

**An Assessment of the Pierce County, Washington
Indigency Screening & Cost Recovery Program**

(September 1998)

Prepared for: The Pierce County Council

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Executive Summary

In June 1998, Pierce County contracted with The Spangenberg Group (TSG), a nationally recognized criminal justice research and consulting firm specializing in indigent defense services, to evaluate the county's indigency screening and cost recovery practices. The project was supervised by the Performance Audit Coordinator and the Pierce County Public Defense Cost Recovery Task Force. Members of the Task Force, made up of representatives from the Pierce County criminal justice system, were instrumental in providing TSG with background information, statistical data and in arranging a site visit. During the site visit, members of TSG met with the Task Force, examined firsthand the operation of Pierce County's system of indigence defense screening and cost recovery, and interviewed key players in the county's criminal justice system.

In the report, the term "cost recovery" is defined as an effort to recover all or a portion of the cost of court-appointed counsel through: (1) an up-front administrative fee that criminal defendants are asked to contribute during the indigency screening process; (2) a promissory note signed by a defendant or the parent/guardian of a juvenile defendant prior to sentencing; and (3) a court-ordered cost imposed at the time of sentencing called "recoupment."

In Pierce County, indigency screenings are conducted by Pre-Trial Services (PTS), a unit of the Sheriff's Department, while the responsibility of cost-recovery is shared by PTS, the courts, the county Office of Budget and Finance, and the state Department of Corrections. Chapter 2 (pages 4-16) details the county's current indigency screening and cost recovery practices. Chapter 3 (pages 17-32) reviews these practices in terms of how successful other comparable jurisdictions, both in and out of Washington, are in their practices.

The report finds that TSG was impressed with the qualifications and commitment of the PTS staff, and the spirit of cooperation that was expressed during Task Force meetings. TSG is confident that such cooperation will have a positive fiscal impact on the county and its criminal justice agencies if changes are carried out. The findings section (Chapter 4: pages 34-39) details the following areas of concern:

- Pierce County's cost recovery program is currently a money-losing proposition;
- Pierce County's promissory note program is flawed, most significantly because of the lack of a unified, comprehensive collection process;
- The success of Pierce County's indigency screening and cost recovery program must be judged in the overall context of the county's criminal justice system. Many systemic concerns currently affect the indigency screening and cost recovery program, including: Pierce County's jail is operating under a federal court order due to overcrowding; the number of defendants held in-custody prior to arraignment in the county is very high; and, the PTS unit is housed under the auspices of the Sheriff's Department.

The report makes the following recommendations to improve Pierce County's indigency screening and cost recovery practices (Chapter 5: pages 40-48):

1. Move Pre-Trial Services (PTS) to Another Department

TSG has grave concerns about the potential conflict of interest of Sheriff's personnel conducting screenings, especially in the presence of other defendants. Although other jurisdictions house their PTS units under the courts, Pierce County's court system is so de-centralized that placing PTS under one or more of the courts is not advisable. In an effort to unify the collection process, TSG recommends housing PTS under the Office of Budget and Finance.

2. Expand PTS Responsibilities to Include a Broader Array of Pre-Trial Duties

TSG recommends that the county invest in PTS to try to generate long-term cost savings throughout the criminal justice system by having PTS be responsible for new duties, including: placing detainees with social services organizations as an alternative to costly pre-trial detention in jail; following up on recommendations for eligibility in court; seeking re-determinations of eligibility on certain defendants; and making recommendations to the court for conditional release of in-custody defendants.

3. Implement a Random Verification Pilot Program

Whereas Pierce County currently provides little verification of defendants financial circumstances, TSG suggests that information be checked on every fifth or tenth defendant, including: receipt of public assistance, employment and assets.

4. Provide PTS with Resources to Verify Defendants' Information

It is not possible for the current PTS staff to properly perform all the tasks assigned to them. It is recommended that PTS be allotted extra staff, an investment that will result in long-term savings for the entire justice system. A part of the additional expenditure could be offset by the increase in revenue generated by an up-front application fee (recommendation 6 below).

5. Conduct More Out-of-Custody Screenings

A comprehensive approach to decreasing the number of suspects held in custody pre-arraignment would: decrease the heavy financial burden on the county of holding so many in custody; improve the possibility of verifying a defendants financial statements; and improve the concerns of confidentiality.

6. Create an Up-Front Administrative Fee for Screening

TSG recommends that a \$25 application fee be assessed on all defendants being screened for representation by the Department of Assigned Counsel and that the fee be waivable if a defendant cannot afford to pay it. Anecdotal evidence from other jurisdictions with successful administrative fee programs suggests that clients who pay even a small portion of the cost of their defense assume a greater responsibility for their own case. TSG projects a gross revenue from the fee program in the neighborhood of \$110,150-\$165,225.

7. Authorize PTS to Set Payment Plans for and Collect from Indigent-and-Able-to-Contribute Defendants

The current promissory note collections program is disjointed. PTS should be able to set payment plans and collect money from defendants.

8. Assess What is the Proper Basis for Indigent-and-Able-to-Contribute Promissory Note Program

Pierce County should move to a flat fee promissory note program. Pierce County's current "anticipated cost of counsel" rates are too high to be used as the basis of a flat fee promissory note program and should be reduced.

9. Authorize PTS to Inform Judges During Sentencing as to the Amount a Defendant Has Left to Pay on His or Her Promissory Note Which Could Be Rolled Over in a Recoupment Order

TSG recommends that judges in all courts be aided in their decisions on whether or not to roll over unpaid promissory notes into a recoupment order by having PTS staff go to court to advise the judges as to the amounts still due at the time of sentencing. Judges should be encouraged to order recoupment for those defendants adjudicated guilty with the visible means to pay.

10. Address Other Systemic Issues in the Pierce County Criminal Justice System from a System-wide Perspective

TSG recommends that the cooperation displayed by the Task Force during this project be continued to address other aspects of the Pierce County justice system, including: alternatives to incarceration; jail overcrowding; uniform statistical reporting and case counts; and a system-wide unified informational services.

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Chapter 1: Introduction

In November 1996, the Pierce County charter was amended to require county government to employ independent, professional organizations to conduct timely performance audits evaluating the effectiveness and efficiency of all county departments and programs. Subsequently, the county entered into a contract with KPMG Peat Marwick in 1997 to conduct a diagnostic audit of county-wide operations and identify areas that merit a more focused and detailed analysis. KPMG submitted its initial findings in March 1998.

The KPMG report, *Pierce County Performance Audit, Phase I: Preliminary Audit*, concluded, among other things, that an opportunity exists to improve the County's recovery of costs for the delivery of law and justice services and identified several specific areas that merited further scrutiny, including: indigency screening, assigned counsel workload, and legal defense collections. Specifically, the report concluded that Pierce County could recover a greater amount of the cost of providing indigent defense services through strengthening indigency screening procedures, thereby increasing the number of arrestees who are deemed able to pay for all or part of their legal costs and decreasing the workload of the Department of Assigned Counsel (DAC). Further, the KPMG report concluded that indigent defense cost recovery practices, for both adult and juvenile defendants, could be improved with a closer analysis of the county's collections.

In June 1998, following a competitive procurement process, Pierce County contracted with The Spangenberg Group to evaluate the county's indigency screening and cost recovery practices. The Spangenberg Group is a nationally recognized criminal justice research and consulting firm specializing in indigent defense services. Created in 1985 and located in West Newton, Massachusetts, The Spangenberg Group has conducted research and provided technical assistance to justice organizations in every state in the nation.¹ The Spangenberg Group has also conducted

¹ Over the last thirteen years, The Spangenberg Group has conducted several hundred assessments of indigent defense programs in all parts of the country. Perhaps 30 to 40 of these studies have included issues of screening and cost recovery of indigent defense services. Prior to the establishment of The Spangenberg Group, Mr. Spangenberg, while at Abt Associates in Cambridge, Massachusetts, conducted the only national study published to date on this subject. The document, *Containing the Costs of Indigent Defense Programs: Eligibility Screening and Cost Recovery Procedures*, resulted from a grant provided by the U.S. Department of Justice, National Institute of Justice.

several studies of public defender offices and indigent defense providers throughout the state of Washington. In particular, the Washington state legislature enacted a bill, SSB-6498, during its 1988 session mandating a statewide study of Washington's system for providing representation for indigent defendants in criminal cases where the right to counsel applies, a study that was undertaken by The Spangenberg Group in 1989. A second study in 1993, conducted on behalf of the State Justice Institute, addressed the specific question of indigent defense cost containment in the state of Washington and was overseen by an advisory task force chaired by then Lieutenant Governor Joel Pritchard.

The specific evaluation objectives of the current Spangenberg Group study are as follows:

1. Examine the operation of Pierce County's system of indigent defense screening and cost recovery, including the practices of the various courts and departments;
2. Compare indigent defense rates and amounts recovered in Pierce County with other jurisdictions, including reasons for any significant differences;
3. Analyze the cost effectiveness of better verification of defendant income and resources;
4. Analyze the feasibility of charging an administrative fee for screening defendants and the amount likely to be collected;
5. Analyze the organization of cost recovery functions, including which functions should be centralized or decentralized;
6. Make specific recommendations for improving indigent defense screening and cost recovery in Pierce County; and,
7. Estimate the fiscal impact of the recommendations.

Pierce County Public Defense Cost Recovery Task Force & Site Visit

In connection with the current study, a Pierce County Public Defense Cost Recovery Task Force to provide oversight on the project was formed in July 1998. The task force, made up of representatives from the Pierce County criminal justice system, includes: John Hill, Director of the

Department of Assigned Counsel; Mary Schmidtke, Budget Chief, Office of Budget and Finance; Ted Rutt, Clerk of Superior Court; Bob San Soucie and George Lonzak, Office of the Clerk of Superior Court; Mike Kilborn, District Court #1 Administrator; James Heller, Presiding Judge, District Court #1; Elaine McNally, Director of District Court #1 Probation; Duane Rivera, Executive Analyst; Daniel Erker, Juvenile Court Administrator; Kitty Ann Van Doorninck, Prosecuting Attorney's Office; Mark French, Sheriff; Andra Motyka, Superior Court Administrator; Thomas Felnagle, Presiding Judge, Superior Court; Roxanne Krieg and Jane Worklan, Pre-Trial Services; and Matthew Temmel, Performance Audit Coordinator for the county.

In July 1998, Robert Spangenberg, Michael Schneider and David Carroll of The Spangenberg Group traveled to Tacoma, Washington to meet with the task force to examine, first hand, the operation of Pierce County's system of indigent defense screening and cost recovery and to conduct interviews with key players in the criminal justice system. Among those interviewed were Superior Court judges, District Court judges, and representatives from the Department of Assigned Counsel, Pre-Trial Services, Sheriff's Department, Superior Court Administration, District Court Administration, District Court Probation, Office of Budget and Finance, Prosecuting Attorney's Office and Juvenile Court Administration. On-site observations were conducted of indigency screening practices at: the Pierce County Jail for in-custody defendants facing charges in Superior, District and Tacoma-Municipal courts; the Pre-Trial Offices for out-of-custody defendants; the County-City Building for in-custody defendants not screened at the jail; and, Remann Hall, for both in- and out-of-custody juveniles facing delinquency charges.

