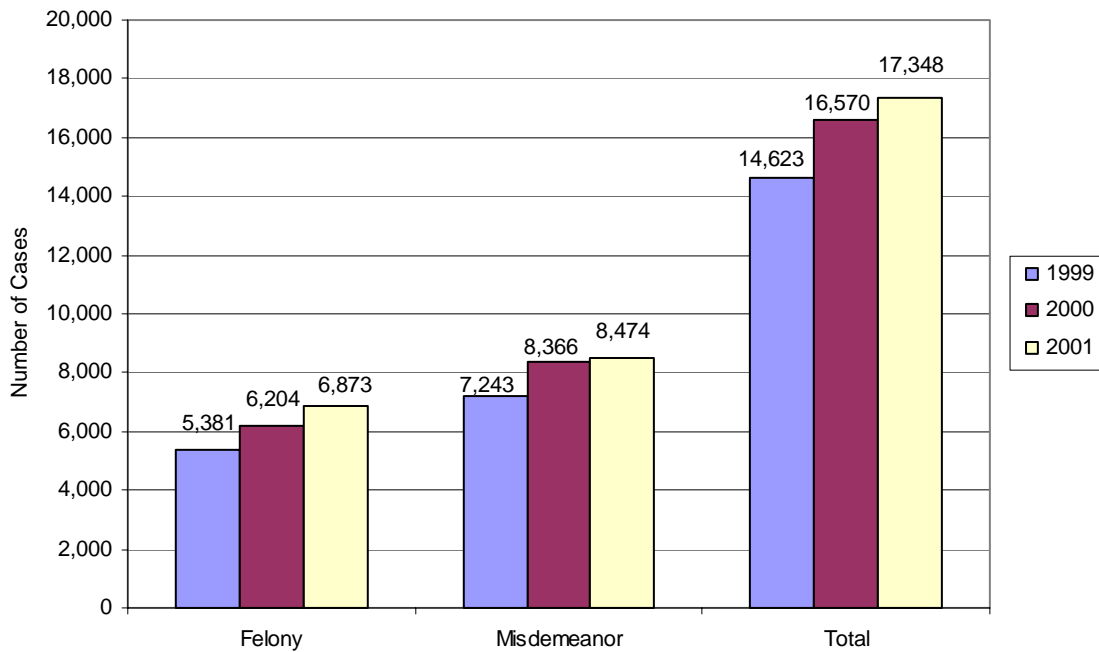
**Exhibit 4-1
Felony & Misdemeanor Cases Referred and Charged (1999-2001)**



Since 1999, the total volume of cases referred to the PAO for a charging decision increased by 1 percent. The total volume of cases charged by the PAO decreased marginally (by less than 1/10th of 1 percent).

The volume of work performed by the Pierce County PAO also includes those cases disposed during a given year, as shown in Exhibit 4-2 below.

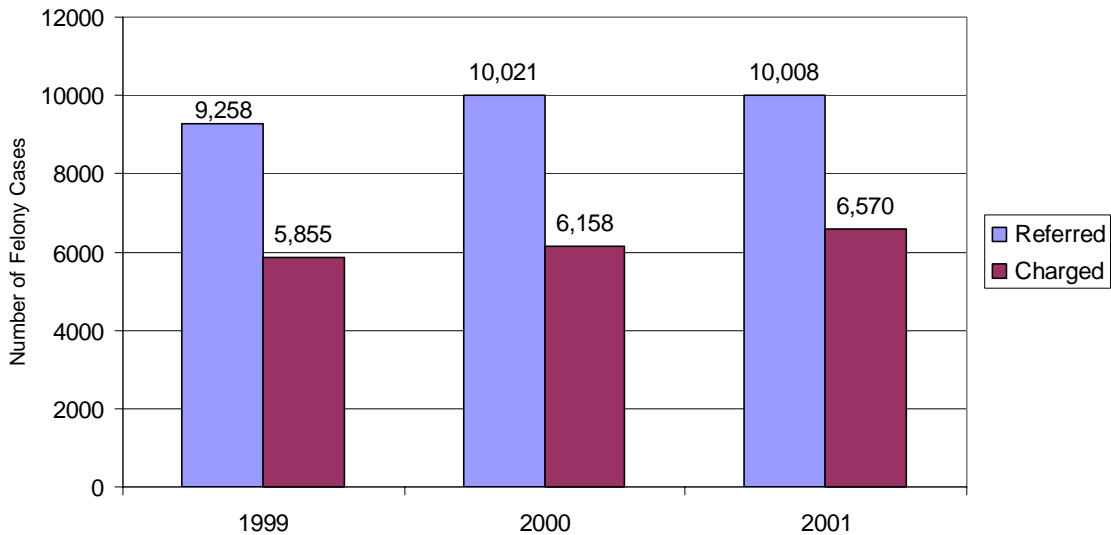
**Exhibit 4-2
Number of Felony and Misdemeanor Cases Disposed (1999-2001)**



Between 1999 and 2001, the volume of cases disposed by the PAO has increased by almost 19 percent. Disposed felony cases increased the greatest amount (by 27.7 percent), while misdemeanor dispositions increased by 17 percent. The disposition information shown in Exhibit 4-2 provides a simple additional measure of the volume of PAO work. More detailed analyses of case dispositions are provided in Chapter 5.

Felony Cases. Traditionally, the volume of felony offenses handled by a prosecutor’s office is less than the volume of misdemeanor offenses (and often less than the volume of juvenile cases). However, felony cases in general require a greater level of effort to prosecute and thus are often the focus of caseload analysis. Exhibit 4-3 shows the volume of felony cases referred and charged between 1999 and 2001. (Dispositions are discussed in Chapter 5.)

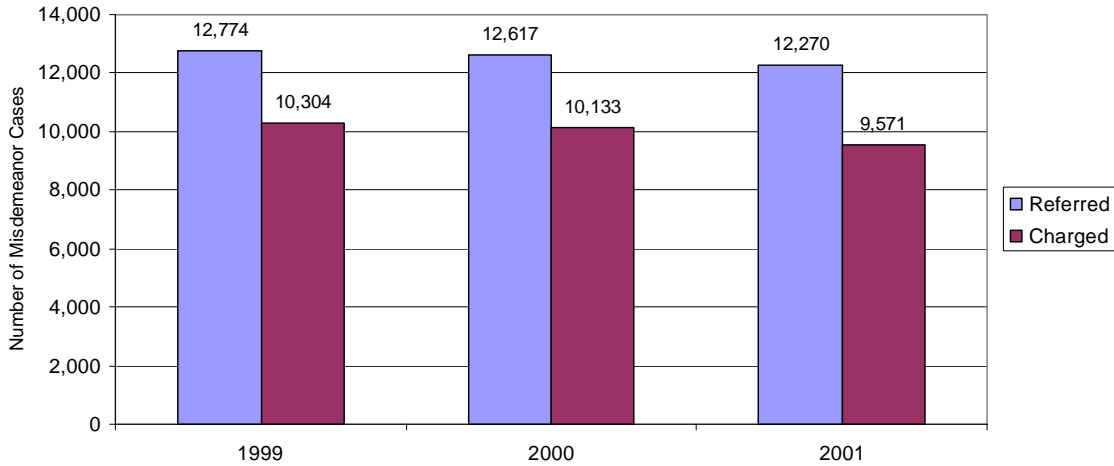
Exhibit 4-3
Felony Cases Referred and Charged (1999-2001)



Between 1999 and 2001, the number of cases referred to the PAO fluctuated, increasing from 1999 to 2000 and decreasing slightly in 2001. The number of cases charged by the PAO, however, increased by 12 percent. In addition, the percent of referred cases charged by the PAO has increased. In 1999, the PAO charged 63 percent of the cases, 61 percent in 2000, and 66 percent in 2001.

Misdemeanor Cases. The Pierce County PAO handles misdemeanors and gross misdemeanors that occur in unincorporated areas of the county and in the municipalities of Edgewood and University Place. Exhibit 4-4 shows the volume of misdemeanor offenses handled by the PAO between 1999 and 2001.

