

Preliminary Report
November 16, 2000
Updated October 18, 2002

Updated Follow-Up Report

Pierce County Public Defense Cost Recovery

Conducted for Pierce County Performance Audit Committee

by

Matt Temmel, Performance Audit Coordinator
and Sue English, former staff member

Pierce County

Performance Audits

955 Tacoma Avenue South, Suite 302A
Tacoma, Washington 98402
Telephone (253) 798-4927 Fax (253) 798-4906
E-mail: mtemmel@co.pierce.wa.us

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To: Performance Audit Committee

From: Matt Temmel, Performance Audit Coordinator



Re: Updated Report on Public Defense Cost Recovery

Updated Report

In November 2000, the Performance Audit staff issued a follow-up report on Public Defense Cost Recovery in Pierce County. That report analyzed the implementation of audit recommendations made by a contractor in 1998 and a county task force in 1999. The report also presented cost recovery data on topics such as the \$25 screening fee established in 1999 for defendants who want an attorney provided at public expense. Another item of interest was recoupment ordered by the courts to offset the cost of the court-appointed attorney.

At a time when taxpayer funding is not so freely available as in the past to support quality legal services in the criminal justice system, we believe it is important to focus on cost recovery. This report, issued in October 2002 almost two years after the original follow-up report, contains updated figures on cost recovery and further information on the status of the audit recommendations. The trend data (from 1997 to 2002) allow us to see the progress that has been made in cost recovery and also opportunities for further improvements. We draw conclusions about the effectiveness of cost recovery efforts at present and recommend changes that are likely to further increase the amounts that are collected.

The report is still a "preliminary report" because we have not yet requested formal written responses by the Department of Assigned Counsel, Prosecuting Attorney, Pre-Trial Services, Clerk of Superior Court, and the Superior, District, and Juvenile courts. All of those entities and others are involved in cost recovery efforts. We hope the agencies will consider the updated information and recommendations and engage in a fruitful dialogue over the next few months.

In December 2002, the performance audits of the Department of Assigned Counsel (DAC) and the Prosecuting Attorney's Office (PAO) will be released. Before releasing those audit reports, we will request comments and formal responses from DAC and PAO. We may also request formal responses from agencies to the material presented here on public defense cost recovery.

Acknowledgement

Matt Temmel prepared this report, building on the foundation created by a former staff member, Sue English. While a member of the performance audit staff, Sue established procedures for collecting and recording cost recovery data on an ongoing basis, and she wrote the first follow-up report (November 2000). In 2001 and 2002, in the course of other work, she continued to collect the cost recovery data that is presented in this report. Two months ago, Sue moved to Illinois. We are grateful to Sue for her work with Pierce County and wish her well in her new home and career.

Executive Summary

This follow-up report reviews the impact and status of performance audit recommendations that were made three to four years ago on the topic of public defense cost recovery. The report has three objectives:

1. Review the implementation status of the March 1999 recommendations on public defense cost recovery by a task force of Pierce County agencies involved in the criminal justice system. The task force based its recommendations in part on the work of The Spangenberg Group, a contractor who conducted a performance audit in 1998 of indigent defense screening and cost recovery.
2. Determine the fiscal impact of the implemented recommendations and analyze the trend in amounts recovered for public defense costs, while updating data through September 2002.
3. Compare cost recovery efforts in Pierce County to those in other counties.

This report reviews the extent to which the recommendations have been implemented by the courts, Prosecuting Attorney, Department of Assigned Counsel, and Pre-Trial Services.

Public Defense Recovery in Pierce County

The report presents data on the amounts received since 1997 for court-ordered recoupment, promissory notes, and application fees. Considering revenue from all sources, the total revenue in 2002 is estimated at approximately \$301,000, or more than triple the 1997 amount.

Application Fee (Screening Fee)

In July 1999, Pre-Trial Services started collecting the \$25 application fee per Pierce County ordinance. The annual revenue of this fee in 2002 is estimated at approximately \$55,000, a decline of \$12,000 since 2000. Pre-Trial Services collects the application fees from 13% of the people screened. No efforts are being made to collect unpaid fees. The report includes a recommendation on ways to collect the unpaid screening fees.

Superior Court

Implementation of task force recommendations has significantly increased the amount collected for public defense costs. In Superior Court, revenue from public defense recoupment is estimated at \$177,000 to \$182,000 this year, versus \$47,000 collected in 1999.

The amount of public defense recoupment ordered by the court in 2002 is estimated at \$659,000. The comparable figure in 1998, when recoupment was first discussed in a Pierce County performance audit report, was \$100,000. Defendants have ten years to pay their obligations, or longer if the court extends jurisdiction. The frequency of recoupment has grown in recent years. In 1997, Superior Court ordered recoupment in approximately 11 percent of the cases in which assigned counsel represented the defendant at any time during the case. In 2002 (January-September), based on data from the LINX information system, we found that Superior Court ordered recoupment in 58 percent of the cases with assigned counsel.

When analyzing cases on a monthly basis, we found a large amount of fluctuation in the number and percentage of assigned counsel cases in which recoupment has been ordered in 2001 and 2002. At the high point, in September 2001, recoupment was ordered in 78 percent of the cases with assigned counsel. At the low point, August 2002, Superior Court judges ordered recoupment in only 28 percent of the cases with assigned counsel.

In analyzing the reasons for such fluctuations, we found that assigned counsel, contrary to the 1999 task force recommendations on the subject, sometimes oppose the prosecutor's recommendation to the court for recoupment. However, we believe that judicial assignments to the presiding courts, where most sentencing is done, are the main reason for the monthly changes in the percentage of assigned counsel cases in which recoupment is ordered. The report includes recommendations to make sure that all Superior Court judges and DAC staff are aware of the task force policy on recoupment.

Legal Financial Obligations

While the amount has grown significantly, Pierce County still collects relatively little for public defense costs. In 2002, through early October, Clark County collected \$257,000 for recoupment in Superior Court felony cases, while Pierce County collected only \$142,000.

Public defense recoupment is a small portion of the total collection for Legal and Financial Obligations (LFOs). Superior Court judges order LFOs when sentencing a defendant. The obligations may include public defense recoupment, crime victim penalty, fines, court costs, drug investigation fees, witness fees, and other charges allowed in state law. Revenue from some LFOs is shared with the state. The report analyzes the amounts collected in Pierce County and eight other counties. Pierce County would receive more revenue if sentences included more LFOs such as recoupment, of which the county retains 100 percent of the amounts collected, and fewer fines, which the county shares with the state.

The report includes analysis of the collection efforts currently under way in Pierce County compared with three counties (Kitsap, Clark, and Chelan) that have more aggressive collection programs and indeed collect more revenue per case.

Recommendations

The report recommends changes to collect unpaid screening fees, improve collection of legal financial obligations, and deal with related issues. The recommendations are directed to the Public Defense Cost Recovery Task Force, which can address the issues and report as soon as possible to the Performance Audit Committee. The recommendations, which are discussed on pages 16-20, are listed below.

Recommendation 1: Eligibility Criteria

Consider the current eligibility criteria in Chapter 10.101 RCW and discuss whether the criteria should be revised to limit the number of persons eligible to receive attorney services at public expense, or whether the eligibility criteria are reasonable but the statute needs to be amended to encourage or require recoupment.

Recommendation 2: Verification of Resources

The indigency screeners should verify defendant resources on a random or selective basis.

Recommendation 3: Unpaid Screening Fees

Collect unpaid screening fees by adopting one of the three approaches described in this report, or devise a better alternative.

Recommendation 4: Recoupment Policy

To make sure that the courts and defense counsel are aware of the Task Force policy on recoupment, it is recommended that:

- a. The presiding judges should notify all judicial departments about the Task Force recoupment policy and inform them about the LFOs that may be ordered by the court, including local and state shares, or add the information to standard materials that are available to judges on an ongoing basis, and
- b. The Department of Assigned Counsel should adopt a written agency policy on recoupment that applies to staff attorneys, panel attorneys, and contract attorneys.

Recommendation 5: Collection

- a. Negotiate an agreement with the Department of Corrections that the Pierce County Clerk will take action to collect from DOC clients who are on monetary supervision only and fail to make monthly payments.
- b. If agreement is reached with DOC for a more active collection program by Pierce County, consider adding at least one staff person to the Clerk's Office to handle the increased collection caseload.
- c. Consider revising the language on the judgment and sentence so that the defendant is notified in that document that Pierce County expects LFOs to be paid and will refer delinquent accounts to a collection agency. Also consider adding to the judgment and sentence other information, such as the interest rate on unpaid obligations, the additional charges that will result if the case is turned over to collection, and the importance of maintaining a monthly payment plan.

Recommendation 6: Role and Organizational Placement of Pre-Trial Services

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

Recommendation 7: Indigency Screening in Juvenile Court

Consider transferring responsibility for juvenile indigency screening to Juvenile Court.

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Introduction

The Public Defense Cost Recovery Task Force was created by the County Council in 1998 to assist a contractor, The Spangenberg Group, in evaluating Pierce County's system of public defense eligibility screening and cost recovery. The task force consisted of representatives from 12 entities of county government.¹ After analyzing The Spangenberg Group's recommendations, the task force agreed in March 1999 on ten recommendations intended primarily to increase the funds recovered for public defense costs. See [Appendix 1](#).

This follow-up study has three objectives:

1. Review the implementation status of the March 1999 recommendations by the Public Defense Cost Recovery Task Force.
2. Determine the fiscal impact of the implemented recommendations and analyze the trend in amounts recovered for public defense costs, while updating data through September 2002.
3. Compare cost recovery efforts in Pierce County to those in other counties.

Status of the Task Force Recommendations

1. Implemented Recommendations

Three of the ten recommendations have been implemented:

1. In 1999, the County Council passed an ordinance establishing a \$25 application fee for the appointment of defense counsel at public expense ([Appendix 2](#)).
2. In 1999, Pre-Trial Services (PTS) started collecting the \$25 application fee and stopped issuing promissory notes, as agreed by the task force. A later section of the report discusses the revenue from this source, percentage of applicants who pay the fee, and related issues.
3. In 1999, the Presiding Judge of the Superior Court signed a general order that changed the distribution of payments received for legal financial obligations (LFOs) for all Superior Court cases decided after April 2, 1999. Payments will be applied first to any restitution ordered by the court, as required by state law, then applied to public defense counsel recoupment, and then distributed proportionally to the other obligations ordered by the court. The county retains 100 percent of the payments for public defense, while the state takes a share of payments for some other LFOs such as fines.

¹ Assigned Counsel, Budget & Finance, Clerk of Superior Court, County Council, District Court #1, District Court Probation, County Executive, Juvenile Court, Pre-Trial Services, Prosecuting Attorney, Sheriff, and Superior Court.

2. Non-Implemented Recommendations

Five recommendations by the task force have not been implemented.

1. District Court has not pursued actions to revise the payment distribution order to give higher priority to recoupment. However, it may not be possible under current law for District Court to issue an order changing the distribution of payments. The statutes and the required accounting procedures for District Court are quite different from Superior Court.
2. The Pre-Trial Services Advisory Board was not reassembled to explore the role of Pre-Trial Services. The intent of this recommendation was to open a dialogue on ways to develop the potential for Pre-Trial Services to better assist the courts, in addition to screening defendants to determine eligibility for a defense lawyer at public expense.

The task force also intended this recommendation as an alternative to the stronger recommendation by The Spangenberg Group that Pre-Trial Services should be removed from the Sheriff's Department and placed in another agency. The contractor, who is a national authority on defense counsel issues, believes it is not appropriate to require defendants to give personal financial data and other information to indigency screeners who work for the police agency because the information could be misused to support the State's case. Another factor cited by the contractor is that PTS can not grow into a "real" pre-trial services or court services agency so long as the unit is located in the Sheriff's Department. We believe that the contractor raised valid issues and that the Advisory Board should be reconvened at the earliest opportunity to address the issues of interest.

3. Pre-Trial Services is not screening more defendants out of custody. Approximately 80% of screenings continue to be conducted in the jail, and 20% are done out of custody. This recommendation was intended to improve chances of collecting the \$25 application fee, which is more likely to be paid when the screening is done in the PTS office. PTS by itself cannot implement this recommendation. Significant progress on the issue can be made only if the police and the courts change procedures so that more defendants, especially those charged with misdemeanors, are cited and notified to appear in court rather than jailed. Compared with other counties, Pierce County appears to jail a high proportion of defendants charged with misdemeanors.
4. In screening applicants and determining eligibility for a lawyer at public expense, Pre-Trial Services does not verify defendant financial resources on a random or selective basis. PTS supported this recommendation in 1999 and then for a time made telephone calls to home, employers, and other sources in an attempt to check information provided on the application. However, PTS never checked credit records, because the procedure was held to be too expensive.
5. The task force also recommended that Pre-Trial Services increase its use of interns. The intent was that interns would assist with verification work. However, as mentioned above, verification work is not being done. Interns are used for other work, such as office duties and indigency screening in the jail on Saturdays.

3. *Partially-Implemented Recommendations*

The other recommendations by the task force concern recoupment of public defense costs. "Recoupment," as used in this report, refers to an order of the court as part of the judgment and sentence that requires a convicted defendant to pay part or all of the costs of public defense. The distinguishing feature of recoupment, as opposed to a promissory note signed by the defendant, is that payment is required by court order. The task force recommendations on this matter were as follows:

- ◆ Recoupment was to become "normal practice in Superior Court and District Courts for all cases with Assigned Counsel." In making the sentencing recommendations to the judge, the deputy prosecuting attorney was to recommend recoupment, and defense counsel was to support the prosecutor's recommendation.
- ◆ The recommended amounts were \$300 for class A felonies, \$200 for class B and C felonies, \$100 for DUI and domestic violence gross misdemeanors, and \$50 for other cases. In 1999, the task force recognized that the actual costs of assigned counsel were much higher, but it was decided to set the standard amounts fairly low, to get the new system off to a start.

The task force agreed that judges should consider ordering recoupment in **all** criminal cases with assigned counsel, without regard to whether the defendant had been determined "indigent" or "indigent and able to contribute" by Pre-Trial Services. Case law allows courts to order recoupment for indigent defendants because indigency is not a permanent condition and the person may subsequently acquire the means to pay the obligation. There is extensive case law on these issues. See State v. Blank, 131 Wn.2d 230, 930 P.2d 1213 (1997). Defendants convicted in Superior Court have ten years to pay their court-ordered legal financial obligations, or longer if the court extends jurisdiction.

These two recommendations on recoupment have been partially implemented. A detailed analysis appears later in the report. In general, Superior Court has made a good start to implementing the recommendations. The amount of money recovered by Superior Court has more than tripled since 1997. Progress has been less visible in District Court and Juvenile Court. In all courts, especially in Superior Court, we believe many opportunities are available to further increase the amount of money that is recovered. This will be discussed later after considering the revenue trends since 1997.

Fiscal Impact and Trends

1. *Amounts Recovered by Pierce County*

Exhibit 1 (next page) shows the amounts collected by Pierce County for public defense since 1997. Payments include the \$25 application fee, recoupment, and promissory notes. The total amount recovered from all sources for public defense costs has increased from approximately \$92,000 in 1997 to an estimated \$301,000 in 2002.

Exhibit 1

Public Defense Cost Recovery Amounts Recovered by Pierce County ¹

	1997	1998	1999	2000	2001	Estimated 2002 ³
Pre Trial Services Administration Fee²						
Adult - In Custody	-	-	17,575	29,250	24,325	22,633
Adult - Out of Custody	-	-	17,600	28,975	28,325	28,129
Juvenile	-	-	2,175	9,245	7,000	4,267
<i>Subtotal</i>	-	-	37,350	67,470	59,650	55,029
District Court						
Court Ordered Recoupment	-	-	544	5,959	10,110	16,085
Promissory notes or collection agency	10,471	13,086	7,133	2,293	1,169	1,177
<i>Subtotal</i>	10,471	13,086	7,677	8,252	11,279	17,263
Superior Court						
Court Ordered Recoupment	45,160	42,949	44,863	88,537	141,497	177,260
Promissory notes or collection agency	6,267	5,355	2,330	500	-	-
<i>Subtotal</i>	51,427	48,304	47,193	89,037	141,497	177,260
Juvenile Court						
Court Ordered Recoupment	-	-	-	-	32,966	50,922
Promissory notes or collection agency	30,313	45,766	32,823	5,809	1,519	1,263
<i>Subtotal</i>	30,313	45,766	32,823	5,809	34,485	52,185
Total	92,211	\$ 107,156	\$ 125,043	\$ 170,568	\$ 246,910	301,737

¹ Figures represent actual money collected and posted in "Cash Receipts Ledger."

² Collection of PTS Administration Fee started in July 1999.

³ 2002 annual estimate is based on January-September actual data.

Sources: Pierce County Budget and Finance, supplemented by 1997 and 1998 data from Clerk of the Superior Court.
Data compiled by Sue English

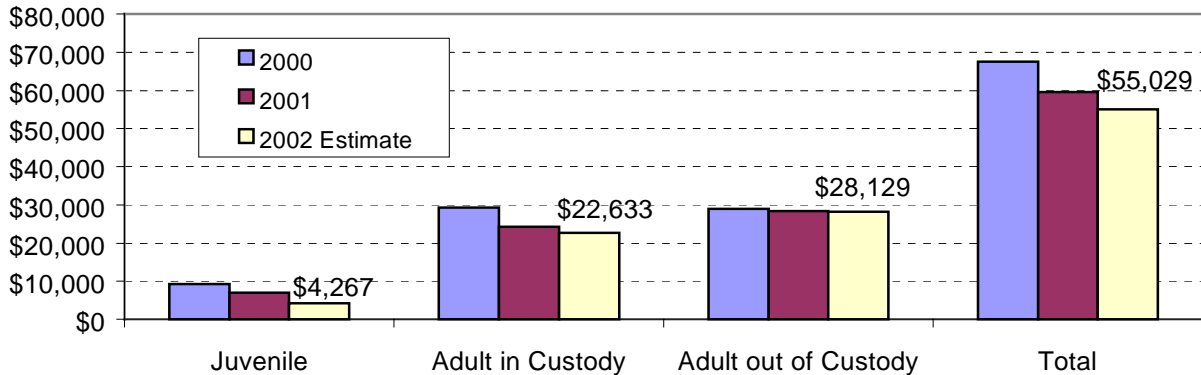
All revenue shown in Exhibit 1 goes to the county's general fund and thus does not enhance the budget of any particular department. The revenue covers a very small fraction of Department of Assigned Counsel costs (\$9.5 million total budget in 2002, mostly for public defense in criminal cases). The revenue in Exhibit 1 also does not cover the cost of screening by Pre-Trial Services, which is estimated at \$335,000 per year. (Screening and related work takes an estimated 40 percent of Pre-Trial Services staff time. The 2002 budget for PTS is \$837,100. Forty percent of that amount is just under \$335,000.)

2. \$25 Administration Fee (Screening Fee)

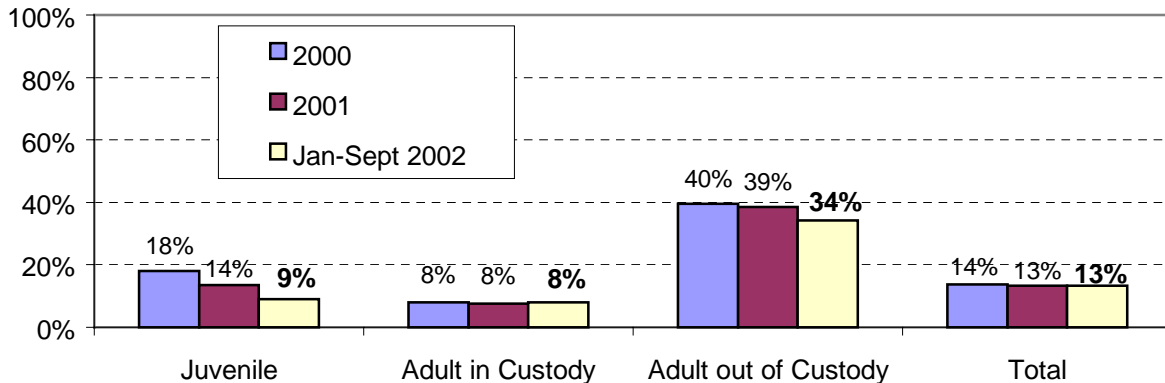
Pre-Trial Services screens defendants and determines their eligibility for defense counsel at public expense based on criteria established in state law (Chapter 10.101 RCW). PTS conducts 16,000 to 18,000 screenings per year. Only 13 percent of the applicants pay the \$25 fee. Based on January-September actual data, we estimate that the screening fee will bring in approximately \$55,000 in 2002. The graphs below show the trends since 2000 in screening fee revenue and the percentages of applicants who pay the fee.

Exhibit 2

Screening Fee Revenue Collected since 2000



Percent of Screening Fees Collected since 2000



The Pierce County ordinance that established the application fee states: “No defendant will be denied the assistance of counsel because of inability to pay the fee at the time of application. *Unpaid application fees shall be reported to the court for consideration at the time of sentencing.*” (Emphasis added.) (PCC 9.50.010, D.)

If a defendant does not pay the application fee, Pre-Trial Services completes the screening and determines eligibility. PTS notifies the court by sending paperwork that indicates eligibility for assigned counsel. The form contains a box that is checked to indicate that the application fee has not been paid. We found little evidence in Superior Court that the prosecutor or the judge is aware of the unpaid fee or that the matter is considered at the time of sentencing.

In Tacoma Municipal Court, on the other hand, a judge and a commissioner on occasion have “waived” the screening fee by writing a note on the form given to the defendant at arraignment. It is not clear that a judicial officer has the power to formally waive the screening fee. There is also an inter-jurisdictional issue in that a municipal judge is waiving a fee legislated by Pierce County.

3. Screening Fees and Promissory Notes

As agreed by the task force, Pre-Trial Services stopped writing promissory notes in 1999 at the same time it began collecting the \$25 application fee. The net fiscal effect has been negative. Total revenue from promissory notes in 1998 was \$64,207, compared with an estimated \$55,000 that will be collected for the screening fee this year.

The task force decided to end promissory notes in 1999 because of the low financial return and high administrative costs. The \$25 application fee involves considerably less workload than promissory notes, and the revenue is a little less—but there is a major difference. Unpaid promissory notes were turned over to a collection agency, but no efforts are being made to collect unpaid screening fees.

4. Superior Court Recoupment

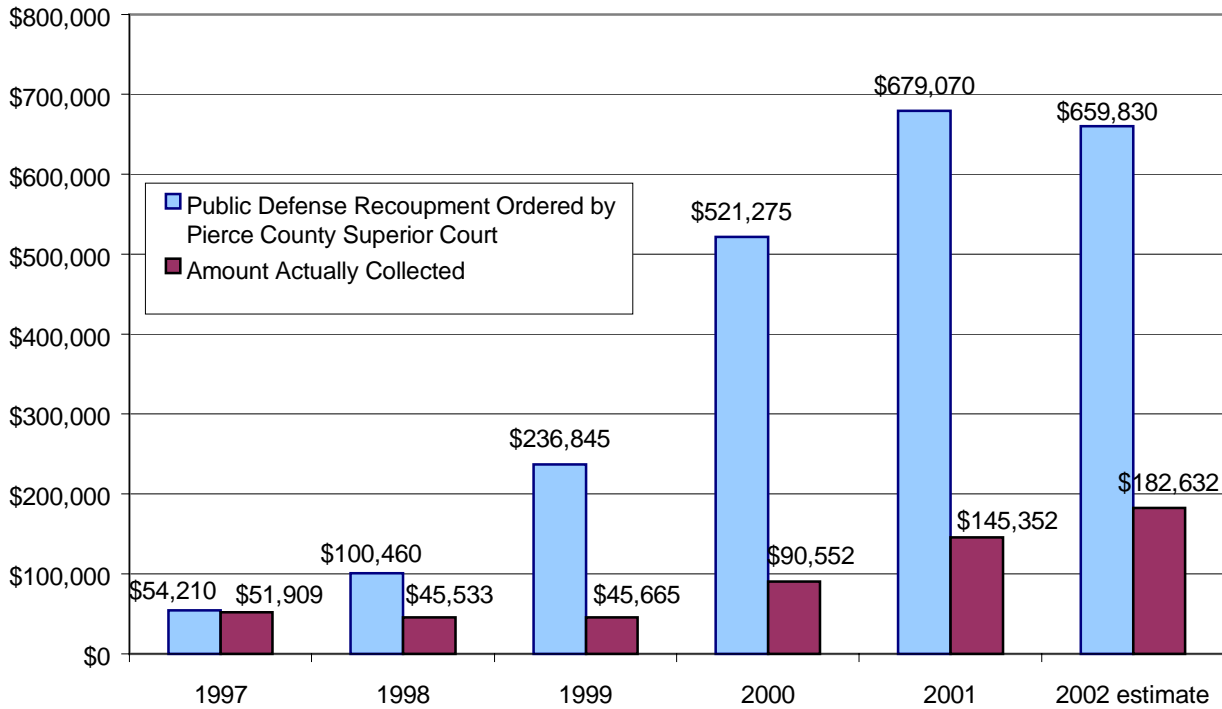
This section reviews to what extent Superior Court has implemented the two main task force recommendations on recoupment for cases with a court-appointed attorney. The recommendations may be quoted here:

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

In Superior Court, implementation of these recommendations has had a positive fiscal impact. Cases with a court-appointed attorney make up approximately 80 percent of the Superior Court criminal caseload. The following graph shows the amounts assessed (ordered) in Superior Court for public defense recoupment and the amounts actually collected since 1997.

Exhibit 3

**Superior Court
Public Defense Recoupment Ordered and Collected since 1997**



Source: Clerk of Superior Court records from SCOMIS/JASS. Amount Actually Collected differs slightly from Cash Ledger data reported above in Exhibit 1 because of time lag in posting revenue.

By ordering recoupment in a large number of cases, Superior Court is building a base of financial obligations from which Pierce County can realize much higher revenues in future years, especially if improvements are made in the collection program. The obligation to pay lasts for ten years from the date of sentencing, or longer if the court extends jurisdiction. Compared with the screening fee discussed earlier, recoupment is a much larger potential source of revenue.

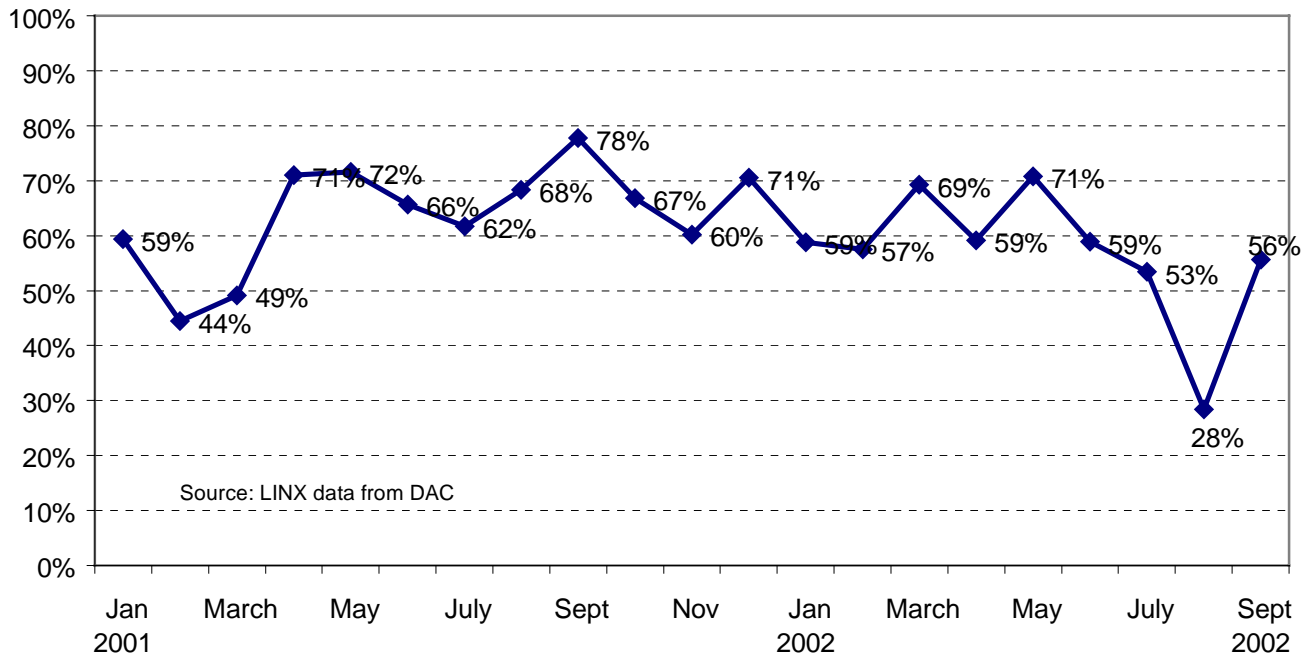
Has Recoupment Become “Normal Practice” in Superior Court?

Baseline data are available from 1997, when Superior Court judges ordered recoupment in only 11 percent of cases with assigned counsel.² The percentage is much higher now. According to LINX data provided by the Department of Assigned Counsel, Superior Court judges ordered recoupment in 2001 in 64% of the cases that had assigned counsel at any time during the case. In 2002, January-September, the percentage fell, as recoupment was ordered in 58% of the assigned counsel cases. Appendix 3 summarizes the 2001 and 2002 data.

These figures indicate significant progress since 1997, but much remains to be done before recoupment can be considered “normal practice” in Superior Court. The above figures, 64% and 58%, are annual averages. When the figures are examined on a monthly basis, a more complex picture emerges. There is a surprisingly large amount of fluctuation in the number and percentage of DAC cases in which recoupment is ordered. The following graph shows the monthly percentages since January 2001.

Exhibit 4

Superior Court Dispositions: Percentage of DAC Cases with Recoupment Ordered



According to the 1999 task force recommendation, deputy prosecuting attorneys are to recommend recoupment to the court. The prosecutor recommendations are not recorded in

² This 1997 figure was calculated from data from SCOMIS, which is the state information system for Superior Court. Comparable data from LINX, which is a county information system, is not available for 1997.

LINX, but they are contained in the paper case files. In 2000, based on a sample of case files, we estimated that prosecutors were recommending recoupment in 90 percent of the cases with assigned counsel. The sampling was very time consuming and was not repeated in 2002. Anecdotal information from both Prosecuting Attorney and DAC sources indicates that the felony prosecutors are continuing to recommend recoupment to the court on a regular basis.

At the time of sentencing, assigned counsel sometimes oppose the prosecutor's recommendation for recoupment. According to anecdotal evidence, this occurs fairly often. The evidence comes from sources both in the Prosecuting Attorney's Office and in the Department of Assigned Counsel. Some DAC staff indicate that they agree to recoupment when negotiating a plea bargain, but they may oppose recoupment when appearing before the judge.

The Prosecuting Attorney has a written policy that endorses the 1999 task force recommendation that the prosecutor is to recommend recoupment in all cases with assigned counsel at any point during the case. The policy has been circulated twice to deputy prosecutors. The Department of Assigned Counsel has held office discussions on the 1999 task force recommendations on recoupment, but there is no written office policy on the topic. The lack of written policy in DAC supports the anecdotal evidence that DAC staff attorneys sometimes oppose recoupment.

Judicial assignments to the presiding criminal courts can have a major impact on the recoupment percentages shown above in Exhibit 4. Typically, four to six judges sit in the presiding courts each month, and they are responsible for the vast majority of the sentences that month. If most of those judges believe in recoupment as good legal practice, the percentage of cases in which recoupment is ordered will be high. The opposite can also occur. In August 2002, for example, the percentage of DAC cases with an order for recoupment fell to a two-year low of 28 percent, as shown above in Exhibit 4. We believe judicial assignments are the main factor in this sharp decline. The next month, when assignments changed, the rate doubled to 56 percent.

On a related topic, the task force recommended standard amounts for recoupment orders (\$300, \$200, \$100, or \$50, depending on the offense), while recognizing that the actual costs were much higher. It appears that Superior Court judges, with some exceptions, are generally following the recommendations as to amount.

We reviewed SCOMIS data on the amount of recoupment that is ordered in individual cases. The order coincided with one of the flat fee amounts in 88% of the recoupment orders in 2000 and 2001 and in 76% of the orders this year, although the amount was not always at the level recommended for the offense. This suggests general use of the recommended recoupment amounts, with exceptions. Rather than follow the standard amounts, some judges will order recoupment higher or lower than the standard amount, sometimes based on a perception of what the defendant can pay.³

³ However, at least one judge seems to habitually order recoupment in the amount of \$110. This appears to confuse recoupment with the standard amount charged for court costs.

Juvenile Court and District Court

Juvenile Court started in early 2001 to order recoupment for public defense. We did not review the frequency or amount of recoupment orders. The revenue data (above in Exhibit 1) indicate a small but growing amount of money collected for public defense recoupment.

In District Court #1, approximately 30 percent of criminal cases have a court-appointed attorney, according to an estimate by a court source. Recoupment issues cannot be researched through the electronic data, because district court criminal cases are not entered into LINX. From accounting records, as shown above in Exhibit 1, it is known that a small amount of money is collected for recoupment. It is also known that District Court #1 collects large amounts in fines and fees of various kinds, and Pierce County retains much of that revenue.

Comparisons with Other Counties

This section considers payments made to various counties for Superior Court public defense recoupment and for other “legal financial obligations” (LFOs). LFO is a statutory term. It refers to financial obligations that a judge may order for a convicted defendant at the time of sentencing. The obligation to pay lasts for ten years from the date of sentencing, or longer if the court extends jurisdiction. State statute directs the court to set monthly payments at the time of sentencing. See RCW 9.94A.760 (1).

1. Public Defense Recoupment

As first reported by The Spangenberg Group in 1998, Pierce County recovers less than some other counties for public defense costs. Clark County and Kitsap County, which are smaller than Pierce County, continue to collect much higher amounts for recoupment. Recoupment revenue is highest in Clark County and Kitsap County through a combination of high incidence of recoupment orders, large standard amounts, and aggressive collection practices. In Kitsap County, for example, recoupment is said to be ordered in virtually every felony case with a court-appointed attorney, and the standard amount is \$960. As discussed earlier, the standard amounts in Pierce County are \$300, \$200, \$100, or \$50, depending on the offense, and recoupment is currently being ordered in only 58 percent of the cases with assigned counsel.

2. Legal Financial Obligations

In 2002, through October 10, Pierce County revenue for public defense recoupment came to approximately \$142,000. This amount is only 14 percent of over \$1 million in total revenue for legal financial obligations received during that period. To understand the big picture, we reviewed the revenue from legal financial obligations, rather than just recoupment, and obtained comparative data regarding other counties. This approach is intended to provide a broad comparative assessment of county performance in collecting legal financial obligations.

The revenues from LFOs are received by the Superior Court Clerk in each county and posted to a state account using standardized accounting categories known as BARS codes. We obtained data for selected BARS codes from the state Administrative Office of the Courts. We have tracked the LFO revenue data since January 1999. In this report, to keep things to a manageable size, we report only the data for 2002, from January 1 through October 10. The patterns that can be seen in the 2002 data are similar to what we have seen in the prior data going back to 1999.

The detailed data on LFO revenues are presented in [Appendix 4](#) and [Appendix 5](#). The data refer to Pierce County and the seven other largest counties in the state. In addition, Chelan County is included because that county has focused on collecting legal financial obligations since 1993 and provides a model for other counties. Summary data are discussed here in the text after first explaining basic information about LFOs. The following table lists the major types of LFOs.

Exhibit 5

Legal Financial Obligations – Superior Court

<u>Legal Financial Obligation (LFO)</u>	<u>Amount</u>	<u>Local Share</u>	<u>State Share</u>
Crime victim penalty – adult (mandatory)	\$500	68%	32%
Fines (frequently ordered in Pierce County)	Varies	68%	32%
Court costs (usually ordered in Pierce Co.)	\$110	100%	-
Public defense costs	Varies	100%	-
Filing fee (not used in Pierce County)	\$110	54%	46%
Drug investigations fee (seldom ordered in Pierce County)	Varies	100%	-
Witness costs (seldom ordered in Pierce Co.)	Varies	100%	-
Crime victim penalty – juvenile (not ordered in Pierce County)	\$250	68%	32%
Juvenile offender fines	Varies	68%	32%
LFO interest	12% per year from date of judgment	50%	50%

Note: Minor miscellaneous fees authorized by statute are not considered here. One major fee, \$3,000 for meth clean up, is also excluded.

Source: BARS manual and revenue data in Appendix 4.

[Exhibit 6](#) on the next page shows the amounts collected in nine counties this year for recoupment and for all legal financial obligations.

Exhibit 6**Amounts Collected for Recoupment and Other Legal Financial Obligations****Superior Court Amounts Actually Collected in Nine Counties, January 1 - October 10, 2002**

Ranked by Right Hand Column

	<u>RECOUPMENT</u>		<u>ALL LFOs (Recoupment and Others)</u>	
	Amount Collected (100% Retained by County)	Amount per Judgment and Sentence *	Amount Collected, Includes Local Share Only	Amount per Judgment and Sentence *
Clark County	\$257,240	\$159	\$945,537	\$583
Chelan County	25,981	88	165,038	557
Kitsap County	178,501	160	388,844	348
Thurston County	38,252	33	379,629	323
Snohomish County	76,677	46	478,936	286
PIERCE COUNTY	142,582	32	1,051,157	235
Yakima County	59,995	50	243,414	204
King County	26,766	5	1,035,561	187
Spokane County	17,171	11	271,775	178

* Based on three-year average number of Judgments and Sentence (for state FY 1999, 2000, and 2001).

Revenue data source: Administrative Office of the Courts, October 11, 2002.

The “mix” of LFOs ordered by the court determines the amount of funding that is eventually retained by the county or remitted to the state. From a revenue perspective, it is helpful to a county if a judge orders a convicted defendant to pay for court costs and public defense because the county retains 100 percent of the revenue collected in these categories. It is less helpful if fines are ordered because the county retains only 68 percent of that revenue.

As shown in [Appendix 4](#) and [Appendix 5](#), Clark County retained 78 percent of the LFO revenue collected so far this year, and Kitsap County retained 84 percent, while the local share for Pierce County was 73 percent. The reason is that judges in Clark County and Kitsap County order more recoupment, drug funds, and other LFOs for which the county retains 100 percent of the amount collected. Pierce County judges tend to impose fines, of which the county retains only 68 percent.

3. *Collection Practices*

Collection practices differ greatly in the various counties. It is sometimes said that the state Department of Corrections has primary legal responsibility for collecting legal financial obligations from offenders under DOC supervision. However, in many parts of the state, it appears that DOC, faced with problems of insufficient staffing, is unable to actively pursue collection apart from the traditional practice of notifying county prosecutors that an offender has failed to make payments. Probation violation hearings may be held, and the offender may be threatened with jail time, or actually serve a further short sentence if the court finds that the failure to pay was willful. However, this approach by itself is generally seen as an expensive and ineffective way to encourage payment of LFOs.

Legislation enacted in 1999 gave the Department of Corrections an option to turn cases over to county authorities for collection. The language of the statute is as follows:

“The department may arrange for the collection of unpaid legal financial obligations through the county clerk, or through another entity if the clerk does not assume responsibility for collection. The costs for collection services shall be paid by the offender.” [Washington Laws of 1999, Chapter 196, Section 6 (12), now codified as RCW 9.94.760(12).]

Counties including Clark, Chelan, Grant, Kitsap, and perhaps a few others have active programs to pursue payment of LFOs. The cases may still be formally supervised by DOC on “minimum supervision” status (also known as “LFO only” status), but the counties have worked out formal or informal arrangements with DOC to collect the outstanding payments.

In contrast, the Pierce County Clerk of Superior Court has a less active collection program. The Clerk tries to collect unpaid financial obligations only in two kinds of cases:

1. Bench supervision cases (not under DOC), and
2. Cases in which DOC has formally terminated supervision.

The second category includes mostly older cases that have been inactive for a long time. By not attempting to collect until DOC has formally terminated supervision, Pierce County is failing to enforce its criminal judgments and missing opportunities to increase revenue. The counties with active collection efforts (such as Clark, Chelan, and Kitsap counties) recover far more than Pierce County when considered on a uniform basis. This can be seen in [Exhibit 6](#), above, and in the more complete data in [Appendix 5](#).

The following sections of the report describe current collection efforts in Pierce County and in Kitsap, Chelan, and Clark counties. As previously shown, payments to the three other counties are much higher on a per case basis than in Pierce County.

Pierce County

In early 2002, the Pierce County Clerk of Superior Court entered into a contract with a collection agency regarding cases that have unpaid legal financial obligations. This is the first time that the Clerk has sent unpaid LFOs to collection. On April 1 this year, after notifying the parties and giving them 30 days to make payment arrangements, the Clerk sent 428 cases to the collection agency. As of October 17, the county has received some \$5,700 in payments from these cases.

In addition, 38 people with unpaid LFOs contacted the Clerk's Office earlier this year and agreed on a payment plan or paid off the obligation in full, rather than allowing the debt to be sent to collection. According to the Clerk's Office, the revenue from these 38 cases was \$22,481 as of October 17.

Most of the above cases were old, some more than ten years old, mainly former DOC cases for which the agency had recently terminated supervision. It is likely that greater revenue could be collected if the Clerk pursued unpaid LFOs for offenders who remain under supervision of DOC for purpose of monitoring their payments. These are newer cases, and the chances of collecting may be greater.

The Pierce County Clerk does not try to collect unpaid LFOs for any cases that are formally under DOC supervision, as set forth in a protocol between DOC and the Washington State County Clerks Association. We believe that the protocol should be re-negotiated. DOC sources informally told us that the state agency would probably be glad to terminate supervision on many current "LFO only" cases because the department does not have the resources to pursue collection in an effective manner.

The Pierce County Clerk has expressed a desire to undertake more active collection efforts, and the agency recently requested additional staff for that purpose. We believe it would be hard to justify additional staff if collection activity remains limited to turning over to a collection agency the old cases on which DOC has terminated supervision. However, in our opinion, workload would greatly increase and some additional staffing would be required if the Clerk would send to collection delinquent DOC cases as soon as they miss payments, rather than waiting years for DOC to terminate supervision.

Kitsap County

In Kitsap County, the Prosecuting Attorney and the Clerk of Superior Court have a written policy to send cases to a collection agency for collection of LFOs when three conditions are present:

1. Active supervision by DOC lapses and the defendant is on monetary supervision only.
2. The defendant has failed to make timely payments on his or her LFOs.
3. There are no other active supervision conditions remaining other than failure to report to DOC and/or failure to pay.

The Kitsap County Prosecuting Attorney's office receives probation violation notices from DOC, as do all prosecutor offices around the state. A legal assistant and a deputy prosecutor review the notices and determine if the cases meet the three criteria mentioned above. If they do, the deputy will request that the case be sent to collection. The legal assistant routes the paperwork to the Clerk's Office. The Clerk then sends a letter to the defendant stating that the case will be sent to collection unless the defendant requests a hearing. It is our understanding that many payments are received as a result of these letters. If the defendant requests a hearing, the case is set on the weekly probation calendar. If there is no response within 30 days, the Clerk's Office prepares an order for a judge's signature *ex parte*, and the case is sent to collection. The collection agency adds 50 percent to the outstanding obligation. (In Pierce County, the collection agency adds 35 percent.)

We inquired of the Kitsap County Clerk how much staff time is devoted to collection work. The response indicated the various procedures that are followed and estimated the level of effort at 0.2 FTE (20% of a staff person). The Prosecuting Attorney's Office could not quantify the amount of staff time devoted to collection, but sources indicated that the amount was very small, and the results were well worth the effort.

Chelan County

Chelan County operates its own collection program rather than sending the cases to a collection agency. One staff person in the Clerk's Office is responsible for all collection work, and the Prosecuting Attorney's Office is not involved in the process. The Chelan County Clerk estimates the costs at \$44,000 per year in salary and benefits plus a small amount for postage and other costs. The Clerk is willing to provide training if Pierce County wants to start an in-house collection program.

Annual reports are available indicating how much the Chelan County Clerk recovers each year in LFOs. The baseline year is 1993, the last year that Chelan County relied on the Department of Corrections for collection activities. The amounts that are recovered have increased enormously since 1993.

Clark County

Collection work in Clark County is the responsibility of county staff working closely with local staff from the state Department of Corrections:

- ◆ In the Clark County Prosecuting Attorney's Office, three staff are assigned to collections work (one legal assistant and two legal secretaries), and a deputy prosecutor handles the probation docket once a week.
- ◆ Two staff from the Vancouver office of the Department of Corrections work closely with Prosecuting Attorney staff and are essential to the collection process.
- ◆ The Clerk's role in the collection process is very limited. The work is considered routine, and the amount of staff effort in the Clerk's Office cannot be quantified.

When the Prosecuting Attorney receives a Probation Violation report, the defendant is ordered to appear in court at the weekly PV docket. We were told that 100 to 120 cases are usually on the docket, and perhaps 20 percent fail to appear. Many cases involve only LFOs. During the half hour before court is scheduled to start, an informal “pre-Court” is held. DOC staff and the legal assistant review the status of each person. If payments are current, the person can leave. If payments are not current, the person stays to see the judge. Very few defendants request assigned counsel, we were told. The judge reviews each case and encourages at least a minimum payment. The message to defendants is that paying something will keep them out of jail.

Recommendations

To provide a basis for discussion, we propose the following recommendations for consideration by Public Defense Cost Recovery Task Force. After the task force has discussed the matters sufficiently or reached consensus, we can report back to the Performance Audit Committee. The recommendations cover the following topics:

- ◆ Eligibility for an attorney provided at public expense
- ◆ Verification of applicant information
- ◆ Collection of the \$25 screening fee
- ◆ Frequency of recoupment orders
- ◆ Collection of LFOs
- ◆ Role and organizational placement of Pre-Trial Services
- ◆ Indigency screening in Juvenile Court.

1. *Eligibility*

In 1989, the state legislature enacted Chapter 10.101 RCW about screening defendants to receive a court-appointed attorney at public expense. The court or its designee is required to make a determination of “indigency” for all persons who desire the appointment of counsel in any case in which there is a right to counsel. The determination is based on the standards contained in this chapter of the statutes.

“Indigent” means a person who

- a. receives public assistance, as defined in the law, or
- b. is involuntarily committed to a public mental health facility, or
- c. has an annual income, after taxes, of 125 percent or less of the federal poverty level, or
- d. is unable to pay the anticipated cost of counsel because his or her “available funds” (liquid assets and “disposable net monthly income”) are insufficient to pay any amount for the retention of counsel.”

Pre-Trial Services conducts 16,000 to 18,000 indigency screenings per year. Approximately 90 percent meet the standards in the state statutes and thus qualify to be represented in court by assigned counsel at public expense.

We believe the standards in Chapter 10.101 RCW may be too generous. Our concerns are mainly in items c. and d. above, which are highlighted.

Under item c., 125 percent of the federal poverty level is a monthly income after taxes of \$925 for a single person or an income of \$1,885 for a family of four.

Under item d., the screeners are allowed to consider liquid assets and one month's disposable net income. If that amount is insufficient to hire an attorney, then the person is provided counsel at public expense. It is open to question how many citizens, when they hire a private attorney, can pay the legal bill with liquid assets and one month's disposable net income. It is unknown why the statute allows consideration of only one month's disposable net income.

We will discuss this topic with the task force and conduct other research as needed. It is thought that most applicants qualify for assigned counsel by virtue of meeting the eligibility standards in categories c. and d. If the facts are clear to the task force and there is a consensus that the eligibility criteria should be changed, proposed legislation can be drafted.

A related issue is that the legislature sets the eligibility standards, which allow 90 percent of applicants to qualify, but provides no funding for the screeners or the court-appointed attorneys who defend the case. In Washington State, local governments pay 100% of the costs of court-appointed attorneys in the trial courts. Assigned Counsel is a very large "unfunded mandate."

Recommendation 1

Consider the current eligibility criteria in Chapter 10.101 RCW and discuss whether the criteria should be revised to limit the number of persons eligible to receive attorney services at public expense, or whether the eligibility criteria are reasonable but the statute needs to be amended to encourage or require recoupment.

2. Verification of Applicant Income and Resources

The recommendation made by The Spangenberg Group in 1998 and then repeated by the task force in 1999 was to verify defendant resources on a random or selective basis. Pre-Trial Services indicates the unit does not have access to credit reports and other verification tools at a reasonable cost. The Sheriff's Department should take immediate action to correct this situation. Verification is an essential part of quality control in a taxpayer-funded program of services.

The screening fee enacted by the County Council in 1999 was based in part on the need to verify the applicant's information for completeness and accuracy and prevent the unconstitutional gift of public funds. (See Appendix 2 for the ordinance.) We repeat the 1999 task force recommendation and urge the Sheriff to implement it.

Recommendation 2

The indigency screeners should verify defendant resources on a random or selective basis.

3. Collection of Screening Fees

Pierce County collects the \$25 screening fee from 13 percent of the persons who apply for defense counsel to be provided at public expense. The percentage has declined since 1999, as had the annual amount that is collected. When the screening fee is unpaid, Pre-Trial Services notifies the court by checking a box on the eligibility form that is sent to the court. This is not an effective procedure to notify the court of unpaid fees. In practice, if the person does not pay at the time of screening, Pierce County is making no effort to collect the unpaid fees. In our opinion, this lack of action encourages disrespect for the law.

For discussion by the task force, we present three approaches to collecting unpaid screening fees.

1. The first approach was proposed in the November 2000 report. Pre-Trial Services would enter data about unpaid screening fees into LINX. The Prosecuting Attorney's Office would check LINX prior to sentencing and call the court's attention to unpaid fees. Then the court, in the judgment and sentence, could convert the unpaid fee into a legal financial obligation.
2. Pre-Trial Services could require the defendant to sign a \$25 promissory note for an unpaid screening fee. The note would specify that interest or an additional flat fee will apply to unpaid fees. The note would also indicate that unpaid promissory notes will be sent to a collection agency if not paid by a specific date, and that the collection agency will add 35 percent in collection charges.
3. Increase the standard recoupment amounts by \$25 (to \$325, \$225, \$125, or \$75), to take account of unpaid screening fees—after all, only 13 percent are now paying voluntarily. If the defendant has already paid the screening fee, assigned counsel can bring that to the attention of the court, show documentation, and request recoupment in the amounts originally agreed by the task force (\$300, \$200, \$100, or \$50).

Recommendation 3

Collect unpaid screening fees by adopting one of the three approaches described in this report, or devise a better alternative.

4. Frequency of Recoupment Orders

In 2002, as shown in this report, Superior Court judges are ordering recoupment in 58 percent of the cases with assigned counsel, a decline from the 64 percent rate in 2001. While this is a great improvement over the 11 percent rate for ordering recoupment in 1997, we believe that the rate could be much higher. Our recommendation on this topic are intended to ensure that both the judges and assigned counsel are aware that the task force adopted a policy on this subject.

- ◆ Several new judges have been elected since 1999, when the task force did its work. We will ask the Presiding Judge of Superior Court to notify all judicial departments about the recoupment policy and inform them about LFOs that may be ordered by the court. We will request the same of Juvenile Court and District Court.
- ◆ The Department of Assigned Counsel has held internal discussions on the recoupment policy. Unlike the Prosecuting Attorney, however, DAC has not adopted a written agency policy on the subject. Our recommendation is that DAC should do so.

Recommendation 4

To make sure that the courts and defense counsel are aware of the Task Force policy on recoupment, it is recommended that:

- c. The presiding judges should notify all judicial departments about the Task Force recoupment policy and inform them about the LFOs that may be ordered by the court, including local and state shares, or add the information to standard materials that are available to judges on an ongoing basis, and
- d. The Department of Assigned Counsel should adopt a written agency policy on recoupment that applies to staff attorneys, panel attorneys, and contract attorneys.

5. Collection of Legal Financial Obligations

An improved collection effort is the most important action that Pierce County can take to increase revenues from LFOs. We believe it is wasteful to continue relying of the Department of Corrections to collect LFOs, when the agency has made known its inability to be more effective in this regard. Under the law passed in 1999, DOC has the option of turning cases over to county clerks, and there is every reason to believe that DOC would do so if approached by Pierce County. Based on the experience of Kitsap, Clark, and Chelan counties and the data on program costs and revenues, we believe that the benefits of a more aggressive collection program in Pierce County would greatly outweigh the costs. Our recommendation has three parts.

Recommendation 5

- d. Negotiate an agreement with the Department of Corrections that the Pierce County Clerk will take action to collect from DOC clients who are on monetary supervision only and fail to make monthly payments.
- e. If agreement is reached with DOC for a more active collection program by Pierce County, consider adding at least one staff person to the Clerk's Office to handle the increased collection caseload.
- f. Consider revising the language on the judgment and sentence so that the defendant is notified in that document that Pierce County expects LFOs to be paid and will refer delinquent

accounts to a collection agency. Also consider adding to the judgment and sentence other information, such as the interest rate on unpaid obligations, the additional charges that will result if the case is turned over to collection, and the importance of maintaining a monthly payment plan.

6. Pre-Trial Services Role and Organizational Placement

The task force recommended that the Sheriff reconvene a Pre-Trial Services Advisory Board to explore the role of the PTS unit, consider ways PTS could be more effective in assisting the courts, and perhaps bring some clarity to the issue of the unit's organizational placement. The original recommendation by the task force was worthwhile in our view, and bears repeating.

Recommendation 6

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

7. Juvenile Court Screenings

The Task Force should consider whether Pre-Trial Services should continue to screen juvenile applicants for a court-appointed attorney or whether that function could be performed more efficiently by Juvenile Court. The screenings take place at Remann Hall. Pre-Trial Services staff travels there often on a daily basis from the PTS office downtown to do work that could probably be done more efficiently by Juvenile Court staff.

Recommendation 7

Consider transferring responsibility for juvenile indigency screening to Juvenile Court.

Public Defense Cost Recovery Task Force

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

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

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

Revenue Issues

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

Organizational Issues

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

Administrative Issues

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

1 FILE NO. 160

PROPOSAL NO. 99-31

2 Sponsored by: Councilmember Karen S. Biskey

3 Requested by: County Executive/Budget & Finance Department

4
5 ORDINANCE NO. 99-31

6 AN ORDINANCE OF THE PIERCE COUNTY COUNCIL ADOPTING A NEW CHAPTER 9.50
7 OF THE PIERCE COUNTY CODE, "INDIGENT DEFENSE SERVICES
8 APPLICATION FEE"; AND ESTABLISHING A \$25.00 APPLICATION
9 FEE FOR APPOINTMENT OF COUNSEL AT PUBLIC EXPENSE.
10

11 WHEREAS, Revised Code of Washington (RCW) 10.101.005 requires
12 that effective legal representation should be provided for indigent
13 persons and persons who are indigent and able to contribute in all
14 cases where the right to counsel attaches; and
15

16 WHEREAS, RCW 10.101.020 requires the court or its designee to
17 determine whether a person who has a right to counsel and wishes the
18 appointment of counsel is indigent or indigent and able to contribute
19 to the cost of legal services; and
20

21 WHEREAS, RCW 10.101.020 requires that the office or individual
22 designated by the court to make the determination of indigency shall
23 provide a written report and opinion as to indigency, based on
24 information contained in the applicant's financial affidavit subject
25 to verification; and
26

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

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

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

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

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

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

17 ATTEST:

PIERCE COUNTY COUNCIL
Pierce County, Washington

18
19 Tara Kammata
20 Clerk of the Council

Jan Shadro
Council Chair

21 Approved As To Form Only:

PIERCE COUNTY EXECUTIVE

22
23 Alan Blak
24 Deputy Prosecuting Attorney
Chief of Staff

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

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

27 Effective Date of Ordinance: June 8, 1999

2
3 "NEW CHAPTER"

4 **Chapter 9.50**

5 **INDIGENT DEFENSE SERVICES APPLICATION FEE**

6 **Sections:**

- 7 9.50.010 Application Fee Established.
8 9.50.020 Severability.

9 **9.50.010 Application Fee Established.**

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

26 **9.50.020 Severability.**

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

From
Pierce
County
Code

Three appendices appear on the following pages:

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

Appendix 3

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

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

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

Appendix 4

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

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

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

SAME DATA AS PERCENTAGES OF COUNTY TOTAL

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

Appendix 4

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

SAME DATA AS PERCENTAGES OF COUNTY TOTAL

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

Appendix 4

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

SAME DATA AS PERCENTAGES OF COUNTY TOTAL

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

Appendix 5

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

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

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

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

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