Members of the task force were instrumental in providing The Spangenberg Group with advance materials, statistical data and key insights into their particular areas of expertise. The Spangenberg Group would especially like to acknowledge the important work of Matthew Temmel, Performance Audit Coordinator, for all of his help in preparing our site visit, arranging interviews, tracking down needed data and coordinating the efforts of the task force throughout the project. This report includes an assessment of the current indigency screening and cost recovery practices in Pierce County and offers recommendations for improvement.

Chapter 2: Current Indigency Screening & Cost Recovery Practices

Pierce County's indigency screening procedures are largely governed by Chapter 10.101 RCW, enacted by the Washington Legislature in 1989. The statutes require Washington counties to provide legal representation to "indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches." Prior to that time, judges made determinations of indigency based upon a simple financial assessment form that defendants were required to fill out.

In 1990, to implement the new statutes, Pierce County created a cost-recovery program under the aegis of the county's Department of Assigned Counsel (DAC). The DAC provides criminal defense representation to indigent individuals accused of crimes in Pierce County's Superior Court, District Court, and Juvenile Court as well as in Municipal Courts in Tacoma, Gig Harbor, Fircrest and Federal Way. Under the 1990 program, indigency screeners from DAC would conduct both in- and out-of-custody indigency determinations. They would also appear in Superior Court during sentencing to make recommendations on payment of unpaid promissory notes as a condition of sentencing. The screeners, we are told, made cost recovery a prime focus of their duties. Responsibility for Juvenile Court screenings and cost recovery was added to the unit in 1991.

In June 1993, the screening unit was removed from the DAC and made part of Pre-Trial Services (PTS) under the auspices of the Sheriff's Department. We were told that the move was made for several reasons, including: the existence of a potential conflict of interest when DAC was charged with both making recommendations on recoupment against DAC defendants and protecting the interests of the client; and the need to streamline procedures whereby PTS personnel could conduct interviews for both indigency screening and bail hearings. The move was seen at the outset as an interim measure until such time as PTS could be housed in a new and separate agency, the Pierce County Department of Corrections. However, the Department of Corrections was not made a separate entity and PTS remains as a bureau of the Sheriff's Department today.

After moving to the Sheriff's Department, the PTS mission was altered several times to focus

more on conducting criminal history checks and making recommendations to the courts for conditional release of in-custody defendants. Less of an emphasis was placed on indigency determination and cost recovery. In fact, cost recovery procedures were terminated completely for a brief period. The de-emphasis on indigency screening and cost recovery continued in 1996, when Pierce County began capping jail populations in accordance with a Federal Court Consent Decree regarding jail overcrowding. In July of that year, PTS took on the additional task of making jail classifications and screening for risk assessment for release on personal recognizance.

Today, PTS employs 11 full-time equivalent personnel that work on a 28-day rotational schedule covering the following duties: conducting in-custody and out-of-custody indigency screening for Superior, District, Juvenile and Tacoma-Municipal Courts; running criminal history checks for Superior, District, and Tacoma-Municipal Court defendants; and making pre-arraignment risk assessments for release on personal recognizance and jail classifications. Calculating the cost of PTS to Pierce County is difficult because many of the overhead expenditures of the unit are absorbed into the larger budget of the Sheriff's Department. As far as we could determine, salaries for the 11 FTEs were determined to be \$313,329 for the year. Fringe benefits bring the total expenditure for the unit to \$400,150. PTS staffers stated that roughly 45% of their time is currently spent on indigency screening and cost recovery. Based on these figures, Pierce County expends at least \$180,068 on indigency screening and cost recovery on pre-trial services alone.

Indigency Screening in Pierce County

Both the interviews with criminal justice officials and our observation of PTS staff work, lead us to conclude that PTS has highly motivated, dedicated and conscientious screeners who desire to maintain a high degree of uniformity in screening practices. Unfortunately, circumstances beyond their control prevent the screeners from uniformly performing their assigned tasks at a high level on all cases that they are required to screen.

Since 1993, PTS has been working under the aegis of the Sheriff's Department. In light of the jail overcrowding problems currently under review in federal district court, the Sheriff's

Department is understandably preoccupied with law enforcement duties, screening and classifying potentially violent inmates, screening inmates for pretrial release that do not pose a risk of violence or flight, and maintaining order at the jail. Faced with these enormous responsibilities, the Sheriff's Department, without additional PTS staff, is unable to assure that appropriate standards are maintained for both indigency screening and cost recovery. Virtually everyone in the Pierce County criminal justice system with whom we spoke, including the Sheriff himself, confirmed this.

The PTS early-shift arrives at the office by 6:00 a.m. and receives the dockets for that day's arraignments in Superior, District and Tacoma-Municipal Courts. A contingent of approximately six screeners heads to the nearby Pierce County Jail around 8:00 a.m.. The jail is situated next to the County-City Building that houses the Superior, District and Tacoma-Municipal Courts. Tacoma-Municipal Court begins calling the docket at 10:30, which is earlier than either the Superior or District Court docket call, so PTS conducts indigency screening on Municipal Court defendants first, with two groups of screeners interviewing male and female defendants in separate areas of the jail. After the first group is screened, defendants charged with Superior Court felonies and District Court misdemeanors are screened, with the goal of all in-custody defendants being screened by 11:00 a.m. Because male and female defendants are screened separately, two to three screeners have to screen anywhere from 8 to 70 male defendants in one large holding cell, while another PTS staff member screens the female defendants. Several PTS screeners expressed a fear that the ratio of defendants to screeners in one holding cell could lead to personal injury should the defendants turn violent. The other one or two PTS screeners conduct indigency screening of individual defendants in certain other areas of the jail cell-by-cell where it is not possible, for both financial and security reasons, to bring these defendants down to the large holding cell.

All defendants are asked to fill out a two-sided indigency screening form for basic personal information (name, address, social security, etc.) and financial background (monthly income, assets, monthly expenditures). Rarely is the form completed in any meaningful way. Therefore, PTS screeners conduct one-on-one interviews to further clarify the information given. As a rule, no follow-up verification of defendant information is conducted.

It was the impression of most of the screeners, and confirmed during our observations, that

the defendants sometimes talk amongst themselves and influence the information reported in the hopes of getting a “free” lawyer. Moreover, we found that PTS screeners, as employees of a law enforcement organization, must routinely face the potential appearance of a conflict of interest stemming from their extracting information from suspects who, notwithstanding statutory confidentiality provisions, attempt to, at times, supply screeners with inculpatory information about their personal lives and their case. During our observations, PTS screeners were uniformly vigilant about attempting to stop defendants from giving inculpatory information, but the possibility of a conflict remains high. Furthermore, because of a lack of privacy, other defendants can easily overhear discussions between PTS staff and those they are screening.

Because of the high volume of cases that must be screened daily, The Spangenberg Group discovered that PTS routinely determines that any defendant who is picked up on a return-on-warrant case, and who previously had a DAC attorney, will automatically be assigned to DAC again, no matter how old the case is or whether or not the defendant’s financial situation has changed. Likewise, we observed that some individuals were given DAC attorneys because they claimed to have been formerly represented by DAC in other cases. Additionally, because interpretive services are often not readily available to PTS screeners in the Pierce County jail, it is often the case that non-English speaking defendants are also given DAC representation without going through the formal screening process.

The extent to which the decision not to conduct indigency screening for these classes of defendants adversely affects the net revenue of Pierce County’s indigency screening and cost recovery programs is hard to determine, because of the very limited computer capacity to maintain statistics. Manual logs are maintained for basic information, including: total number of people screened both in- and out-of-custody by court; and total found indigent, not indigent and indigent- and-able-to-contribute by the court. Though the information is eventually transferred to a spreadsheet program for reporting purposes, the chance of statistical errors is greatly enhanced by the fact that the data is tallied by hand. Moreover, there are gaps in critical data. Information is not readily available on: the breakdown of male and female defendants; indigency determinations by reason codes (represented previously by DAC, return on warrants, non-English speaking, etc.); the average disposable income

of defendants found indigent-and-able-to-contribute; and the breakdown of defendants whose disposable income was greater than the anticipated cost of counsel.

PTS staff find it exceedingly difficult to hire short term staff and interns to help handle the excess workload. Part of the difficulty in hiring short term staff and interns is that the Sheriff's Department requires, for obvious reasons, detailed information to obtain security clearances, even where the candidates are applying for very short term positions. The security clearance process is long and involved, and potential interns may feel that the job is not worth the trouble of getting formal clearances. Formerly, when PTS was under the auspices of DAC, PTS maintained a staff of interns that, at times, was as large as 19 individuals.

While the first group of screeners are at the county jail, a second group conducts out-of-custody screenings at the PTS office beginning at 10:00 a.m. The PTS office is located on the second floor of a small privately-owned building rented by the county. The PTS office has adequate working space which affords about half the PTS staff private offices. The office has a separate, outer-office waiting area where the screenings take place. Out-of-custody defendants are instructed to report to PTS, with Municipal Court defendants reporting at least three to five working days prior to their next court date and District and Superior Court defendants reporting 15 working days prior to their next court date to be screened. These reporting parameters have been established by DAC to allow its attorneys sufficient time to prepare for the cases. Out-of-custody defendants are asked to fill out the same screening form as the in-custody defendants, though out-of-custody defendants are also asked to bring in proof of employment.

Chapter 10.101 RCW directs that legal representation will be provided for indigent persons and for those found indigent-and-able-to-contribute. A person is classified as "indigent" if he/she: (a) receives public assistance; (b) is involuntarily committed to a public mental health facility; (c) receives an annual income, after taxes, of 125% or less of the federal poverty level; or, (d) is unable to pay the "anticipated cost of counsel" for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of private counsel. A person is classified as "indigent and able to contribute" if the person, at any stage of a court proceeding, is unable to pay the anticipated cost of counsel, but has sufficient means to pay a portion of the cost. The statute

define the “anticipated cost of counsel” as the cost of retaining private counsel for representation on the matter before the court. In 1997, PTS conducted 22,030 screenings. In that year, 87.3% (19,225) were found to be indigent, 4.3% were found to be indigent-and-able-to-contribute and 8.4% were found not indigent.

Initially, PTS screeners make determinations of “indigent,” “indigent and able to contribute,” or “not indigent.” Those defendants found indigent-and-able-to-contribute are asked to sign a promissory note for a determinate amount of money based upon their monthly available funds. A defendant’s contribution to his or her own defense is calculated by taking the monthly income, after taxes, and subtracting his or her necessary monthly expenditures (i.e., food, shelter, etc.). The net result is then rounded to the nearest \$25. For example, if a defendant claims to earn \$500 a month and necessary expenses are determined to be \$280 a month, then the client would be asked to sign a promissory note for a total of \$225. The only other factor in this calculation is that the assessment cannot exceed the anticipated cost of counsel for the charge the defendant is facing. In Pierce County, those caps are presumptively set at: \$3,000 (Class A Felony); \$2,500 (Class B Felony); \$1,500 (Class C Felony); \$500 (DWI); and, \$350 (Misdemeanor). These rates, we were told, are lower than the cost of retaining private counsel in Pierce County.

PTS personnel also handle indigency screening for juveniles charged as delinquents. Every day, two or three PTS screeners go to Remann Hall, the county’s juvenile detention center and court facility located several miles from the downtown courts. The indigency screening of juveniles is governed by a different statute than that of adults: RCW 13.40.145. The indigency determination is based upon the parent or guardian’s assets. An in-custody juvenile is screened in a private interview room at Remann Hall, while out-of-custody juveniles are screened in the hall’s large waiting area. If the juvenile is charged with a crime in which a family member is a victim, the child is automatically deemed indigent. Likewise, all juveniles charged as adults are also automatically deemed indigent. The juvenile is asked a series of basic questions by the screener to determine the ability of his or her parents or guardian to pay, including: “Do your parents work?”; “What do they do?”; and, “Do they own the house you live in?” If the juvenile is out-of-custody, and the parent or guardian is with him, the questions are directed to the parent/guardian. Based on the information provided, the juvenile is

classified as either “indigent” or “return with attorney (RWA).” If classified as RWA, the juvenile is instructed to come to court for his or her next appearance, either a scheduling conference or a pre-trial conference, with privately retained counsel. The juvenile, whether classified indigent or RWA, is given a DAC attorney for the arraignment.

The PTS screeners also follow-up on those juveniles classified as RWA at the juvenile’s next appearance. Prior to the juvenile’s next hearing or pre-trial conference, PTS screeners will call out the name of “RWA” defendants on that day’s docket. Juveniles who have retained private counsel are not re-screened. Those that appear without an attorney are asked why no attorney was retained. If the parent or guardian is present, he or she is questioned about the family’s financial standing. Under RCW 13.40.140, no juveniles are allowed to proceed without representation, so unless the parent or guardian is clearly able to afford counsel (i.e., CEO of an organization, high-ranking military officer, etc.) a DAC attorney will be appointed after the signing of a promissory note. Again, in Juvenile Court, the presumptive amount to retain counsel is set by classification: \$500 (Class A Felony); \$375 (Class B Felony); \$250 (Class C Felony); \$150 (Gross Misdemeanor); and, \$125 (Misdemeanor). These figures are lower than the presumptive fees in adult criminal cases. In 1997, approximately 26% of all juveniles screened were found “not indigent” (457 of 1,774), 64.9% were indigent (1,152), while 9.3% (165) retained DAC at the above presumptive rates.

The vast majority of defendants in the county are screened in-custody. The last complete year that statistics were compiled on the percentage of in- and out-of-custody screenings by court is 1996. In that year, 96.1% of all defendants who were screened, were screened in-custody in Superior Court; 76.6% of District Court defendants were screened in-custody; and, 78.8% of all Tacoma-Municipal Court defendants were screened in-custody. No statistical breakdown is available on the percentage of indigency screenings conducted in Juvenile Court. No verifications are done to confirm the information elicited during the in-custody interviews. Though out-of-custody defendants are asked to bring some means of verifying their employment status, PTS does not have access to a credit check system and does not make follow-up phone calls to employers and/or landlords. During the life of a case in Pierce County it is very infrequent that PTS or the court asks for a re-determination of indigency even if it becomes clear that a defendant has the means to hire private retained counsel.

Other Pre-Trial Services Duties and Responsibilities

In addition to their indigency screening duties, PTS screeners are required to check criminal histories, as well as screen for personal recognizance and jail classification for convicted inmates. Since the aim of this report is to make recommendations to improve indigency screening and cost recovery, it is important to describe the impact these other duties have on PTS staff.

Criminal histories are run by PTS for most defendants in Superior, District and Tacoma-Municipal Courts. Remann Hall Department of Probation performs this task for juvenile detainees. PTS personnel working the late shift begin to run criminal histories for those arrestees brought into the system that day. The process of running a criminal background check on a single defendant may take anywhere from 20 minutes to over an hour depending on the extent of the record. PTS begins the criminal records check by entering the defendant's name in the Pierce County Jail Booking History Data System (CHRI), Washington State Criminal Data System (WASIS), and the Federal Bureau of Investigation Criminal Data System (NCIC III). PTS screeners then will check the Washington State Felony Data System (SCOMIS) and the Washington State Misdemeanor Data System (DISCIS). Once the checks are completed for an individual, the screener compiles print-outs from each of these systems and types up a cover sheet listing outstanding warrants, pending court dates and prior convictions. The original packet is distributed to the proper court each morning with a full copy for the PTS office, the prosecutor and the defense attorney.

If the criminal history is being run for jail classification, the PTS screener prepares a cover sheet to accompany the computer print-out in a criminal history summary. The cover sheet includes: the total number of misdemeanors for which the individual has been found guilty, dismissed and/or arrested; and, itemized felonies indicating charge, conviction date, court, and disposition. This packet is given to the jail classification officer.

One PTS staff member is assigned to the Pre-Trial Release Program each month. To reduce over-crowding at the Pierce County Jail, this person provides risk assessments and, based upon certain criteria, is authorized to release individuals on personal recognizance arrested for misdemeanors and gross misdemeanors. In Pierce County, gross misdemeanors are punishable by

imprisonment in the county jail for a maximum term of not more than one year and/or by a fine not to exceed \$5,000. A misdemeanor holds a maximum term of not more than 90 days in the county jail and/or a fine not to exceed \$1,000. The PTS screener on this rotation starts each day by collecting all the booking numbers brought in during the prior 24 hours. The screener runs the charge number on the Jail Information Management System (JIMS) to determine which defendants may be eligible for personal recognizance. Again, criminal histories are run on CHRI, WASIS, NCIC III, DISCIS and SCOMIS if they have not already been run for other purposes. PTS personnel conduct face-to-face interviews with the defendant and make assessments based on several factors, including: present offense, current Washington residence, living situation, age, employment, income, failure to appear history and prior criminal record. Each of these risk assessment factors is given a quantitative point value that is then totaled. Based on a matrix, defendants are classified on a 0-20+ scale. Those rating below 20 can be released on their own recognizance. Those over 20 points are generally not eligible for release. PTS screeners are given the discretion to make decisions for release outside of this general matrix if the decision is justified by extenuating circumstances. Defendants are not given interviews if the screener feels he or she does not qualify at any point during the criminal history check.

PTS is also responsible for running criminal history checks for the electronic home monitoring unit, which is conducted by a private company under contract with the Sheriff's Department. Packets are also sent to the home monitoring unit complete with print-outs from the various criminal databases and a cover sheet.

Cost Recovery in Pierce County

The term "cost recovery" can be confusing since it may, in fact, have several meanings. For example, "cost recovery" in some jurisdictions around the country may include all of the following:

1. An up-front administrative fee or cost that criminal defendants are asked to "contribute" during the screening process. These fees may range from as little as \$5 to as much as \$200;

2. A promissory note signed by a defendant or the parent/guardian of juvenile defendants before sentencing; and,
3. A court-ordered cost imposed at the time of sentencing called “recoupment.” This assessment is an effort to recover all or a portion of the cost of court-appointed counsel.

Generally speaking, up-front administrative fees and payments on promissory notes are collected prior to sentencing. In some jurisdictions, if a balance remains on the promissory note at the time of sentencing, it may become part of the recoupment order. At the time of our study, Pierce County had no provisions for an up-front administrative fee. Thus, cost recovery in Pierce County, by definition, is limited to payments on promissory notes due prior to sentencing and court-ordered recoupment imposed at the time of sentencing.

The cost recovery process in Pierce County is complex and problematic because each court’s promissory notes are handled differently. In fact, each court has a different form for its promissory notes which must be kept separate by the PTS screeners. The Superior Court process for following up on promissory notes is different depending on whether or not the case is a criminal case or a dependency case. Criminal case promissory notes are forwarded to the Clerk of the Superior Court. Payments can be made on the note through the life of the case at the Clerk’s office in the County-City Building. If the note is not paid by the time the case is adjudicated, the note may be “rolled over” and recoupment may become part of the condition of sentencing. Payments on dependency case promissory notes are sent directly to the PTS office. PTS is charged with tracking the payments, but the checks are forwarded to the Office of Budget and Finance for deposit.

Unlike Superior Court, District Court #1 is not involved in receiving payment on promissory notes, nor do District Court judges make recoupment or payment on promissory notes a condition of sentencing. Rather, PTS sends copies of promissory notes to the Office of Budget and Finance, which then sends out bills to defendants and tracks all subsequent payments.

Juvenile Court promissory notes are processed similarly to District Court promissory notes. PTS sends a copy of the promissory note to the defendant, a copy is retained at PTS, and the final copy is sent over to the Office of Budget and Finance. PTS screeners are not allowed to accept

payments at Remann Hall. Since 1996, all promissory notes for Superior and Juvenile courts are entered on the Justice Accounting Sub System (JASS) and promissory notes unpaid after 90 days are sent to a collections agency. Finally, all payments for Tacoma-Municipal Court are accepted at the court and the court takes full responsibility for the collection process.

It is understandable that defendants, and/or parents of juvenile defendants, are confused by the payment system. In Superior Court no attempt is made to collect on promissory notes prior to sentencing, though if someone comes to the front cage in the Clerk's office and wants to pay a portion of fees owed, then the money is taken. PTS staff do send out an initial letter in each case, but do no follow-up. Defendants in Superior Court dependency cases must mail their payments to PTS directly. No money is collected at District Court or Juvenile Court. Defendants in these courts, many of whom find it hard to secure transportation to and from court, must make a special trip to the Office of Budget and Finance to make payments.

Indigent defense cost-recovery through court-ordered recoupment in Pierce County is also problematic. Once again, any defendant adjudicated guilty in any court may have payment of all or part of his or her defense cost made a condition of sentencing at the discretion of the judge. The Spangenberg Group found that, as a matter of practice, District Court judges routinely do not order recoupment as a condition of sentencing, while Superior Court judges will, at times, order recoupment. Oversight of the recoupment system is provided by a state agency, the Department of Corrections (DOC). The DOC manages the state prison system and provides supervision on convicted defendants who have been released. Any violation of court-ordered conditions on sentences -- including financial obligations -- can result in a sanction of confinement not to exceed 60 days for defendants on post-release supervision and for minimum management defendants. All money recovered through the D.O.C. collections program is returned to the appropriate county.

Washington state imposes restrictions on all counties that add to the difficulties of collecting defense costs through recoupment. The Washington statutory scheme permits, and in some cases requires, the imposition at disposition of numerous fees, fines, and assessments against defendants in addition to recoupment or payment on promissory notes. While defendants have up to ten years to pay these amounts, the proliferation of these fees in recent years, in particular, has placed

substantial limits on what can be ultimately collected from indigent defendants by way of recoupment. Examples of the fees assessed at the end of a case include: a \$500 “victims of crimes” fee for those adjudicated guilty of a felony or gross misdemeanor; a \$250 “victims of crimes” fee for those found guilty of a misdemeanor; a \$400 District Court Probation fee; restitution; DWI fees; court costs; and fines. It should be noted that the proliferation of these fees has made the Pierce County District Court a large revenue producer for the county, even though District Court recovers a relatively low amount of indigent defense costs. In view of all of these mandatory assessments, many of the judges, court officials, probation department and PTS personnel we spoke with talked of the difficulty of getting “blood from a stone.”

Additionally, state mandates to “get tougher on crime,” through enactment of new crimes and/or new requirements on the courts, can be called “unfunded mandates” because the state legislature does not provide any appropriation to the counties, courts, the public defenders or the prosecution to meet the new state requirements. This is especially problematic in a state like Washington because the counties have a limited tax base and limited state funds to run their criminal justice system as it is. Though all legislation requires a “fiscal note” addressing the financial impact of the legislation on state government, a corresponding county government impact statement is seldom developed.

In 1997, Pierce County recovered \$92,686 in indigent defense costs. Of the \$274,640 in promissory notes written in that year, only \$37,698 was collected from defendants through the disjointed promissory note collection system described above (Superior Court: \$6,265; District Court: \$8,457; and Juvenile Court: \$22,976²). In addition, \$9,351 was brought in through the private collections agency and \$45,637 was recovered through the Superior Court recoupment program overseen by the Washington State Department of Corrections. This additional \$54,988, collected through the private agency and recoupment, reflects collections on promissory notes that may, and probably do, pre-date 1997. Pierce County expended \$6,183,570 for the services of the Department of Assigned Counsel in Superior, District and Juvenile courts in 1997 and recovered 1.5% of the

² The \$22,976 recovered in Juvenile Court includes revenues collected through both promissory notes and recoupment. A further breakdown of the total net revenue is unavailable.

money.

Chapter 3: Comparison of Pierce County Indigency Screening and Cost Recovery Practices

Overview

Before making recommendations to improve indigency screening and cost recovery in Pierce County, it is useful to assess the program in terms of how successful other comparable jurisdictions, both in and out of Washington, are in their practices. However, The Spangenberg Group has found that making comparisons between indigent defense systems is an imperfect science due to a wide number of variables affecting indigent defense services from jurisdiction to jurisdiction. Within Washington, these variables may include: population of the county; the availability of complete, up-to-date and reliable data; the court structure; and the way a program defines, and therefore, counts cases. When comparing counties nationwide, the analysis must also take into consideration: whether state funds are used for indigency screening and cost recovery; whether the indigent defense system is organized at the county, regional or state level; and whether the state has a centralized organization responsible for statewide data collection, oversight and/or policy-making. We offer the following analysis with these caveats in mind.

Comparison with Washington Counties

Since Pierce County's inability to recoup a greater portion of its indigent defense costs is due, in part, to state statutory requirements, it is useful to compare Pierce County's indigency screening and cost recovery efforts to those in other Washington counties. Because each county must run its indigency screening and cost recovery program in compliance with the same statutory requirements, we chose to compare Pierce County with other Washington counties based on population alone. In 1997, Pierce County's population was 674,300. We chose the state's other seven largest counties for our study (Clark, King, Kitsap, Snohomish, Spokane, Thurston and Yakima.)

The Spangenberg Group had a difficult time obtaining indigency screening and cost-recovery

Table I: Comparison of Washington Counties' Indigency Screening and Cost Recovery

County Population (1997)	Indigent Defense Expenditure (1997)	Agency Responsible for Indigency Screening	Other Duties of Indigency Screeners	Superior/Juvenile Court			District Court		
				Verification Procedures	Recoupment Procedures	Cost Recovery (1997)	Verification Procedures	Recoupment Procedures	Cost Recovery (1997)
Clark (316,800))	\$1,949,739	Corrections Department	Risk assessment for personal recognizance; readies some court paperwork	None, unless so ordered by judge or auditor.	Payment on notes made condition of sentence	\$256,678	Defendants must show proof of indigency or are assessed \$74 fee	Defendant must make two payments of \$37 to PTS	\$41,999
King (1,646,200)	\$20,968,404	Office of Public Defense	Office oversees county contracts with four non-profit defender organizations and maintains panel attorneys for conflict cases. Collections on promissory notes.	None, unless screener suspects defendant of providing false information.	Payment can be made a condition of sentence	\$508,576 county-wide. Includes revenue garnered through up-front application fee.	None, unless screener suspects defendant of providing false information.	None	\$508,576 county-wide. Includes revenue garnered through up-front application fee.
Kitsap (229,400)	\$2,444,314	Courts	Run criminal histories; screen for bail and personal recognizance; Appear in-court to follow-up on indigency determinations	Calls to employers and landlords	Payment on notes made a condition of sentence	\$237,042	None	Almost all assessed \$159; Can pay off through community service	\$47,237
Pierce (657,272)	\$6,183,570*	Sheriff's Department	Run criminal histories; screen for personal recognizance and jail classification.	None	Payment can be made a condition of sentence	\$82,215	None	None	\$10,471
Snohomish (551,200)	\$2,545,000	Department of Corrections	Run some criminal histories; screen for personal recognizance; collections of payments; pays public defenders.	None	Payment is made a condition of sentencing	\$161,842	None	None	\$45,000
Spokane (409,900)	\$3,962,000	District Court Probation	Screening for personal recognizance; monitor adjudicated cases for compliance; referrals to treatment centers	Individual must prove indigency or is assessed \$125	Payment is made a condition of sentencing	\$2,359	Individual must prove indigency or is assessed \$50	None	\$35,881
Thurston (199,600)	\$923,083	Department of Corrections for Superior Court Defendants. District Court makes its own determinations.	Run criminal histories; screen for personal recognizance; oversee compliance of court imposed release conditions; prepare violations/compliance reports.	Individual must prove indigency or provide notarized statement from financial supporter	Payment can be made a condition of sentencing	Approximately \$30,000 - \$40,000 total between Superior & District Court.	None	None	Approximately \$30,000 - \$40,000 total between Superior & District Court.
Yakima (208,700)	\$1,884,596	Courts	There is no Pre-Trial Services unit in Yakima County. Judges screen defendants from the bench.	Judge asks questions from the bench	\$350 fee is assessed against those adjudicated guilty and is made condition of sentencing	\$123,216	Judge asks questions from the bench	None	\$19,783

* = For comparison purposes, Pierce County Department of Assigned Counsel indigent defense expenditure and caseload figures do not include Municipal Court cases.

referral form signed by a judge. Defendants found ineligible to receive services have their arraignment dates delayed one week to allow the defendant additional time to retain counsel. All defendants, both in- and out-of-custody, must fill out a simple indigency form indicating monthly income, dependents, employment status, assets, etc. Verifications are infrequently requested.

Instead of spending resources on verification, Clark County has strict indigency requirements. Only those that can prove that they receive public assistance are deemed indigent. All others are determined to be indigent and able to contribute. All defendants are assessed a flat fee dependent on whether they face felony or misdemeanor charges. The flat fees are determined by the prior year's average, county-wide cost-per-case. Currently, those fees are set at \$74 for a District Court misdemeanor case and \$500 for a Superior Court felony case. All defendants are asked to sign a promissory note for these fees at the time of their screening.

Collection procedures in Clark County vary slightly between the courts. In District Court, PTS arranges with the defendant to make two payments of \$37 each. Every six months, PTS does a mass mailing to all defendants who are delinquent in their payments. PTS is currently in the process of switching to a new collection system that will allow them to bill defendants on a monthly basis. Payment on unpaid promissory notes is not made a condition of sentencing and recoupment is very rarely ordered. In 1997, Clark County District Court assessed \$96,877 in indigent defense cost-recovery charges and received \$41,999.

In Superior Court, PTS is allowed to collect on the promissory note up until the point of sentencing. After that, the promissory note for defender services is rolled in with all the other court fees. Payment on the defendant's court financial obligations is made a condition of sentencing, though individuals who fail to pay their obligations are not picked up as probation violators. Last year, Clark County assessed \$272,772 in promissory notes for defender services in Superior Court, and collected 7.68% of the costs (\$20,943). Additionally, Clark County recouped \$235,736 in Superior and Juvenile courts. In total, Clark County recovered \$298,677 of the approximate \$1.95 million spent in the county on indigent defense.

King County Population: 1,646,200

The Office of Public Defense (OPD) is an independent county agency that oversees the determination of indigency in King County. The office is also charged with overseeing county contracts with the four non-profit public defense organizations serving the Superior, District, Juvenile and Municipal courts and maintaining a panel of private attorneys to handle assigned counsel conflict cases.

OPD conducts out-of-custody screening at their Seattle office and screens in-custody defendants daily in the county jail. Indigency screeners also travel to outlying district courts in the county on appointed days. Screeners determine eligibility based on guidelines established by statute. If, in the screener's judgement, a defendant's resources fall below the guidelines, the defendant is found to be indigent. If the defendant's resources exceed 125% of the federal poverty level, but are not sufficient to retain counsel, the defendant is termed indigent-and-able-to-contribute and is asked to sign a promissory note based upon the cost of the case to the county. Payment schedules for the defendant are set-up by OPD, usually in small increments each month until the note is paid off. In 1997, OPD collected \$415,900 in promissory notes. As a rule, judges do not order recoupment of unpaid promissory notes as a condition of sentencing, although fiscal sources indicate that King County collected \$84,676 in public defender recoupment charges in 1997.

King County, Ordinance 10167 directs OPD personnel to assess a small administrative fee on those indigent defendants who are out-of-custody and applying for appointed counsel. Though initially set at five dollars when the program began in 1991, the fee was subsequently raised to \$25 in 1997. Failure to pay the fee at the time of screening never results in the inability to obtain counsel, but OPD does continue to try and collect the fee at a later date. In the first year of the \$25 fee, OPD collected approximately \$8,000 in up-front fees. For 1998, OPD is projecting revenues of \$30,000 from the fee.

Kitsap County Population: 229,400

Indigency screening in Kitsap County falls under the jurisdiction of the courts. A separate indigency screening unit was established for both the Superior and District Courts. In Superior Court, a staff investigator performs screening and the office is under the direct supervision of the Superior Court Administrator. In addition to screening defendants, the staff's duties include running criminal history checks, screening for bail and conducting personal recognizance risk assessments. All of this work is completed by two FTE staff. Despite the small size, the investigative staff manages to screen everyone charged with a felony. Approximately 80% of the people screened are in-custody. Unlike Pierce County, the Superior Court investigative staff verifies information on the vast majority of the defendants (Kitsap County staff told us verification is done in all cases, but there are certain heavy days in which the staff physically cannot make all the necessary calls.) Verification mostly amounts to calling employers and landlords. Each afternoon, the screeners appear in Superior Court with the indigency determination, bail recommendations and criminal histories. The information is shared among the court, public defenders and prosecution, and PTS is seen as an independent organization by all three components. The Superior Court staff does find some people indigent-and-able-to-contribute and those people are assessed based upon an average felony cost of \$871. The assessment is made a condition of the sentence if it is still unpaid and a defendant can be picked up on probation violations for wilful failure to pay. Defendants can be put in jail for up to 60 days, though the high cost of housing people in jail deters the court from putting probation violators in jail. Last year, we were told, Kitsap County's Superior Court recovered \$214,644 in indigent defense costs. There is no available data to determine the costs to the county for collections.

Kitsap County District Court recovered an additional \$47,237 in defender costs. Indigency screening in District Court operates differently than in Superior Court. The District Court has approximately two FTE employees doing screening and checking criminal histories. Out-of-custody defendants are screened at the court house and in-custody defendants are screened at the county jail. As opposed to Superior Court, District Court very rarely does any verification of the information provided. Unlike Pierce County, in Kitsap County almost all District Court defendants are found able

to pay the \$159 flat fee defender cost assessment. Only those that are on public assistance are not assessed. The fee is always made a condition of sentencing, and Kitsap County has a community service work program for those physically able to work who cannot afford the \$159. The District Court administrator sets up a payment plan with the defendant for all court assessed fees, not just defender costs. Usually, defendants are asked to pay approximately \$50 to \$75 a month for 12 months. District Court finds it difficult to pursue probation violation charges for individuals found guilty of misdemeanors, so after 12 months, unpaid collections are given to a collections agency with no further follow-up.

With an additional \$22,398 recovered in Juvenile Court, Kitsap County recovered a total of \$284,279. We were told that Kitsap County has earmarked \$2,446,314 for indigent defense in FY 1998. This means that Kitsap County recovered 11.63% of its total indigent defense costs.

Snohomish County Population: 551,200

The “Pre-Trial Services” in Snohomish is named “Department of Assigned Counsel.” Since January 1997, the DAC has been under the Department of Corrections. Four FTEs screen in-custody felony defendants after the charge has been filed or at the DAC office prior to arraignment as per the summons for out-of-custody defendants. Misdemeanor defendants are screened after the first appearance at arraignment. Screeners’ duties include: indigency screening for District and Superior court (but not for Municipal and Juvenile court); determination of indigent-and-able-to-contribute; collection of money from defendants classified as indigent-and-able-to-contribute; payment of attorneys for services; making recommendations for personal recognizance; and, running some criminal histories. The Department of Corrections wants the DAC screeners to begin making jail recommendations as well.

Recently, we were told, court personnel are currently trying to hire a court administrator to oversee all four court systems (Superior, District, Juvenile and Municipal). Because some of the screeners believe that there is a potential conflict of interest in Snohomish County between screening for corrections and screening for the appointment of counsel, there is hope that the hiring of a unified

court administrator is the first step in eventually moving the DAC screeners out of the Department of Corrections.

The Snohomish screening unit has a budget of approximately \$455,000. The unit is also responsible for overseeing approximately \$2,545,000 in attorney fee payments. The primary public defender organization is paid \$754 per felony and \$184 per misdemeanor. DAC pays conflict attorneys on a different scale: \$740 (Class A); \$620 (Class B); \$530 (Class C felony); \$100 (misdemeanor). Despite its broad responsibilities, DAC's information system is not computerized but operated manually.

About 7% of all defendants are found to be "not indigent" in Snohomish County. All indigent-and-able-to-contribute defendants are assessed the full cost of their defense uniformly (i.e., \$754 for a felony defense). Whenever possible, the screeners work out a payment schedule with DAC. FY 1997 revenue from these indigent-and-able-to-contribute defendants collected by DAC prior to adjudications amounted to approximately \$5,000 in Superior Court and \$45,000 in District Court. People who cannot work out a payment system are asked to sign a promissory note. Superior Court judges make payment of these notes a condition of a defendant's sentencing and, in FY 1997, Superior and Juvenile Court collected approximately \$161,842 in defense cost recoupment. District Court does not make payment a condition of sentencing.

Spokane County Population: 409,900

Pre-Trial Services in Spokane County is under the direction of District Court Probation. The PTS used to be under the Spokane County Commissioner's Office, County Corrections Division, until approximately a year ago when the District Court judges felt that they could do a better job of indigency screening and cost recovery. Even though the PTS is under the District Court's supervision, the office screens for municipal, district and superior courts. A standing order issued by Juvenile Court requires the automatic appointment of a public defender in all delinquency cases. A pilot program in that court to assess defense costs against parents and guardians was terminated upon analysis that the county spent more on overhead than it collected.

Spokane County Pre-Trial Services has the following responsibilities: screening for public

defenders, screening to allow personal recognizance, monitoring adjudicated cases for compliance (i.e., individuals on probation), and screening for referrals to substance abuse treatment centers. PTS has 13 FTE staff. Four staff members do most of the screenings (both in-custody and walk-ins). Three do the pre-trial screenings, placement and probation monitoring. Six are municipal employees that work exclusively in municipal courts. The staff, because they are half county and half city employees, must be kept separate, although they attend staff meetings together and files are shared between the offices (e.g., if a person is charged with both a municipal misdemeanor and a county misdemeanor, only one screening will take place and the information is shared across jurisdictions).

Screening is done on the first working day after arrest and most screenings are done in-custody. As in Pierce County, a group of screeners goes to the jails each morning. Unlike Pierce, the screeners go cell by cell and are not put in one large holding cell with many detainees. In an attempt to prevent non-qualified defendants from getting a county-paid public defender, PTS assesses provisional charges of \$50 for a misdemeanor and \$125 for a felony against almost all detainees. It is then up to the individual to prove that he or she is indigent at a later date and to have the fees waived. The only people who are not assessed the fee are people who are deemed “indigent and able to contribute.” These people are assessed \$300 for a felony or \$125 for a misdemeanor. All defendants sign promissory notes and are given 6 months to pay before the note is turned over to collections. Screeners are given the discretion to decide who are “able to contribute.”

Spokane County indigent defense cost-recovery figures for 1997 reflect, in part, the problems associated with switching the program from one agency to another. In 1997, Superior Court indigent defense cost recovery brought in a mere \$2,359. We were told that progress is being made in this area and that Superior Court has already recovered over \$5,630 thus far in 1998. In 1997, District Court indigent defense cost-recovery was \$35,881.

Thurston County Population: 199,600

Pre-Trial Services in Thurston County is housed in the Department of Corrections. Two FTEs handle all indigency screening for felony defendants only. District Court judges do at-arraignment indigency determinations for all misdemeanor defendants. Beside felony indigency screening, PTS staff: run criminal history checks; screen for risk assessment for release on personal recognizance; supervise and monitor compliance of court imposed release conditions; and prepare violation reports, compliance reviews and other court memos.

Most felony defendants are initially screened in-custody on the day of their arraignment. PTS screens approximately 20-30 new interviewees each Monday, and an additional 8-10 each day on the other weekdays. Indigency is determined using the federal poverty level guidelines and defendants are asked to return to PTS to provide proof of indigency, such as public assistance (AFDC, food stamps, unemployment income, etc.) after arraignment. If a defendant claims to have no employment but does not receive public assistance, PTS asks for a notarized statement from the person financially supporting the defendant (preferably a letter from a parent or significant other).

If the defendant fails to present proof, PTS puts the burden on the court by going ahead and appointing counsel, but requires the defendant to provide the same proof to the court within a week. PTS has access to property records to check whether a defendant owns property interests but does not have access to credit reports. If a defendant owns property, he or she is automatically ineligible for a public defender.

With respect to indigent-and-able-to-contribute defendants, PTS will put defendants in this category who are just slightly above or below the poverty line – they are actually indigent, i.e., earning below poverty line wages, but have no other significant obligations because they are living with parents, or do not pay utilities, rent, or have credit card debts. Superior Court judges make the final determination as to the defendant’s ability to contribute and to figure out how much to assess in recoupment.

On the day of arraignment, misdemeanor defendants fill out paperwork themselves regarding their indigency status. The defendant then hands the information to the District Court judge, who

asks more questions regarding the defendant's assets. The determination is made then and there.

Thurston County's cost recovery programs bring in approximately \$30,000-\$40,000 per year. A breakdown of this figure between District and Superior courts is unavailable.

Yakima County Population: 208,700

Indigency screening in Yakima County is the responsibility of the courts. Though Yakima County hired a single court administrator to oversee the District, Superior and Juvenile courts about a year ago, the court administration is still not unified. Thus, indigency screening procedures vary slightly among the courts. In District Court, court clerks give the defendants a simple one-page questionnaire prior to the arraignment. The form is rarely, if ever, filled out well and there are no verification procedures to confirm whatever information is reported. Thus, the judge asks oral questions from the bench to fill in the gaps before making a finding of indigency. In Superior and Juvenile Courts, the judges do not have defendants fill out a form. Indigency is determined by the judges from the bench at the first appearance. We were told that in Yakima County, "whoever wants a lawyer can have a lawyer."

Yakima does have a Pre-Trial Services entity under the Department of Corrections. The Yakima PTS interviews every defendant for jail classification, screens for personal recognizance and "releases to the custody of another party." Finally, they run the criminal histories on everyone for the courts. Yakima County is in the initial phase of getting criminal justice system leaders in the county together to discuss changing the indigency screening procedures. The Yakima County Department of Assigned Counsel has been experiencing financial problems over the last three years. Each year, DAC has been over budget by \$100,000 to \$200,000 because of caseload increases. Each year, the county has given DAC budget supplements to cover expenses. DAC is developing a new screening form and is considering having Pre-Trial Services (PTS) conduct the screening of in-custody defendants.

Recoupment is assessed against those defendants adjudicated guilty and the recoupment is made a condition of the sentence. In Superior Court, a flat fee of \$350 is charged. Because financial

recoupment is a part of the judgement, and since all of the enforcement procedures are already in place through the clerk's office, Yakima does a good job of following up on collections. Last year \$123,216 was collected through the Superior Court program. The total includes Juvenile Court, which assesses attorney costs against the parents. District Court has no set flat fee or cost recovery procedures, and thus only \$19,783 was recovered last year. Interestingly, these figures were easy to obtain because the county reports indigent defense cost-recovery as revenue for the Department of Assigned Counsel.

Comparison with Non-Washington Counties

Though comparisons with counties across states are more difficult to draw, it may be informative to look at Pierce County's indigency screening and cost recovery practices from a national perspective. Variables such as state funding of indigent defense services, structure of the court system, centralized record-keeping, and statewide oversight organizations directly impact county-to-county comparisons; comparisons are also affected by crime rates, standard of living, and geographic region. The Spangenberg Group therefore decided it was best to provide simple descriptions on other jurisdictions with similar sized-populations to Pierce County.

Multnomah County, Oregon (Portland) is slightly smaller than Pierce County with a population of 624,903 in 1996. As opposed to Washington, the state provides all funding for indigent defense services at the trial level in Oregon. The Indigent Defense Services Division of the Administrative Office of the State Courts in Oregon administers contracts with each county indigent defense program, which may choose a public defender, private bar contract or court-appointed counsel system. The State Public Defender handles direct appeals.

State court employees, known as indigency verifiers, conduct indigency screenings prior to a defendant's arraignment. State Statute ORS 151.491 authorizes screeners to obtain access to records from any public or private source as is needed to determine eligibility. Effective January 1998, Oregon authorized a \$20 public defender application fee. Though statistics could not be supplied, Oregon does have a recoupment program whereby those deemed eligible to pay and

adjudicated guilty of a criminal offense are required to make payments to the court administrator's office.

Kern County, California (Bakersfield) has a population of 622,729. As in Washington, trial representation is funded on a county-by-county basis in California. Kern County has a county-funded public defender program that is responsible for screening all defendants. Indigency screening is done at arraignment and if there is any question, court judges make the final determination. Kern County, we are told, is pretty vigorous about recouping indigent defense costs, and last year collected \$261,090 in gross revenues.

In Georgia, funding for indigent defense representation comes primarily from the counties, with limited state assistance from two state-funded organizations: the Georgia Indigent Defense Council (GIDC) and the Office of the Multi-County Public Defender. The GIDC distributes funds to those counties that meet its indigent defense standards, while the Multi-County Public Defender monitors every death penalty case in Georgia, provides consultation to any public defender or private attorney working on a death penalty case, and acts as lead counsel in a number of death penalty cases. Indigency screening practices vary from county to county.

In De Kalb County, Georgia (Decatur-population: 589,796), indigency determinations are made by the public defender when the defendant comes to the office prior to arraignment. The De Kalb County Public Defender only screens out-of-custody defendants. Those in jail are presumed to be indigent. On occasion, the court will ask a sentenced defendant for restitution to the county for the cost of public defender services in exchange for probation. Whenever this occurs, the collection process is run by the parole department. De Kalb County recovers, on average, \$20,000 per year of its indigent defense costs.

The Department of Public Advocacy (DPA) is a statewide entity that oversees the delivery of indigent defense services in Kentucky's 120 counties. By statute, the state is responsible for funding indigent defense in Kentucky with the expectation that the counties will contribute local funds to augment the state appropriation. In Jefferson County (Louisville - Population: 673,040), public defender representation is provided by a private, non-profit corporation outside of the DPA which receives a combination of county and state funds.

Kentucky statute KRS 31.120 requires the determination of indigency to be conducted no later than the defendant's first appearance. In practice, the courts determine whether a person who requests a public defender is indigent or able to pay a portion of his or her representation prior to arraignment.

Kentucky relies extensively on alternative revenue sources to supplement state funding of various agencies and now assesses over 40 different fees against people passing through the state's justice system. For example, since July 1994, any indigent person who is assigned a public defender or court-appointed counsel in a criminal case is assessed a \$40 administrative fee. Also, the public defender organization receives 25% of the \$200 service fee assessed against individuals convicted of drunk driving. Kentucky courts also assess recoupment charges against indigent defendants. While revenue from the \$40 application fee is returned to the public defender agency, recoupment collections are returned to the county in which the recoupment was ordered. In FY 1998, the Jefferson County public defender recouped \$51,521 of indigent defense costs through the application fee and \$109,399 through the DUI assessment.

Public Defender Application Fees: National Practices and Experiences

There are several reasons why up-front payments make sense. First, a small amount of money can be collected from a very large group of defendants, which means that gross revenues will be much higher than if accomplished through recoupment. Second, the anecdotal evidence in other jurisdictions is that clients who pay this fee feel that they have paid for a real lawyer, and accordingly assume a greater responsibility for their own cases. There is also some evidence that people who make up-front payments have a lower no-show rate than those who do not pay up-front. It further appears that indigent defendants may gain a sense of dignity in paying some cost of their defense. Finally, if the application fee process is done by the same organization that does the screening, the additional cost to collect may be minimal.

Application fees are typically assessed at the time of screening. Each of the laws and ordinances establishing such fees that we are aware of contains a waiver provision to assure that

individuals will not be denied counsel if they are not able to afford the fee. Such a waiver provision may, indeed, be constitutionally required. While this safeguard exists in every jurisdiction utilizing an application fee, the frequency with which such fees are requested from defendants varies significantly. Available data indicates that in some states, only about 25% of eligible defendants are asked to pay the application fee, while in other states, up to 75% of all those who are screened and found eligible for court-appointed counsel are asked to pay the fee. Most proponents agree that the fee should be low and that ideally an effort should be made to collect all or at least a portion of the fee at the time of screening from as many individuals as possible. In the last three years, there is a clear trend among states and counties around the country to move to an up-front administrative fee.

Even when revenue collections from administrative fees are modest, proponents continue to support the fees for the political goodwill they represent. The fees help demonstrate that indigent defense programs are doing as much as possible to ensure that they are fiscally accountable, that taxpayers' dollars are not being wasted, and that indigent defendants are contributing to the cost of their defense.

Jurisdictions have had varying degrees of success with indigent defendant application fee programs. TSG, in its July 1997 report, *Public Defender Application Fees: An Update*, prepared on behalf of the American Bar Association, Bar Information Program, concluded that there are a few specific lessons from around the country that other jurisdictions considering implementing such programs should consider:

1. Ideally, public defenders should not be responsible for the collection of application fees. Commentary to ABA Standard 5-7.2 has advice on this point:

Should contributions be required of defendants...in order to avoid interference with the attorney-client relationship, either the court or its designee, rather than the defender or assigned-counsel program, should be responsible for collection of the funds.

2. Screeners should not be expected to collect payment from defendants if the screening agency will not benefit in any way from doing so. It is unrealistic to expect pre-trial service personnel to assume an additional responsibility of collecting fees if all revenue from the fee goes elsewhere. The best approach is to allow the screening agency to

retain a percentage of each fee assessed or a flat fee to help shoulder their administrative burden.

3. There can be risk in dedicating revenue from an application fee to one particular need of an indigent defense program because fee collections can fall far short of expectations. In New Mexico, for example, revenue from the \$10 up-front fee was dedicated to the Public Defender Automation Fund, which is to be used for all of the Department's computer maintenance and upgrade needs. The application fee revenue has yet to approach the amount projected when it was first created, and the state has been reluctant to appropriate general funds to make up for the short-funding of the Public Defender Department's computer network. The unintended and unfortunate consequence was that much-needed improvements to the network were not made in a timely fashion. This experience highlights the need to structure application fee programs so their revenue supplements, rather than supplants, general fund appropriations to the programs receiving the revenue from the fee.
4. A variety of contribution programs can increase the chances of capturing supplemental revenue for indigent defense compared to programs that contain only a single component. Kentucky and South Carolina capture funding from both indigent defendants (through the application fee) and from all convicted defendants, regardless of income (through Kentucky's DUI surcharge and South Carolina's criminal conviction surcharge).
5. A sense of program accountability is one of the primary features of public defender application fees, but it is important to keep in mind that while the effort to recover or supplement public funds from the users of a public program, application fees do not always bring in a large amount of revenue and current recoupment from indigent-and-able-to-contribute programs should be considered carefully before being terminated. Application fees should not be implemented with the expectation that the revenue they produce will be a panacea for indigent defense under-funding problems.

Chapter 4: Findings of Study

The balance of this report consists of our findings and recommendations regarding the evaluation of Pierce County's system of indigent defense eligibility determination and cost recovery. We begin with our findings based upon the large number of individuals we interviewed during our one-week site visit, our observations of the screening process for all court levels, the large number of documents given to us by numerous agency officials and the materials that Matt Temmel tracked down for us based upon the numerous requests that we made. By definition, no study is ever complete, totally comprehensive, or quantitatively unassailable. However, we feel confident that within these parameters the following information is reliable and useful.

First the Good News

There are several findings that we have made at the outset that should be viewed as quite positive:

1. It is clear to us that virtually everyone we interviewed in Pierce County has an interest and concern about ways to improve indigency screening and cost recovery. We were particularly impressed with the spirit of cooperation we felt during our three meetings with the task force set up for this study. This same spirit of cooperation has not existed in some other jurisdictions we have visited around the country in the past few years.
2. With this spirit of cooperation we are confident that several changes in the current program, if carried out, will have a positive fiscal impact on the county and its criminal justice agencies.
3. We were particularly impressed with the experience, qualifications and commitment of the PTS staff who are working under extraordinarily difficult circumstances.

Now for the Other News

As certain as we are regarding the good news, we are equally certain about the following:

1. Without some substantial change in the current system of screening and cost recovery, the problems we found in our site work in July 1998 will continue with even greater frustration.
2. No likelihood of improvement can be expected until the PTS program is removed from the Sheriff's Department and rededicated to screening, cost recovery and some of the more traditional court-oriented pre-trial risk assessment and social service placement functions traditionally performed by pre-trial service units or probation departments around the country. Over all, this approach might well generate long-term cost savings by providing the courts with alternatives to costly pre-trial incarcerations.
3. Pierce County's recoupment program is a money-losing proposition. We say this for several reasons:
 - While it is difficult to assess the accurate costs of collecting recoupment orders, it is our view that they clearly exceed the revenue produced for the state and the county.
 - District Court judges routinely do not make recoupment of defender costs a condition of sentencing. Although Superior Court judges exercise their legal discretion in requiring recoupment, the net revenue generated through Superior Court recoupment will never be significant because a large majority of defendants in Pierce County are misdemeanor defendants.
 - Collection on recoupment orders in Washington state, when ordered, must stand in line behind an endless set of statutory and local regulations that impose all kinds of fees, fines, forfeitures, costs, program assessments, penalties, surcharges, wage assignments, collection charges, etc. And, should a convicted defendant fail to comply with each and every financial order, they may be back in court on a technical violation of probation, a contempt order or a failure to pay charge. This will needlessly set up many defendants to fail, and will result in additional costs of processing, supervising and imprisoning

these defendants.³

4. The current promissory note program in Pierce County has several flaws. The most important one is the lack of a comprehensive collection process. The program was originally designed for defendants who, after screening, were found to be indigent because they were “unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.”

We found little, if any, support for the continuance of the current promissory note program in Pierce County without a substantial improvement in collection procedures. Some courts seldom, if ever, use the system, and no court, except possibly the Juvenile Court, has developed any successful procedure to collect. Additionally, jurisdictions around the country have encountered the following problems with promissory note programs:

- The inconsistency in application from case to case during the screening process.
- The cost required to collect.
- The concern about possible law suits charging that the program may have a “chilling effect on the right to counsel.”
- The lack of administrative machinery to collect, record and report on both revenue and cost.
- The failure of a uniform, written policy for all screeners in all courts.
- The question of whether the promissory note is legally collectible before formal disposition.
- The lack of consistency in rolling over unpaid notes into recoupment.

5. A program involving screening for eligibility for indigent defendants and cost recovery

³ We wish to make it clear that we are in no way condoning the failure of defendants in Pierce County who are able to make good on the recoupment order, but who flaunt the law by deliberately refusing to pay. Rather, we seek to state the obvious. Unless the decision is made that to maintain integrity in the criminal justice system by requiring every defendant who has some resources to pay back the cost of court-appointed counsel following sentencing, the county cannot expect to obtain a large amount of revenue from recoupment in the future.

As an aside, we cannot help but note that some of the fines, fees, costs, etc., are contained in state statutes, perhaps, to avoid the state’s obligation to adequately fund requirements imposed on county criminal justice systems initiated by the legislature. These “unfunded” state mandates, in our judgment, make the county’s fiscal condition more difficult from year to year, particularly with its limited tax base and taxing authority.

must be reviewed within the overall context of a jurisdiction's criminal justice system. There are a number of legal requirements, policy considerations and practical concerns within which the indigency screening and cost recovery program must function in Pierce County.

We believe that many of these problems are systemic and while they may well be found in other jurisdictions, they are particularly significant in Pierce County. We consider all of the following findings important within the overall setting of the Indigency Screening and Cost Recovery Program. They are not set out in order of priority:

- It is our opinion that Washington's speedy trial rule has an unintended effect on increasing the number of defendants represented by DAC who could pay all or part of the cost of their defense. State Superior Court criminal rule 3.3 states that defendants not released from jail and facing charges in Superior, District or Juvenile courts shall be brought to trial no later than 60 days after the arraignment date. Out-of-custody defendants must be brought to trial in all three courts no later than 90 days after arraignment. This puts substantial pressure on all criminal justice agencies, and particularly the courts, to process cases within the required time. Judges, in an effort to keep the dockets moving in accordance with the speedy trial statute, will often appoint counsel in instances in which a defendant is found to be not indigent by PTS, if the defendant appears in-court without an attorney.⁴ However, we were told that these time limitations are frequently waived by defendants.
- The county jail is under federal court order in Pierce County, which places tremendous pressure on the courts and all agencies of the criminal justice system.
- Many of the key players in the criminal justice system in Pierce County do not have a clear understanding of all the requirements for screening and cost recovery. For example, a number of people who we interviewed were of the impression that PTS is still located in DAC and not in the Sheriff's Department. It is obviously difficult to expect all the players to conform to a set of standards or requirements which they do not clearly understand. In addition, the lack of valid, reliable and retrievable data is a major problem in trying to assess the efficiency of both screening and cost recovery procedures.
- There is a clear belief among virtually everyone we spoke to in the criminal justice system in Pierce County that any attempt to uniformly apply all of the

⁴ This process is mirrored in Juvenile Court, where juveniles accused of delinquency often are deemed not indigent (RWA) by the screeners based on parent financial information provided by the juvenile, yet return for the pre-trial conference without an attorney. PTS screeners, in an effort to follow-up with the defendant, offer the parents reduced flat-fee rates for a public defender.

cost recovery requirements, both pre- and post-sentence, would be a waste of time for a large number of indigent defendants who will never be able to make good on recoupment orders and other court-ordered financial obligations. Indeed, we were told that there are a number of defendants in Pierce County who now owe over \$10,000 for debts related to court activity, and will never be able to pay and may well find themselves back in jail from time to time, not because they refuse to pay but because there is no way that they can pay.

- The cost of retained counsel for criminal cases in Pierce County seems to us to be very high. It creates a big gap between those few defendants who are able to pay these rates and the huge volume of defendants who can not. It may also create a gap between those defendants who receive assigned counsel and those middle class defendants, who while not indigent or indigent-and-able-to-contribute, cannot pay the cost of hiring private, retained counsel.
 - As stated previously, government officials in Pierce County have continually been mandated by the state to provide more funding for the county's criminal justice agencies, and in very few instances has the state provided funds to meet these new requirements. This places continuous and constant pressure on the county and each of the criminal justice agencies to try to do more with less. In addition, in the last couple of years there has been a substantial increase in death penalty cases in the county, as well as a general increase in criminal filings, unlike most counties of similar population in other parts of the country.
 - For reasons that are not totally clear to us, Pierce County has a very large number of defendants in both felony and misdemeanor cases who are in custody at the time of arraignment. While we do not have sufficient and reliable data to make this statement with any quantitative precision, it is, in our judgement, part of the overall problem of quality screening and cost recovery.⁵
6. Indigency screening and cost recovery in Washington's eight largest counties vary considerably. Three counties (Clark, Snohomish, and Thurston) house their Pre-Trial Services units in the Department of Corrections; two (Kitsap and Yakima) place their PTS unit under the direct supervision of the courts; one (Spokane) has indigency

⁵ In this regard we also wish to note, although it is not part of our mandate, that there appears to be an unusually large number of defendants serving felony sentences in the Pierce County jail, which means a large number of defendants who are sentenced to jail for felonies for less than a year. These matters are ones that the county may want to review further in terms of the reliability of our data and what, if anything, could be done to address it.

screeners overseen by the Probations Department; and one (King) has established an independent agency for this purpose. Pierce is the only county whose Pre-Trial Services unit is under the auspices of the Sheriff's Department.

One way to measure the success of a county's indigency screening and cost recovery program is to look at the percentage of total dollars recouped per total indigent defense expenditure. Unfortunately, the extreme difficulty we encountered while trying to obtain accurate data from other Washington counties precludes us from quantitatively ranking the performance of each surveyed county in regard to cost-recovery. The following table is for informational purposes only, and should not be used to rank the success of each county. Additionally, cost recovery dollars do not reflect net revenues as administrative cost of collection were not available.

Table II: Percentage of Total Dollars Recouped Per County Indigent Defense Expenditure, 1997

County	Population	Indigent Defense Expenditure	Defense Costs Recovered County-Wide	% of Expenditure Recovered
Clark	316,800	\$1,949,739	\$298,677	15.32%
King	1,646,200	\$20,968,404	\$508,576	2.42%
Kitsap	229,400	\$2,444,314	\$284,279	11.63%
Pierce	674,300	\$6,183,570	\$92,686	1.50%
Snohomish	551,200	\$2,545,000	\$211,842	8.32%
Spokane	409,900	\$3,962,000	\$38,240	0.97%
Thurston	199,600	\$923,083	\$35,000	3.79%
Yakima	208,700	\$1,884,596	\$142,999	7.59%

7. Before turning our attention to our recommendations, we felt that it would be important to list a number of the issues that we found relative to the screening and cost recovery process itself that we will want to address in our recommendations. In laying out these problem areas we want to make certain that we are not placing the blame on PTS staff or any other individual or agency. They simply are things that came out of our review and observations that need further attention. Again, they are not listed in order of priority:

- We wish to reiterate the fact that the ability to conduct quality screening and cost recovery relates at the outset to the many other duties the PTS screeners are required to perform.

- There are a number of inconsistent practices going on within the whole screening process that need to be tightened up.
- The screening for out-of-custody defendants needs to be tightened, and it may well be that these are the individuals who have the greatest likelihood of making some form of contribution since they may be able to maintain employment while out-of-jail.
- There does not appear to be any redetermination of eligibility once the initial screening is done, which we believe has to do almost entirely with the lack of resources available at PTS.
- There is virtually no verification of any of the information provided by either in-custody or out-of-custody defendants before the screening decision is made or shortly thereafter. This clearly needs to be addressed.

We wish to repeat the fact that despite these inconsistencies and problems in the screening and cost recovery process, the screeners were given very high marks for the work that they do in providing criminal histories and developing the point schedule and matrix for the jail population. We also wish to make the point that if PTS is removed from the Sheriff's Department and placed in another agency or department, the county should provide assurances to the Sheriff that the function and quality of the work provided by these screeners, in terms of the two functions just mentioned, will be maintained in some reliable way.

These are our findings after the two months' study and form the basis for our recommendations which appear in the final section of this report.

Chapter 5: Recommendations for Improvement

Overview

During our site visit, The Spangenberg Group was impressed with the caliber of the people we interviewed working throughout the criminal justice system in Pierce County. Time and again, people expressed a genuine desire to work together toward the goal of improving the indigency screening and cost-recovery program. We are encouraged by the attitude of the people we met and our recommendations, though challenging, are made with the knowledge that Pierce County has the personnel and the will to institute change.

It is obvious that Pierce County is currently losing money through its indigency screening and cost recovery program. Yet, before changes are made to the current practices and procedures based on this fact alone, it is very important for the county to make a decision as to the goal of its indigency screening and cost recovery program. As we see it, there are two possible goals for any indigency screening and cost recovery program: (1) to preserve the integrity of the criminal justice system such that those who can afford to pay some portion of the cost of counsel will be required to do so; and (2) to diminish net expenditures.

Since Pierce County currently makes little or no attempt to verify the information given by defendants, setting a goal of assessing all individuals who can legitimately afford to pay all or some of the cost of counsel as the number one priority of the cost recovery program would require a major re-evaluation of Pierce County's current verification practices and very likely require the county to expend more money for the program.

Of course, the two above-stated goals are not mutually exclusive and a balance between the two may be struck. We strongly feel that whichever path Pierce County ultimately chooses, it should recognize the fact that indigency screening and cost recovery cannot be improved apart from changes in the entire justice system. For instance, even with the best verification resources, there is a limited amount of money that could possibly be recouped from defendants. Therefore, if Pierce County is serious about controlling costs, while maintaining fairness in the criminal justice system, it may be

necessary to invest more resources in PTS with an eye toward reducing the overall costs of running the entire criminal justice system. Real cost savings require the county -- in addition to improved indigency screening and cost recovery -- to consider developing alternatives to incarceration, unifying the court system administrative functions, forming coalitions with other counties to lobby for state money at the trial level, and reducing the caseload of the Department of Assigned Counsel. Though The Spangenberg Group understands that it is the county's prerogative to determine its own goals for the program with respect to what is best for its citizenry, our recommendations for improving indigency screening and cost recovery are made in the light of balancing concerns of justice and revenue in the entire criminal justice system.

1. Move Pre-Trial Services to Another Department

No significant improvement of Pierce County's indigency screening and cost recovery program can occur unless PTS is moved under the authority of a different county department. The American Bar Association's *Standards for Criminal Justice: Providing Defense Services (Third Edition: Standard 5-7.3)* suggests that determination of eligibility should be made by one of three agencies: the county's public defender organization, a neutral screening agency, or by the court. Whichever organization does conduct indigency determinations, the ABA standard makes clear that client confidentiality must be maintained at all costs. As mentioned previously, we have grave concerns about the potential conflict of interest of Sheriff's Department personnel conducting screenings and about the vast majority of the screenings being conducted in large holding cells in the county jail with other defendants present.

Each of the three organizations suggested by the ABA to conduct eligibility has its own concerns. Though having the public defender organization perform this task eliminates problems of client confidentiality, it does place the public defender in the awkward position of protecting the best interest of the client while simultaneously recommending recoupment charges against him or her. For this reason, we find that the best place for the Pre-Trial Services to be housed is generally under the auspices of the court. Although in other jurisdictions, the functions performed by PTS are often

located in the probation departments of the courts or in independent agencies responsible to the courts, the court system in Pierce County is so de-centralized that placing PTS under the aegis of one or more of the courts is, in our view, not advisable.

Although there are programmatic arguments for placing PTS in any number of other locations, including as an independent agency under the Department of Public Safety, we believe that the county should consider placing PTS under the aegis of the Department of Budget and Finance, which would help to integrate data-gathering and collections. Inasmuch as PTS must coordinate its effort to screen with DAC, it might nonetheless make sense for the county to consider physically housing the PTS in the new DAC building. There is a strong consensus among the people we interviewed that the office should be moved, and moving PTS would give the screening unit the ability to hire interns again without having to put prospective candidates through the stringent background check required by the Sheriff's Department.

2. Expand Responsibilities of PTS to Include a Broader Array of Pre-Trial Duties

In many jurisdictions, PTS units are responsible for placing detainees with social services organizations as an alternative to costly pre-trial detention in jail, having a court presence to follow up on recommendations for eligibility, seeking re-determinations of eligibility on those defendants whose financial circumstances change during the life of the case, and making recommendations to the court for conditional release of in-custody defendants. It is our opinion that expanding the duties of Pierce County's PTS to include this broader array of responsibilities would re-invigorate morale amongst PTS employees, would be welcomed by many of the judges we spoke with in Superior Court, and might well generate long-term cost-savings by providing the courts with alternatives to costly pretrial incarceration.

We recommend that PTS, with the broader array of responsibilities, should still be conducting criminal history checks and it may serve the county well to have PTS continue to produce the criminal history packets specifically for the jail classification project. Whether PTS staff or other Sheriff's Department staff will be responsible for continuing the important work of jail classifications is a

question best answered by Task Force representatives and the Sheriff. It is important for the Task Force to discuss the exact scope of responsibilities PTS will have before a determination of the number of additional staff PTS would need to perform at a high standard.

3. Implement a Random Verification Pilot Program

In many jurisdictions around the country, we have found a presumption that the administrative cost of verification outweighs any potential savings, and thus little or no money is expended toward this end. Some jurisdictions, however, report that verification can and does result in substantial cost savings. The problem we have encountered in Pierce County is that no one knows exactly the degree to which defendants are candid about their financial circumstances in the hope of getting a free lawyer. Clearly, if Pierce County wants to insure the integrity of its criminal justice system, there needs to be some verification of the information provided by defendants. In general, we find it an unnecessary use of scarce resources to verify all defendants' information in every single case. However, screeners should have full authority and the required tools to make the necessary inquiries to verify questionable data.

We therefore suggest a random pilot program whereby the information provided by every fifth or tenth defendant be verified, including checks into their receipt of public assistance, employment and assets. It is important to see what the results are before going to a full-scale verification program.

4. Provide PTS with Resources to Verify Defendants' Information

To institute the pilot program, the most important resource needed by PTS is time. It is not currently possible for PTS staff to properly perform all the tasks assigned to them by the Pierce County criminal justice system. Though dedicated and hard-working, PTS has had to prioritize its workload according to whatever has been deemed most urgent by the department overseeing it. As mentioned, this has led at times to focusing on jail classifications and/or personal recognizance screening above indigency screening and cost recovery. We recognize the importance of all the

functions and suggest that additional staff up front will allow PTS to conduct verifications and begin social services placements, and will result in long-term cost-savings for the entire justice system. Though we are recommending that some extra money be expended for PTS, we believe that a portion of the cost to the county will be offset by revenues dedicated to the PTS unit and collected through the creation of an indigent defense up-front application fee (See Recommendation #6).

With proper staffing levels, screeners in other jurisdictions frequently make phone calls to check: the county welfare department regarding food stamps or Medicaid; the county assessor's office, title companies and/or banks to verify mortgage and equity information; employers, to verify monthly income; and landlords to verify monthly expenditures. Additionally, in-house credit check systems are necessary tools for screeners.

5. Conduct More Out-of-Custody Screenings

We were struck by the high percentage of defendants who are held in-custody until arraignment in Pierce County courts. We were given a variety of explanations for this, including that many defendants are picked up on warrants and that the Sheriff's Department releases very few defendants on personal recognizance. It is clear to us that if a comprehensive approach to decreasing the number of suspects held in custody pre-arraignment and pre-trial could be implemented, this would allow for greatly improved out-of-custody screening and would decrease the heavy financial burden on the county of holding so many in custody. Although we feel that the in-custody rates are high because of systemic problems discussed below, it is clear that the potential for verification of a defendant's financial statements is greater when a defendant is screened out-of-custody since he or she can be required to bring proof of employment and/or receipt of public assistance. Additionally, confidentiality concerns are lessened if the defendant is questioned one-on-one and not in a large holding cell in the county jail. For those inmates who are released pre-trial, the quality of screening would be dramatically improved by having them re-screened at PTS offices. This would allow for inspection of key documents and verification by screeners. All potentially indigent criminal defendants applying for counsel should be screened for eligibility including: those returned on warrants;

defendants who have had a public defender in the past; and juvenile defendants charged with crimes against family members.

6. Create an Up-Front Administrative Fee for Screening

We suggest that an application fee program be instituted by Pierce County. Although it is best for representatives of the criminal justice system in each jurisdiction to decide the amount of the fee themselves, we suggest \$25 as a starting point. The task force should be charged with implementing, overseeing and evaluating the program. Whichever agency ultimately oversees the screening process should also do the collection of the up-front fee to eliminate extra overhead costs. Therefore, it is necessary to give PTS the necessary resources to collect money. Additionally, we believe that the agency doing the collection should have an incentive for collecting. Although it is ultimately up to the county to decide how revenue is to be dispersed, we suggest some funds be returned to PTS to offset some of the additional costs to the unit. We also suggest that the balance of the revenue be distributed amongst the courts and DAC.

Projecting gross revenues in advance of application fee programs is always a difficult task. In their report, KPMG projected that Pierce County could recover \$205,000 to \$410,000 annually through a \$5 to \$10 application fee program. In 1997, PTS screened 22,030 defendants, both in- and out-of-custody. Based on these figures, Pierce County could recover \$550,750 in indigent defense costs if every defendant actually paid the \$25 fee. But, it has been our experience that anything approaching 100% collection rate is unobtainable. We feel that Pierce County should expect to receive the \$25 fee from at least 20% to 30% of all defendants being screened, and recover a gross amount of indigent defense costs in the neighborhood of \$110,150 to \$165,225.

7. Authorize PTS to Set Payment Plans for and Collect from Indigent-and-Able-to-Contribute Defendants

Although PTS is currently authorized to initiate promissory note payment plans, the collection process is disjointed. A single department must be responsible for unifying the billing and tracking of payments. Therefore, PTS should be authorized to set up payment plans with defendants throughout the life of a case and be given the tools and resources to collect. Being under the Office of Budget and Finance will enable PTS to unify the payment procedures and collection practices currently in place. Moreover, if PTS is housed in the new DAC offices, defendants will not have to make a special trip to make their payments.

8. Assess What is the Proper Basis for the Indigent-and-Able-to-Contribute Promissory Note Program

Basically, there are two approaches to assessing costs for indigent-and-able-to-contribute defendants: (1) base the assessment on the difference between income and expenses, rounded to the nearest \$25; and (2) base the assessment on a flat amount per felony or misdemeanor. In Pierce County, if a defendant has income and assets that exceed his/her expenses by \$100 a month, that defendant is deemed indigent-and-able-to-contribute and asked to sign a promissory note for only \$100 regardless of the charge. We recommend that Pierce County switch to the second option, with a few caveats. We strongly believe that Pierce County's current "anticipated cost of counsel" rates are too high to be used as the basis of a flat fee promissory note program. The Spangenberg Group believes that the difference between a defendant whose monthly expenses exceed his or her income by a small amount is not substantially different from a defendant whose monthly income exceeds his or her monthly expenses by a small amount. In order not to put an undue burden on the indigent-and-able-to-contribute defendants, we suggest that the "anticipated cost of counsel" rates in Pierce County be re-evaluated by the task force and substantially reduced to the anticipated cost of counsel rates set for Juvenile Court.

Finally, we feel that there is a substantial difference between the current “anticipated cost of counsel” and the actual cost to a defendant to retain private counsel in Pierce County. For instance, we do not believe that a defendant could retain a private attorney to defend him or her on a Class A felony for only \$3,000. We suggest that the Task Force explore the possibility of starting a referral program whereby defendants, determined to be just over the indigent-and-able-to-contribute criteria but unable to retain private counsel, could retain private attorney for a reduced fee through the county bar association. These flat fees should be higher than those set for indigent-and-able-to-contribute defendants.

9. Authorize PTS to Inform Judges During Sentencing as to the Amount a Defendant Has Left to Pay on His or Her Promissory Note Which Could Be Rolled Over in a Recoupment Order

The discretion as to whether or not to order the recoupment of indigent defense cost resides in Washington with each judge. Though revenues from recoupment will never amount to a windfall for the county for the reasons cited in this report, we believe judges would be aided in their decision to order recoupment in appropriate cases if they were advised as to the amount a defendant has left to pay on a promissory note. Again, because a defendant may be incarcerated for failure to pay on a recoupment order, the potential to cause an escalating cycle of court costs from which some defendants may never be able to get out from under is great. The Spangenberg Group suggests that judges in all courts, with the advisement of PTS, consider ordering recoupment on only those defendants that are adjudicated guilty and have visible means to pay indigent defense costs.

10. Address Other Systemic Issues in the Pierce County Criminal Justice System from a System-wide Perspective

We encountered several systemic issues that have a direct fiscal impact on the cost of running the criminal justice system in Pierce County which are beyond the scope of this project. We feel that

the problems stemming from these systemic issues could be improved through the continued spirit of cooperation demonstrated by all the components of the criminal justice system during this project. The Spangenberg Group would welcome the opportunity to discuss these ideas in more detail, but suggest that the following issues be considered:

- alternatives to incarceration;
- jail-overcrowding;
- uniform statistical reporting and case counts; and,
- system-wide unified informational services.

We have suggested specific recommendations in this report that call for the continuance of the Task Force to oversee the implementation of the indigency screening and cost recovery changes. However, whether these other systemic issues are best addressed by the Pierce County Public Defense Cost Recovery Task Force or the more encompassing Pierce County Law and Justice Commission is left up to the discretion of representatives from Pierce County.

Chapter 6: Conclusion

Our findings and recommendations suggest that the actual dollars raised through indigent defense cost recovery in Pierce County, even if improved through an up-front application fee and a uniform collection system under the Office of Budget and Finance, will never come close to the total expenditures required for DAC on an annual basis.

Instead, by addressing the issues affecting the county's criminal justice system, as well as financial concerns, the county could save significant money and contain indigent defense costs through reducing both the number of in-custody defendants housed at the county's expense and the number of defendants found eligible for county-paid attorneys, while at the same time increasing the number of defendants found able to pay a part of the cost of their defense. In order to save money down the road, Pierce County must make an initial financial investment in the Pre-Trial Services unit, with increased staff and resources. The degree to which the county will save money from the initial investment depends, in large measure, on the extent to which The Spangenberg Group's recommendations are implemented.

In concluding our report, The Spangenberg Group would like to point out that, despite the current problems surrounding Pierce County's indigency screening and cost recovery programs, the county has taken an important step forward in forming the Pierce County Cost Recovery Task Force to oversee and assist the assessment project. We applaud their efforts and hope that together, the Pierce County Council and the Task Force will institute meaningful change and become a model for other Washington counties seeking to improve their pre-trial service units.