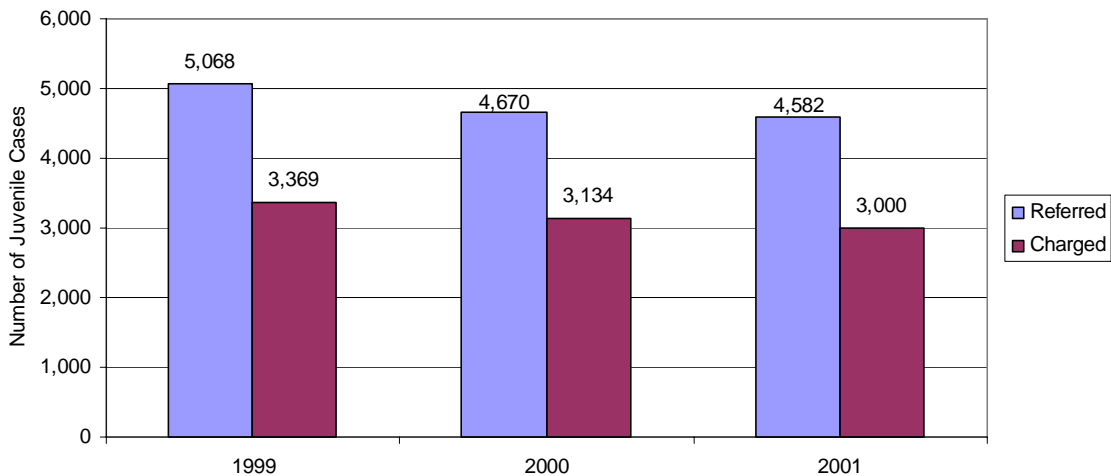
Exhibit 4-4
Misdemeanor Cases Referred and Charged (1999-2001)



Unlike felony cases, the number of misdemeanors handled by the PAO has decreased since 1999. Misdemeanor referrals decreased by 4 percent, and cases charged decreased by 7 percent. As expected with the observed downward trend, the percent of referred cases charged by the PAO also decreased, from 81 percent in 1999 to 78 percent in 2001.

Juvenile Cases. The volume of juvenile cases referred to and charged by the PAO is shown in Exhibit 4-5.

Exhibit 4-5
Juvenile Cases Referred and Charged (1999-2001)



Between 1999 and 2001, the number of juveniles referred to the PAO for prosecution decreased by 10 percent. Similarly, the number of juvenile cases charged by the PAO decreased (by 11 percent) over the same time period. However, the charging rate in each year has remained relatively stable (fluctuating from 66% in 1999 to 67% in 2000 and 65% in 2001).

The volume of cases handled by the Pierce County PAO is a critical first step in understanding the agency’s overall workload and to put the Pierce County PAO caseload into context within the state, as described in the next section.

PIERCE COUNTY PAO CASELOAD COMPARED TO OTHER WASHINGTON COUNTIES

Over the years, the Pierce County PAO has had a reputation for having the “heaviest” caseload in the State, among large counties in Washington. In order to make such a determination, it is critical that cases are counted in the same manner. APRI conducted a survey of five counties: Clark, King, Kitsap, Snohomish, and Thurston. All five counties count referrals by defendant, thereby allowing for valid comparisons of referrals to Pierce County (shown in Exhibit 4-6).

It is important to note that it is not valid to make comparisons of felony case filings between counties due to variations in case counting. In particular, Snohomish County reports that it counts cases by defendant at the time of referral but by charge at the time of filing and disposition.

Exhibit 4-6
Felony Case Referrals and Felony Crime Rate for Comparison Counties, 1999 - 2001

Year	Washington State County					
	Clark	King	Kitsap	Pierce	Snohomish	Thurston
Felony Case Referrals						
2001	4,101	11,859	4,061	10,008	5,654	2,350
2000	3,727	12,488	4,125	10,021	5,250	2,361
1999	3,456	11,586	Unavailable	9,258	4,674	2,332
Felony Crime Rate by Case Referrals (per 1,000 population)						
2001	11.6	6.8	17.4	14.0	9.1	11.2
2000	10.8	7.2	17.8	14.3	8.7	11.4
1999	10.2	6.7	Unavailable	13.4	7.9	11.4

Sources: Population, Washington State Office of Fiscal Management; Case Filings, APRI County Comparison Survey, Pierce County PAO LINX annual report data summaries

For this analysis, APRI first compared the number of “raw” felony referrals for Pierce County to that of the other five counties. Pierce County easily surpassed the number of felony referrals for Clark, Kitsap, Snohomish, and Thurston counties. The only county exceeding Pierce County in the number of felony referrals was King County, which had 18 percent more felony referrals in 2001 than Pierce County, and 25 percent more in 1999 and 2000.

To standardize the data in order to make more meaningful comparisons, APRI computed felony crime referral rates (per 1,000 population) for each of the six counties. Pierce County ranked second highest among the six counties. Kitsap County had more felony referrals per 1,000 population than did Pierce County, for the two years for which comparable data were available. Specifically, in 2000 and 2001, Kitsap County had 24 percent more felony referrals per 1,000 population than did Pierce County. The other four counties had from 15 to 50 percent fewer felony referrals per 1,000 population than did Pierce County.

In sum, the two analyses yield somewhat different results, in that they identify different counties as having the heaviest felony referral caseload among the six counties. However, as discussed later in this chapter, other comparisons between the counties show that Pierce County does have one of the heaviest caseloads in the state in comparison to similar counties.

MURDER AND CAPITAL MURDER CASES

Pierce County also has a reputation for having the highest homicide rate among the six counties. In 2001, the Pierce County Prosecuting Attorney’s Office reviewed 50 referrals for homicide cases and charged 45. Unlike other felony case types, comparisons are easier to make with other counties in terms of homicides. Exhibit 4-7 below shows the number of homicide cases filed in Pierce County and the five comparison counties in 2001, as well as the homicide rates per 100,000 population.

Exhibit 4-7
Homicide Cases* Filed and Homicide Rates in 2001

County	Homicide Cases Filed	Rate per 100,000 Population
Clark	7	2.0
King	70	4.0
Kitsap	9	3.9
Pierce	53	7.4
Snohomish	24	3.9
Thurston	14	6.7

* Note: The data, obtained from the Washington State Courts, contains both homicide and vehicular homicide cases.

Source: Washington State Courts Annual Report, 2001.

As shown, Pierce County has the highest homicide rate per capita of the comparison counties. Of the homicide cases filed in 2001 in Pierce County, four were for aggravated murder. By law, aggravated murder is defined as pre-meditated first degree murder with one or more aggravating factors such as multiple victims, the victim was a law enforcement officer, the crime was a “murder-for-hire,” the murder was committed to advance a person’s position in a hierarchical group or organization, etc. Aggravated murder charges carry a sentence of either life imprisonment or, if there are insufficient mitigating circumstances to

warrant leniency, the death penalty.⁶ Between 1995 and 2001, the Pierce County PAO's aggravated murder filings were 44 percent higher than King County (43 filings compared to 24 filings) and 56 percent higher than Snohomish County (with 19 aggravated murder cases filed). Since 1999, the PAO filed notice of intent to seek the death penalty in two cases (one case in 1999 and one case in 2000).

Questions are sometimes raised about the decision to seek aggravated murder charges and the death penalty. The elected Prosecuting Attorney makes all decisions regarding the pursuit of the death penalty after soliciting input and opinions from the Chief Criminal Deputy, the Assistant Chief Criminal Deputy, and other trial team leaders.

Aggravated murder cases and capital murder cases are the most labor intensive for prosecutors. Complicated forensic evidence, impact on surviving family members of the victim, and the severity of the punishment if found guilty all warrant the dedicated time and attention of several staff members over a lengthy period of time. Typical practice in a prosecutor's office (and in the Pierce County PAO) is to assign two senior level attorneys, usually at the County IV level, to handle the case. An analysis conducted by Gerald Costello, Chief Criminal Deputy, on aggravated murder cases handled in 1999, estimated that 4 full-time attorneys were needed to handle the 15 active cases during that year,⁷ and 1 full-time support staff person (an office assistant, paralegal, legal assistant, or intern).

Costello's analysis assumes that an attorney can handle 3.75 aggravated murder cases per year, which is consistent with APRI's national workload assessment finding that an attorney who works *exclusively* on aggravated murder cases can handle up to 4 per year. However, there is a concern about the impact of a murder caseload in addition to a trial team caseload (e.g., Special Assault). The Pierce County PAO practice of assigning murder cases to the trial team supervisors has the potential to impact the amount of time they have available to process their own trial team caseload, particularly if the murder case is a capital case.

Given the number of aggravated murder and capital murder cases being handled by the Pierce County PAO, it will be important to document the time and effort associated with these cases to ensure that the Homicide Unit has sufficient staff to devote substantial time and effort to capital cases. In addition, data should be collected by the PAO to determine the impact of being assigned an aggravated murder or capital case on their other case assignments.

⁶ See RCW 10.95.020 for a full list of circumstances resulting in a charge of aggravated murder.

⁷ The active aggravated murder cases in 1999 included 7 new cases and 8 cases from previous years (2 of which appeared to be appeals).

CASELOAD PER ATTORNEY

A final measure of workload is the average number of cases handled by the deputy prosecuting attorneys. To assess this, APRI analyzed the number of case referred to the PAO for a charging decision by trial unit as well as the number of charged cases by trial unit. Exhibit 4-8 below shows the referrals by trial unit and the average number of offenses per attorney in the trial unit.

**Exhibit 4-8
Number of Referrals & Average Referrals per Attorney by Trial Team, 1999-2001**

Referred	Robbery/ Assault	Arson/ Fraud*	Burglary/ Theft	Special Assault	Drugs/ Vice	Homicide**	Misdmnr***	DV***	Juvenile
2001	1,399	1,926	1,819	1,580	3,234	50	9,909	2,361	4,582
2000	1,365	1,894	1,785	1,533	3,399	45	10,285	2,332	4,670
1999	1,210	1,787	1,572	1,422	3,221	46	10,456	2,318	5,068
Referrals per Attorney (N=number of attorneys)**									
2001	155.4 (N=9)	481.5 (N=4)	363.8 (N=5)	175.6 (N=9)	294.0 (N=11)	7.1 (N=7)	660.6 (N=15)	590.3 (N=4)	458.2 (N=10)
2000	151.7 (N=9)	473.5 (N=4)	357.0 (N=5)	170.3 (N=9)	309.0 (N=11)	6.4 (N=7)	685.7 (N=15)	466.4 (N=5)	467.0 (N=10)
1999	151.3 (N=8)	446.8 (N=4)	314.4 (N=5)	158.0 (N=9)	292.8 (N=11)	6.6 (N=7)	697.1 (N=15)	463.6 (N=5)	506.8 (N=10)

Source: LINX, APRI County Comparison Survey, Pierce Co. PAO Annual Reports (1999 & 2000)

* The aggregate data provided by the PAO in the comparison survey grouped fugitive, vehicular homicide, and vehicular assaults under the Arson/Fraud Trial Team.

** The homicide unit is staffed by 2 full-time attorneys; for the purposes of estimating caseload, APRI included the trial team supervisors in the homicide unit, as they are responsible for handling some homicide cases. The trial team supervisors are also included in the count for each of the individual trial teams for purposes of estimating caseload per trial team.

*** Misdmnr means Misdemeanor. DV stands for Domestic Violence.

Nearly all the trial teams in the Felony Division experienced an increased caseload per attorney between 1999 and 2001 with the exception of the Drugs/Vice Unit. In the Misdemeanor and Juvenile Divisions, the caseload per attorney decreased between 1999 and 2001. Of particular note in Exhibit 4-8, is the increased caseload per attorney in the Domestic Violence Division which is a result of decreased staffing.

APRI also examined the number of cases charged by attorney, shown in Exhibit 4-9 on the following page.

Exhibit 4-9
Number of Charged Cases & Average Charged
Cases per Attorney by Trial Team, 1999-2001

Charges	Robbery/ Assault	Arson/ Fraud	Burglary/ Theft	Special Assault	Drugs/ Vice	Homicide	Misdmnr	Juvenile
2001	766	1,463	902	758	2,636	45	9,521	3,000
2000	739	983	916	642	2,848	30	10,133	3,134
1999	696	1,124	897	465	2,641	32	10,304	3,369
Charged Cases per Attorney								
2001	85.1 (N=9)	365.8 (N=4)	180.4 (N=5)	84.2 (N=9)	239.6 (N=11)	6.4 (N=7)	501.1 (N=19)	300.0 (N=10)
2000	82.1 (N=9)	245.8 (N=4)	183.2 (N=5)	71.3 (N=9)	258.9 (N=11)	4.3 (N=7)	506.7 (N=20)	313.4 (N=10)
1999	87.0 (N=8)	281.0 (N=4)	179.4 (N=5)	51.7 (N=9)	240.1 (N=11)	4.6 (N=7)	515.2 (N=20)	336.9 (N=10)

Source: LINX, APRI County Comparison Survey, Pierce Co. PAO Annual Reports (1999 & 2000)

* The number of staff in the Homicide Unit includes the 5 felony team supervisors, the Chief Criminal Deputy, and the Assistant Chief Criminal Deputy. The trial team supervisors are also included in the count for each individual trial team.

The highest charged case rate per attorney in the felony division was in the Arson/Fraud, Drugs/Vice, and the Burglary/Theft Trial Teams. In each of these units, the number of cases per attorney exceeds the defense standards cited by the ABA of no more than 150 felonies per attorney.⁸ In addition, the number of misdemeanor cases per attorney exceeds the ABA standard of no more than 400 misdemeanors. It is important to note that no such standards exist for prosecutors explicitly, and the ABA standards, although dated, are the most recent available.

However, prosecutors have responsibility for numerous additional case related activities that defense attorneys do not have responsibility for, such as reviewing cases for charging decisions and working with law enforcement on on-going investigations. Moreover, the ABA standards focus exclusively on case related activities of attorneys. In APRI's national workload assessment project, a review of relevant literature on the prosecution function and empirical study of more than 50 prosecutors' offices nationwide found that the non-case related activities of office administration, general legal research, community outreach, and coordination with law enforcement must be considered in any determination of a reasonable caseload.⁹

⁸ ABA Criminal Justice Standards 5-5.3, *Providing Defense Services*, 1977.

⁹ Nugent, E. et al. (2002). *How Many Cases Should a Prosecutor Handle? Results of the National Workload Assessment Project*.

In an effort to ascertain how Pierce County’s caseload compares to the caseload of other prosecuting attorneys’ offices, APRI analyzed the comparison survey data. Exhibit 4-10 shows the number of felony case referrals and the felony referral rate per attorney for 1999-2001 for all six counties.

**Exhibit 4-10
Number of Charged Cases & Average Charged
Cases per Attorney by Trial Team, 1999-2001**

Year	Washington State Counties					
	Clark	King	Kitsap	Pierce	Snohomish	Thurston
Felony Case Referrals						
2001	4,101	11,859	4,061	10,008	5,654	2,350
2000	3,727	12,488	4,125	10,021	5,250	2,361
1999	3,456	11,586	Unavail.	9,258	4,674	2,332
Felony Referral Rate per Attorney						
2001	205.1 (N=20)*	141.2 (N=84)	140.0 (N=29)	222.4 (N=45)	182.4 (N=31)	167.9 (N=14)
2000	186.4 (N=20)	164.3 (N=76)	142.2 (N=29)	222.7 (N=45)	164.1 (N=32)	181.6 (N=13)
1999	172.8 (N=20)	154.5 (N=75)	Unavail.	220.4 (N=42)	146.1 (N=32)	179.4 (N=13)

Source: APRI County Comparison Survey, Pierce Co. PAO Annual Reports (1999 & 2000)

* N=Deputy prosecuting attorneys who handle felony cases.

In 1999 and 2000, the Pierce County PAO’s felony referral rate was approximately 20 percent higher than the rates in Thurston or Clark counties and substantially higher than the rates in the other counties. Since 1999, the Pierce County rate has steadily decreased while other counties (Clark and Snohomish) have increased. Nevertheless, the felony referral rate per attorney in Pierce County continues to be the highest in the state as of 2001.

CONCLUSIONS

The Pierce County PAO handles the highest volume of felony, misdemeanor, and juvenile cases per attorney, per capita in the state (among the comparison counties). Moreover, the Pierce County homicide rate is the highest of the six counties. Because of the volume of cases handled by the PAO staff, and in particular the volume of homicide cases, consideration should be given to conducting a comprehensive workload assessment to determine if the office has sufficient resources to process cases more effectively and efficiently.

