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WASHINGTON COUNTY CRIMINAL JUSTICE SYSTEM INTERIM REPORT

Volume II
Justice System Components
An Initial Assessment

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ILPP

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TABLE OF CONTENTS

TABLE OF CONTENTS (cont.)

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ABBREVIATIONS

ADB ..... Average daily bookings

ADP ..... Average daily population

AJA ..... American Jail Association

ALS ..... Average length of stay

CJES ..... Criminal Justice Executive Staff

CMSI ..... Computer Management Services Inc.

DAIS ..... District Attorney's Information System

DUII ..... Driving under the influence of intoxicants.

DWHO ..... Driving while habitual offender

DWR ..... Driving with a revoked license

DWS ..... Driving with a suspended licence

ESPD ..... Enhanced Sheriff's Patrol District

FTA ..... Failure to appear

FY ..... Fiscal year

ICHS ..... (Intensive) Custodial Home Supervision

ILPP ..... Institute for Law & Policy Planning

JIGSAW .... Justice Information Gathering and Sorting Affiliation of Washington (County)

JMIS ..... Jail Management Information System

LEDC ..... Law Enforcement Data Center

LEDS ..... Law Enforcement Data Service

LOS ..... Length of stay

LPA ..... Law and Policy Associates

NCIC ..... National Criminal Information Clearinghouse

NIC ..... National Institute of Corrections

OJIN.....Oregon Judicial Information Network

OOC.....Out of custody

OSH.....Oregon State Hospital

PC.....Personal computer

PROBER.....Probationary Client Tracking System

RAO.....Release Assistance Officer

RC.....Restitution Center

RDIS.....Remote Data Information System

RFP.....Request for proposal(s)

VOP.....Violation of probation/parole

WC.....Washington County

WCJP.....Washington County jail personnel

WCSO.....Washington County Sheriff's Office

WERC.....Willamette Employment Resource Center

LISTING OF TABLES

CONTENTS OF OTHER VOLUMES

Volume I: Summary and Introduction

GOALS AND OBJECTIVES OF THE CORRECTIONAL SYSTEM

A. COUNTY JAIL MISSION STATEMENT

B. DEPARTMENT OF COMMUNITY CORRECTIONS (RESTITUTION CENTER) MISSION STATEMENT

PROFILE

A. COUNTY JAIL - MALE
Demographic Characteristics
Criminal Characteristics

B. COUNTY JAIL - FEMALE
Demographic Characteristics
Criminal Characteristics

C. RESTITUTION CENTER - MALE
Demographic Characteristics
Criminal Characteristics

D. RESTITUTION CENTER - CUSTODIAL HOME SUPERVISION

E. RESTITUTION CENTER - FEMALE
Demographic Characteristics
Criminal Characteristics

F. PROFILE FINDINGS
1. Risk Assessment
2. General Finding - Males, County Jail and Restitution Center
3. General Finding - Females, County Jail and Restitution Center

G. WASHINGTON COUNTY EXIT SURVEY

CLASSIFICATION

A. INTRODUCTION

B. CLASSIFICATION IN WASHINGTON COUNTY

C. THE CLASSIFICATION EXERCISE

D. COUNTY JAIL - MALE

E. COUNTY JAIL - FEMALE

PART ONE: FACILITIES EVALUATION

A. PURPOSE AND METHODOLOGY

B. EXISTING DETENTION FACILITY SYSTEM

C. WASHINGTON COUNTY JAIL

Functional Organization

1. ACCESS
2. GROUND LEVEL
3. FIRST FLOOR
4. SECOND FLOOR
5. THIRD FLOOR

Housing
Housing Capacity Analysis
Medical
Visiting
Law Library
Program Spaces
Functional Issues

- LACK OF SINGLE CELLS
- POOR SIGHTLINES IN HOUSING AREAS
- LACK OF FLOOR AREA AND TYPES OF SPACES
- TOTAL FACILITY AREA
- HOUSING AREAS
- INADEQUATE INTAKE AND PROCESSING FACILITIES
- LACK OF PROGRAM SPACE
- LACK OF ADEQUATE DAYLIGHTING
- INADEQUATE NUMBERS OF TOILETS, SHOWERS, SINKS FOR CAPACITY
- PERIMETER SECURITY
- COURT MOVEMENT/HOLDING
- FIRE & LIFE SAFETY
  - Fire Sprinkler Systems
  - Smoke Separation
- HAZARDOUS MATERIALS
- CONVERSION TO SINGLE CELLS
- SUMMARY

Conclusions and Corrections Master Plan Issues

D. RESTITUTION CENTER

History
Facility Functions
Housing Capacity
Housing and Hygiene Standards
Program Areas
Fire and Life Safety
Expansion Potential
Master Plan Issues

PART TWO: INTERIM MASTER PLAN

INTRODUCTION

INTRODUCTION

A. BACKGROUND

Historically, most of the components of criminal justice systems have tended to operate in a vacuum, isolated from each other and from local government, health, welfare and service agencies, as well as the community in general. Correctional facilities, particularly local jails, have received the brunt of the lack of system connectivity , as they have the least control over other parts of the system. But the massive changes in incarceration processes mandated by the Courts, the increased public clamor for punishment of criminals, and the limited resources available to construct and operate new jails make it necessary for these problems to be shared throughout the system and with the community.

In the following section, each of the system components will be assessed in turn, with an overall eye to system flow and the potentials for improved management for the entire system.

B. ORGANIZATION OF REPORT

All issues identified in this initial assessment as in need of resolution are presented first as a "discussion;" the discussion will provide relevant description and background information, such as existing policy or procedure. Flowing from the discussion are "findings," stated briefly. Then, "recommendations" are presented. Although some recommendations will correspond with specific findings, others will be general in nature and address an entire issue rather than individual findings.

The major areas of study presented below are each of the major criminal justice system functions. First is law enforcement, followed by the pretrial release function, the trial stage (courts, prosecution and defense), community corrections (including probation and parole) and corrections.[1]

Prior to the discussions of the major areas of the criminal justice system, this introduction contains the analysis of the tracking study which presents a picture of the overall inmate flow through each of the areas presented. It will be seen that the jail plays a relatively passive role in the process. Actions of law enforcement, the District Attorney and the Courts determine to a great extent who is in the jail and who is not. The flow looks at a sample of persons entering and leaving the jail, recording for each the reasons for entry and exit and the length of time stayed. Subdivision of the intake into smaller groups by charge and release type gives valuable information on what changes could be made to reduce overall jail population. Thus, the tracking study is a powerful diagnostic tool with which to begin an overall system assessment.

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1 All sources are listed in Appendix II.A, Bibliography.

C. EFFECTIVENESS MEASURES

There are a number of measurable quantities which can be tabulated and used by the county to gauge the effectiveness of its criminal justice activities. A listing and description of some of these measures is presented here. However, as will be explained, determination of the "desirable" values of these quantities is a political rather than a technical matter and is left up to the county's decision makers.

The ultimate measure of effectiveness is the reduction of crime in the county, but this is almost impossible to determine. A simple reduction of the crime rate does not prove much, since it might have fallen on its own; what is needed but obviously unavailable is a measure of what the crime rate would have been in the absence of the county's activities. A decrease of public concern about crime is subject to the same criticism and is manipulable by the media and other public opinion shapers without much regard to actual crime trends.

It is possible to get measures of how smoothly the criminal justice mechanism is operating in terms of reduced staff effort and enhanced flow of cases through the system, given the caseload. These indicators can be compared with the performance of similar jurisdictions in other areas.

A criminal justice system must balance the conflicting demands of system economy on the one hand and public safety and justice on the other. The system should be thought of as an economic good, to which resources should be allocated up to the point where a dollar's worth of input no longer produces a dollar's worth of results. Unfortunately, the economic analysis of justice systems has not advanced to anywhere near the point where a clear-cut cost benefit analysis can show the ideal tradeoff between these.

Furthermore, there is statistical uncertainty in justice operations. Guilt or innocence is not always easily proven; vigorous enforcement will convict more guilty parties only at the expense of convicting some innocent ones as well. Policies which better protect the innocent will also shield some offenders. The overlapping errors may be reduced with improved procedures, but ultimately there is no way to avoid the dilemma. Local values must determine in which direction a county leans on this. Thus, the decisions must be made on political grounds which means that they will be subject to argument and that they will change over time.

ILPP recommends that the county examine the following measures and make its own decisions as to what the acceptable goals or ranges for each of them should be. Some of these are being gathered now, and most are further discussed in other sections of this report, along with statistics directed more towards long-range planning.

The indicators are organized according to the agency where they are measured but will be of general interest for system management.

Law Enforcement

Since the operations of law enforcement are not a primary focus of this report, widely used indicators such as calls for service, response times, and miles traveled are not included. These, and other measures of internal operating efficiency, are available to evaluate law

enforcement departments. Interest here is directed at the output: persons delivered to the County Jail where charges are filed (i.e., cases successfully referred to prosecution), and officers' and deputies' interaction with the Courts (i.e., convictions).

There seem to be three issues here: the number of persons brought to the County Jail in comparison with the number of those warned, cited, or diverted; the quality of the cases referred for prosecution; and the time spent in marginally productive activities such as booking, transporting persons or paperwork, and waiting for court appearances.

With jail space at a premium, it is important to arrest only persons who present a danger to the public or seem likely to flee. Furthermore, both these and anyone cited for later appearance should have a case against them with a reasonable possibility of successful prosecution. The disadvantages of bureaucratic delay are obvious.

Indicators then would be:

- Number of arrests, citations, referrals, and warnings, by offense, per officer. Since there is good reason for citations and warnings to be used where practical, officer performance should not be evaluated on arrests alone.

- Percentage of cases, by type, rejected by the DA. This should be low to avoid unnecessary effort, but it should not be zero, as that would imply overconservatism in making referrals. Cases which are prosecuted but result in acquittals should not be counted with rejections.

- Time spent in bookings, court appearances, and related paperwork, and in transporting suspects or materials and records. While much of this is unavoidable, there seems to be time wasted in these activities. In many instances, scheduling can be improved, or alternate procedures are available.

The Court System, Prosecution and Defense

Here, the major issue is the speed and efficiency with which cases are handled. Other concerns which have been identified are the referrals of cases that are too weak to prosecute and the quality of indigent defense, which seems to be closely connected to the low fees paid to the defenders.

Slow processing implies that there are judicial backlogs. Backlogs accumulate when too many cases come into the system, when bottlenecks arise in scheduling or processing, or when dispositions are not reached as early as they might be. Backlogs cause the County Jail to remain overcrowded while holding inmates for trial and may diminish the quality of justice dispensed.

Some cases are weak and ought not to enter the system at all. The DA in Washington County screens incoming cases and drops a proportion of them, especially misdemeanors. The proportion dropped varies considerably among law enforcement agencies; this fact and the concerns expressed in several interviews indicate that there needs to be a fuller understanding between enforcement and prosecution as to what kinds of cases can be filed.

Dispositions can be reached at almost any time within the judicial process. But these usually require intervention and advocacy by the attorneys and the judge. It is in the

interest of the Courts to reach the disposition points as quickly as reasonable to free it for the next case.

Indigent defense by contract agencies and private attorneys is described as being of inconsistent quality. The specified fees almost guarantee that a minimum of effort will be spent on all but capital cases. The results may be inadequate preparation and consequent delays.

ILPP will not here attempt to assess the professional qualifications of judges or attorneys, nor analyze the procedures of record keeping and case flow. Effectiveness indicators which will provide a measure of overall processing efficiency are:

- For pretrial release, proportion, time and failure to appear rates.
- For attorneys (both prosecution and defense), elapsed time and effort per case, by type of offense and case disposition. This may serve to indicate where cases could be settled earlier in the process.
- Number of cases dropped by the DA's Office, by law enforcement agency, and the time expended in screening them.
- Workload per attorney, by type of case, for each agency or office since this affects preparation and processing time.
- Proportion of unsuccessful prosecutions (dismissed or acquitted); this should be small to avoid wasted effort, but if it is too low, it suggests that only the surest cases are being prosecuted. The defense, of course, will want a fair number of acquittals or reductions in charges.
- Proportion of felonies reduced to misdemeanors, indicating overcharging. The situation is like that of unsuccessful prosecutions described above.
- For the Courts, caseload agings, at 30-day intervals for the first six months and agings as currently recorded thereafter, will allow comparison with other jurisdictions. The county can establish timetables for the proportions of felonies and of misdemeanors settled at each interval.
- Changes in backlog over the years, by case type, to assess the progress being made.
- Individual and total judicial caseloads (numbers and types of cases) to see whether anyone is too heavily loaded.
- Number and costs of conflict cases since these are more expensive.
- Proportions of cases settled at arraignment, judicial conference, and other stages of the process to see whether settlement could be reached at an earlier stage.
- Trial durations; number and relative proportions of jury and court trials since jury trials are lengthy and expensive.

- Distribution of misdemeanor sentences, by judge and offense, to indicate how uniformly these are being applied until state standards are developed. (Longer sentences crowd the County Jail.)

County Jail and Restitution Center

At the County Jail and Restitution Center, populations accumulate although jail management has little discretion in admitting or releasing them. Yet the overriding issue for the county is jail overcrowding; it will lead to the expenditure of many millions of dollars to build and operate a more adequate facility. Jail management per se (housing, feeding, security, medical, etc.) will not be addressed.

The following indicators of jail population and composition are measured at those facilities but will be of more use to the Courts and prosecution in seeing how to reduce crowding and in devising lower-security confinement alternatives.

- Intakes and inmate composition, by sentenced/unsentenced, charge, and security classification.
- Number and types of pretrial releases and average lengths of stay as measures of processing efficiency and indicators of where the process might be expedited. The performance of the Courts' Release Assistance Officers is especially of interest here.
- Proportion of "secondary" offenders (warrants, FTA, probation violation, DWS/DWR, etc.): these suggest system shortcomings since these people ought not to have come back at all.
- Proportion of inmates with substance abuse or mental health problems; these might better be diverted to treatment facilities.
- Number of cases returned to the County Jail from the Restitution Center and a summary of the reasons. The Restitution Center may turn out to be too low-security for some of the people sent there.
- Rehabilitative programs, especially at the Restitution Center; number of participants, average time spent, and some measure of program impact or success.
- Population reduction through releases for Route Out, public or community service, house arrest, good behavior credit, and overcrowding relief.
- For those released to another jurisdiction, the time between notification and pickup or release: is the county holding these too long?

Although the Department of Community Corrections operates the Restitution Center, that facility is in fact being used as an extension of the County Jail, albeit with more attention to rehabilitation. For this reason, it has here been considered in conjunction with the County Jail. The balance of the Department of Community Corrections manages probation, rehabilitative programs, and presentence investigations. The issues to be examined for this part of the department include the rates of recidivism and probation violation among its

clients and the department's role in speedy case processing, especially with regard to presentence investigations.

The Department of Community Corrections undertakes a more varied set of activities than the other justice departments. For that reason its list of effectiveness indicators is longer. This in not meant to imply that the Department of Community Corrections is more important, or has worse problems, than the other agencies.

Other things being equal, it is to be expected that probation violations will decrease as the intensity and attention to supervision increases. Thus it is important to consider the size and level of caseloads as overloaded probation officers will be unable to keep up with their charges. Alternatives between confinement and unsupervised probation can be particularly useful in encouraging good behavior at a modest cost. The clients, particularly if employed, can even be required to repay the county for these services.

After a long period of professional skepticism, it is beginning to be accepted that some rehabilitative programs are moderately successful, though the good ones do not seem to fit into any particular therapeutic modality. In addition to their misdirected orientation towards society, offenders tend to be poorly educated and marginally skilled for employment. Thus, both motivational and educational programs may be useful if well conceived and executed.

Not all offenders will be rehabilitated, of course; and some will rehabilitate themselves regardless of outside intervention. Without attempting a scientific study of the county's programs, it is nevertheless possible to examine the procedures and participation in them and to chart recidivism in their graduates.

Presentence investigation reports give judges background information which helps them to devise appropriate sentences, especially for misdemeanants where there are no state guidelines. It is observed in other jurisdictions that judges, acting out of prudence, are inclined to give longer sentences in the absence of such information. ILPP will not examine the quality or accuracy of the PSI reports in Washington County but will call attention to the time required to prepare and deliver them.

Useful performance indicators for this segment of the Department of Community Corrections will be:

- Supervision caseloads: size and type. Are probation officers equally utilized?
- Utilization of out-of-custody sanctions, particularly home confinement, electronic monitoring, and other stratagems for intensive supervision. Can they be expanded?
- As a result of these, jail bed savings and the associated costs which are avoided.
- Some measure of the dollar value of restitution through community or public service and of direct repayment to victims.
- Probation violations and reasons, by program; in particular, failure rates for alternative sanctions. The use of jail beds by violators returned to confinement.
- Types of rehabilitative programs; duration; participation and graduation or failure rates.

- Recidivism rates and time to recidivate, by program and for nonparticipants. These should also record the age of all subjects since criminality decreases with maturation.
- Number of PSIs and report preparation times for those in and out of custody; number of late reports.

D. TRACKING ANALYSIS

Description of Sample

Jail tracking information is important in determining the average length of stay (ALS) for inmates. ALS data are crucial to identifying system operations which may cause delays in routine case processing. Other admission and release information will help determine the points at which alternatives to incarceration are used.

The tracking analysis, particularly when combined with inmate background information, can provide an excellent basis for analyzing local incarceration practices. For example, it can lead to a more accurate determination of the size of the pretrial and sentenced populations and the percentage of felons versus misdemeanants.

The tracking sample was obtained by compiling information on all bookings into the Washington County Jail during four selected weeks (one week each for the following months: July and October, 1990, January and April, 1991). The total sample consisted of 826 valid cases.

A significant proportion (13%) of the total sample, however, consisted of "out of custody" (OOC) bookings. An OOC booking involves an arrestee who is cite-released by the arresting officer in the field; at the first court appearance, the arrestee reports to the jail for fingerprinting and a photograph. Such a booking is for identification purposes only. The arrestee is not actually booked into the jail in the traditional sense and not held in custody.

An OOC booking is usually completed in less than 15 minutes, although the process can take up to 30 minutes when jail personnel are particularly busy. The technical nature and very short average lengths of stay of such bookings made it desirable to eliminate them from the tracking sample. For this purpose, the cases of all arrestees with a length of stay of 15 minutes or less ($\leq$0.01 days) were deemed OOC bookings. The revised sample consisted of 717 valid cases. While these cases were eliminated for purposes of the tracking analysis, a comparison of the total sample with the revised sample provided some information on cite-releases by law enforcement agencies. Table 1 identifies the categories of charges that were most affected by the elimination of OOC bookings.

Table 1
Impact of "Out of Custody" Bookings on Sample

Charged Offense	*N (% of total sample) (N=286)*		*N (% of revised sample) (N=717)*	
Felonies				
Property	29	(3.5)	18	(2.5)
Auto (DWS/DWR, etc.)	34	(4.1)	23	(3.2)
Misdemeanors				
Burglary-related	21	(2.5)	12	(1.7)
Property	83	(10.0)	41	(5.7)
DUII	169	(20.5)	164	(22.9)
Nuisance	28	(3.4)	20	(2.8)

Total OOC Bookings = 109
Total Felony OOC Bookings = 31
Total Misdemeanor OOC Bookings = 78

For both felonies and misdemeanors, the categories most affected were property offenses. OOC bookings accounted for 38 percent of those charged with a felony property offense and 49 percent of those charged with a misdemeanor property offense (including burglary-related charges).

Felony/Misdemeanor Breakdown

Felony bookings (218) accounted for 30 percent of the revised sample. The single largest category of felony bookings was violations of probation/parole (VOP), which were 23 percent of all felony bookings. Persons booked on VOPs also had one of the highest ALS for the felony bookings at 19.9 days. Over a third (37%) of the felony bookings were for VOPs, failures to appear (FTA) and holds.

Offenses involving violence against other persons, including robbery, and property offenses each represented 14 percent of all felony bookings. Bookings for robbery accounted for 50 percent of all the bookings for offenses involving violence against other persons. A significant proportion of the felony bookings was for vehicle violations (DWS/DWR and DWHO) which reflects an increase in what have been described as "second generation" offenses related to a prior conviction for drunk driving. Such bookings were 11 percent of the felony subsample.

Table 2
Felony/Misdemeanor Breakdown

Offense Category	*N*	*% of all felonies*	*ALS*
Felonies (N=218, 30%)			
Violent	30	14	40.01
Burglary	18	8	15.93
Property	30	14	7.16
Drug sale	19	9	4.61
Drug possession	8	4	1.38
Probation/parole	51	23	19.87
FTA	13	6	16.38
Holds	16	7	5.56
Auto (DWS/DWS/DWHO)	23	11	5.31
Other	10	5	8.98
Total	218	101	15.26
		% of all misdemeanors	
Misdemeanors (N=499, 70%)			
Violent	69	14	2.17
Property	41	8	7.70
Burglary-related	12	2	2.51
Drug sale	1	<1	46.81
Probation violations	59	12	14.71
DUII	164	33	4.31
Auto (DWS/DWR)	12	2	3.74
FTA	87	17	6.64
Nuisance	20	4	3.4
Other	34	7	11.88
Total	499	100	6.41

The revised sample included 499 bookings for misdemeanor offenses. As seen in most other jurisdictions, bookings for drunk driving (DUII) constitute the greatest proportion of misdemeanor bookings: 33 percent (164). In contrast to the felony subsample, bookings for "second generation" misdemeanor offenses were insignificant; such bookings made up only two percent of the misdemeanor subsample. This may be a charging issue.

Misdemeanor offenses involving violence against other persons were essentially limited to simple assault; this was the charge in 91 percent of such bookings. Misdemeanor bookings for drug offenses were virtually nonexistent; there was only one booking for a drug offense, and that involved drug sales. In contrast, felony bookings for drug offenses, primarily drug sales, were a significant portion of that subsample: 13 percent of all felony bookings, including nine percent for drug sales and four percent for drug use/possession.

What the misdemeanor and felony booking subsamples do have in common is a substantial number of bookings for probation violations and failures to appear. Such bookings constituted 29 percent of the misdemeanor subsample; the overall ALS for probation violations was also one of the highest for misdemeanor offenses, 14.71 days.

Pretrial Release

At the Washington County Jail, pretrial release is generally effected through only three types of methods: own recognizance (OR), security deposit and bail. Of these three release methods, OR release is the most utilized; bail is used so infrequently that it is insignificant as a viable form of pretrial release (see Table 3). (Although bail is seldom used to effect pretrial release, it is the fastest way to get out of the Washington County Jail. The ALS for all persons released after posting bail was 1.21 days, but a detailed analysis of the ALS for such persons shows that all but one of the nine individuals who posted bail in the sample were released in one day or less. See Table 4.)

Table 3
Release and ALS by Nature of Offense

	N	*% of felony bookings*	*ALS*
Felonies			
OR	76	35	2.93
Security Deposit	27	12	2.08
Court Order	36	17	14.72
Bail	2	1	0.14
Agency Transfer	54	25	26.76
Time Served	23	11	46.66
Total	218	101	15.26
Misdemeanors			
OR	239	48	1.42
Security Deposit	71	14	1.19
Court Order	49	10	4.72
Bail	7	1	1.51
Agency Transfer	31	6	19.35
Time Served	61	12	31.19
Weekender	39	8	0.68
Furlough	1	<1	0.31
Escape	1	<1	3.24
Total	499	100	6.41

Based on the data, the pretrial release rate for Washington County is fairly low at 59 percent (422 releases) in comparison with ILPP's prior experience in nearly 50 county studies. Pretrial release on OR is also relatively slow: persons booked on felonies and released on OR have an ALS of nearly three days (2.93 days); persons booked on misdemeanor charges have an ALS of 1.43 days.

Table 4
Length of Stay by Pretrial Release Mode

Length of Stay (range)	*OR*		*Sec. Dep.*		*Bail*		*Ct. Order*	
	N	*% OR*	*N*	*% SD*	*N*	*% Bail*	*N*	*% Ct. Order*
≤0.50 days	223	71	59	60	5	56	16	19
≤0.51 to 1 day	16	5	12	12	3	33	10	12
≤1.01 to 2.0 days	33	10	10	10	0	0	12	14
≤2.01 to 3.0 days	6	2	1	1	0	0	5	6
≤3.01 to 4.0 days	4	1	6	6	0	0	0	0
≤4.01 to 5.0 days	4	1	0	0	0	0	0	0
≤5.01 to 6.0 days	4	1	2	2	0	0	3	4
≤6.01 to 7.0 days	1	<1	1	1	0	0	5	6
≤7.01 to 8.0 days	6	2	2	2	1	11	2	2
≤8.01 to 9.0 days	4	1	2	2	0	0	4	5
≤9.01 to 10.0 days	1	<1	1	1	0	0	2	2
>10.01 days	13	4	2	2	0	0	26	31
Total	315		98		9		85	
Overall ALS	1.79 days		1.44 days		1.21 days		8.96 days	

In contrast, persons who post a security deposit have a shorter ALS, 2.08 days for felony bookings and 1.19 days for misdemeanor bookings.

As shown in Table 5, the use of the three pretrial release methods for both felony and misdemeanor bookings is virtually identical.

Table 5
Pretrial Release Methods by Felony and Misdemeanor Bookings

	OR	*Security Deposit*	*Bail*	*Total Pretrial Release*
Felony Bookings	76 (72%)	27 (26%)	2 (2%)	105 (100%)
Misdemeanor Bookings	239 (75%)	71 (22%)	7 (2%)	317 (99%)

The pattern of pretrial releases for both felony and misdemeanor bookings can probably be explained by the fact that OR releases actually include two types of releases. In addition to the traditional OR release, also known as sheriff's citation releases in other jurisdictions, OR includes releases authorized by court officers. Such releases occur after a booked offender completes a form and is interviewed by one of the court Release Assistance Officers. Although the process differs significantly for the two types of OR release, no distinction is made between them in the booking information maintained by jail personnel.

The combination of OR releases by the Sheriff's Department with those by Release Assistance Officers may also explain the relatively high overall ALS for OR releases in the misdemeanor booking subsample. (The range of ALS for misdemeanor bookings was 0.02 days to 76.06 days.)[2]

2 The cases for the booking sample were obtained before Washington County jail personnel implemented use of a matrix system which sets release criteria for persons arrested for misdemeanors and felonies and assigns points to various criteria. The matrix system was implemented on October

Table 4, which breaks the ALS for pretrial releases into smaller subgroups, shows that 71 percent of all OR releases (felony and misdemeanor combined) are effected in one-half day or less.

Table 4 also shows that the majority of releases by security deposit (60%) require less than half a day, as well as court-ordered releases as a pretrial release. Although court-ordered releases are generally used for persons whose charges have been adjudicated (e.g., continued on probation or given credit for time served), data analysis showed that a significant number of persons were released from the jail by court order within two days. Since persons arrested without an arrest warrant must be arraigned within two days, ILPP believes that most court-ordered releases within the same time frame probably represent pretrial releases.[3] If court-ordered releases within two days of booking are included as pretrial release, the overall pretrial release rate for Washington County is increased to 64 percent.

Although most OR releases are effected in one-half day or less, Table 6 shows the processing of such releases is slower than most other jurisdictions studied by ILPP. (In these jurisdictions, OR release, or sheriff's citation, requires only one to two hours at most.) Slightly more than a third (34%) of all OR releases occurred after an ALS of two hours or less.

Table 6
Pretrial Release Within 1/2 Day

	OR		*Sec. Dep.*		*Bail*		*Ct. Order*	
Length of Stay (range)	*N*	*% OR*	*N*	*% SD*	*N*	*% Bail*	*N*	*% Ct. Order*
≤1 hour (0.2 - 0.04)	42	14	4	4	1	11	7	8
≤2 hours (0.05 - 0.08)	73	23	17	17	2	22	1	1
≤3 hours (0.09 - 0.13)	29	9	14	14	0	0	5	6
≤4 hours (0.14 - 0.17)	16	5	7	7	0	0	0	0
≤5 hours (0.18 - 0.21)	11	3	4	4	2	22	0	0
≤6 hours (0.22 - 0.25)	13	4	2	2	0	0	1	1
≤7 hours (0.26 - 0.29)	9	3	5	5	0	0	0	0
≤8 hours (0.30 - 0.33)	10	3	1	1	0	0	0	0
≤9 hours (0.34 - 0.38)	10	3	1	1	0	0	0	0
≤10 hours (0.39 - 0.42)	3	1	1	1	0	0	0	0
≤11 hours (0.43 - 0.46)	3	1	3	3	0	0	2	2
≤12 hours (0.47 - 0.50)	4	1	0	0	0	0	0	0
Subtotal	223	70	59	59	5	55	16	18
Total	315		98		9		85	

Given the minimal processing requirements for implementing an OR release by the Sheriff's Department, most OR releases should occur within four hours; this time frame would also minimize the use of jail resources, particularly bedspace. Nevertheless, only 51

1, 1991, and is based on a system used in Multnomah County. Jail personnel note that the basic criteria were followed for OR releases prior to the use of the matrix system, but that no "numbers" were assigned to the criteria. This analysis of OR releases is therefore based on the assumption that there have been no significant changes in effecting such releases.

3 The use of the code "court order" on booking logs may also represent inconsistencies in the use of the codes for "OR" and "court order." There is a possibility that some "court order" releases are actually OR releases authorized by a Release Assistance Officer.

percent of all OR releases take place within four hours or less. If the ORs between four and 12 hours could all be shortened to four hours, there would be a savings of eight beds daily.

While the recommendation that more precise codes be used for releases from the jail appears trivial, improved system effectiveness and efficiency cannot be obtained without data-based management. The inability to distinguish between OR releases by Sheriff's deputies and by Release Assistance Officers is an excellent example of the difficulty in identifying policy or procedural changes that must be made to minimize ALS for persons eligible for pretrial release. Based on available data, it is not possible to identify factors that contribute to delay. Such delay could be due to procedures followed by the Sheriff's Department; problems in identifying individuals who must be interviewed by Release Assistance Officers; problems booked offenders have in completing their forms (e.g., non-English speakers); or even the need to have more Release Assistance Officers available (one position was recently eliminated).

The wide range of ALS for persons booked on misdemeanors before OR release also indicates that OR releases may be used to reduce the jail population when the jail cap has been exceeded. (The ALS of 76.06 days, the highest value in the range, was for a person who had been booked on an outstanding Washington County warrant.) If OR release is used under such circumstances, there is an issue whether such persons should have been released from jail within a shorter time frame (e.g., at the time of arraignment or even earlier).

Probation/Parole Violations

One of the factors underlying the low pretrial release rate for Washington County is the significant proportion of the sample that had been booked and held in custody on a warrant, hold or detainer. This group accounted for 42 percent of all the bookings in the revised sample. When weekenders, who do not usually spend any time in the jail, are excluded, the proportion increases slightly to 44 percent. The delay in pretrial releases due to such holds is demonstrated in Table 7 which excludes weekenders from the analysis.

Table 7
Release from Jail by Custody Reason[4]

Custody Reason	*Pretrial Release[5]*			*Court Order*			*Transfer*			*Time Served*		
	N	*%*	*ALS*	*N*	*%*	*ALS*	*N*	*%*	*ALS*	*N*	*%*	*ALS*
Probable Cause (318)	263	83	1.14	29	9	5.15	16	5	37.74	10	3	56.66
Wash. Co. Warr. (176)	105	60	3.57	36	20	11.17	16	10	51.74	19	11	32.41
Agency Hold (89)	45	51	0.61	6	7	6.58	32	36	10.05	6	7	36.27
P.O. Detainer (16)	1	6	0.23	5	31	9.28	6	38	14.53	4	25	57.01
Multiple Holds (19)	5	26	2.89	2	11	13.63	9	47	20.85	3	16	26.30
Secret Indictment (4)	2	50	0.31	1	25	5.15	1	25	8.99	0	0	0.00
Report for Sentence (54)	0	0	0.00	6	11	15.33	5	9	1.62	43	80	29.58

Table 7 shows that 83 percent of those booked and held on probable cause affidavits are released pretrial after an ALS of 1.14 days. The proportion of pretrial releases drops substantially for persons booked and held on a Washington County warrant. (In general, most of the Washington County warrants were bench warrants for failure to appear, failure to pay a fine or failure to comply with a court order. The reason for the warrant, however, was not always identified in the data obtained from Washington County personnel.) Only 60 percent of this group was released pretrial. A fifth of this group (20%) were released upon court order after an ALS of 11.17 days.

Persons booked and held on a probation/parole detainer generally were not eligible for pretrial release. In Washington County, detainers apparently are not used for all probation or parole violations. The issuance of a warrant for failure to pay a fine or comply with a court order can generally be deemed a violation of probation. A review of the data also showed that five of the 19 cases held at the request of another agency were for probation violations; two of the cases where there were multiple holds involved probation detainers.

The delay in pretrial release created by the need to clear a warrant or hold is further demonstrated in Table 8 which identifies pretrial releases by the three traditional methods, OR, security deposit and bail.

4 Excludes weekenders and furlough releases.
5 Includes OR, security deposit and bail.

Table 8
Pretrial Release by Custody Reason

(Total=421)	*OR*			*Security Deposit*			*Bail*		
	N	*% PT Rel.*	*ALS*	*N*	*% PT Rel.*	*ALS*	*N*	*% PT Rel.*	*ALS*
Probable Cause	208	49	1.08	54	13	1.23	1	<1	7.89
Wash. Co. Warrant	74	18	4.15	28	7	2.39	3	1	0.28
Agency Hold	25	6	0.82	15	4	0.32	5	1	0.43
P.O. Detainer	1	<1	0.23	0	0	0.00	0	0	0.00
Multiple Holds	4	1	2.86	1	<1	3.02	0	0	0.00
Secret Indictment	2	<1	0.31	0	0	0.00	0	0	0.00
Totals	314	75	1.79	98	23	1.44	9	2	1.21

As shown in Table 8, only 18 percent of all pretrial releases were OR releases for persons booked and held on a Washington County warrant; this group had the highest ALS, 4.15 days, for OR release. Warrant arrestees also had the highest ALS for security deposit releases, 2.39 days.

Impact of Drunk Driving Charges on Booking Sample

With the enactment of stricter laws against drunk driving, and concomitant stricter enforcement of such laws, bookings for drunk driving (DUII) have become the most significant proportion of all misdemeanor bookings. Washington County is no exception to the national trend, as reflected in the fact that a third of all misdemeanor bookings were on DUII charges. In contrast to many other jurisdictions studied, however, persons booked on DUII charges spend substantially more time in jail before obtaining pretrial release.

Table 9
Releases for Persons Booked on DUII Charges

(Total=164) *Release Mode*	*N*	*% of DUII Bookings*	*ALS*
OR	87	53	0.87
Security Deposit	22	13	0.91
Court Order	4	2	4.76
Agency Transfer	5	3	10.54
Time Served	20	12	25.92
Weekenders	25	15	0.74
Escape	1	1	3.24
Totals	164	99	4.31

While the pretrial release rate for persons booked on DUII charges (66%) exceeds the overall pretrial release rate, such persons spend nearly one day in jail before obtaining pretrial release, 0.87 days for OR and 0.91 days for security deposit respectively. (The pretrial release rate is even higher if weekenders, who are already adjudicated, are excluded; the release rate is then 78 percent.) For persons booked on DUII charges, OR releases accounted for 80 percent of all pretrial releases.

The impact of stricter laws against drunk driving on the allocation of jail and law enforcement resources is not limited to arrests for drunk driving. Convictions for drunk driving have also resulted in "second generation" offenses, such as subsequent arrests for driving with a suspended license. The impact of such "second generation" offenses is seen in the felony booking sample where bookings for such violations made up 11 percent of the subsample. (Persons booked on felony charges of "auto-DWS/DWR/DWHO" had an overall ALS of 5.31 days; with the exception of one person, all were released pretrial after an ALS of 0.68 days.)

Although the misdemeanor booking sample had an insignificant number of bookings on similar charges, the "second generation" impact can be seen in bookings for probation violations and failures to appear.

Table 9A
New Charges with Related DUII Charges

	Total	*N with Underlying DUII Charge/Conv.*
Probation Violation	59	16 (27%)
Failure to Appear	87	37 (43%)

Table 10 may be an underrepresentation of new charges related to an underlying DUII charge or conviction since reasons for the probation violation or failure to appear were not always available in the data collected by, and/or provided for, ILPP. Nevertheless, the data did show that 27 percent of all misdemeanor probation violations were related to a prior conviction for drunk driving; 43 percent of all misdemeanor failures to appear involved either an underlying DUII charge or conviction. If all charges related to drunk driving are included with new bookings on DUII charges alone, the proportion of such bookings in the misdemeanor booking sample would increase to 43 percent.

Implications for Jail Population

The tracking study has implications for the size and makeup of the jail population. Bookings may be converted to bed-days by multiplying by ALS, and then dividing by the number of days in the sample (28) to give daily beds. This shows the contribution of each inmate category to total population. In the tracking sample, 71 percent of the beds were occupied by inmates booked on just four types of charge: felony violence, DUII, FTA, and probation violation. Reduction in any of these categories would have the greatest effect on overall population.

Violent felons are the class for which confinement seems most reasonable as it keeps them out of further trouble. Drunk drivers are important because there are so many of them

(23% of all bookings). Their relatively long stay (4.31 days) reflects the average sentence of nearly a month served by about ten percent of them.

FTA and probation violations are not the result of any new offenses (assuming that they are not used to shortcut the normal booking and charging procedure). They indicate that the system is not doing as good a job as it might in supervising probationers and enforcing court appearances.

Just two release types accounted for 77 percent of the beds: time served and agency transfer. The latter category, however, is a catch-all which is so broad as to make it useless for population management. It includes at least the following: persons released to another county soon after booking; convicted felons who are kept through trial and then sent to prison; persons extradited to another state; and anyone who has served a sentence in Washington County and is then released to another jurisdiction for further prosecution. It appears also to include those who are held for the probation or parole departments, and this reportedly can be for a fairly long time (exact data not available).

These are really unrelated release types and should be so recorded. Even the usual distinction between pretrial and post-sentence release is not observed here. Presumably the bulk of the population released to another agency is those going to prison, but there is no way to tell without reviewing individual case files.

The charges and release modes listed above account for most of the jail population. It is in these categories that system improvements will have the greatest effect on reducing overcrowding. Shortening the lengths of stay in other categories, while welcome, might be less cost effective in terms of the effort required to make the changes.

Conclusions

Although the tracking study suffered from problems with poorly defined baseline data, with careful manipulation, it was nonetheless suitable to support many findings initially identified in interviews.

The most important observations, set out below, are discussed elsewhere in this study in more depth and presented with complete recommendations.

1. Washington County appears to have a slow and somewhat ineffective "nonsystem" of pretrial release, resulting in some significant delays. Pretrial release functions are hampered by poor data and many failures to appear.

2. Probation and parole violations are a major jail and system crowding issue due to a long length of stay.

3. DUII cases are a major load on the overall justice system initially and in "second generation" arrests.

4. Some of the data kept by the county is insufficiently differentiated to support the kind of analysis which would be most useful in managing the jail population.

LAW ENFORCEMENT IN WASHINGTON COUNTY

LAW ENFORCEMENT IN WASHINGTON COUNTY

This section reviews law enforcement in Washington County by first providing an overall description of the local law enforcement agencies in the county, including organization and mission, staffing and budget. ILPP then examines basic issues of law enforcement based on data collection and interviews with chiefs of police and other staff at almost all of the main police agencies in the county.

A. BACKGROUND

Law enforcement in Washington County is generally a local government function (i.e., noncounty). The Sheriff's Department provides direct service in unincorporated areas. There are strong local-versus-county political considerations that discourage the use of a county study to assess the cost-effectiveness of local police work. (These practical considerations may have contributed to an initially chilly reception given to the county's Criminal Justice Planning Coordinator, John Hutzler, when he originally requested cooperation and extensive data and documentation from all local police departments.) Local agencies, however, were especially cooperative in interviews, providing ILPP with much useful information. The initial inability of ILPP to obtain maximum/optimal amounts of data might be a result of these political constraints.

While the focus of this study is not local policing, ILPP's assessment of Washington County's criminal justice system includes a review of this area as it affects and interacts with other areas of the justice system. Because of the narrow focus, the initial data collection problems, and the interim nature of this report, the evaluation is less well-developed than reviews and assessments of other aspects of the justice system.

B. SHERIFF'S DEPARTMENT

The Sheriff's Department is the largest local law enforcement agency; its organization is described below.

Patrol Functions

The role of the Sheriff's patrol division is to ensure citizen safety. As first responders to calls for police service, the patrol division provides a wide range of services. When responding to a crime, deputies take the initial incident report, complete an on-scene investigation, interview witnesses, and make recommendations for follow-up by senior deputies or detectives. Deputies also enforce traffic laws, pursue arrest warrants issued by the Courts, and help in crime prevention by advising citizens. The Sheriff's patrol also provides assistance to other police agencies in the county.

Enhanced Sheriff's Patrol District

The Enhanced Sheriff's Patrol District (ESPD) began providing an intensified level of patrol services to specified urban, unincorporated areas in January of 1989. The purpose of the district is to decrease the response time to emergency calls, improve traffic enforcement on county roads and in neighborhoods, remove drunk drivers from the streets, provide additional follow-up investigative services and decrease criminal behavior by increasing the presence of uniformed police officers in neighborhoods.

Detective Functions

The detective division is responsible for investigating major felony crimes, including homicide, rape, assault, robbery, burglary, larceny, motor vehicle theft, arson, forgery, etc. The division has three subdivisions: Forensic Services, Narcotics Investigation, and Gang Intelligence and Enforcement.

Staffing and Budgeting

The following information summarizes Sheriff's Department staffing and budgeting (excluding the corrections function which is described later in this report).

Table 11
Sheriff's Department Staffing

	Operations	*Investigations*	*Services*	*Administration*	*District Patrol*
Captain	1	1	0	0	0
Lieutenant	2	2	0	0	1
Sergeant	7	3	0	0	3
Detective	0	15	0	0	0
Sr. Deputy	12	5	0	0	0
Deputy	22	2	1	0	58
F.S. Tech 2	0	3	0	0	0
Evid Off 2	0	1	0	0	0
Evid Off 1	0	1	0	0	0
Secretary 3	0	1	0	1	0
Secretary 2	2	2	1	2	1
Data Entry Op	0	1	0	0	0
Emer Mgt Coord	1	0	0	0	0
Assoc Acct Clk	0	1	0	0	0
Services Mgr	0	0	1	0	0
Civ Dep Super	0	0	1	0	0
Civil Deputy	0	0	4	0	0
Office Super	0	0	2	0	0
Comm Ed Spec 1	0	0	2	0	0
Senior Clerk	0	0	3	0	0
Assoc. Clerk	0	0	18	0	3
PBX Operator	0	0	0	0	0

Table 11 (cont.)

	Operations	*Investigations*	*Services*	*Administration*	*District Patrol*
Sheriff	0	0	0	1	0
Undersheriff	0	0	0	1	0
Admin. Mgr.	0	0	0	1	0
Mgt. Analyst	0	0	0	1	0
Sr. Acct Clerk	0	0	0	1	0
Total	**47**	**38**	**33**	**8**	**66**

Budgets were as follows from Fiscal Year 1990-91's adopted budget.

Public Safety (Sheriff)	$11,566,725
District Patrol (ESPD)	$3,644,672
Search and Rescue	$13,588

C. CITY LAW ENFORCEMENT

Typically, the chiefs of local law enforcement agencies are responsible to their respective city administrators for the operations of the department and for overall coordination of public safety programs within the community. They provide patrol, traffic, investigation, dispatch[6] and records management services 24 hours a day.

The administration divisions are responsible for overall department management, personnel, budget, purchasing and management controls; crime analysis and management information systems; work scheduling; press relations; internal investigations; and general public safety coordination.

The patrol divisions are the first responder to all calls for service; their response to the citizen has the most critical impact on the community, and is one of the most important elements in the departments.

The investigation divisions provide investigative support to criminal cases that require rapid response and continuation to a conclusion that cannot be provided by patrol.

The following table lists the city police departments in Washington County, including available information on staffing and funding.

6 Dispatch is in the process of becoming a county function.

Table 12
Staff and Budgets, City Law Enforcement

	Staffing[7]	*Budget*[8]
Banks	1.00	*
Beaverton	91.50	$4,283,000
Cornelius	10.64	*
Forest Grove	19.00	*
Gaston	1.00	*
Hillsboro	64.00	$2,938,000
King City	NA	*
North Plains	2.40	*
Sherwood	5.50	*
Tigard	43.50	$3,025,000
Tualatin	22.00	*
Total	260.54	$13,947,000

*Combined costs for Cornelius, Forest Grove, Gaston, King City, North Plains, Sherwood, and Tualatin police are estimated to be $3,701,000.

D. DISCUSSION OF LOCAL LAW ENFORCEMENT

The areas emphasized in the interviews were those issues which directly related to county concerns and those operations which directly or indirectly impact the county criminal justice system and thus, impact the County Jail and/or indirectly impact the other agencies.

ILPP interviewed the chiefs of police and staff representatives from the following law enforcement agencies:

- Beaverton Police Dept.
- Tualatin Police Dept.
- North Plains Police Dept.
- Washington Co. Sheriff's Office
- Hillsboro Police Dept.
- District Attorney's Office
- Forest Grove Police Dept.
- Cornelius Police Dept.
- Tigard Police Dept.

Data and reports of all kinds were received from many agencies, but the level of data and response to the initial request for materials was uneven. Thus, the interviews were primary sources of useful information. However, interviews and system data collected at the County Jail corroborate the preliminary discussion, findings and recommendations below.

ILPP noted a professional and cooperative attitude and commitment to service in each law enforcement agency, a perception of being an element in the greater criminal justice system, and an awareness of the impact individual entities have on each other.

ILPP found that there were clear differences in experience levels among law enforcement operations which depended upon the size and demographic make-up of the agencies and the

7 From ILPP's proposal to Washington County.
8 Estimates, from Volume I. Introduction, System Costs. Note footnotes for figures in that section.

jurisdictions. As to be expected, there were also significant variances in the operational and philosophical objectives of the agencies.

These differences and variances become relevant to this study only in the interaction between law enforcement and other criminal justice agencies. It is at the point of this interaction that some of the issues described below arise.

The criminal justice system, and correspondingly, the County Jail, is by definition full of cases brought to it by the county's various law enforcement agencies. Law enforcement officials and others throughout the justice system and in the county have questioned whether or not the system caseload is properly prioritized and whether better screening, exercising of supervised police discretion, or more explicit prosecution direction would improve the system's caseload quality. This would, according to some, create more efficient performance throughout the county's criminal justice system and thereby reduce crowding. While there is no definitive answer to this question, the following discussions review aspects of the issue.

A case not referred to the District Attorney (DA) virtually precludes the filing of criminal charges. While the decision to prosecute is uniquely the prosecutor's, police practices necessarily affect this decision. American law has long recognized the enormous discretion given to officers on the beat and their superiors. This discretion is the source of both great anxiety about abuses not subject to court review and appreciation of broad opportunity to avoid cumbersome legal proceedings by meting out "informal justice." An example cited by one experienced Washington County judge is an earlier tendency of the police to, in appropriate circumstances, simply pour out the alcohol of youths caught drinking. This was cited as an example of a case that would now be written up, enter the court system and generate work by the government that would be less effective than the officer's on-scene response.

Police practices can significantly increase the workload of the DA. In response to earlier law enforcement complaints that officers are not informed of the outcome of cases, the DA adopted the practice of reviewing all law enforcement referrals in writing. A copy of the decision on the referral (to prosecute or not) is sent back to the agency. This means every referral must be read by an attorney, the decision recorded, and the form filled out. All this paperwork must be logged, processed and reported by clerical personnel. An unspoken assumption in this process is that there are probably some less serious cases accepted for prosecution out of deference to the large volume of trivial cases rejected.

It is apparently common practice for Washington County law enforcement agencies to refer cases for DA review without making a recommendation and even when the obvious conclusion is that no prosecution is contemplated. Several prosecutors were vehement in describing an almost ritualistic practice in law enforcement of writing up all incidents which could conceivably be prosecuted as crime and referring them to the prosecutor. An example cited is the complaint about a loud party in which the law enforcement agency took no action, but referred the report for the prosecutor's review.

Many attorneys and judges believe that this readiness to arbitrarily refer all cases to the DA by law enforcement stems from a belief that a failure to do so could create civil liability for the police agency. Afraid to expose themselves to civil lawsuits for which there is no immunity, police report the incidents to the DA in order to come under the umbrella of prosecutorial or judicial immunity.

Because there are reasonably clear-cut rules governing police liability for law enforcement activities, fear of civil liability should not be a force controlling or motivating police action or inaction. Nor should it drive referral of cases which should not be prosecuted to the prosecutor.

If indeed fear of civil liability is a motivating factor, it should be directly dealt with. Consultation between the County Counsel and the middle managers of law enforcement agencies may serve to clear up any misunderstandings and further serve to open up communication when questions needing speedy resolution arise.

Prosecutors also fault the lack of meaningful review in law enforcement agencies prior to referral of a case to the DA. While it is believed that sergeants at least review cases before passing them on, the decision on whether to refer is assumed to lie with the officer who wrote the report, not with the sergeant who reviews it or the agency employing the officer.

The discussion above demonstrates some of the dissatisfaction currently experienced by criminal justice system agencies regarding the law enforcement function. Major findings in this regard are set forth below with recommendations following in a separate section. In making recommendations, ILPP notes that Washington County officials should be aware of, and sensitive to, interagency conflicts and a reluctance to cooperate in the implementation of all of the recommendations in this study. This problem should be an ongoing concern for CJES.

E. FINDINGS

1. Law Enforcement Training

Training was held, by all interviewed, to be a major factor in addressing the issues raised in the above review of local law enforcement. The issues which arose regarding training were quality and standard of arrest, report writing, and court testimony.

Prosecutors and judges both emphasized the need to train police officers and Sheriff's deputies on the legal aspects of their jobs. While the DA does make advice from a deputy district attorney available around the clock, there is a need for more routine training of line officers.

Appropriate training could be conducted by the statewide peace officers training office, or particularized training could be held in Washington County by attorneys from the District Attorney's Office and the County Counsel.

There is a lack of consensus in Washington County as to who should or could provide legal update training. Providers identified included the District Attorney, the state and internal (county/municipal law enforcement agencies) sources. Present funding schemes for training appear to be insufficient. Those interviewed felt that local input should be part of the training, with the DA playing an integral role. However, the DA and his staff are not able to adequately take a major role as instructors unless some funding is available. Locally sponsored training, should it be created, would be welcomed by everyone interviewed.

The following discusses findings regarding training in the specific areas of arrests, report writing and testimony.

ARRESTS

Presently, arrests are primarily made by line personnel. Policies vary between agencies on how and when an arrest may be made. Most agencies do not require supervisory approval to make or approve of arrests, and the discretion is left totally in the hands of the individual officer. Overall, there appears to be a lack of supervision.

The facts at the time of the arrest, including the circumstances, the legal issues of search and seizure or detention, sufficiency of evidence, elements of the crime or policy concerns, are generally not considered or reviewed at the time of the arrest by anyone other than the arresting officer. It is unclear, based upon the interviews conducted, whether and/or when there is any meaningful internal review in each agency after arrests are made. Even if there is supervisory review after the arrest is made, if the review is not done prior to booking, the impact upon the system (particularly the County Jail) is clear: avoidable arrests result in unnecessary bookings.

More specifically, concerns voiced by those interviewed centered around training to improve the quality of arrests. Law enforcement agencies believe that if an officer can or does make an arrest that is technically correct and is able to aptly document the arrest, the number of "no complaint" cases will drop significantly, thereby reducing wasted system resources and jail space taken when a subject is arrested and then released with no complaint.

REPORT WRITING AND TESTIMONY

Interviews suggest that in their investigative reports, some officers may not be adequately documenting the steps taken to initiate the arrest, the circumstances surrounding the detention and/or search, and in some cases, sufficient descriptions of the elements of the crime. As a result, charging and defense decisions may be made or based on insufficient or erroneous information. The result can be either cases being improperly turned down, dismissed, charged and/or defended. This can result in defendants often being booked with charges later dropped or never filed. Attorneys for both the prosecution and defense, who noted this problem, stated they spend needless time reviewing such cases.

With an enhanced ability to write crime reports in such a way as to convey both the proper legal steps and the thoroughness of the investigation, much time might be saved in several areas. First, the DA would be better able to evaluate the cases in a timely fashion. Second, the likelihood of early pleas based upon the fear of conviction would be increased as defense attorneys see the weight of the case sooner.

As with report writing, court testimony is an area that might be improved by local law enforcement agencies. Officers' abilities to testify effectively are considered to vary greatly. Little training is available to improve officers' skills in this area.

2. Law Enforcement Performance Evaluation

There is a perception on the part of some individuals in law enforcement and others throughout the county's justice system that a "point system" type of performance evaluation is the main incentive for arrests and citations. This practice receives criticism because it causes unnecessary arrests that are made for the sake of "numbers" and expediency rather than for serious violations of law and public safety.

ILPP requested, but did not receive, copies of law enforcement field training guides and evaluation forms, as well as periodic evaluation program policies, procedures and documents. Interviews of the individual agencies, however, revealed that most, if not all, had some formal method of ongoing evaluation of officers in the field.

ILPP was not able to confirm the widely held belief that evaluation of the number of arrests results in too many weak arrests. However, the fact that many cases involving arrests by field officers do not result in prosecution filings does deserve further attention.

If there is indeed a problem with the motivations of individual officers making arrests for the purposes of satisfying minimum performance standards or receiving promotions and special assignments, this pattern could only be discovered in a careful and difficult evaluation process. Even if the agency or system encourages or supports such an attitude, an independent review of individual officers' arrest-to-charge/conviction rates would be needed to reveal a problem, and this would not necessarily prove causation.

However, ILPP did find that the Sheriff's Department was concerned enough about this perception and the possible interpretation of evaluation criteria that it now provides for positive evaluation points for officers who use alternatives to arrest and citation. Instead of being required to cite a driver for a traffic violation, the officer receives the same evaluative point value if (s)he issues a warning instead of a citation. Other quantifiable tasks conducted by an officer during his/her daily routine are also listed and ranked for evaluation points.

As a matter of routine accountability, law enforcement agencies have policies for review and evaluation of individual officer performance. This area is one of the most criticized and hotly contested aspects of personnel practices in enforcement. Quotas and other standards which measure minimum levels of performance by arrest or citation are routinely outlawed by statute in many states.

3. Coordination Between Law Enforcement and District Attorney's Office

All parties interviewed recognized and acknowledged that the communication between law enforcement and the District Attorney's Office needs improvement. The problems appear to be in the following areas: the investigation of criminal

allegations, the charging of cases, hearings and trials, and the policies of both agencies on all of the above.

COURT/DA LIAISON OFFICER

In Washington County, no law enforcement agency has an individual officer designated as a court or DA liaison officer. Individual officers make inquiries regarding their cases on their own.[9] Where there is no such liaison, the only contact most officers have with the DA, and vice versa, is when a case goes to court.

POLICE ARREST VS. DA CHARGING PRACTICES

The Washington County District Attorney does not always obtain a clear understanding of why certain police-initiated cases are referred for prosecution. On the other hand, the law enforcement agencies do not always understand why the cases they refer are refused for prosecution, or why there seem to be some apparent inconsistencies in the charging of individual cases.

An example of the type of difficulty the DA has experienced is when he receives rape or other sex crime investigative reports that clearly cannot be prosecuted either due to a lack of sufficient evidence or other legal impediments which preclude prosecution. In some of these cases, the problems are evident in the nature of the written report or are expressly pointed out by the investigating officer with a notation that prosecution is not recommended.

In effect, the DA considers these cases to have been "dumped" on his office, with the intention that the prosecution take responsibility for not pursuing the case. The DA believes that the decision to not pursue the case should be made by the individual agency, and that truly weak cases need not be forwarded for review. Other types of cases with little hope of prosecution seem to be regularly forwarded to the DA's office in the same fashion.

On the other hand, the police question why their cases are turned down when there is clear evidence of violation of law. They are particularly disturbed when they have extended themselves or where there is a definite threat to the public. Many cases of this type were brought to ILPP's attention.

In one case, the law enforcement agency had identified the culprits of a particularly vicious set of armed robberies involving illegal aliens. The case was written up and submitted for review, but turned down for an on-view arrest. Although the agency had identified the responsible parties, the DA requested that the agency delay in making the arrest until a warrant could be obtained (perhaps to incorporate a search). An off-duty officer later on-viewed the group engaged in another armed robbery, and the group was arrested. According to the agency in question, charges were dropped by the DA after the arrest. It was the understanding of the agency

9 In other counties where law enforcement agencies utilize court or DA liaison officers, this person conveys messages and reports back and forth between the District Attorney and the law enforcement agency. The liaison acts as a conduit for information flow and policy exchange in addition to attending staff meetings with the DA.

that the reason the charges were dropped was that the agency did not await a warrant. In this instance there were serious communications problems.

A second case illustrates the question of priority setting for police and prosecution. A shoplift arrest of two Spanish-speaking adults was made. A store employee had caught the defendants stealing some small items, listed in the DA's Charging Decision form as items priced $.99 and $2.15. The form returned to the agency in question noted that the case would not be charged due to minute value of the theft; the case was "not appropriate for prosecution." Overall, police discretion regarding arrests appears to vary, and there is little systematic effort by the District Attorney's Office or law enforcement to counter this pattern.

Although some nominal feedback is given to police departments in the form of the charging decision form, it appears that the form is not used to make improvements in system communications. The District Attorney's office does not follow up if further information requested on the form nor do the officers from whom the information is sought. It appears that the forms go to the chief or top managers and are not a major subject of follow-up for supervision, training or feedback within most departments.

Also contributing to coordination problems is the DA's policy of frequently rotating deputy district attorneys who make the charging decisions. This practice creates an air of uncertainty and inconsistency in what is required for prosecution because of the difference in individual standards of the persons making the charging decision. What is good for one person is not for the next, and so on. This practice appears problematic. Although each case must be viewed individually, law enforcement must have some consistency in the demands made upon it for investigative and charging standards. Frequently changing the persons who make those standards may not help the situation.

DUII ARRESTS AND DRUG FORFEITURE

Major conflicts revolve around forfeitures, "low-blow" DUII arrests, and certain arrests related to drug sales and possession. Both sides have asked for the policies of the other be made known to all concerned.

The District Attorney questions the local law enforcement policies regarding the arrest and detention of drug and DUII defendants (e.g., often, arrests are for intoxication below the legal limit but are referred for prosecution nonetheless). The DA's position is based upon the intent of the law as enunciated in the statutes and his views regarding prosecuting cases that cannot win. However, the DA's written policies do not fully state or explain DA priorities and are considered by the police to be inadequate. The police want the policies of the District Attorney spelled out. Some of these questions which separate the DA and law enforcement are both operational and philosophical. However, they create unproductive dissension and conflict.

Regarding civil forfeiture in narcotics cases, the DA has determined that in minor cases, there should be either civil forfeiture (e.g., of a car) or prosecution but not both. While the DA is elected to make such decisions about crime and punishment and system priorities and resource expenditures, the police agencies have been resistant to the DA's decisions regarding civil forfeiture.

4. Arrest Policies

As explained previously, the goals of prosecutors and law enforcement officers often intrinsically conflict, crippling the effectiveness of both agencies. As an example, in the resolution of some situations, law enforcement officers must arrest or detain simply to put an end to the problem, with no expectation of complaint. The DA, on the other hand, when presented with a case where an arrest is made, but where no complaint is warranted, is faced with releasing the defendant, seemingly in opposition to the police arrest purpose.

Interviews of attorneys and judges rendered the strong impression that Washington County has a relatively large volume of shoplifting, minor theft and bad check cases in the Courts. While many of these cases should be cited, use of citation release in lieu of booking appears inconsistent county-wide. The criteria for citation release versus physical custody varies from agency to agency, with the main factor often being the overcrowding level of the County Jail. Much is left to the discretion of individual officer as to when to cite and release and when to book. Interviews suggest that there is little or no supervisor review. The result is that there is no prioritization of jail use at the outset, causing some agencies to overuse the jail space.

5. Jail Problems

Law enforcement officials note that the problem of failure to appear (FTA) by pretrial inmates is increasing. ILPP's profile and tracking studies show that FTAs, warrants and holds are a major element in the system flow and custody population. Police chiefs and law enforcement administrators believe the release policies and practices of the County Jail and the Courts are the problem. ILPP sees it as a systems problem.

PRETRIAL PRACTICES AND FAILURES TO APPEAR

Pretrial practices with resulting appearance problems cause an increase in the load the County Jail must handle because an offender is booked more than once on the same original charge. After the individual is released on the initial booking and does not show for court, a warrant is issued. The person is then rearrested, arriving in the County Jail once again, taking up space and becoming more difficult to release because of the FTA on his/her record. ILPP sees the problem as one of inadequate pretrial services; this is discussed in the Pretrial section of this report.

DELAYS IN BOOKING

Due to the low staffing levels of the County Jail and the backlog of arrestees waiting to be booked, police officers often must wait to book prisoners. They sometimes must wait for extended periods of time to book arrestees, leaving their jurisdictions understaffed in the meantime.

Out of custody bookings, ordered by the court either before the defendant's court date or after, also can clog the jail and slow the entire process. Defendants who are

ordered to surrender often turn themselves in just after or just before a court appearance. The sudden rush of bookings overloads the booking officers at the County Jail and causes further delays to officers awaiting their own bookings.

The paperwork involved in the booking process is also identified as needing improvement. Smaller agencies have difficulty in completing the necessary paperwork in a timely fashion. Booking sheets and probable cause affidavits cause delay and practical difficulties in making appropriate copies. Officers do not have adequate access to copying and facsimile machines. All these problems can subtly increase crowding.

6. Coordination Between Law Enforcement and Other Justice System Members

Interagency and system communications and interaction seem to be a problem in Washington County. Although there is a high-level forum where all elements of the system meet, it is apparently ineffective as a means of clearing bottlenecks and friction between agencies. At this point, criminal justice system members do not work together to manage the system resources.

TRANSFER OF DOCUMENTS

Although some outlying agencies are able to use a fax machine to get documents to the DA's Office, the Courts do not have a fax machine, and the DA does not copy reports for the Courts. The present report delivery system from east county to the county seat is by state police courier. The state police station will be moved soon, and this practice will have to be changed. These seemingly minor clerical problems are expensive in many ways.

FUNDING

As a result of Measure 5, it is feared that law enforcement agencies are not only competing for funding with other municipal and county departments within their own jurisdiction, but they will be competing with other law enforcement agencies within the county as well. This is bound to create jealousies and animosities over jurisdiction and authority.

F. RECOMMENDATIONS

Officer Training. Officer training in the areas of arrest, report writing and testimony is needed to improve the connection between Washington County law enforcement officers and the next stages in the justice system. The training could be provided by the DA's Office if funds are available. However, if funds are not available, the DA should offer policy guidance, with individual law enforcement agencies taking more responsibility for officer training on the up-to-date policies.

Areas covered by such training should include, at a minimum, new laws, drug enforcement practices (legal issues), policies of the DA's Office, charging and filing criteria, and case investigation protocols.

Part of the training should include the exercise of arrest discretion. ILPP found that excellent individual policies regarding discretionary arrest exist within many agencies in Washington County. Through the training forum, perhaps uniform policies could be created. (See recommendations regarding diversion under Arrest Policies.)

Performance Evaluation. Although no arrest quotas were confirmed by ILPP, there were sufficient comments about the perception of them by members of the justice system to warrant concern. Nonetheless, no decisive findings or recommendations could be made at this time.

However, individual agencies may want to review their policies. Dialog and feedback between law enforcement and the DA may improve officer and system performance, reducing the number of arrests which do not result in prosecution filings.

Case Review Coordination. Probably the most effective initial step to improve coordination between the DA and law enforcement would entail the sergeant or lieutenant level to begin reviewing all cases referred and to not refer those where there is no culprit identified, no clear evidence of a crime nor good reason for a prosecution. Notification could include the names of the deputy district attorneys who are available for consultation in the DA's Office. The basic notion would be to begin viewing referrals as the work of the law enforcement agency, rather than of the individual officer who wrote up the incident. Formal agency recommendations could, but need not, be a part of the referral.

Although the DA in Washington County believes that it is the responsibility of the police agency to determine what is and is not a pursuable case, ILPP recommends that all cases with named or identified suspects be referred for review to assure, as a check and balance, that cases do not "slip through the cracks." By involving the supervisors of the law enforcement agencies, the cases should be stronger and the need for secondary review by the DA lessened.

Alternatively, senior officials in the District Attorney's Office could meet jointly or individually with the various law enforcement agencies and together, rough out the outline of what cases ought to be referred and which not. Formal written guidelines could be adopted by law enforcement agencies, perhaps in conjunction with the DA. A court/DA liaison could be appointed to keep communications between law enforcement and the DA's office active and to update and review guidelines and policies.

While the District Attorney's charging decision form is helpful to the DA in providing a brief form to supply a reason why a case was turned down, it is only a start in the feedback process necessary for good communication between law enforcement and the DA. The agencies receiving these forms need to assure that the information sought by the DA is obtained. A follow-up system or tickler file should be created to provide accountability for the information requested, and the forms should be used in the local agency to hold supervisors accountable and for follow-up officer training.

Law enforcement agencies should have some follow-up system in place to assure that proper case development and timely investigative steps are taken in criminal investigations.

Uniform Charging and Arrest Policies. A forum should be created by CJES in which the policies of each agency should be discussed and a uniform charging/arrest policy sought. Policies should be created in written form and disseminated among the courts for all agencies to consider and, if appropriate, adopt.

The forum should include members from both management and supervisory levels of the agencies involved. As it now stands, the only official interaction between criminal justice agencies is at the top level. Managers, supervisors and line staff of both the DA's Office and the law enforcement agencies need to be part of the policy making decision process and the process of operationalizing and fitting competing policies and practices.

An alternative to the supervisory and management staff participating in the policy making process is to at least include them in meetings with the policy makers who can directly explain the thoughts behind the policy decisions. This will better enable the line staff to carry out, and the supervisors to oversee, the implementation of the policies.

In addition, by involving the supervisory level, the lines of accountability can be more clearly drawn. When the DA asks for further information, supervisors are more likely to understand why and be willing to follow through with seeing the work done, rather than dismissing the request as unnecessary.

In other jurisdictions where the supervisory staff take a more involved role in the overseeing of investigations, quality of investigations and criminal cases vastly improves. This also prevents investigators from writing cases in such a way as to assure the DA's refusal to file.

DUII Arrest and Drug Forfeiture Policies. ILPP recognizes that the objectives of the law enforcement agencies and the DA are different. However, clear policy regarding DUII and drug cases must be provided by and to the agencies involved in enforcement in these crime areas. It is recommended that the law enforcement agencies and the DA, individually, create their policies on the subjects and either work out a compromise of their differences or simply recognize the different philosophical differences and get on with business. Line staff should be trained about the policies, and the policies should be put into action. Ongoing disagreement between these agencies is debilitating.

Crime Prevention. Serious consideration should be given by law enforcement to implementation of crime prevention measures among merchants, perhaps through a joint county-wide crime prevention agency. National and regional crime prevention associations have a variety of programs aimed specifically at small merchants which can reduce the need for police investigation and prosecution referral in cases such as bounced checks.

The general practice in former times of lecturing young, minor offenders and then keeping an eye on them for further signs of trouble has fallen by the wayside. In some jurisdictions, there is a rebirth of formalized police diversion. Community action officers are assigned to work with officers on patrol who have the option of lecturing the culprits on the spot and turning them over to the informal supervision of the community action officer.

No special legislative authority is needed to institute such a program, and Washington County, given its size and crime mix, seems an ideal candidate for this kind of a program.

Citation Release Policy. Law enforcement agencies should develop clear county-wide policies on the use of citation release in lieu of booking. Officers must be provided sufficient training in such county-wide policies. This training might be integrated with training provided for arrest, report writing and testimony (see Issue 1, Officer Training).

Rationing Jail Use. The county should pursue legislation to promote rationing jail use. The state should legislate a city booking fee to help fund and ration jail operations.

Jail Bookings. The pretrial release practices in Washington County need systemwide attention to ensure that FTAs do not cause new crowding and intensify delay problems. Exploration should be made of the potential for local agencies to do some of their own booking at their own facilities and then either issue a citation release or bring the arrestee in for housing.

Another alternative is the creation of one or more satellite booking/release facilities. Such facilities could be used as a place to print, photograph and release or simply hold until the person could be picked up at a later time. It would require personnel to manage and pick up prisoners. For DUII cases, this would allow more expedient administering of breathalyzer tests. This is already being done in the eastern part of the county where arrests are brought to Tigard for the test and release. (More on this issue can be found in Volume III's Special Issues section.)

Additionally, the county should use video arraignment as an alternative to transporting inmates from the County Jail to outlying courts. A local cable station has expressed a willingness to handle the transmissions if all outlying court areas agree to go "on-line."

Coordination Between Law Enforcement and Other Justice System Members. The county's law enforcement agencies should have opportunities to have their respective staffs interact with other agency members in their same work levels. CJES could facilitate this sharing and exchange of ideas and information which will help break down the barriers that prevent good cooperation. There needs to be a more successful method of communication between agencies, perhaps at the mid-manager level.

Court Facsimile Machines. The Courts should acquire facsimile machines to avoid costly hand-delivering of police reports by local and state police officers.

Washington County officials should be aware of and sensitive to interagency conflicts and a reluctance to cooperate in the implementation of all of the recommendations of this study. This problem should be an ongoing concern for CJES.

PRETRIAL RELEASE FUNCTION

PRETRIAL RELEASE FUNCTION

A. INTRODUCTION

Although arrest by law enforcement marks the beginning of the criminal justice system processing of offenders, the pretrial release of some of those offenders is of at least equal importance to the demand for criminal justice resources. Because many arrests do not result in filings, and then, up to 93 percent of all cases are disposed of through plea bargain, the interim decision whether to incarcerate an arrestee until other decision points are reached impacts tremendously on the number of offenders "in" the system.

The constitutional right to reasonable bail, incorporated into federal and state law, supports various principles of pretrial release. Oregon law is in the forefront of encouraging nonfinancial pretrial release and eliminating the bail bond industry from its traditional role in this vital stage of criminal justice case processing.

Pretrial release has historically been available to insure public safety and the accused's appearance at trial (and only secondarily through analysis of likely flight to avoid sentence). Combined with the presumption of innocence and various "Own Recognizance" (OR) principles originally developed to release clerics who could not make a surety deposit of livestock or monies, pretrial release procedures have developed rapidly and broadly in our current criminal justice system framework. In fact, pretrial release mechanisms have become one, if not the chief, means of regulating case flow and demand for the entire criminal justice system in most jurisdictions. The number of those arrested who are released pretrial, the speed and conditions of that release, and the effectiveness of insuring the accused's appearance all impact directly on the caseloads of the prosecution and defense, the Courts, and most importantly, the custody facilities.

In Washington County, where the proportion of pretrial to sentenced inmates in custody has more than doubled in recent times, the pretrial mechanisms are instrumental to various analyses and findings about an overloaded justice system, and in particular, the overcrowded jail.

B. DISCUSSION

In Washington County, pretrial release procedures are extremely simple and universally underdeveloped. They involve primarily the following: field citation in lieu of arrest, stationhouse release (also called "OR") by court-appointed Release Assistance Officers (RAO) at police agencies, OR release by special Release Assistance Officers, several forms of financial release, and most recently, emergency release (a hybrid form to cope with a court-ordered population cap on the jail).

Overall, the pretrial release rate in Washington County is about 60 percent. This is low in comparison with other jurisdictions studied by ILPP. The formal pretrial release "system" costs under $100,000 annually for two full-time RAOs. It is funded by the state through the Courts, and some police agency personnel are involved part-time, via local funding.

The various release forms noted above are described below with analysis based on ILPP's tracking study and interviews of those involved.

Field Citation

Each law enforcement agency in Washington County has policies, procedures and criteria for the release of those arrested in the field, with a citation requiring their appearance in approximately one week to be arraigned for trial. While the procedures vary significantly as to criteria and review by supervisors, the field citation option generally allows and often encourages police officers to issue a citation on minor offenses, including most misdemeanors and C class felonies.

In Washington County, data suggest that about one of eight arrests in the field by local law enforcement results in such a field citation instead of arrest. Available data cannot precisely identify the number or proportion of those cited who fail to appear (FTA), but all interviews and analysis of jail tracking and profile data suggest it is substantial. Importantly, those with prior FTAs and warrants are generally not issued a field citation when they are arrested again.

Of equal interest, but without concrete data to support the observation, many of those interviewed noted that citations were sometimes employed by police officers to avoid arrest, transport and being out of service or to avoid long delays in booking at the jail. ILPP observes that without consistent criteria, such variance is typical and results in substantial "overuse" of citation and underuse of custody facilities.

Many of the offenders are not cited in the field, but rather are cited by specially designated police release officers who have a less than clear relationship to court-sponsored Release Assistance Officers (discussed below). While labeled "OR," these releases are really citation releases at the booking desks of law enforcement agencies. They are generally known in the field of criminal justice planning as "stationhouse releases in lieu of arrest." Again, it appears from the tracking studies and interviews that about one in eight arrests in the county are released without booking into the jail, through a citation of one kind or another.

Bail/Security Deposit

Once booked into the jail, offenders can be released through financial means, via a security deposit of 10 percent of bail or a posting of the full bail amount. In Washington County, these two types of financial release are the fastest means of pretrial release after booking and generally occur in about 24 hours.

It should be noted that financial release in most counties studied by ILPP and reported on nationally is much quicker; it usually takes no more than one to two hours to post a deposit or bail (or a deposit on bail) in a typical jurisdiction. About one-fourth of all those booked into the Washington County Jail who are eventually released pretrial are released by these financial mechanisms.

Court OR

By far the most important pretrial release mechanism in Washington County is Court OR (own recognizance) which releases about three-fourths of all those released pretrial. OR

release and the stationhouse citation release that is called "OR" (discussed above) are governed by general court order, and staffed by court-funded Release Assistance Officers (RAO).

The general court order on pretrial release sets out bail amounts for various charges as well as criteria for OR. It is supposed to govern the exercise of discretionary decision making by both the RAOs working under the judges and the police department-based release officers discussed above.

Each accused offender fills out a questionnaire and then the RAOs attempt to verify some of the resulting information and make an assessment, based on the Court's criteria and their experience, as to whether the accused is a good risk to appear. The criteria for these OR decisions are geared to assessing offenders' propensity to appear at arraignment, and as such, they examine prior record, the current charge, ties to the local community, and similar items generally thought to help predict appearance (and, secondarily, related to public safety in releasing the offender).

For those offenders cited by law enforcement in the field, or cited at the stationhouses (where they are usually fingerprinted and photographed) there is no booking and intake at the County Jail on the day their citation requires appearance. Instead they are "booked" (i.e., registered into the custody system and perhaps fingerprinted and photographed) in an area away from the central custody areas of the County Jail. This is a short procedure after arraignment, and while it causes some crowding and delays due to peaking, there is little impact on jail capacity occasioned by the release of these offenders. For those released on OR by the two RAOs in the jail, however, this procedure involves a full booking, with intake, filling out a questionnaire and waiting for up to several days for OR release.

Little or no data are kept at any stage of the above release process, as to who is released, what the basis is for or against release, and with regard to FTAs. As a result ILPP's assessment of pretrial release is based largely on interviews, observations, the tracking analyses, and knowledge of pretrial release issues generally.

Washington County has also gradually developed a more formal pretrial release mechanism for emergency releases. Because the jail is under a court-ordered cap on its maximum population, emergency releases when the cap is exceeded have been occurring for several years. Originally, these releases were authorized under the jail administration with cognizance by the Courts on a somewhat haphazard basis (e.g., the "least bad" inmates were released by custody personnel, beginning with sentenced inmates with only a few days left to serve). Gradually, the emergency release procedures expanded, with the cooperation and concurrence of the RAOs, to include marginal pretrial offenders.

Recently, a release matrix has been adapted from nearby Multnomah County in an attempt to lessen the perceived risk of liability on the part of jail personnel. The matrix provides points based on offense and prior record and is quite objective in setting release priorities. Because of the increase in the jail's pretrial population proportion, which is now about 70 percent, and the increasing crowding, the use of the emergency release mechanism with the collaboration of the RAOs has become a major pretrial release mechanism in its own right.

C. FINDINGS

Overall Pretrial Release System

In interviewing Washington County criminal justice officials and in trying to obtain and analyze relevant data, it appears that court personnel and two RAOs, as well as law enforcement personnel, etc., are hardworking, professional and trying to do a good job. Nonetheless, ILPP has concluded that Washington County does not have a cohesive pretrial release "system." What occurs is inadequate in terms of speed of release, consistency and appropriateness of release. The current policies, procedures and practices are slow, inconsistent, inadequately funded and insufficiently connected to other system elements. They are not based on data or feedback regarding results or public safety, and generally are not very effective in helping to regulate jail crowding or the flow of cases through the system. Much needs to be done, overall, to improve this situation.

Field Citation

Field citation policies, procedures and criteria are inconsistent among local police jurisdictions, with each policing agency setting out different factors related to release and according to interviews, interpreting similar criteria in different ways. Interviews also suggest little or no supervision by local law enforcement over the use of citations and resulting inconsistencies, even within departments, regarding use of release criteria. Many of those interviewed suggested that the "attitude test" and distance to drive to the jail were far more important release criteria than was propensity to appear.

While these criticisms cannot be documented, it is clear that there is no uniform, county-wide release policy, criteria or practice.

Stationhouse Release

Similar but less severe problems seem to occur in the stationhouse release procedure (OR). Interviews suggest that substantial subjectivity is employed and that the release authority delegated by the Courts is often exceeded. Several of those interviewed suggested that there was deviation from the Courts' criteria in both directions, sometimes resulting in needless jail bookings and at other times resulting in releases that would not have been approved by the bench. Many complaints were offered regarding releases that would result in an FTA or danger to public safety, as well as releases that did not occur but should have.

Due to the fact that virtually no useful data are collected regarding field and stationhouse releases, it is not possible to more objectively assess the process. However, the lack of data leads to the findings that the current process cannot even be managed; unwarranted bookings and releases occur, and changes in program, procedure, criteria, etc., based on data and feedback, are not possible.

Bail

Financial release is the fastest pretrial release in Washington County. As a result, there is a certain unfair element of personal wealth involved in the release pattern in comparison with nonfinancial releases. Nonetheless, Washington County is not in control of financial release, per se, as state law governs the practice in most ways.

OR Release

OR release is slow, without regard to the number of offenders released or the nature of their offenses. In evaluating system load and jail crowding, it is always important to focus on average length of stay (ALS). A very small change in ALS for those who are released can make a very large difference over time in bedspace occupied in custody facilities. This relationship between ALS and jail crowding is discussed in depth in the population projection sections of Volume III, but it requires brief mention here.

In Washington County, the ALS for OR is 1.79 days, a high ALS in comparison with other jurisdictions studied by ILPP. In many counties, the OR intake questionnaire filled out by the offender is part of the booking process. Verification of crucial information is almost simultaneous; points are assigned to release criteria based on verified information, and arrestees are booked and released within four to eight hours.

Such a procedure in Washington County would save a great many jail bed days. Assuming, for example, that the ALS for OR was reduced to 0.79 days (a modest reduction of 24 hours), the number of beds (not bed days) saved would be nine. It should be stressed that delay in the current process is not due to slow work by the RAOs; rather, it is because of an understaffed, underfunded and unconnected system and procedure.

Construction of these nine beds alone would cost nearly a million dollars and operations costs are normally 20 times that amount over a life cycle. Throughout the following analysis, a great potential for many more saved beds appear at each decision point.

In addition to being slow, OR releases are based on established written criteria that, by definition, are subjective in that they are interpreted by the RAOs. No points are assigned to the criteria, nor are the criteria defined in such objective terms that consistency can be counted on.

Interviews support this finding; it is widely thought that different release officers, both in the jail and at the police agencies, interpret and apply the criteria differently. Neither are the criteria necessarily "valid" in that they have not been statistically correlated with detainees' propensity to appear at arraignment and trial, nor with the likelihood of rearrest during a period of pretrial release.

Assuring Appearance

In addition to the above problems, there are not sufficient staff nor adequate procedures for collecting data on OR release or FTAs. Thus, there are no data to determine if the pretrial

release procedures as used are working well. Furthermore, there is virtually no policy or program in place in Washington County to ensure that those released will in fact appear.

Other than a brief and formal admonition on release, no mail or phone reminders are initiated, no easy rescheduling mechanism is available, and little follow-up or supervision occurs for those released. While informally, RAOs will employ certain release conditions or on occasion, use third party supervision on an informal basis, Washington County OR procedures do not really provide for conditional or supervised release, drug and/or alcohol testing, etc.

As a result of the above limitations, the county experiences an apparently high rate of FTA, and encounters what ILPP commonly labels a serious "second generation" pretrial release problem. For example, those who already have an FTA and who are later rearrested on even a modest offense are not cited in the field, the station or the jail. When persons are released and do not appear, there is reason not to release them the next time they are arrested. The second arrest is often for failing to appear on the first offense.

Release Due to Crowding

Added to these problems is the very serious potential for abuse of the current system in the face of overcrowding. Until the recent overcrowding release matrix was put into effect, RAOs, under pressure from overworked custody staff and facing emergency releases of those not initially released, were in a position to exceed their release authority based on their prediction of judicial approval. While the RAOs appear excellent and hardworking, little real accountability to public safety exists in such a situation, and many agree that the county has been lucky to not have a major incident.

D. RECOMMENDATIONS

Pretrial Release System. Washington County should develop a comprehensive pretrial services program centered in the Courts, County Administration, or the Department of Community Corrections. Building on available state funds for three (recently cut to two) RAOs and local police resources already committed to field and stationhouse release, a comprehensive and data-oriented effort should be planned and put into effect.

As part of the new system for pretrial release, data should also be collected on those released via financial means to compare their appearance and rearrest rates with those released through nonfinancial means.

Part and parcel of the recommended new pretrial release system should be a provision for charging fees for various program and service elements, to be paid by those benefiting. Geared to ability to pay and available to all, the provision would allow charging detainees for release conditions such as supervision while on release or urinalysis, per similar recommendations for the Department of Community Corrections, set out elsewhere in this report.

Regarding the housing of a pretrial services program, much local planning is needed. Court and local police funds are now employed, and clearly additional funding will be required. These funds will save a tremendous amount more in costs for bedspace and criminal justice processing. Thus, the county should provide the funds. Assuming county

funding, ILPP estimates that a proper program would require $200,000 to $300,000 annually, and these funds could be administered by the County Administrator, the Courts, or the Department of Community Corrections (which seems to make the most sense). In any event, the issue of placement should be considered along with any possible consolidation among agencies over the custody function, as discussed elsewhere in this report.

Field Citation. The new system should begin with uniform policies, procedures and criteria for field citation in lieu of arrest developed with the cooperation of CJES and the chiefs of police. Common forms, data collection, reporting, training and feedback on release and FTA data should be employed.

Stationhouse Release. A similar stationhouse citation procedure should be developed through CJES and the Council of Chiefs for use in situations where a field citation cannot be issued because of the need to identify, fingerprint and/or "mug" an arrestee. Using uniform county-wide policies, procedures and criteria, tied (ideally) to objective points to insure consistent application, both field and stationhouse citation procedures should result in data that show the success/failure of the criteria in insuring appearance and public safety. This information should be provided to the arresting agency for training, monitoring, and feedback.

OR Release. With regard to formal OR release at the jail, use of a system similar to the current overcrowding matrix should be employed. Current criteria are reasonable, but objective points should be attached to the criteria to insure validity in terms of predicting appearance and consistency in application. Data should be collected on appearance and rearrest so that points can then be adjusted to reflect public safety concerns as well as jail crowding constraints.

New OR programs should be instituted, providing formally for conditional release, such as conditioning release on remaining at a certain residence or away from a person or place. Supervised release to a private party should also be formalized and, with current Community Corrections efforts, more formal supervision should be provided. Electronic monitoring and use of urinalysis and alcohol testing should be included in various forms, as suggested by the profile discussion in Volume III, perhaps in coordination with the Department of Community Corrections recommendations set forth elsewhere in this report.

Assuring Appearance. As part of the pretrial services program recommended herein, Washington County should establish a program to insure appearance of those released and to limit FTAs. There are a variety of proven mechanisms for assuring appearance and reducing FTAs, including computerized telephone reminders of court appointments, postal reminders with admonitions and procedures for rescheduling court dates impossible to make, and more specific techniques such as requiring periodic phone-ins, providing calls and postcards in Spanish, etc. This recommendation is based on the principle that the county loses when there is an FTA; this occurs because the court date is missed and time and money are expended and because the FTA makes the pretrial detainees a subject for a second arrest without the benefit of pretrial release, clogging the system with second generation cases.

THE TRIAL STAGE
COURTS, PROSECUTION, DEFENSE

THE TRIAL STAGE: COURTS, PROSECUTION, DEFENSE

A. COURTS

Discussion

The Washington County Courts, in common with other agencies in the county, are in good shape when compared with larger, urban cousins. Any overall assessment would have to score them as well managed, adequately staffed except in a few specific areas, providing a pleasant work environment and fulfilling the goals of a local justice system.

The Washington County courts are demonstrating innovation in the face two difficult transitions currently underway. First, the system is growing quickly: it is changing from a sleepy, small town court with few demands placed on it to a moderately busy, medium-sized, suburban court system. Second, the state is taking greater control: instead of the traditional court system primarily under the control of a county government, the Oregon state government is increasingly making important decisions from the state capitol which affect the Washington County Courts.

In addition to these ongoing changes, the Washington County Courts are experiencing "unification." Unlike the traditional division of trial courts into a lower level for misdemeanors and lesser civil cases and an upper level for felonies and large civil cases, Washington County is undergoing the metamorphosis from split trial court to "unified" court. The development of unified courts is a new trend among a minority of American jurisdictions. Designed to eliminate artificial distinctions between "lower" and "upper" trial court judges and give court managers great flexibility to meet workload shifts, unification creates a common pool of judges qualified to handle any case in the system.

Washington County is part of the way through unification. Only two currently sitting judges are "unified" judges (that is, appointed since the unification statute became effective), with the rest remaining as Circuit or District Court judges. However, all judges are "cross-designated" so that each is legally authorized to handle any case which may come into the court system. Experience with unification of courts in some other states has met great resistance, as lawyers object to less qualified lower court judges handling the more difficult and complex cases, and higher court judges resist a perceived diminution in their status.

These issues seem not to have arisen in Washington County, perhaps because of the high qualifications of the judges there. There are presently 12 judges on the court, with the thirteenth scheduled for 1993. The presiding judge assigns judges interchangeably, according to their particular talents and caseload needs, rather than based on their status as a District or Circuit Court judge. Unification of the Washington County Courts has gone well, and based on interviews with attorneys and judges, it simply is not an issue with either the bench or the bar. This is probably due to the county's good fortune in having well-respected judges on the lower court bench who have readily adapted to the change.

The method of appointing judges to the bench seems to be working well, judging from the generally high quality of the incumbents. As is common in much of the United States in

this century, judges are usually appointed by the governor and then subject to periodic election. Occasionally, a lawyer will run in an election for an empty seat or, less frequently, against a sitting judge. All but one of the current incumbents were initially appointed by the governor, and all but one have been confirmed in an election since taking the bench.

The Washington County system is almost entirely supported by the state government. The state pays the judges salaries, provides court personnel and pays for capital outlay costs.[10] It contracts for the public costs of defending those accused of crime. It pays the core salaries of the prosecution lawyers but not their support staff. The present system has worked well for Washington County. It is not grossly understaffed with judges, given the volume and seriousness of the work facing the Courts, as is so common in other states. While all of the judges are presently housed in older and overcrowded quarters, with one judge required to float among available courtrooms, new courtrooms are under construction and should meet the need reasonably anticipated.

After a meeting with all the judges, five of the currently sitting judges were interviewed separately for this report, including several interviews and many chats with the current presiding judge. The presiding judge is appointed by the state's Chief Justice, subject to a veto by the other judges, for a term of two years. The incumbent, Judge McElligott, is a strong manager with definite goals who has brought about significant change in the last year. Probably as a result of his background in the urban courtrooms of Portland, he has helped define the role of presiding judge as a central administrative force, giving cohesion and control over judicial policy. He assigns cases and other matters to courtrooms, feels primarily responsible for backlog reduction, and is seen as responsible for the uniform administration of justice. He is widely perceived as close to the Chief Justice of the Oregon Supreme Court, which is seen as an advantage for Washington County. His predecessor, Judge Pihl, is also viewed as a strong judge. In short, the role of the presiding judge in Washington County is commensurate with that role in urban counties in most progressively administered jurisdictions.

The intangible quality of collegiality, so important to the smooth operation of a court, is a plus for Washington County. The judges are supportive of each other, speak well of one another and work together in a close, informal cooperation. Court personnel seem cheerful, and an atmosphere of harmony and attention to business prevails.

Court Findings

1. WORKLOAD

Unlike many large, urban courts, the total volume of cases in Washington County is not unmanageable although detailed information to support this is hard to find. There appears to be no comprehensive central information system providing empirical data on workload which is readily available for useful analysis. The Oregon Judicial Information Network keeps "aging" data on cases pending longer than six, 12 and 24 months, but this information is of very limited value at the trial court level. It is particularly useless in District Court where significant proportions

10 In the Introduction section of Volume I, ILPP discusses system costs and estimates the Courts' budget to be $3,561,000 for fiscal year 1990-91.

of misdemeanors should be disposed of within 30 or 60 days and over 90 percent within 120 days.

These reports do demonstrate, however, that about 85 percent of pending active cases are less than six months old. This proportion has improved significantly (from 64 percent) since 1988 for the Circuit Court, but has slipped a little in the same period for the District Court. About half of these older cases are infractions, while violations show the highest rate of cases over a year old.

Information from the Oregon Justice Information Network spotlights some interesting patterns in caseload growth and age of pending cases. Table 13 shows that in the District Court, there was a 43.6 percent increase in infractions filed from 1988 to 1989, followed by a 19 percent drop in 1990. Misdemeanors, however, grew by 19 percent from 1988 to 1989 and almost doubled that growth rate to 33 percent in 1990. Felonies, while far fewer in number, jumped by 23 percent between 1988 and 1989, and by 34 percent the next year. Nontraffic violations, though small in number overall, showed by far the greatest growth (46% between 1988 and 1989 and 102% between 1989 and 1990). This is a pattern of very dramatic growth in the District Court workload, compounded by a huge surge in infractions in 1989.

Table 13
Washington County District Court Data

	1988	*1989*	*1990*	*1988*	*1989*	*1990*
		Infractions			*Violations*	
Filed	16,434	23,593	19,144	592	863	1,747
Pending	5,434	29,131	8,555	107	161	377
Age:						
1-6 months	1,034	1,736	1,586	27	76	181
6-12 months	10	96	172	0	6	23
12-24 months	11	13	107	0	0	65
Active	1,055	1,845	1,865	27	82	269
Inactive	4,379	6,227	6,690	80	79	108
Increase in filings	NA	43.6%	-18.9%	NA	45.8%	102.4%
% active <6 mos.	98%	94%	85%	100%	93%	67%
% inactive	80.6%	77.1%	78.2%	74.8%	49.1%	28.6%
		Misdemeanor			*Felony*	
Filed	4,007	4,760	6,335	1,068	1,313	1,765
Pending	3,142	3,558	5,952	85	193	284
Age:						
1-6 months	595	896	1,000	93	115	107
6-12 months	24	99	64	0	1	0
12-24 months	15	34	41	0	0	3
Active	634	1,029	1,105	93	116	110
Inactive	2,508	2,529	4,847	92	77	174
Increase in filings	NA	18.8%	33.1%	NA	22.9%	34.4%
% active <6 mos.	94%	87%	90%	100%	99%	97%
% inactive	79.8%	71.1%	81.4%	49.7%	39.9%	61.3%

Table 13 (cont.)

	1988	*1989*	*1990*	*1988*	*1989*	*1990*
	All Offenses			*Civil and Small Claims*		
Filed	22,101	30,529	28,991	6,058	6,308	6,178
Pending	8,868	33,043	15,168	1,723	1,641	1,480
Age:						
1-6 months	1,749	2,823	2,874	1,326	1,362	1,367
6-12 months	34	202	259	272	226	71
12-24 months	26	47	216	104	33	12
Active	1,809	3,072	3,349	1,702	1,621	1,450
Inactive	7,059	8,912	11,819	21	20	30
Increase in filings	NA	38.1%	-5.0%	NA	4.1%	-2.1%
% active <6 mos.	97%	92%	86%	78%	84%	94%
% inactive	79.6%	74.4%	77.9%	1.2%	1.2%	2.0%

NOTES: District Court trials are not tabulated. "Violations" are minor nontraffic offenses like boating or dog laws. "Infractions" do not include parking tickets. "Inactive pending" cases are failures to pay or appear, for which warrants or notices of license suspension have been issued.

The age of pending cases reveals no great surprises. The first six months is the most important time period since the great majority of cases should be resolved by then. In fact, 90 percent of active misdemeanors (1990) were resolved within that time. This is quite acceptable performance. It may be noted, however, that unresolved misdemeanor cases nearly tripled, from 39 to 105, between 1988 and 1990. Unresolved infractions grew from 21 to 279, a disturbing trend. Virtually all felonies are resolved within six months at this level.

Circuit Court figures reflected in Table 13 are comparable. They show a significant growth of felony criminal cases from 1988 to 1989 of 15.5 percent, and of 20 percent into 1990. The total growth of felony cases was pretty dramatic, from 323 to 485 in two years. Here, there is a clear improvement in the backlog: cases older than six months fell from 115 (36%) to 74 (9%) during this time.

Table 14
Washington County Circuit Court Data

	Criminal			*Civil, etc.*[11]		
	1988	*1989*	*1990*	*1988*	*1989*	*1990*
Filed	1,545	1,784	2,141	4,765	5,006	5,471
Pending	670	691	811	3,937	3,513	3,376
Age:						
1-6 months	208	282	411	1,135	1,204	1,165
6-12 months	66	46	66	641	603	638
12-24 months	49	11	8	693	483	384
24+ months	0	1	0	545	211	121
Active	323	340	485	3,014	3,379	3,207
Inactive	347	351	326	66	134	169
Increase in filings	NA	15.5%	20.0%	NA	5.1%	9.3%
% active <6 mos.	64%	83%	85%	38%	36%	36%
% inactive	51.8%	50.8%	40.2%	2.1%	3.8%	5.0%
Trials:						
Jury	97	91	77	61	55	53
Court	39	41	68	102	92	89

From 1988 to 1990, the number of cases brought to the Courts has increased in all categories. Despite this, the fraction of the more serious criminal cases resolved in less than six months has risen to a quite acceptable level. However, the case aging reports do not reflect intervals less than six months (180 days). In order to have this be a useful effectiveness measure, case agings would need to be reported at perhaps monthly intervals.

One seemingly minor statistic in the Circuit Court figures should not be overlooked as a measure of judicial effectiveness. The number of jury criminal trials fell from 97 in 1988 to 77 in 1990. This probably signals a marked increase in court efficiency. Jury trials are like the fixed capital of the court system. They consume days or weeks of court time. For each day, a courtroom is occupied, and time of a judge, prosecutor, defense attorney, court reporter, clerk and other support personnel is consumed, totalling thousands of dollars per day. More important is the lost opportunity time: each day consumed in a jury trial means that that judge has been unable to dispose of dozens, perhaps hundreds, of other matters which add to a backlog.

Court criminal trials grew over the same period from 39 to 68. Court trials tend to proceed much more efficiently than a jury trial, usually lasting only a few days at most and often less than a day. Conversion of about 20 jury trials, almost a fifth of the total, into court trials is a significant accomplishment.

Finally, the civil jury and court trials tell a sad and too familiar tale: the former fell from 61 to 53 and the latter from 102 to 89 despite a 15 percent increase in civil

11 "Civil" includes domestic relations, guardianship, conservancy, and decedents' estates. Numerically, domestic relations is the largest group in the filings, followed by civil, but the two smaller groups have a higher proportion of pending cases. Guardianship/conservancy cases are not aged, so "Active" is more than the aging totals. Also, only civil cases are listed as "Inactive Pending."

filings. This is not greater efficiency but a displacement of resources from civil matters to criminal ones. This is consistent with the remarks of judges that the civil side of the court has suffered under the onslaught of criminal cases, resulting in the protracted delay of family and business law cases.

The description and findings reported below are based primarily on interviews of representatives of the prosecution, the defense bar and the Courts. In-depth analysis of criminal case statistics, while it would have been desirable, fell outside of the scope of this interim report. Even given the lack of case handling statistics, a reasonably clear picture emerges from interviews.

There were few complaints about difficulties in handling felony criminal cases. The overall volume of felonies handled by the system is relatively low, at least in comparison with other urban areas. The judges, prosecutors and defense attorneys interviewed all agreed that serious crime, while present, is not an overwhelming problem in the county.

According to the presiding judge, there are presently about 550 misdemeanors handled in the Courts each month, and he feels well-staffed to handle about 400. Misdemeanor cases consume a disproportionate amount of the system's energy and provide its major unique characteristic: the Washington County Courts are clogged with minor cases which would not be on the judicial calendar in a county of comparable size elsewhere.

The main culprit seems to be cases of drinking and driving (DUII). Oregon, as most other jurisdictions today, has a statute which prohibits driving when the driver's blood alcohol level reaches 0.08 percent or more. This level represents a reduction from 0.10 percent common a decade ago, and further eliminates the requirement that the driver be "under the influence" of alcohol. An adult of average size can reach the prohibited 0.08 percent level after consuming only two or three drinks, depending on body weight and some other factors. The driving public is only belatedly coming to terms with these restrictions on the ability to drive, and court systems everywhere are struggling with the cases generated by these new laws.

Most courts are so inundated with a high volume of workload that cases on the margin, such as drivers who test at 0.08 or even 0.09 percent, are not vigorously prosecuted and in some jurisdictions, are not prosecuted at all. While legal justification for prosecution exists, especially where there are observable symptoms of intoxication, the actual practice is commonly to drop or plea bargain to lesser charges in the prosecution of these cases.

All participants agreed that the situation in Washington County is quite different. Until recently, there were many cases in which the tested blood level was below 0.08 percent, including some as low as 0.02 and 0.03 percent. Defense attorneys and judges were all aware of a few cases in which blood alcohol levels of 0.00 percent were prosecuted. While the prosecutor's office recently shifted emphasis away from cases in which the test results are below 0.06 percent, a great deal more remains to be done in the area of early screening of cases.

While these drinking and driving cases are the most obvious candidates for closer scrutiny, there were repeated suggestions that other misdemeanor cases might

benefit from a more thorough screening. This screening of misdemeanors needs to first take place in police agencies, then in the prosecutor's office and finally, in the Courts.

2. CASE PROCESSING

The lack of empirical data on case flow is a real handicap in analyzing the movement of cases through the system. It would be very helpful to have information such as:

- Number of cases filed, proportion arraigned and how quickly;
- Number and proportion settled at or before a pretrial conference;
- Number and proportion by offense group which are disposed of 30 days from date of arraignment and in 15-day intervals thereafter;
- Method of disposition (dismissal, plea to another charge, plea to charged offense, court trial, jury trial), giving numbers and proportions in various offense groups;
- "Aging" data (i.e., the number of cases pending at certain time periods after arraignment), displayed in 15-day intervals.

It is possible that some or all of this information will become available once the new automation system is installed (see "Court Recommendations" below).

The system for handling cases, whether formal or informal, is a major determinant of court efficiency. The system now in place in Washington County has evolved over the decades as the county grew from a rural court system of just a few judges to the suburban court of a dozen judges today.

The very recent past has seen great changes in the way cases are handled in Washington County. First, the state adopted a set of sentencing guidelines for felony cases and imposed these strictures on all Oregon counties. This means that the previously almost unfettered discretion of judges is now carefully circumscribed by extensive statutory, regulatory and case law. The power to sentence is often a determinant of movement through the system, and the restriction of this discretion has effected a power shift on the Courts, probably in common with many other Oregon counties.

Second, the appointment of Judge McElligott as presiding judge has, by all accounts, wrought great change. A decade ago, there was no highly structured system for moving cases along. A case was simply continued until the defendant pled guilty, the prosecutor dismissed or a bench warrant was issued for a missing defendant. Jury trials were few and far between. It was not unusual for misdemeanor cases to be pending after a year or longer. Though felony cases continue to be handled in much the traditional fashion, misdemeanor cases are taking on the characteristics of high volume venues.

3. PROCESSING MISDEMEANOR CASES

The present presiding judge has moved very aggressively to resolve misdemeanor cases early in the process. Under his prodding, the Washington County Courts now are reluctant to grant continuances, sometimes to the dismay of the prosecution and defense. A firm policy of scheduling cases with the expectation that they will be resolved, rather than simply continued until some resolution occurs, is the rule. Judges are assigned to cases with their individual skills at settlement, moving high volumes of cases or expeditious trial work specifically in mind. At each court appearance, both attorneys and the defendant are expected to be present.

The result has been a dramatic improvement in disposition times for misdemeanors. Instead of many cases taking over a year to resolve, most are now concluded within a few months. Although the lack of hard data makes precision impossible, most defense attorneys perceive resolution as occurring in most cases in 35 to 60 days. The presiding judge said that cases are currently running between 90 to 100 days between arraignment and trial and increasing. The data in Table 12 supports the presiding judge, but even this recent deterioration due to volume is probably a big improvement over a decade ago.

This means that the total volume of misdemeanor cases is within acceptable limits for the personnel available, and the disposition time is also at an acceptable level, though stretching toward the outside limits preferred for resolution - within three or four months. A significant problem in this regard is the complete lack of information about cases resolved within the first six months.

The primary problem, at least in the perception of the participants in the system, is the remarkably high number of minor crimes in the system which ought to be screened out or resolved otherwise. All judges and attorneys placed a major emphasis on the consequences of a large budget increase in the Sheriff's Department a few years ago. Commonly called "Extended Patrol," this measure resulted in the Enhanced Sheriff's Patrol District which provided about 65 new Sheriff's officers. Together with growth in other police agencies in the county, there has been an influx of about 100 new officers enforcing the laws on the street. Given the relative lack of major crime (see below), these officers have apparently concentrated on misdemeanor, violation and infraction cases, according to most interviews and limited data. The result has been, in the views of judges, prosecutors and defense attorneys, a veritable flood of minor cases inundating the system.

As a result of this tide, there was general agreement that too often, misdemeanor cases are not as well prepared as they should be. Attorneys come to court without full discovery of pertinent documents; time is lost because of inadequate preparation; coordination with defendants, police and witnesses is poor; and more cases are scheduled for trial than can be tried. If the victim does not show up, no effort is made to refile the case; it is simply dismissed. Prosecutors are often handed a case file on the way to the courtroom. The effort to expedite earlier decisions in cases means that not infrequently, six or eight cases will be set before a particular judge, requiring attendance of both attorneys, the defendant and all witnesses, including police, even though only two or three will actually be handled.

As mentioned above, the police, the prosecution and the Courts each have a role to play in more closely scrutinizing the cases entering the system. One point at which this can be done is in the pretrial conference settlement system. The system in Washington County presently consists of setting a pretrial conference for misdemeanors one week prior to trial. Attorneys complained that this was not early enough in the process. Scheduling the conference so late means there is little incentive for the attorneys to push for resolution. In addition, holding it so close to a trial date often means that many could not realistically go to trial, even if they had to. Because of caseload, attorneys are not prepared, and the settlement conference is not about settlement but merely an opportunity to review the case.

A more basic problem lies in the "courtroom culture" surrounding plea negotiation. The long-standing practice described above of simply continuing cases until there was a plea, a dismissal or a warrant issued reflects a basic attitude that the resolution of cases is largely a matter between the parties themselves. Judges suggest, and attorneys confirm, that the judges play little or no role in case disposition at the settlement conference. This judicial *laissez faire* approach to case settlement helps account for the continued presence of very minor cases in the system. The pretrial conference should not be a paper tiger; it should be a major focus of judicial activism toward early resolution of cases.

Finally, judges and defense attorneys agreed that prosecutors came to settlement conferences without the authority to settle cases. A decision had previously been made in the DA's Office about what the final offer would be, and no matter what happened at the settlement conference, that offer would remain the same. Instead of an experienced prosecutor with full authority to finally dispose of the case, an inflexible, prerecorded offer is the rule.

4. PROCESSING FELONIES AND CIVIL CASES

Major crimes are rare in Washington County and receive a great deal of individual attention from prosecution, defense and judiciary when they reach the Courts. Except for the rare occasion when a serious felony defendant can afford private counsel, a single firm, the Metropolitan Public Defender, handles the defense. Highly experienced prosecutors, including sometimes the District Attorney himself, will handle the prosecution. A solid, experienced trial judge will be assigned.

In late summer of this year, there were ten murder cases pending, including several which have received statewide publicity and one which was the subject of international attention. There are few cases of forcible sexual assault and of armed robbery. Most felonies are property crimes, with burglary predominating.

The handling of felonies in the Courts is much more relaxed than that of misdemeanors, probably because of the highly individualistic attention paid to cases. The prosecution and defense each felt it and the other side were well prepared, and the judges agreed. Few expressed dissatisfaction with the way felony cases are handled in Washington County.

One remarkable feature stands out, however. There are no pretrial settlement conferences in felony cases. What negotiation is done to settle a case is done by telephone calls between the two attorneys. The District Attorney's Office almost

immediately after arrest prepares a plea offer, which is put in writing and placed in the file for any later deputy. By one estimate, this offer is in the file at arraignment for between half and three-fourths of the cases.

As with misdemeanors, however, the attitude that the attorneys are primarily responsible for deciding upon guilty pleas should be changed. A settlement conference set a week after discovery is completed, rather than a week before trial is scheduled, would permit earlier resolution of a significant number of cases. In addition, the judge assigned should by nature be an aggressive settlement judge who pushes the parties toward the likely outcome.

Civil cases, as with felonies, drew few complaints. This is probably due to the settlement skills of Judge Bonebrake, universally praised as a good settlement judge. Civil cases are assigned in the same fashion as criminal cases: the day before the trial. Complex civil matters often need more attention and preparation than criminal cases and might benefit from preassignment.

Although closer scrutiny, especially among the private civil bar, might suggest some reforms in the civil field, this is outside the scope of the present study. Several judges suggested that recent court reforms have had an ill effect on juvenile cases. This was beyond the scope of ILPP's study.

5. CASES IN CUSTODY

Many jurisdictions are experiencing great controversy over which cases ought to be in custody pending trial, with constant pressure to reduce jail populations to a level more consistent with the size of the jail, accompanied by claims that minor offenders are improperly being kept locked up.

This is decidedly not the situation in Washington County. Defense attorneys, prosecutors and judges alike agreed that the present system of Release Assistance Officers reviewing jail intake shortly after arrest was working well. There were no complaints of minor offenders being inappropriately kept in jail; instead, there was praise for the job these officers were doing. However, this observation relates to release in general and not to possible delays in release (which are discussed elsewhere).

6. COURT AUTOMATION

Washington County has the good fortune to have been designated the site of a pilot project, managed by IBM, for the use of optical imaging technology to create an information system for the Courts. Although obviously, a great deal had been done in terms of creating the system, since training started in August, none of the judges interviewed knew very much about it, and it was not familiar to the attorneys. As is common among legal personnel who have yet to experience the benefits of modern information technology, all described themselves as "computer illiterate," and except for some praise for word processing, most seemed unaware of the benefits of automation.

The new system is for the use of the Courts only and will apparently not permit the automated filing of criminal charges nor include the basic police documents upon which criminal cases are based and which need to be shared by prosecution,

defense and judge. It further leaves out the correctional system. It was unknown to those interviewed whether there are plans for further extending the system in the future. ILPP observes that this is a major gap.

Other than this unknown new system, there were a few observations that disparities between the state information system and the county information system created difficulties.

7. REVOCATION OF PROBATION

According to the judges in Washington County, a recent appellate court decision held probation officials civilly liable for failure to report a violation of probation to the Courts. The result of this decision has been a dramatic increase in violations reported. Even in jurisdictions where the probation officer is not held civilly liable, there has been a trend toward increased probation violations, partly because of the drug crisis and partly because of widespread, inexpensive drug testing. In some jurisdictions, up to half the intake in the prison system is due to parole or probation violations.

This volume can have obvious implications for jail and court calendar overcrowding. It was not within the scope of this study to sample probation revocation cases to suggest specific remedies, but careful attention to the probation revocation caseload is required. Consideration should be given to expedited calendars specializing in probation revocation, use of magistrates for this purpose, and close coordination between court supervision of probation and cases referred for revocation.

Court Recommendations

Misdemeanor Pretrial Settlement Conferences: Scheduling and Judicial Involvement. Attorneys, like legislators, students and taxpayers, tend to put off decisions which do not have to be made. Creating formal checkpoints in the process to explain the failure to make a decision tends to offset this human proclivity. Pretrial conferences, when well managed, are a common device for inducing early decisions.

Misdemeanor pretrial conferences are presently scheduled a week before trial. As discussed above, this is too late in the process to accomplish much savings in time for cases which ought to be disposed of by plea. A better time to schedule the misdemeanor pretrial conference would be around two weeks after arraignment. This allows sufficient time for discovery to be completed, and once the adjustment to the new schedule was completed, most defendants would be ready to plead guilty, or their attorneys would have a defense ready. The time saved in reduction of pending cases would be substantial, with many cases resolving at 14 days instead of after the 75th day after arraignment.

The active involvement of a judge who by temperament is an aggressive "settlement judge" would bring outside pressure on the prosecutor and defense attorney to reach by agreement what would be the likely outcome anyway. Doing this within the first few weeks of the process would substantially reduce the number of cases pending for months, freeing the workload carried by every participant and reducing system costs and crowding. This would also provide a mechanism for the prosecutor to express and enforce case screening policies (see below).

Felony Pretrial Settlement Conference. Presently, there is no pretrial settlement conference device in felony cases in Washington County. What settlement occurs is accomplished informally by telephone calls between prosecutor and defense attorney. The process should be formalized by establishing a routinely scheduled conference around the time of the preliminary hearing. As with misdemeanors, there should be active, even aggressive, involvement of a judge in the conference. Cases which are not settled at the conference should be limited to those more serious cases in which there is some real factual question to be settled and in which there is a real possibility of a harsher sentence being imposed.

Local Rules of Court. There are few written rules of court governing local practice of the law in Washington County. A common expression of the inevitable administrative side of the judicial branch, written rules of court are intended to formalize the actual operating rules. They are a significant improvement when a community grows past the size where a few judges see a few attorneys with such regularity that written rules are superfluous. Attorneys practicing in the community are put on notice of the formal rules they will be expected to observe; they are kept apprised of changes in the rules; and practice is standardized among courtrooms. Attorneys from out of the county can quickly adapt to variations in local practice.

Written rules are sometimes resisted because writing them requires significant effort from judges, officials and clerks who are already overly busy; because a certain skill is needed to balance the strictness of a rule with the necessary discretion to make the right decision in the unusual case; and because there is a sense of poignancy at the loss of the personalized touch found in a small court system.

Once undertaken, however, written rules of court engender attorney-judge advisory committees, a thoughtful review of court practices, and a spirit of cooperation between the bench and bar which can produce significant benefits for the system. Written rules also give structure to an automated information system and assure that key measurements are not thoughtlessly changed.

Misdemeanor Sentencing Guidelines. The introduction of felony sentencing guidelines has been a painful experience for some judges and attorneys. Across the country, since their inception in 1975, sentencing guidelines have often been accompanied by controversy and a loss of discretion and individualization. As they have grown more sophisticated over the last 15 years, however, the ability to accommodate unusual cases within the guidelines has improved. Despite the turmoil, guidelines seem to be here to stay.

Oregon is experiencing a phenomenon common to other guideline states. The statewide guidelines govern felony cases, but do not attempt to reach misdemeanors. The result is that the old indeterminate range of up to a year for most misdemeanors, when multiplied by several offenses, can produce a sentence considerably longer than low grade felonies would receive under the felony guidelines.

There were repeated suggestions that this was happening in Washington County. Some judges are very tough with repeat misdemeanor defendants, and others focus on exigent circumstances.

In addition, many interviewed suggested that there is great disparity in sentencing some criminal misdemeanants. An example offered was the defendant convicted for the fourth time of DUII who might receive six months in jail from one judge and little or no jail time from another.

Disparities like these induce imbalances in the court system. Experienced attorneys begin to look for ways to manipulate the system to obtain the judge they believe will be most favorable in a particular case, a practice known in the trade as "forum shopping." Universally criticized, this practice can become ingrained in a court culture if the system rewards it. Misdemeanor sentencing guidelines are one way to minimize it.

In 1991, a bill was pending in the state legislature to create misdemeanor guidelines. Failure of this bill should stimulate a review in Washington County of misdemeanor sentencing practices with a view toward adopting local rules of court guiding the sentencing of misdemeanor cases.

A specific example of this failure to have some form of sentencing guidelines can be seen in the lack of standard policies for repeat DUII cases. Some states do not have misdemeanor guidelines, but have statutory mandates for repeat instances of drinking and driving. Some defense attorneys with experience elsewhere commented that they found it very difficult to persuade Washington County clients to plead guilty at an early stage in the absence of a formal policy demonstrating severe punishment for second, third and fourth offenses. Some clients, often in denial of their alcoholic problems, simply expect to be treated the same way they were the first time.

This hope is not entirely misguided, as suggested by reports that some Washington County judges will impose only a few days' jail time for a fourth-time offender and others will require six months. This kind of Russian roulette sentencing for the predominant misdemeanor offense should be eliminated by statewide guidelines or statutory mandates. Failing that, the Washington County judges should consider adopting DUII sentencing guidelines by local rule of court. Doing this would improve the quality of justice and make the system more efficient.

Automated Case Information System. The fall of 1991 saw the Washington County Courts initiate an automated court information system utilizing IBM imaging technology. The hardware is the latest technology, but it was beyond the scope of this study to review the software and data to be collected.

There were several warning signs that such a review should be undertaken. First, no one with extensive experience in the court system seemed familiar with what the new system would do. Second, it was designed purely for internal court use, with no apparent provision for interaction with the prosecution, the defense or the law enforcement agencies who generate most of the information which will eventually flow through the system. Third, the structure of the case flow system in Washington County is still relatively unsophisticated, with recent reforms still taking hold and new reforms desirable. These structures, once agreed upon, should be reflected in an automated case information system.

Items of interest in this regard would be, for example:

- Distribution of cases by charge;
- Proportions of cases discharged, dismissed, or acquitted and of felonies reduced to misdemeanors;
- Average time to disposition, by charge and level;
- Average caseload per judge or attorney;
- Proportion of trials (which are much more expensive than negotiated pleas);
- Number of indigent cases;
- Number of "conflict" cases (see below); and
- Cost of public defense by the various contractors.

Many of these quantities could be compared with other counties in Oregon or with standards proposed by the National Center for State Courts.

Case Aging Data to Courts. The Courts should request case agings at monthly intervals for the first four months and establish goals for case resolution on that basis. For misdemeanors, reasonable goals might be 60 percent settled within 90 days and 75 percent within 120 days. The current figure of 90 percent in 180 days is acceptable. A comparable schedule, with appropriately lower resolution values, could be established for felonies in the Circuit Court.

Clerical Support. The level of clerical support appears insufficient for a court of this size, particularly for the presiding judge and the court administrator. Several additional clerks to handle coordination of the ever-growing caseload would be a more efficient use of courtroom time, which is now excessively consumed by bringing all the parties to pending cases to the courtroom to sort out what procedurally will happen next. This could be better handled by clerks telephoning parties and sorting cases into proper categories before a calendar begins, saving courtroom time for more appropriately judicial decisions. A single position for the presiding judge to help structure and enforce court rules and calendars, coupled with one or two for the court administrator or the county clerk to process cases in the system would offer an opportunity for more effective use of judicial and attorney time and real efficiencies.

Courthouse Security. There is a lack of any significant security in the courthouse. Unlike most comparably sized jurisdictions, there are no bailiffs, no contract deputy sheriffs, no private security officers and no full-time personnel assigned to assure safety in a place for resolution of often intense conflicts. The Sheriff does provide courtroom security if advance notice is given by the judge, but a better arrangement would provide one full-time peace officer for daily security as needed among the dozen courtrooms. