



THE AMERICAN UNIVERSITY
WASHINGTON, D.C.

Technical Assistance Report

MFL
144023

URTS TECHNICAL ASSISTANCE PROJECT
es to State and Local Courts Under a Grant From the State Justice Institute





THE AMERICAN UNIVERSITY
WASHINGTON, D.C.

School of Public Affairs

Justice Projects Office
3615 Wisconsin Ave., N.W.
Washington, D.C. 20016
(202) 362-4183
FAX: (202) 362-4867

Technical Assistance Assignment No. 3-001

Joseph A. Trotter, Jr.
Director

**Recommendations to Expedite the
Management of Drug Cases in the
Multnomah County, (Portland), Oregon
Circuit Court**

March 1991

Consultants:

**Hon. Ronald J. Taylor
Caroline S. Cooper**

144023

**U.S. Department of Justice
National Institute of Justice**

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

American University

School of Public Affairs

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

**COURTS TECHNICAL ASSISTANCE PROJECT
ASSIGNMENT DATA SHEET**

Technical Assistance No.: 3-001

Requesting Jurisdiction: Multnomah County (Portland), Oregon

Requesting Agency: Multnomah County, Oregon Circuit Court
(Fourth Judicial District)

Requesting Official: Hon. Donald H. Londer, Presiding Judge; Hon. Philip T. Abraham, Chief Criminal Judge; James D. Hennings, Esquire, Metropolitan Public Defender; Hon. Michael D. Schrunck, District Attorney; and Mr. Robert Jackson, Director of Community Corrections

Dates of On-Site Study: February 8, 1991

Consultants Assigned: Hon. Ronald J. Taylor

CTAP Staff Coordinator: Caroline S. Cooper

Central Focus of Study: Expedited Drug Case Management

This report was prepared in conjunction with the Courts Technical Assistance Project, which is conducted under a grant from the State Justice Institute to The American University. The points of view expressed do not necessarily represent the official position or policies of the State Justice Institute.

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
A. Assignment Background	1
1. Request for Technical Assistance	1
2. Initial Site Visit	2
B. Description of the Multnomah County Judicial System	3
1. General	3
2. Court Organization	3
3. Criminal Case Process	4
4. Recent Caseload	5
5. Other Matters Relating to Drug Case Adjudication	5
a. Forensic Laboratory Facilities	5
b. Motions	5
c. Presentence Investigations	5
d. Indigent Defense Services	5
e. Correctional Facilities	6
II. ANALYSIS OF EXISTING SITUATION	7
A. Issues Relevant to the Management of Drug Cases in Multnomah County	7
1. General	7
2. Specific Problems	7
3. Need for Additional Techniques to Address Drug Caseload Needs	9
B. Possible Approaches to Improved Drug Case Management	9
1. Use of Differentiated Case Management	9
a. General	9
b. Application to the Multnomah County Drug Caseload	9
2. Principal Changes Needed to Implement a DCM Program	10
a. Earlier Communication Between Prosecution and Defense	10

b.	Prompt Provision of the Report of the Laboratory Analysis	10
c.	Earlier Opportunities for Case Disposition	11
d.	Earlier Rulings on Motions	11
e.	Assign Senior Prosecution and Public Defender Staff to Screen Cases When Filed	11
f.	Considerations Relating to the Establishment of a Diversion Program	12
g.	Considerations Relating to the Handling of Cases Involving Illegal Alien Defendants	13
h.	Improved Coordination of the Various Resources and Functions Required to Dispose of Drug Cases	13
i.	Adequate Monitoring of Defendants Referred to Treatment Programs	14
3.	Other Areas for Consideration	14
a.	Special Support to the Drug Courts	14
b.	Creation of Position of Coordinator of Interpretator Services Within the Court	14
III.	RECOMMENDATIONS	15
A.	Establish a Committee to Review the Issues Addressed in Section II of this Report	15
B.	Experienced District Attorneys and Public Defenders Should Screen Each Case Very Early in the Process	15
C.	Categorize Cases for Processing Purposes According to their Characteristics	16
1.	Cases qualifying for immediate diversion	16
2.	Cases qualifying for early plea and sentence	16
3.	Cases involving non English-speaking defendants	16
4.	Unusual high-complexity cases	16
5.	Standard cases	16

	<u>Page</u>
D. Adopt Special Procedures for Handling Cases Involving Non-English Speaking Aliens	17
E. Create Position of Case Processing Coordinator	17
F. Develop Mechanisms to Provide Inpatient and Outpatient Services, Screening and Monitoring of Defendants Diverted or Processed by Way of Expedited Dispositions	17
IV. Conclusion	18
Attachment: Sample Job Description and Performance Guideline for Court Interpreter Coordinator Position (Pierce County (Tacoma), Washington)	

I. INTRODUCTION

A. Assignment Background

1. Request for Technical Assistance

In December 1990, the principal officials¹ of the Multnomah County (Portland), Oregon, justice system jointly requested the State Justice Institute's (SJI) Courts Technical Assistance Project (CTAP) at The American University to provide technical assistance to develop an Expedited Drug Case Management Program to address the County's continuing problem of escalating felony filings generally and drug offenses in particular. Recently enacted state Sentencing Guidelines had placed an additional burden on the judicial system by requiring for case disposition prior criminal history and juvenile record information which were difficult to obtain in light of the large foreign population and the organization of the juvenile record system.²

In response to Multnomah County's request, the CTAP assigned Judge Ronald Taylor, Chief Judge of the Circuit Court for Berrien County (St. Joseph), Michigan to conduct a "problem definition" visit to meet with local justice system officials to review the caseload process and suggest possible strategies for addressing their concerns. In 1988, Judge Taylor began a Differentiated Case Management (DCM) program for criminal cases, a large proportion of which are drug and drug-related. Since that time, he also has been working with other jurisdictions around the country involved in the pilot Expedited Drug Case Management (EDCM) programs launched under the sponsorship of the Bureau of Justice Assistance (BJA) of the U.S. Department of Justice.

¹ The request was submitted by Hon. Donald H. Londer, Presiding Judge of the Multnomah County Circuit Court (Fourth Judicial District); Hon. Philip T. Abraham, Chief Criminal Judge of the Circuit Court; James D. Hennings, Esquire, Metropolitan Public Defender; Hon. Michael D. Schrunck, District Attorney for Multnomah County; and Robert Jackson, Director of Community Corrections.

² In Oregon, juvenile records are organized by family name rather than by individual defendant.

2. Initial Site Visit

On February 8, 1991, Judge Taylor and Caroline Cooper, CTAP Deputy Director, who also directs a special technical assistance project in support of the pilot BJA DCM and EDCM pilot sites, met with Multnomah County justice system officials to discuss current problems with managing the drug caseload and possible approaches for developing an expedited drug case management program. During a series of several meetings, they met with the following officials:

Hon. Philip T. Abraham, Chief Criminal Judge

Hon. Dorothy M. Baker, District Court Judge

Douglas Bray, Circuit Court Administrator

John Connors, Multnomah County Public Defender

Hon. Harl H. Haas, Circuit Court Judge

Cary Harkaway, Program Service Manager, Community Corrections Department

James Hennings, Executive Director of the Metropolitan Public Defender Association

John Hoover, Senior District Attorney

Linda Hughes, Senior Felony Attorney with the Public Defender's Office

Harley Leiber, Court Operations Manager for Pre-trial and Post-trial Services

Fred Lenzer, Chief Deputy District Attorney

Hon. Donald Londer, Presiding Judge

Judy Phelan, Staff Assistant, District Attorney's Office

Hon. Michael Schrunk, Multnomah County District Attorney

Linda Tyon, Director, Tasc of Oregon, Inc.

During the course of these meetings, the CTAP study team discussed with local officials current procedures for handling the drug caseload, including screening and treatment programs, applicable statutory and/or policy provisions, and areas of desired improvement. A wrap-up meeting was held at the conclusion of the visit, at which time the study team summarized their observations and discussed with local officials in attendance possible directions for improving drug case management.

This report summarizes the CTAP team's observations and preliminary recommendations based on their February 8th visit and is designed to provide a

framework for Multnomah County officials to use and adapt in developing the elements of an Expedited Drug Case Management Program. Once local officials have designed that program, limited additional TA is available to assist in developing an implementation plan.

B. Description of the Multnomah County Judicial System

1. General

Multnomah County (Portland), Oregon is an urban area with a population of approximately 575,000 persons and consisting primarily of the City of Portland. Like most other urban areas of the country, Portland has fallen victim to the current proliferation of drug traffic on the streets. As a result, the criminal justice professionals responsible for enforcement are seeking new approaches to dealing with the ever-increasing caseloads associated with this problem.

2. Court Organization

The Multnomah County courts consist of the District Court, a court of limited jurisdiction, and the Circuit Court, the court of general jurisdiction. The District and Circuit Courts have been consolidated administratively, although they still exist as separate courts; the 14 District Court judges handle a significant amount of the Circuit Court caseload.

The 34 judges on the two courts use a master calendaring system, each handling a mix of civil and criminal cases. In October 1988, the Court began a special program to expedite drug cases by establishing two "drug courts" to which two judges are assigned for 60-day terms on a rotating basis. These "drug judges" receive their cases at the time of the calendar call (see below) and retain them through disposition. In addition, two additional events were added for drug cases to occur between arraignment and trial: a judicially supervised pretrial conference and the drug case calendar call before one of the two judges assigned to the rotation.

3. Criminal Case Process

The events and applicable timeframes for the criminal case process are summarized below:

<u>Event</u>	<u>Time of Occurrence</u>	<u>Person/Agency Responsible</u>
(1) Arrest	Day 1	Police
(2) Booking	Day 1	Police
(3) Bail decision ³	Day 1	Pretrial Services
(4) Arraignment on Information ⁴	Day 2	District Court
(5) Grand Jury Indictment	Day 7	
(6) Arraignment on the Indictment	Day 8 ⁵	Circuit Court

The following two additional procedures were established for drug cases:

(7) Pretrial conf. ⁶	Day 29	Circuit Court
(8) (a) Criminal calendar call ⁷	Day 50 (9 a.m.)	Presiding Circuit Court Judge
(b) Drug Call	Day 50 (1:30 p.m.)	Circuit Court Drug Court
(9) Trial	Day 55 approx.	Circuit Court Drug Ct.
(10) Sentencing	Day of trial or a few days later	

³ Defendants can be released by posting 10% cash according to a bond schedule; most defendants don't make release this way and are then interviewed by pretrial release agency staff who make a release decision and have the authority to release defendants.

⁴ The public defender is appointed at this time; in special situations, reduction of bond can be considered at this point.

⁵ may occur slightly later for non-custody defendants

⁶ This conference is generally conducted by the attorneys who then report to the judge assigned if a plea has been reached; if not, the case is set for a criminal calendar call.

⁷ If the case is not settled at this point, it is assigned for trial several days later before one of the two drug court judges.

4. Recent Caseload

The court's caseload has been increasing rapidly in many areas. Felony indictments have been totalling approximately 500 - 600 monthly, 40% of which are drug cases. Civil and Family case filings have been at a record high, with approximately 600 civil filings and 800 family filings monthly.

5. Other Matters Relating to Drug Case Adjudication

a. *Forensic Laboratory Facilities*

Laboratory analysis of seized substances is provided by the State Police.

b. *Motions*

Evidentiary motions in drug cases are scheduled and heard on the day of trial.

c. *Presentence Investigations*

The District Attorney provides the criminal history information to the Court for the purpose of applying the sentencing guidelines. Two full-time staff persons in the District Attorney's Office are assigned to obtain criminal history information, which frequently requires a search of both local and state information systems as well as contacts with other jurisdictions, frequently Mexico.

d. *Indigent Defense Services*

Approximately ninety percent of the defendants in the Multnomah County Circuit Court are represented by indigent defense service providers. Approximately forty percent of these defendants are represented by the Metropolitan Public Defenders Association. The remaining defendants are represented by one of four law firms with which the Court contracts. Several of these law firms provide Spanish-speaking attorneys. Cases are assigned to the Public Defenders Association or a law firm at the time of the District Court arraignment, depending upon the day of the week and the public defender unit assigned.

e. *Correctional Facilities*

Multnomah County is under a federal court order regarding its local jail population and defendants who have been committed to the jail are sometimes subsequently released by the sheriff in order to comply with the federal order.

II. ANALYSIS OF EXISTING SITUATION

A. Issues Relevant to the Management of Drug Cases in Multnomah County

1. General

Creation of the special drug court in October 1988 to provide a mechanism for expediting the management of drug cases was moderately successful initially, but has brought to the surface additional problems in disposing of drug cases during the two years they have been in operation. While there has, without question, been an enhancement in the ability of the system to cope with additional cases, the pace of dispositions of drug cases has not matched the continuing increase in filings. Additionally, it has become apparent that other somewhat unique problems exist that partially defeat the effort and need to be addressed promptly. Among these problems are:

- the very large percentage of illegal alien, non-English speaking defendants;
- the inability to sustain local justice system officials' stated objective of achieving disposition of drug cases within 60 days of arrest; and
- the need to coordinate an unusually large number of resources outside the control of the court system to effect case disposition.

2. Specific Problems

a. *Special Needs of the Non-English Speaking Defendants*

Probably the single most significant and unusual impediment to the efficient operation of a successful caseload management system in Portland is the high percentage of foreign non-English speaking defendants, most of whom are illegal aliens. Individuals interviewed during the study estimated that 55% of the drug cases in the system comprise such individuals. Obviously, the ability of the drug court to effectively deal with these cases is severely hampered by the need for additional resources to accommodate such large numbers of defendants with special needs, such as bilingual attorneys and court staff.

The problem of furnishing interpreters for court proceedings appears to be reaching crisis proportions, especially in view of the almost universal

practice among this population of demanding jury trials. In addition, the U.S. Department of Immigration and Naturalization has taken the position that it will not engage in deportation efforts unless and until a conviction is obtained in state court and the sentence has been served. Thus, it is apparent that any solution to the caseload management concerns in this jurisdiction will have to address this problem.

b. *Need to Coordinate Resources Outside of the Control of the Court to Effect Case Disposition*

It is not unusual to observe that many of the resources necessary to improving caseload management lie outside the court's control. Indeed, it is axiomatic that the criminal justice system is just that -- a system -- and therefore other agencies besides the courts must be involved in efforts to increase efficiency. In the case of Multnomah County, however, the number of outside resources and agencies which need to be coordinated to achieve case disposition is unusually high.

Among the most significant factors generally outside of the control of the court which bear on case disposition are:

- obtaining criminal history information⁸
- obtaining laboratory analysis and reports of the nature of confiscated substances
- provision of treatment services necessary to providing sentencing alternatives
- charging and disposition policies of the District Attorney's Office
- policies of the INS, which, as already mentioned, dictate the handling of illegal alien defendants
- jail and prison overcrowding, resulting in large numbers of defendants outside confinement and attendant failures to appear

⁸ The provision of criminal history information is essential to the use of the state's sentencing guidelines, therefore driving all plea negotiations and case dispositions. Currently, District Attorney staff search records from at least three information systems in addition to those of the Juvenile Court and foreign jurisdictions.

- mandatory sentencing guidelines and minimum sentence provisions which limit judicial discretion
- special needs of non-English Speaking Defendants

3. Need for Additional Techniques to Address Drug Caseload Needs

The stated goal of the managers of the system is to achieve an average life of all drug cases of 60 days from arrest to final disposition. At the outset of the drug court program in 1988, this goal seemed reachable. The use of pretrial release screening, pretrial conferences, and the creation of the drug courts themselves, provided new opportunities and resources to move drug cases along. However, with experience, it has now become apparent that additional techniques will be necessary if the dispositional goal is to be reached. Indeed, it was pointed out that, while the program was initially very effective in achieving early dispositions, it has begun to slip back to previous levels, largely as a result of the problems noted above. This may also be due to the "learning curve" in the ability of defendants to "play the system".

B. Possible Approaches to Improved Drug Case Management

1. Use of Differentiated Case Management

a. *General*

Initially, it should be noted that the Multnomah County system, while perhaps somewhat unusual in the number of factors contributing to the case disposition process, is far from unique. Around the country, numerous jurisdictions are grappling with the same, or similar, concerns. It has been found helpful in these jurisdictions to examine the caseload to determine whether it is possible to divide the cases into various groupings for processing along parallel "tracks", each with different time and event characteristics depending upon the differing processing requirements of the cases in each track. This concept is known as "Differentiated Case Management".

b. *Application to the Multnomah County Drug Caseload*

In the case of the Portland system, it would appear that this approach is most appropriate. For example, no organized program of diversion from the criminal justice system -- a technique that has proved highly successful elsewhere -- exists

in Multnomah County. Such a system provides a natural grouping of those cases found qualified for diversion. In the case of Multnomah County, it is estimated that as many as 600 cases per year may qualify for diversion. Likewise, as earlier pointed out, the large illegal alien population provides a natural grouping for the purpose of bringing to bear the special resources necessary to the handling of these cases. Similarly, it is estimated that an additional 900 cases per year consist of relatively low-level drug-user defendants who might be handled on an expedited track leading to early disposition and treatment. Therefore, of the approximately 3,000 drug cases per year currently being filed, some 1,500 cases are either divertable or may be subject to early disposition and as many as 55% of the balance, or some 800 cases involving illegal alien defendants, may be the subject of separate specialized handling. Thus, it can readily be seen that by breaking the caseload down into its component parts, the remaining "ordinary" cases (in the approximate current amount of 700 cases) can be dealt with in a more realistic manner.

2. Principal Changes Needed to Implement a DCM Program

a. *Earlier Communication Between Prosecution and Defense*

One of the problems inherent in expediting the disposition of criminal cases is the failure of various components of the system to communicate with one another early in the case process. In Multnomah County the process of communication is delayed in that no consultation between prosecutors and defense attorneys occurs until after the arraignment on the indictment, some nine or ten days after arrest. In addition, no meaningful plea negotiations appear to occur until the pretrial conference, about twenty days after arrest. It is apparent that the process of communication must begin earlier, and that the necessary information to allow the defense to respond to disposition suggestions must be furnished as soon as possible.

b. *Prompt Provision of the Report of the Laboratory Analysis*

Early laboratory confirmation of the nature and amount of confiscated substances is an essential element to any expedited drug case management program. This information must be provided to the prosecutor and the prosecutor must,

in term, provide it to the defense counsel very early in the case process to encourage meaningful plea negotiations and expedited dispositions of appropriate cases.

c. *Earlier Opportunities for Case Disposition*

The Court currently requires several appearances by the defendant which do not also present opportunities for disposition of the case. These include Arraignment on the Information and Arraignment on the Indictment. The Court should make use of each scheduled appearance as an opportunity for case disposition. This could be accomplished by earlier appointment of counsel and preparation by the District Attorney and earlier exchange of discovery (see (b) above) so that both sides are equipped to discuss the matter fully from the outset of the case.

d. *Earlier Rulings on Motions*

Currently, motion practice, a very important part of the processing of drug cases, is delayed until the onset of trial. Thus, in the event of a successful motion to suppress, time scheduled for trial may not be needed if the case is then dismissed. By that time, however, it is generally too late to fill in with another case. Conversely, in the event a motion to suppress is denied, the case may result in a plea -- which might well have occurred much sooner if an earlier ruling on the motion had been made. More importantly, this practice does not allow time for serious reflection on the results of such motions and the possible effect on plea negotiations. The net result is the loss of a possible early disposition opportunity in connection with motion rulings. Perhaps an early so-called "omnibus hearing" day might provide the setting for plea discussions, motion practice and negotiated dispositions in many cases.

e. *Assign Senior Prosecution and Public Defender Staff to Screen Cases When Filed*

Notwithstanding the desire of both the Prosecutor and the Public Defender offices to maintain "vertical" handling of cases (i.e., by a single staff member throughout the life of the case), a successful diversion program is best accomplished by experienced and informed attorneys who are specially assigned to this function. Similarly, the effective use of early plea offers requires that plea negotiations be

conducted by experienced prosecutors and defense counsel who are in a position to make an informed assessment of each case. Both offices should provide staff to analyze cases together, sharing information at the earliest possible time following arrest. Likewise, judicial personnel should be available to consult and accept dispositions as called for by the parties.

f. *Considerations Relating to the Establishment of a Diversion Program*

Discussion with both Prosecutors and Public Defenders disclosed a possible willingness on the part of defense counsel to waive Grand Jury indictment in order to remove time constraints for the D.A.'s office to obtain an indictment in order to allow consideration of possible diversion of suitable defendants from the criminal justice system. This willingness should be utilized in establishing a formal diversion program. While it may be necessary to later withdraw such waivers in the event that a defendant does not qualify for diversion or, for some other reason, does not participate in the diversion program, nonetheless the overwhelming majority of diversion candidates will no doubt be accepted at a very early time in the case process. It may also be possible to engage in diversion decisions based on local criminal history data available through the PROMIS system, subject to verification of statewide and national records.

Any program of diversion and early disposition will rely to a great extent upon assurances that defendants taking advantage of such programs will have available assessment, treatment and monitoring mechanisms for necessary follow-up after disposition. Accordingly, it is important that a specific mechanism be established to provide screening of offenders and placement at appropriate levels of treatment. In addition, court liaison must be provided to insure adequate supervision and monitoring for compliance with terms of probationary sentences and diversion criteria. It should be noted that such services appear to be currently in place and are available to selected offenders. These programs include a very active acupuncture treatment component which should be expanded to allow further use in connection with diversion and expedited dispositions.

g. *Considerations Relating to the Handling of Cases Involving Illegal Alien Defendants*

As previously noted, the illegal alien defendants, virtually none of whom speak English, cause a unique and very difficult impediment to expedited case handling. Given the large number of such defendants (up to 55% of the caseload), it is clear that any attempt to expedite drug cases must include a significant effort to address these cases. The handling of these cases presents a challenge quite different from the "traditional" case and, therefore, would dictate that a separate procedure be adopted to deal with them. The establishment of a separate court to handle such cases could address the need for multilingual personnel, court employed interpreters, training of participants and indoctrination of alien defendants in the American judicial system. This approach would also allow for the development of judicial expertise and sensitivity to the special needs of such cases and defendants.

h. *Improved Coordination of the Various Resources and Functions Required to Dispose of Drug Cases*

Finally, it is apparent that a large number of factors must come together throughout the processing of the case to make best use of the judicial system and to expedite disposition of all cases, both drug-related and otherwise. The coordination of resources and various charges against individual defendants has been primarily undertaken by the court due to a lack of ability of other agencies to do so. It is apparent, however, that the court is ill-equipped to fulfill this function adequately under current conditions. The crush of other business is simply too much to require the court to micro-manage all the elements necessary for the smooth operation of an expedited case management system. Accordingly, consideration should be given to the addition of a Case Processing Coordinator position. This person would be responsible for all case, charge, screening and treatment coordination, as well as the allocation of pretrial services and release supervision. This position should be answerable directly to the Court and should maintain contact with all necessary outside agencies involved in the disposition of drug cases, both public and private. Such a position should result in a significant reduction of redundant services, presently being performed by various agencies independent of one another, and a consequent improvement in efficiency.

i. *Adequate Monitoring of Defendants Referred to Treatment Programs*

It will be very important to maintaining the court's credibility as well as the credibility of any diversion or treatment programs adopted that on-going monitoring of participating defendants be made and that non-compliance be reported and sanctioned immediately. Periodic reports should also be made to the Court, D.A.'s Office and Public Defender regarding the status of defendants referred to these programs.

3. Other Areas for Consideration

a. *Special Support to the Drug Courts*

It is important to recognize that the sheer volume and logistical needs of the drug caseload necessitate special support (clerical and other) to the drug courts that may not be required for "standard" dockets. It is also important to recognize that judges who serve as "drug court judges" are subject to special pressures as a result of the volume and nature of cases they are handling. Consideration might be given to assigning the Case Processing Coordinator (see (h) above and Recommendation D below), if such a position is created, to the drug courts to assure coordination of the various elements essential to case disposition so that dockets move smoothly and the designated judges are relieved of the special logistical and paperwork tasks associated with the high volume of cases they are handling.

b. *Creation of Position of Coordinator of Interpretator Services Within the Court*

Currently, interpreter services are arranged for by defense attorneys and persons serving as interpreters may or may not have appropriate training and experience. It is therefore suggested that consideration be given to creating the position of a Coordinator of Interpreter Services within the Court who could be responsible for training and monitoring individuals who provide interpreter services and for assuring that necessary interpreters are available when needed. A copy of a job description for the Coordinator for Interpreter Services in the Pierce County Superior Court in Tacoma, Washington is appended, along with a copy of the Procedures and Conduct Guidelines for Interpreters used by that Court.

III. RECOMMENDATIONS

Based on the above observations, a number of short-term and long-term goals for improving the management of drug cases in Multnomah County might be developed. The following recommendations address short-term measures. It should be noted that these recommendations and the preceding commentary upon which they are based are intended to provide merely a "skeleton" for further development, depending upon policy and program decisions adopted by Multnomah County officials, and that considerable additional detail will be required prior to implementation of any recommendations adopted.

A. Establish a Committee to Review the Issues Addressed in Section II of this Report

A committee composed of representatives from the Circuit Court, District Attorney's Office, Public Defender, pretrial and probation agencies and others involved in the adjudication, treatment and supervision of drug offenders should be assembled to review the various issues addressed in the preceding section of this report and possible strategies for addressing them. The recommendations of this committee should be integrated with any actions taken on the recommendations submitted below.

B. Experienced District Attorneys and Public Defenders Should Screen Each Case Very Early in the Process

The case intake should be subjected to early screening, undertaken as a joint effort by specially assigned experienced personnel of the District Attorney and Public Defender Offices. This should be accomplished at a time prior to the presentment of the case for Grand Jury indictment. As a part of this process, provision should be made for the availability of judicial personnel to expedite disposition if possible. Additionally, mutual availability of information necessary to dispositional decision-making, including criminal history information, to the extent available, laboratory analysis results, information on pending charges, etc. must be assured.

C. Categorize Cases for Processing Purposes According to their Characteristics

Cases should be selected and separated for processing purposes in accordance with their characteristics. The following categories might be considered:

1. Cases qualifying for immediate diversion

A first category of cases might be those qualifying for immediate diversion from the criminal justice system and deferral of prosecution for a period of time up to one year pending good behavior.

2. Cases qualifying for early plea and sentence

A second category of cases might be those qualifying for early plea and sentence based upon agreed pleas and sentencing recommendations primarily involving treatment for substance abuse on an inpatient or outpatient basis.

3. Cases involving non English-speaking defendants

A third category of cases might be those involving alien non English-speaking defendants not eligible for handling pursuant to the procedures applicable to the first two categories described above. These cases could be tracked into a special court environment designed to accommodate them.

4. Unusual high-complexity cases

A fourth category of cases might be those which present unusually high complexity cases involving numerous motions, unusual legal issues or complex proof. These cases should be assigned to specific judge, prosecutor and defense teams for all future proceedings after Grand Jury indictment.

5. Standard cases

All other cases not previously noted which should be handled in a "normal" fashion, subject to other revisions of the existing system outlined herein.

NOTE: Criteria for selection of cases in the above categories should be agreed upon by the parties in advance and should be clearly articulated and published to all interested participants.

D. Adopt Special Procedures for Handling Cases Involving Non-English Speaking Aliens

Special court procedures should be established for the handling of cases involving non English-speaking aliens. This should include specially trained judiciary, staff and counsel. Since this category of defendants represents primarily detained defendants who, because of their illegal alien status cannot be released, the importance of expediting the disposition of these cases is all the more acute in light of the burden they present on the jail population.

Care should be taken to assure that defendants appearing in this court are adequately informed and represented in a manner consistent with existing standards applicable to English-speaking defendants. Consideration should be given to creating the position of a Coordinator of Interpreter Services within the court to assure the quality and timely provision of interpreter services. Closer liaison should be maintained with INS to enlist their help in expediting deportation proceedings without the necessity of final state court disposition, a redundant and unnecessary procedure.

E. Create Position of Case Processing Coordinator

A position of "Case Processing Coordinator" should be created as a member of the court staff. This person should be responsible for coordination of all cases assigned to the various processing tracks as set forth above. Additional responsibilities should include coordination of all outstanding cases against individual defendants, co-defendant cases and outside agencies.

F. Develop Mechanisms to Provide Inpatient and Outpatient Services, Screening and Monitoring of Defendants Diverted or Processed by Way of Expedited Dispositions

A program should be designed to provide inpatient and outpatient services, screening and monitoring of defendants diverted from the system or processed by way of expedited dispositions. This program should include acupuncture treatment, counselling, therapeutic intervention, family assistance and related services. Expansion of the existing Department of Community Corrections would appear to be the best available approach to meeting this need.

IV. Conclusion

As indicated at the outset, this review of drug case processing in Portland is far from exhaustive, and the suggestions herein are not intended to be all encompassing. However, they should form a framework for additional discussion by local justice system officials and program and policy decisions regarding how drug cases can be more efficiently managed. Based on those decisions, limited additional technical assistance can be provided to address the tasks required for implementation.

Attachment:

**Sample Job Description and Performance Guideline
for Court Interpreter Coordinator Position
(Pierce County (Tacoma), Washington)**

JOB DESCRIPTION - SUPERIOR COURT INTERPRETER SPANISH LANGUAGE

The Superior Court is requesting applications for a full-time Spanish Language Interpreter to coordinate interpretive services for Superior Court.

Duties shall include but not be limited to:

1. Providing Spanish language interpretive services for Superior Court Criminal Departments 1 and 2;
2. Translating documents.
 - 2(a) Securing and directing interpreters for all languages, as needed;
3.
 - (a) Evaluating per diem interpreter's performance;
 - (b) Providing Spanish interpreting for DAC in client/attorney interviews at the jail or attorney's office in preparation for court appearance (outside peak courtroom hours as time permits;
4. Preparing vouchers for payment;
5. Maintaining accurate records of all requests, actual needs and budget expenditures;
6. The development of recommendations for a fully-developed policy for providing interpretive services for juvenile, district and superior court with attention toward meeting the demands for service in the most cost-efficient manner.

District, Juvenile and Municipal Court Needs:

1. Within the time and budget available, this person should also address the needs of district and juvenile court.
2. Municipal court needs which can be met by this person shall be billed on a time and service basis and reflected as income to the budget of the superior court interpreter.
3. This person will be asked to develop policies, procedures and resources for assuring the availability of qualified interpretive services and recommendations for meeting future needs for courts in Pierce County.

QUALIFICATIONS:

College degree. Two years of appropriate experience may be substituted for each year of college.

Demonstrable skills in English-Spanish simultaneous translation in a court environment.

Not less than two years experience or training in courtroom procedures, terminology and the ethics of court interpretation.

Administrative skills or background sufficient to provide for program development and budget management.

Be able to work under pressure with minimal supervision.

PIERCE COUNTY SUPERIOR COURT GUIDELINES FOR INTERPRETERS

PROCEDURES AND CONDUCT

ASSIGNMENT PROCESS

All assignments of work will be made through the office of the Coordinator or his/her designee.

Whenever possible, assignments will be made from a list of certified, or otherwise qualified, interpreters established by the Coordinator. Applications to appear on this list may be obtained from the Office of the Coordinator by calling (206) 591-6091 and leaving your name and address.

Assignments of work may be made over the telephone. Assignment information will include the date, time and place of the hearing and the defendant's name. Calls are made as far ahead of the appointed day as is possible.

Every attempt will be made to give prompt notice when a hearing is cancelled. Failure to receive notification of a cancellation in time to avoid a court appearance will entitle the interpreter to one-hour's pay.

You should report to the court only if you have been called or confirmed by the Coordinator. Although a case on which you have served may be continued for future hearings, or an attorney or witness may have requested your services, unless the assignment is confirmed by the Coordinator, do not assume you are assigned to the case.

DAY OF ASSIGNMENT

REPORTING FOR DUTY

Report directly to courtroom where you have been assigned or to the Coordinator's office.

Prior to beginning your specific assignment, find out for whom you will be interpreting, who the attorney is and what the case is about.

You should be ready to begin interpreting promptly at the time of the assigned hearing. Remember parking can be a problem and plan accordingly.

DURING THE HEARING

As an interpreter, you will be used in a variety of ways in the course of a hearing or trial. The most frequently encountered are as follows:
Defendants:

In criminal hearings such as arraignments, pretrial motions, probation and sentencings, preliminary examinations and trials, the interpreter will sit or stand (depending upon the nature of the proceedings) next to the defendant, either at the podium or at the defense table, and verbally translate to him/her all the proceedings.

Translate to the defendant, exactly, ALL the information and explanations that the defendant's attorney wants him/her to know, and likewise translate, exactly, all the responses, questions, etc., that the defendant has to the defendant's attorney.

Witnesses:

In most trials and preliminary examination hearings, the interpreter stands next to the witness stand translating all questions and answers of the attorneys, the judge and the witness for whom the interpreter's services have been requested.

Sometimes a problem or question will come up in the courtroom which you, as the interpreter do not know how to handle. In these situations, you should always inquire of the court how to answer or how to proceed. It is better to correct the problem immediately than to later have questions or errors on the record.

Remember to remind the court, if necessary, of the need to be sworn in as an interpreter.

"Do you solemnly swear or affirm that you will make a true interpretation to the defendant(s) of this proceedings in a language which the defendant(s) understand(s) and that you will repeat any testimony of the defendant(s) into the English language to the best of your skill and judgment, So Help You God?"

The interpreter will respond with the words "I do." Then state your name and spell your last name for the record.

It is your responsibility to remain with the case(s) to which you have been assigned for the total time needed during the course of the day. Every effort will be made to expedite matters, however you should not expect to be released from your interpreting responsibilities within a short time.

AFTER THE HEARING

Check with the court clerk to see if there are forms or information that need to be given to the person for whom you have interpreted.

Do not leave the courtroom until officially excused by the judge, the attorney or the Coordinator. Ask for permission to be excused if there is any question.

Return to the Coordinator's office, or call if at Remann Hall, and record the disposition of the case and any future dates which may have been established by the court or attorneys.

You will either be assigned to another case, or excused to leave if your services are no longer needed that day.

The interpreter should see that the form entitled "Authorization for Payment" is submitted to the Coordinator with the case number and title and the signature of a court officer (attorney, judicial assistant or judge). In the rare event that an appropriate signature is difficult to get, the problem should be reported to the Coordinator immediately.

PAYMENT

Upon submittal of the form entitled "Authorization for Payment," and a bill, the interpreter is entitled to payment for:

1. All interpretation services in the court or other location (such as the jail) to which the interpreter has been specifically assigned by the Coordinator.
2. Waiting time between the scheduled time for the event and the time when the assignment actually begins. However, while waiting, the interpreter must be available to the Coordinator for other interim assignments.
3. Time waiting for the verdict to be rendered or to the end of the working day as determined by the judge. If a guilty verdict is rendered, the sentencing date may not necessarily be assigned to the interpreter used during the trial. After the first day of deliberations by the jury, the verdict may be received by the Coordinator or another assigned interpreter. Do not automatically report for sentencing hearings or subsequent days of jury deliberation.
4. Up to a quarter hour of administrative time for purposes of becoming familiar with the case and reporting to the Coordinator's office any subsequent dates or other information.
5. Interpreters will be paid one hour minimum. Additional time will be computed in increments of 15 minutes rounded to the nearest quarter hour. The "Authorization for Payment" form should indicate the specific activities for which the interpreter is requesting payment i.e. Waiting time, interpreting time, administrative time (limited to one-quarter hour).
6. You may expect payment within 40 days. Interpreters submitting invoices on a monthly basis, must present bills by the 5th of each month. Inquiries regarding billings or payment should be directed to the Coordinator at (206) 591-6091.

GENERAL RESPONSIBILITIES AND COURTROOM ETHICS

CODE OF CONDUCT FOR COURT INTERPRETERS

PREAMBLE. All language interpreters serving in a legal proceeding, whether certified or uncertified, shall abide by the following Code of Conduct:

- A language interpreter who violates any of the provisions of this code is subject to a citation for contempt, disciplinary action or any other sanction that may be imposed by law. The purpose of this Code of Conduct is to establish and maintain high standards of conduct to preserve the integrity and independence of the adjudicative system.
- A language interpreter, like an officer of the court, shall maintain high standards of personal and professional conduct that promote public confidence in the administration of justice.
- A language interpreter shall interpret or translate the material thoroughly and precisely, adding or omitting nothing, and stating as nearly as possible what has been stated in the language of the speaker, giving consideration to variations in grammar and syntax for both languages involved. A language interpreter shall use the level of communication that best conveys the meaning of the source, and shall not interject the interpreter's personal moods or attitudes.
- When a language interpreter has any reservation about ability to satisfy an assignment competently, the interpreter shall immediately convey that reservation to the parties and to the court. If the communication mode or language of the non-English speaking person cannot be readily interpreted, the interpreter shall notify the appointing authority or the court.
- No language interpreter shall render services in any matter in which the interpreter is a potential witness, associate, friend, or relative of a contending party, unless a specific exception is allowed by the appointing authority for good cause noted on the record. Neither shall the interpreter serve in any matter in which the interpreter has an interest, financial or otherwise, in the outcome. Nor shall any language interpreter serve in a matter where the interpreter has participated in the choice of counsel.
- Except in the interpreter's official capacity, no language interpreter shall discuss, report, or comment upon a matter in which the person serves as interpreter. Interpreters shall not disclose any communication that is privileged by law without the written consent of the parties to the communication, or pursuant to court order.
- A language interpreter shall report immediately to the appointing authority in the proceeding any solicitation or effort by another to induce or encourage the interpreter to violate any law, any provision of the rules which may be approved by the courts for the practice of language interpreting, or any provisions of this Code of Conduct.
- Language interpreters shall not give legal advice and shall refrain from the unauthorized practice of law. Washington Rules of Court GR 11.1

PERSONAL ETHICS

- The interpreter should appear on time, wear clothing appropriate for court and be well groomed.
- The interpreter has a responsibility to the interpreting profession to elevate standards of performance and to achieve a professional relationship with the other court officers and attaches.
- The interpreter shall never accept gratuities of any kind.
- The interpreter shall refrain from making personal phone calls or conducting any kind of personal business while waiting for a court hearing except with the express permission of the Coordinator.
- An interpreter should uphold the highest standards of the profession and of the court, and refrain from voicing accusations or complaints about the court, its personnel or other interpreters. If the interpreter has any questions, concerns or complaints, they should be brought to the attention of the Coordinator, preferably in writing. Attempts to discredit the court, its personnel, or other interpreters will not be tolerated.

USUAL INTERPRETATION RULES AND TECHNIQUES

The interpreter is responsible for understanding and following, as near as is possible, the following guidelines and rules for interpreting.

USUAL INTERPRETATION MODES:

1. Consecutive Interpreting. This form is generally used when questions, answers and statements are presented to the person for whom you are interpreting. In this type of interpreting you first listen to what is said in English, then you translate it entirely (not paraphrased) into the second language. Then you listen again, this time to the response in the second language, which you then translate into English. When complex or long statements are involved, the interpreter may have to stop the speaker and interpret in segments. The most common situation for this type of interpreting is when you are translating at the witness stand, although it can be used in other situations.
2. Simultaneous Interpreting. This form is generally used when there is no conversation directed to the person for whom you are interpreting. In this type of interpreting the interpreter listens and talks at the same time! While you listen to what is being said by the judge, attorney or witness, you translate at the same time into the second language, word for word, (in a low whispered voice) everything that is being said. The most common situation for simultaneous translation is when you are interpreting for a defendant at the defense table or at the podium, although it also can be used in other situations.

NOTE: Perfect simultaneous interpretation is a practical impossibility. At best, there is a small delay between the speaker's words and the interpretation. In addition, a delay may be introduced because in some instances the meaning of the statement may not be evident until later in the sentence.

The interpreter should stand or sit in close proximity to the witness or defendant, but not in a place to disturb the view of counsel, judge or jury.

After a witness is sworn to testify (which is done through the interpreter), he/she will be asked to state his/her name and to spell it for the record. As the witness is spelling his/her name in the foreign language, the interpreter should be writing it down first, then spell it orally to the court in English. The interpreter should not assist the witness in spelling the name correctly. Proper names should not be interpreted, but left in their original language form.

1. The interpreter should emulate the inflections, modality and intonations of the speaker in order to convey the meaning and stresses of the speaker's words.
2. The interpreter should also speak in a loud, clear voice, audible to the judge, all counsel and parties, when translating testimony from the witness stand. However, when the interpreter is translating the proceedings to one person only (such as the defendant), he/she should speak only loud enough to be audible to that person. His/her voice should not interfere with the proceedings.

When a witness gives an extensive answer and it is obvious that the interpreter cannot wait until his answer is completed to report accurately everything that has been related, the interpreter must interrupt the witness and break up his narrative into segments not greater than the interpreter's recall will allow for accurate translation. The essence or gist of a statement is not enough. The entire statement must be reproduced. The interpreter may not, under any circumstances, edit testimony nor omit parts which seem unimportant. The judge is the only person who can strike portions of testimony, after hearing the full content.

The interpreter should develop a compendium of standard phraseology for handling interpretation of often repeated portions of proceedings such as admonishment of rights, administering oath, change of plea form, sentencing, voir dire and standard judicial admonishments.

The interpreter must regard him/herself as an instrument for the accurate, unembellished transmittal of questions, answers and statements of counsel, judges, defendants and witnesses. There should be no editing, i.e., epithets have to be translated as well.

The interpretation should be conducted in the first person voice; that is, to the question "State your name," the correct response through the interpreter is "My name is John Doe," not "He says his name is John Doe." If the judge says, "I order you to answer the last question," the interpreter must state the order exactly as the judge has phrased it. The interpreter may not take the liberty of saying to the witness, "The judge says you must answer the last question" or "You must answer the last question." Likewise, if a lawyer says to a witness in English, "Didn't you tell me at the last hearing that you got the money?", the interpreter translates the question exactly as given, "Didn't you tell me..., etc." and not "Didn't you tell him at the last hearing..., etc."

In case of idiomatic or colloquial usages, the interpreter is expected to be sufficiently the master of both English and the foreign language to be able to employ appropriate equivalent words or phrases in translation, and as close to a verbatim and literal interpretation should be made. When in doubt, don't guess, but do bring it to the attention of the court.

When idioms or other terms are used that are not co-definitional and the speaker's meaning is clear to the interpreter, the closest appropriate term or phrase should be substituted. If a term or phrase can reasonably take on more than one meaning, or if the interpreter is unfamiliar with a term or phrase, the interpreter should inform the court of this fact. With the court's permission, the interpreter may inquire further of the speaker to determine an exact meaning.

Instances may arise where knowledge of special or technical terminology is needed in a particular case, or the interpreter is required to understand uncommon dialects or regionalisms. These instances may cause an otherwise qualified interpreter to be unsuitable in the instant case. Should these conditions arise, it is the interpreter's responsibility to critically assess his/her ability to perform and to disqualify himself/herself if not fully capable of giving high-quality interpretation.

If counsel or the court utilizes a term or phrase which the interpreter believes may confuse the witness, the interpreter should so inform the court. These instances may arise when a particular concept is unknown in the witness' native culture or when certain English terms are ambiguous in the translations (e.g., "you" can be either a singular or plural referent.).

If the interpreter fails to understand something completely, it will be necessary for him/her to ask to have it repeated or clarified. The interpreter asks the judge directly for this clarification or repetition. The impossibility of correctly translating a statement not perfectly understood is obvious.

The interpreter must not engage in discussion with a witness or defendant in an attempt to explain a question to him/her. The interpreter should bear in mind that protracted conversation with the

witness can lead to suspicion and distrust not only of the interpreter but also of the accuracy of the entire examination.

The interpreter should give the exact translation of the question to a witness and then report back in English exactly what the witness replies, not what the interpreter thinks the witness should say or means to say. For example, if the examining counsel says to the witness, "Now, were you there on that date?" and the witness replies to the interpreter, "Does he mean, was I at home?", the interpreter may not reply to him, "Yes, he means at home." The interpreter can only state to the court what the witness has said to him, namely, "Does he mean was I at home?" It is for the court and counsel to clarify matters, not for the interpreter.

If a witness says, "yes, yes, yes, it's true," the interpreter has to translate, "Yes, yes, yes, it's true," and not "Yes, it's true." If he should say, "It was in April, I mean March," the interpreter translates, "It was in April, I mean March," not "It was in March." The interpreter may not add or subtract words for the sake of clarity. Besides distorting what is being said, he/she may be jumping to conclusions as to what the speaker has in mind.

The interpreter must never correct erroneous facts posed in questions to witnesses. Conversely, the interpreter must never correct the testimony of witnesses even if the errors are obvious. The interpreter must never infer a response of the witness. For example, if the witness is asked to clarify his/her prior answer as to which door he exited the vehicle, the interpreter should pose the question as asked, and not volunteer that the witness meant the front passenger's door.

The interpreter must keep confidential any conversation interpreted or overheard between counsel and client.

The interpreter must not discuss a case pending before the court. To any inquiries he/she must state, "I am not permitted to discuss anything with you out of the presence of the court or without the court's express permission."

The interpreter is not a counselor or advisor. Should a person ask the interpreter for any advice, such person should be directed to the attorney(s) involved in that matter.

The interpreter should be completely impartial in his/her work. To avoid the appearance of prejudice, the interpreter must not have any unnecessary discussions with counsel, the parties to the action, criminal defendants, witnesses or other interested parties inside or outside of the courtroom. Remember, you are not working "for" either side. You must never consider yourself as the interpreter "for" the defense or "for" the prosecution.

If the interpreter believes that the quality of the interpretation is faltering due to fatigue, for example, the court should be so informed.