CRIMINAL CASELOAD RECOMMENDATIONS

2. Conduct an Assessment of Homicide Workload: The County should consider conducting a study of the time and activity associated with murder, aggravated murder, and capital murder cases. The assessment should examine how time is distributed between an attorney's murder cases and other cases. Such an assessment would allow the PAO to determine if sufficient staff are assigned to handle murder cases, the impact of handling murder cases on attorneys' other caseload, and whether or not additional staff are needed.

CHAPTER 5

CASE PROCESSING AND DISPOSITIONS

Prosecutors, as the gatekeepers to the court system, perform a number of critical functions as part of case processing and in disposing of cases. These functions include screening potential cases, making charging decisions, negotiating pleas, trying cases, and handling post-adjudication work. This chapter focuses on the various prosecutorial functions associated with case processing and case disposition. In addition, detailed analyses of case disposition types are discussed.

SCREENING AND CHARGING

As discussed above, the PAO filed charges on a total of 6,565 felony cases in 2001. Charging decisions in felony cases are usually made and filed within 24 hours of arrest, or by Monday afternoons if the arrest occurred on the weekend.

As noted in Chapter 3, the screening and charging of cases varies by trial unit. In some trial units, the unit supervisor reviews and charges cases, while in others, cases are parsed out among all attorneys in the unit. In-custody cases are reviewed first, which in Pierce County constitute the largest percentage of cases (77%), followed by out-of-custody cases (23% of cases). According to APRI's survey of Pierce County PAO supervisors and deputy prosecuting attorneys in-custody cases are reviewed and charged within 4 hours, on average. Out-of-custody cases, however, take on average 15 days to review and charge. Clearly, the PAO is efficient in its processing of in-custody cases. The interviews with PAO staff and others in the criminal justice system suggest that the PAO is less efficient with out-of-custody cases; however, the interviewees also noted that the backlog of out-of-custody cases has been dramatically reduced in the past few years. Moreover, according to the PAO, court restrictions on the number of cases that can be filed on any given day have the potential to create a court-created backlog of cases.

Charging decisions are based on the type of offense, strength and quality of the evidence, interests of the victim, and other factors. Prosecution standards, published by the National District Attorneys Association, state the prosecutors should file charges that encompass the offenses committed or believed to have been committed and should only file charges that he/she reasonably believes can be substantiated by admissibility in court (Standard 43.3, p. 130).¹⁰ The standards cite several factors that may be considered if the prosecutor deems them to be consistent with the interests of justice. Some of these factors include:

¹⁰ National District Attorneys Association (1991). *National Prosecution Standard* (2nd Edition). National District Attorneys Association: Alexandria, Virginia.

- Probability of conviction;
- Nature and seriousness of offense;
- Characteristics of the offender(s), including criminal history;
- Deterrent value of prosecution to the offender and society in general;
- Likelihood of prosecution by another criminal justice authority;
- Willingness of the offender to cooperate with law enforcement;
- Possible improper motives of a victim or witness;
- Availability of adequate civil remedies, if appropriate;
- Age of the offense; and
- Undue hardship caused to the accused (Standard 43.6, p. 130-131).

In APRI's opinion, the charging guidelines adopted by the PAO and the WAPA are consistent with the guidelines established by the NDAA.

In their review of cases, the attorneys in the PAO consider five options: 1) charge the suspect consistent with the booking charges entered by police or with other appropriate crime(s); 2) divert the case to EL CID for counseling and payment of restitution; 3) decline to file charges; 4) decline to file charges pending further investigation; or 5) decline to file charges but refer the case to district/municipal court.

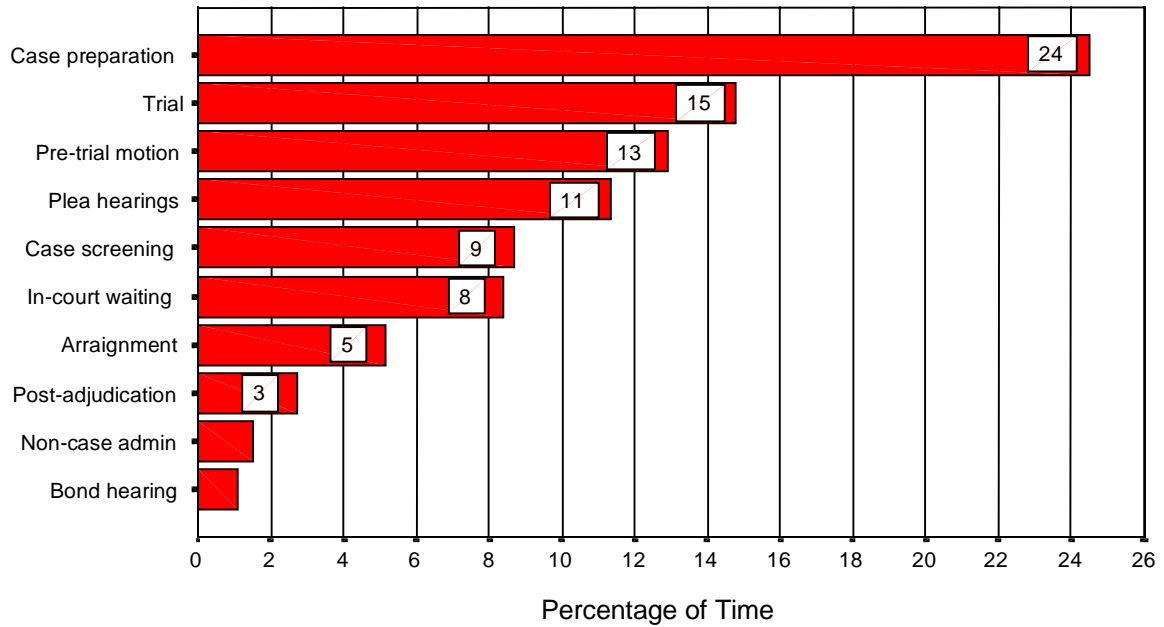
In 2001, the Pierce County PAO charged 71 percent of cases referred to their office (66% of felony referrals, 78% of misdemeanor referrals, and 65% of juvenile referrals). With regard to felony cases exclusively, the PAO declined 3,036 law enforcement referrals. An additional 314 cases were not charged pending the results of an investigation or further investigation by the referring law enforcement agency.

CASE PROCESSING

Case processing occurs along a continuum—from initial screening and charging to case preparation, adjudication, and post-adjudication activities. Case preparation includes various out-of-court and in-court activities such as interviewing witnesses, reviewing case law, negotiating pleas, and preparing for and attending motions hearings. Adjudication activities are predominantly in-court activities such as plea hearings, bench trials, or jury trials. Post-adjudication activities include post conviction relief hearings, preparation for appeals, parole review board hearings, and other follow-up activities.

Exhibit 5-1 shows the distribution of attorney time on various case processing activities including in-court waiting and non-case administrative work.

Exhibit 5-1
Self-Reported Percentage of Prosecutorial Activities, 2001



Source: APRI Pierce County Deputy Attorney Survey

The deputy prosecuting attorneys report spending the greatest percentage of time on case processing, as expected. In other jurisdictions, APRI has found that case preparation activities account for 25 to 35 percent of all time (both case related and non-case related). Typically, in-court activities, particularly trials, represent a much smaller percentage of attorney time overall. However, in Pierce County, the attorneys’ self assessment of how they spend their time indicates they spend more than 40 percent of their time in court for arraignments, pretrial hearings and motions, and trials. In other jurisdictions, the total time in-court for these types of activities is generally 10 to 15 percent of time overall.

This finding was unexpected given the large number of cases that are disposed through plea agreements (discussed in later in this Chapter). However, the PAO has several attorneys who are assigned to handle court proceedings exclusively—three “barrel” attorneys who handle arraignments, plea hearings, and disposition hearings as well as three attorneys assigned to handle fast track drug cases exclusively. Having dedicated attorneys, whose work is predominantly in court, could account for the finding. Also, the PAO reports that prosecutors are required by judges to report to court and wait in the “fish bowl” for cases to be called. If comprehensive workload data were available, this could be explored in more detail to determine if the deputy prosecuting attorneys’ self-reports are accurate and/or if there are inefficiencies to be addressed.

CASE PROCESSING TIMES

The average time it takes to dispose of a criminal case varies depending on the seriousness of the offense, court schedules, number of pretrial motions, continuances, and a myriad of other factors that may fall outside the control of the prosecutor's office. Trial teams in the PAO are delineated according to offense type; therefore, one would expect units that handle the most serious offenses to take the longest amount of time on average to dispose of a case. Based on LINX data, Exhibit 5-2 illustrates the average amount of elapsed calendar time it takes to dispose of a case by each trial unit.

Exhibit 5-2
Average Days to Dispose of a Felony Case by Trial Unit, 2001

Trial Unit	Average Calendar Days to Dispose a Case
Robbery/Assault	82.3
Arson/Fraud	72.6
Burglary/Theft	61.8
Special Assault	89.4
Drugs/Vice	70.5
Homicide	161.3

Source: LINX

Felony criminal offenses are categorized by Washington Superior Courts in the following order of seriousness: homicide, sex crimes, robbery, assault, theft/burglary, motor vehicle theft, controlled substance, and other felony. As expected, the Homicide unit takes the longest time to dispose of a case (161 days). Not surprisingly, and in accordance with the Superior Court's level of seriousness, Special Assault, which handles sex crimes, takes the second longest time to dispose of a criminal case (89 days). Robbery/Assault ranks third among the trial units (82 days).

The number of calendar days that elapse between arrest and disposition can indicate a potential problem with continuances. Continuances, whether or not agreed upon between prosecutors and defense counsel, can significantly impact the number of calendar days that elapse before a case is disposed. This is an issue to be monitored on an on-going basis.

Another important consideration with regard to case processing times, particularly for projecting resource needs of an office, is a determination of the average hours actually spent working on a case. For example, a robbery case takes on average 82 calendar days to bring to disposition; however, it is unlikely that an attorney will spend all his/her time over the 82 days working on a single case. Rather, he or she probably will spend a few hours each day, which produces a more accurate assessment of actual time spent processing a case. The most comprehensive method for determining actual case processing time is with a workload assessment, which has not been done in Pierce County. The workload assessment would allow for the Pierce County PAO to make resource projections based on number of cases

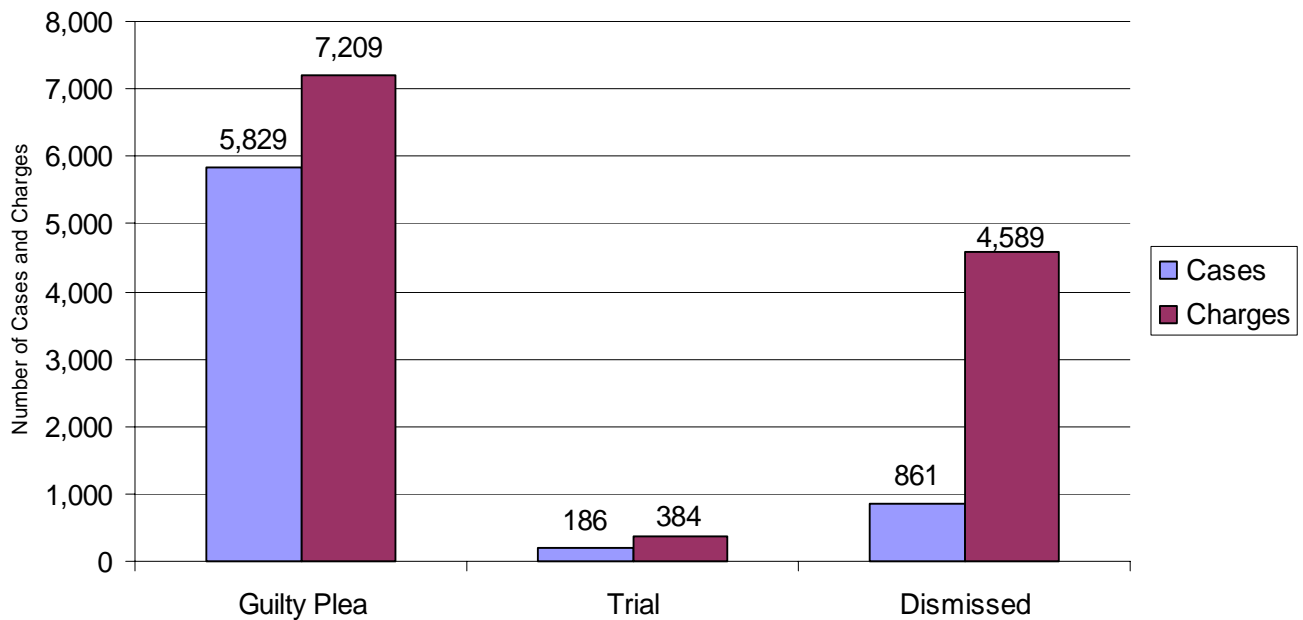
disposed, the average amount of time actually spent bringing a case to disposition, and the number of available work hours in a given year (excluding holidays, vacation, and sick leave).

CASE DISPOSITION

Cases can be disposed at various points along the case processing continuum. In general, the major types of case dispositions are: dismissed, guilty pleas, and trial verdicts. APRI analyzed LINX data of all cases disposed in 2001.

In 2001, the PAO disposed of 6,876 cases (1 case = 1 defendant). Of the 861 cases disposed by dismissal, 259 were fugitive cases (30 percent), and thus 9 percent of the cases were (n=602 cases) disposed by dismissal. The 6,876 cases disposed included the disposition of more than 12,000 felony charges, as shown in Exhibit 5-3 below.

Exhibit 5-3
Cases and Charges by Type of Disposition, 2001



Source: LINX data and PAO reports

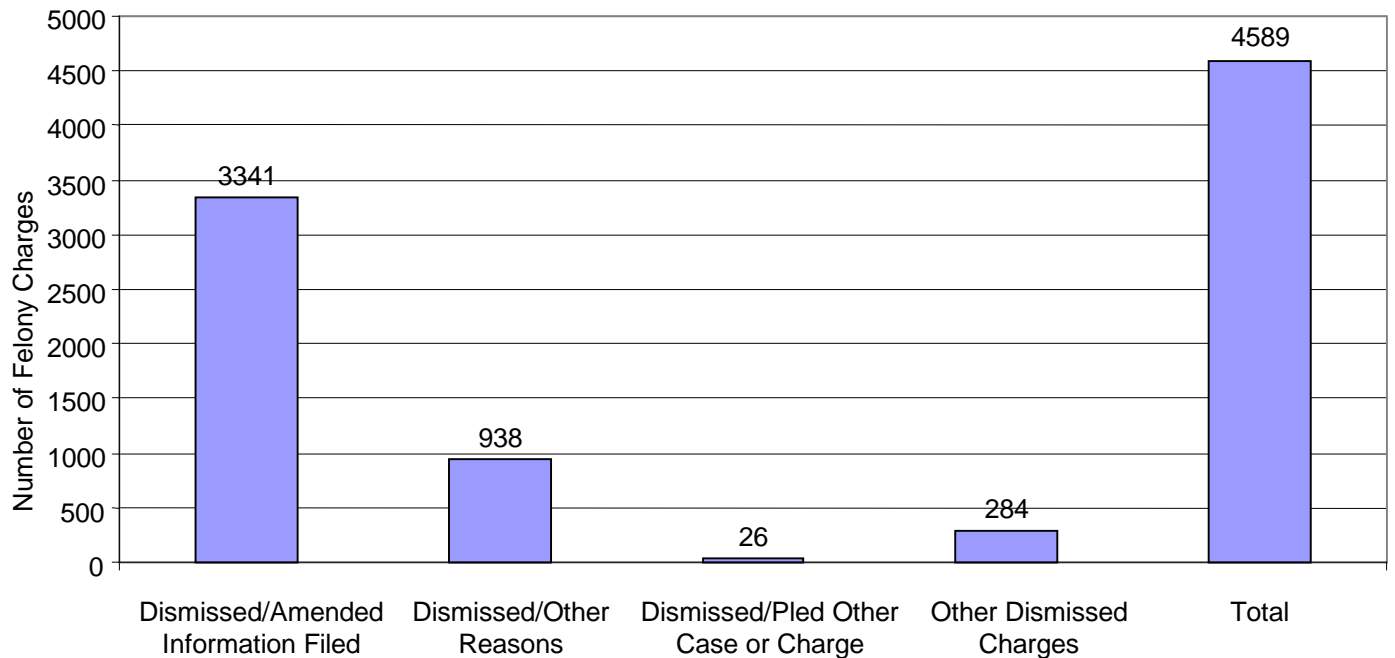
Using LINX data, APRI also analyzed the charge dispositions. LINX has 27 different types of charge dispositions that can be recorded. For analytic purposes, APRI condensed the LINX disposition types into 11 categories based on their most frequent use by the PAO. (Except where indicated by parentheses, the category name is exactly as it appears in LINX.)

- Dismissed/amended information filed;
- Dismissed/pled other case or charge;

- Dismissed other reasons;
- Other dismissed charges (an aggregate of cases dismissed to the drug court or EL CID, dismissed by reason of insanity, juvenile dismissals, reversed by appeal, and dismissed/released to authorities);
- Pled guilty as charged;
- Pled guilty to a lesser felony;
- Pled guilty to a lesser misdemeanor;
- Other pleas (an aggregate of guilty pleas to an equivalent felony, lesser gross misdemeanor, and greater charge);
- Guilty as charged by trial verdict;
- Guilty of lesser charge by trial verdict; and
- Other trial dispositions (an aggregate of no charges final, vacated charges, and guilty greater charge dispositions).

Exhibit 5-4, below, focuses exclusively on felony charges dismissed in 2001 by disposition type.

Exhibit 5-4
Number of Felony Charges Dismissed, 2001



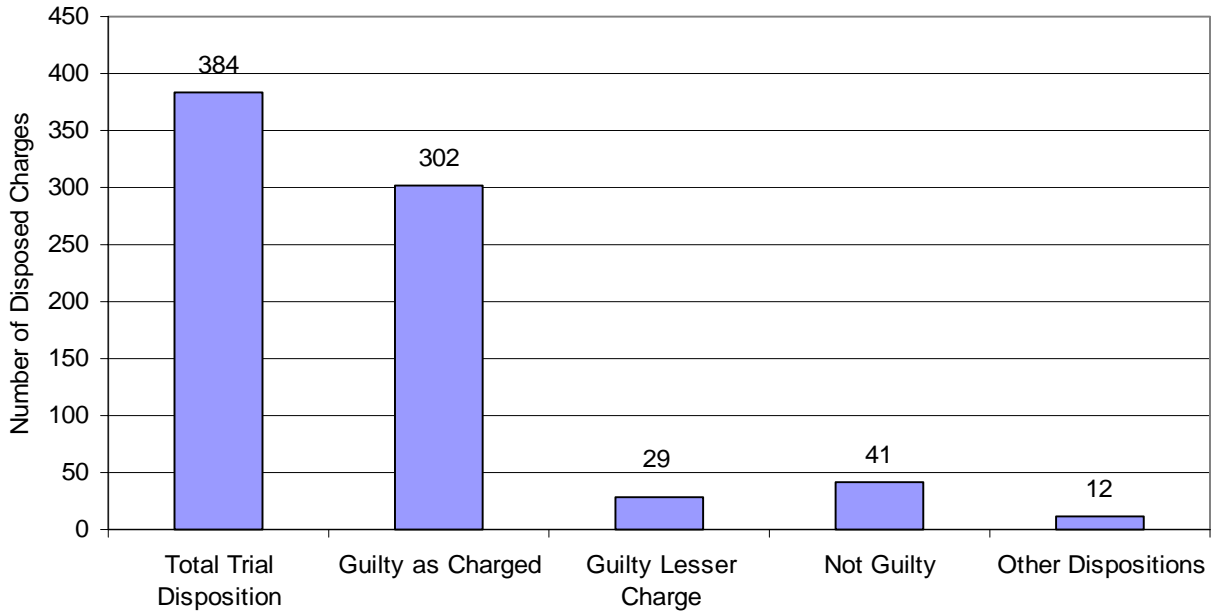
Almost three-quarters of felony charges dismissed fall into the category of “Dismissed/Amended Information Filed.” These dismissals represent charges that are amended as part of case preparation. Exhibit 5-5 shows the number of felony charges disposed by the Pierce County PAO through plea agreements.

**Exhibit 5-5
Felony Charges Disposed by Guilty Plea, 2001**



Nearly 60 percent of the charges that the Pierce County PAO disposed through plea agreements were guilty pleas as charged (35% of all dispositions). Nationally, very few cases actually go to trial, and in Pierce County the trial rate is comparable to the national average. Exhibit 5-6 shows the felony cases in Pierce County that were disposed by trial.

**Exhibit 5-6
Felony Charges Disposed by Trial, 2001**



According to the Bureau of Justice Statistics, approximately 90 percent of the felony cases tried by state and local prosecutors resulted in convictions. In Pierce County, the conviction rate was 86 percent 2001, which is in line with the national average.

CONCLUSIONS

Given the volume of cases handled by the PAO, Pierce County should consider conducting a workload assessment that will help the PAO better determine average case processing times in hours. The results of such a study will help the PAO to project resource needs into the future and allocate existing resources.

CASE PROCESSING AND DISPOSITIONS RECOMMENDATIONS

4. Conduct a Workload Assessment: To better understand the time associated with case processing and the average length of time required to bring cases to disposition, Pierce County should conduct a comprehensive workload assessment that will produce case weights (average case processing times), workload measures (number of cases that can be handled by an attorney), and a formula for projecting resource needs.

CHAPTER 6

CIVIL DIVISION/RISK MANAGEMENT SECTION: USE OF OUTSIDE COUNSEL

The primary responsibility of the Risk Management Section in the PAO Civil Division is to reduce county exposure to monetary judgments and liability. In this capacity, the four deputies assigned to the Risk Management Section provide advice to the different county departments about prospective liability issues, including advising the county Risk Management Department on legal issues that arise as claims for damages are processed.

In general, the cases handled by the Risk Management deputies fall into 11 different categories:

- Constitutional rights violations;
- Employment discrimination;
- Flood;
- Malicious prosecution;
- Personal injury;
- Property damage;
- Road design;
- Worker's compensation;
- Wrongful arrest/imprisonment;
- Wrongful death; and
- Other miscellaneous cases.

A review of on-going cases, from the March 6, 2002 Tort Litigation Docket, showed 136 open cases in the Risk Management Section. Slightly more than one-third of these cases (35.2%) involved constitutional rights violations, followed by property damage (15.6%), personal injury (11.7%), employment discrimination (6.3%), wrongful death and flood (each at 4.7%). Road design issues accounted for less than one percent of the cases, and the remaining 21 percent of cases were categorized as miscellaneous.

The attorneys in the Risk Management Section appear in court more frequently than other deputies in the Civil Division. According to the March 6, 2002 tort litigation docket, 27 of the 136 cases had trial dates scheduled (representing 21% of all risk management cases), and another 36 had been filed but not scheduled (28%). Almost 30 percent of the cases were at the post-trial stage, either in post-trial motions (14.5%) or under appeal (13.7%). Interestingly, fifteen percent of the cases were assigned to outside counsel.

Of key interest to the County as part of APRI's audit is the use of outside counsel in risk management cases. Specifically, APRI focused on the number of cases assigned to outside counsel in Pierce County and in four comparison counties, the reasons for using outside counsel, and costs associated with outside counsel. APRI's ability to fully assess the use of outside counsel was significantly hindered by a lack of usable data that could provide

trend information for comparative purposes. For these reasons, APRI's assessment is limited.

As noted above, 15 percent or 21 of the 136 risk management cases active at the time of the audit were assigned to outside counsel. Five additional cases were being handled by outside counsel because of a contract right, either by insurance agreement, interagency/local agreement, or personal services agreement that the entity with whom the county had the contract would be responsible for defending the county in any litigation arising from the contracted work/agreement. As such, these five cases should not be (and were not) included in the analysis of outside counsel usage.

The Risk Management Section of the PAO conducts a review of the lawsuit to determine if the case should be handled internally or sent to outside counsel. As part of this review, consideration is given to the potential for actual or perceived conflict should the PAO Civil Division handle the case and the complexity of the case and the Risk Management deputies' ability to handle it (both in terms of time and expertise). Decisions about whether or not to assign the case to outside counsel are made by the head of the Risk Management Section and the Chief of the Civil Division, in consultation with the head of the County Risk Management and Insurance Department.

In order to determine the reasons for use of outside counsel, APRI and the head of the PAO Risk Management Section reviewed the docket of cases open at the time of the study and discussed each case listed. Of the 21 outside counsel risk management cases open at the time of the study, the majority represented conflict of interest cases (52%). Twenty four percent of the cases sent to outside counsel.¹¹ The remaining 24 percent of outside counsel cases were contracted out for various reasons such as the firm representing another locality, which was also included in the suit, and it would allow the county to share the costs.

In comparison to other counties, Pierce County appears to use outside counsel in risk management cases more frequently; however, Pierce County also has a larger volume of risk management cases, as shown in Exhibit 6-1.

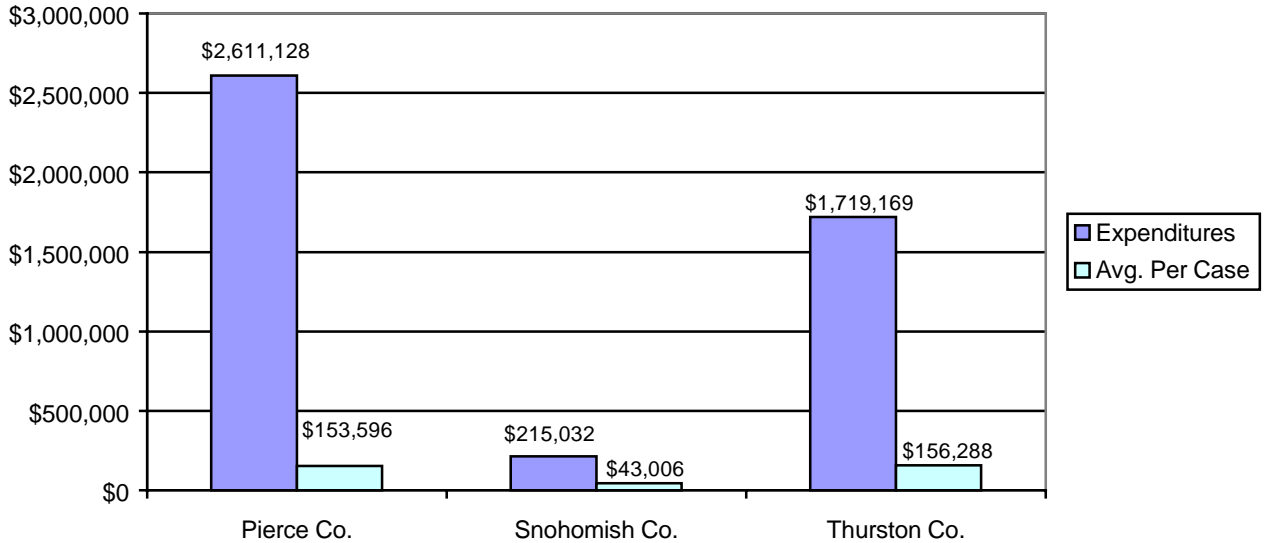
**Exhibit 6-1
Risk Management Cases Referred to Outside Counsel Since 1999**

Washington State Counties				
Number of Cases Since 1999	Pierce	King	Snohomish	Thurston
	17	16	5	11

¹¹ The majority of cases in which conflict was an issue were cases involving employment discrimination (4). The other cases in which conflict of interest was cited were for constitutional rights (2 cases), personal injury (2 cases), and property damage (1 case). Another two cases, classified as miscellaneous risk management cases, were sent to outside counsel for conflict reasons. The majority of cases (3) in which complexity was an issue were listed as miscellaneous risk management cases. One property damage case and one wrongful death case were assigned to outside counsel for complexity reasons.

The total expenditures since 1999 for Pierce County, as well as the three other comparison counties from which data were available are shown in Exhibit 6-2. It is important to note that the figures shown in Exhibit 6-2 include costs for expert witnesses, court reporters, and other expenses that are incurred whether or not a case is sent to outside counsel.

**Exhibit 6-2
Risk Management Expenditures for Outside Counsel Since 1999**



Source: Pierce County Risk Management and Insurance Department and APRI comparison survey

As can be seen from Exhibit 6-2, Pierce County spent 12 times as much as Snohomish County on outside counsel and one-and-a-half times as much as Thurston County. Pierce County did, however, have significantly more risk management cases being handled by outside counsel than the other counties. To understand the relative difference between counties in terms of expenditures, it is useful to calculate the average cost per case, which is also shown in the Exhibit. When the volume of cases is taken into consideration, Pierce County spends slightly less per case than Thurston County but more than Snohomish County.

According to the PAO, the figures provided by the Risk Management and Insurance Department on expenditures for outside counsel includes costs for retained counsel in tax valuation cases, which are not risk management cases, and other cases such as the health care Master in a jail case action case and outside counsel retained by the County Executive for the McNeil Island Sexual Predator Halfway House dispute. The reported costs associated with these cases totals \$234,425, which would further reduce the costs per case to \$139,806.

RISK MANAGEMENT RECOMMENDATIONS

4. Risk Management Case Management Information System. Details about risk management cases, reasons for assigning to outside counsel, and the costs associated with outside counsel are available but from different sources. Cost information is managed by the Pierce County Risk Management Office, while case details are maintained by the Civil Division of the PAO. If the County is interested in an on-going assessment of the use of outside counsel, it should consider the development of a shared information system that allows for the generation of combined expenditure reports and reasons for assigning cases to outside counsel. As currently maintained, specific information is generated by each entity and then must be matched manually.



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February 11, 2003

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FEB 26 2003

Pierce County
Performance Audits

M. Elaine Nugent
Director of Research
American Prosecutors Research Institute
99 Canal Center Plaza, Suite 510
Alexandria, Virginia 22314

Re: Performance Audit of the Pierce County Prosecuting Attorney's Office
Draft Report dated January 16, 2003

Dear Ms. Nugent:

I am in receipt of your draft report, dated January 16, 2003. Upon review of the draft report, I have only a small number of concerns/corrections with the data presented. I will address our concerns by page number, and ask that you consider these comments prior to submitting your final draft report. Overall, I feel that you listened to our previous concerns and I appreciate the work that you did to correct the original draft report.

Page iii: The report states the following: "The PAO has a separate homicide trial team with two full-time attorneys."

Response: The two attorneys assigned to the homicide team, Gerald Costello, Chief Criminal Deputy, and Barbara Corey-Boulet, Assistant Chief Criminal Deputy and Felony Division Chief, are managers within the prosecutor's office and handle administrative tasks as well as a homicide caseload. Barbara Corey-Boulet, as the Felony Division Chief, is responsible for the day to day operation of the entire felony division. Ms. Corey-Boulet is the direct supervisor for all trial team leaders within the felony division. Mr. Costello oversees our three criminal divisions – misdemeanor division, juvenile division, and felony division. I believe that it is important to note the additional duties assigned to the two attorneys in the homicide team.

Page 9: The report states the following: "Attorneys, legal assistants, victim/witness assistance specialists, office assistants, and paralegals are also assigned to most of the trial teams."

Response: There are no paralegals assigned to the trial teams.



Page 25: The report references 7 attorneys per referral for homicide cases in 1999 through 2001. The report states: “The homicide unit is staffed by 2 full-time attorneys; for the purposes of estimating caseload, APRI included the trial team supervisors in the homicide unit, as they are responsible for handling some homicide cases.”

Response: The trial attorneys are counted twice in Exhibit 4-8, once under their individual trial team and once under the homicide trial team. The double counting is misleading. The report could be further clarified to include the following language: “The homicide unit is staffed by 2 full-time attorneys; for the purposes of estimating caseload, APRI included the trial team supervisors in the homicide units, as they are responsible for handling some homicide cases. The trial team supervisors are also included in the count for each of the individual trial teams for purposes of estimating caseload per trial team.”

Page 26: The report states the following: “However, prosecutors have responsibility for numerous additional case related activities than defense prosecutors do....”

Response: This sentence should read: **However, prosecutors have responsibility for numerous additional case-related activities that defense attorneys do not have responsibility for....”**

Page 30: The report states the following: “In APRI’s opinion, the charging guidelines adopted by the PAO and WPAA are consistent with the guidelines established by NDAA.”

Response: WPAA is actually WAPA (Washington Association of Prosecuting Attorneys.)

Page 31: The report states the following: “However, the PAO has several attorneys who are assigned to handle court proceedings exclusively – three “barrel” attorneys who handle arraignments, plea hearings, and disposition hearings as well as an attorney assigned to handle fast track drug cases exclusively.”

Response: There are three attorneys assigned to handle fast track drug cases exclusively, as opposed to one attorney.

Page 33: The report states the following: “In 2001, the PAO disposed of 6,876 cases (1 case = 1 defendant.) Nearly 13 percent (12.5% or 861 cases) of the cases were disposed by dismissal. Of the 861 cases disposed by dismissal, 259 were fugitive cases. The 6,876 cases disposed included the disposition of more than 12,000 felony charges, as shown in Exhibit 5-3 below.”

Response: The emphasis that “Nearly 13 percent “ of the cases were dismissed is misleading. The fugitive cases must be subtracted from the number of cases dismissed to receive an accurate picture of the percentage of cases dismissed in 2001. When you subtract the fugitive cases (259) from the cases dismissed (861), the actual percentage of cases dismissed in 2001 was 8.76%.

Page 33: The report states the following: “NOTE: Can the PAO provide the number of cases disposed by guilty plea and by trial in 2001 for Exhibit 5-3?”

Response: In 2001, 6,876 cases were disposed, 861 cases were dismissed, 5,829 cases were disposed of by guilty plea, and 186 cases were disposed of by trial.

Page 39: The report lists the expenditures for outside counsel since 1999 for Pierce, Snohomish and Thurston Counties in Exhibit 6-2.

Response: The “Outside Counsel” expenses for Pierce County, listed in Exhibit 6-2, includes such expenses as expert witness and court reporter costs which exist regardless of whether a case is handled outside the office. Did Snohomish County and Thurston County include expert witness and other such expenses in the figures they provided APRI?

Page 39: Exhibit 6-2 lists the expenditures for “Risk Management” Outside Counsel as \$2,611,128 since 1999.

Response: The 1999-2001 summary numbers provided to APRI (\$983,046; \$863,524; \$764,558), by the Risk Management and Insurance Department and upon which APRI built its \$2,611.128 figure for Pierce County in Exhibit 6-2, includes matters other than the 17 outside counsel risk management cases which are identified in Exhibit 6-1 and which APRI uses to calculate the “avg. per case” in Exhibit 6-2. For example, the expenses of retained counsel in tax valuation cases has been included for all three years, although those are not risk management cases and are not among the 17 identified outside counsel cases. The Boeing tax case alone accounted for an expenditure of \$126,836 (\$12,297; \$78,902; \$35,637), which is nearly 5% of the total 3-year Pierce County expenditures charted in Exhibit 6-2. Other examples of expenditures not properly attributable to outside counsel in risk cases on that chart are the expense for the health care Master in the jail class action case (\$95,285) and the expenses for outside counsel retained by the County Executive involving the McNeil Island Sexual Predator Halfway House dispute (\$12,304). In short, the sum (\$2,611,128) used by APRI for 1999-2001 Pierce County outside counsel risk management expenses is over-inclusive.

Page 39: The report recommends the following: “Risk Management Case Management Information System. The level of detail about risk management cases, reasons for assigning to outside counsel, and the costs associated with outside counsel are available but from different sources. The Pierce County Risk Management Office manages cost information, while the Civil Division of the PAO maintains case details. The County should consider the development of an information system that allows for the generation of expenditure reports and reasons for assigning cases to outside counsel in order to determine if the use of outside counsel is cost-effective.

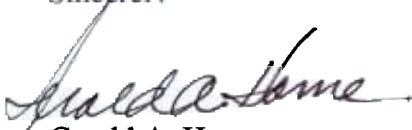
Response: The “different sources” are the Civil Division of the Prosecutor’s Office (which has a litigation file on each damages action) and the Risk Management and Insurance Department (which has a claim file, including a record of expenses, on each case). These two offices exist separately under the oversight of two independently

ected officials (the Prosecuting Attorney and the County Executive) and County Code establishes their roles involving risk management cases.

The Risk Management Department maintains and generates information concerning the expenditures made in every damage action against the County. The reasons for assigning cases are identified jointly by the Prosecutor's Office and the Risk Management Department early in litigation. Both the reasons for sending cases to outside counsel and the expense of employing such counsel are readily accessible.

Ms Nugent, again I would like to thank you for taking the time to listen to our concerns pertaining to the initial draft report. I appreciate your willingness to listen to our concerns with an open mind and your diligence in correcting the inaccuracies in the initial report. If you have any questions, please do not hesitate to contact Dawn Farina, my Chief Administrative Deputy (253-798-7749).

Sincerely

A handwritten signature in cursive script that reads "Gerald A. Home".

Gerald A. Home
Prosecuting Attorney
Pierce County Prosecuting Attorney's Office

cc. Matt Temmel, Performance Audit Coordinator

Appendix 2

Comments by APRI in Response to Prosecuting Attorney Comments

Note: Appendix 1 is a letter from Prosecuting Attorney Gerald Horne commenting on a draft report. APRI considered Mr. Horne's comments and revised the draft as follows for this final report. (This final report may also include a few minor revisions in detail on matters that were not addressed in Mr. Horne's letter.)

Page iii, Executive Summary: In response to the PAO's request to articulate the responsibilities, in addition to their caseload, of the Chief Criminal and Assistant Chief Criminal Deputies, APRI added the following sentence:

In addition to their caseload, both attorneys have management responsibilities; one oversees the day-to-day operation of the felony division and supervises the trial team leaders in the division and the other oversees the three criminal divisions.

Page 9: The felony division does not have paralegals; therefore, APRI deleted the reference to paralegals as part of the felony division staffing.

Page 25, Exhibit 4-8: The PAO asked that APRI clarify how trial team leaders were counted in the table. APRI added a sentence in the note to explain that trial team leaders were included in their respective units as well as the homicide unit for the purposes of estimating caseload.

Page 26, Exhibit 4-9: The same clarification with regard to the counting of trial team leaders was made in the Exhibit note.

Page 31: APRI changed the number of attorneys assigned to fast track drug cases from one to three per the PAO.

Page 33: APRI revised the discussion of case dismissals that precedes Exhibit 5-3 to focus on the fact that a significant number of dismissals were of fugitive cases, and when the fugitive cases are subtracted from the total number of dismissals, the overall percentage of dismissals decreases substantially.

Page 38: APRI added the following sentence to clarify the decision-making process for assigning cases to outside counsel:

In order to determine the reasons for use of outside counsel, APRI and the head of the PAO Risk Management Section reviewed the docket of cases open at the time of the study and discussed each case listed.

Page 39: APRI added the following clarifying statement with regard to the costs of outside counsel:

It is important to note that the figures shown in Exhibit 6-2 include costs for expert witnesses, court reporters, and other expenses that are incurred whether or not a case is sent to outside counsel.

Page 39: The PAO requested that APRI revise the costs associated with risk management cases to take into consideration that some of the dollars expended were for tax revenue cases, which are not risk management cases. APRI did not have a detailed breakdown of cost data by case in order to make this change. However, APRI did add the following paragraph in response to the PAO's request:

According to the PAO, the figures provided by the Risk Management and Insurance Department on expenditures for outside counsel includes costs for retained counsel in tax valuation cases, which are not risk management cases, and other cases such as the health care Master in a jail case action case and outside counsel retained by the County Executive for the McNeil Island Sexual Predator Halfway House dispute. The reported costs associated with these cases totals \$234,425, which would further reduce the costs per case to \$139,806.

Page 40: Details about risk management data are available from different sources—cost information from the Risk Management Department and case information from the PAO Risk Management Section. In response to the PAO's comment with regard to APRI's recommendation that a management information system be developed, APRI clarified the point about the different data sources, and added language to explain that the current system is not the most efficient for the purposes of the types of analyses requested by the Performance Audit Committee. These changes were also reflected in the Executive Summary.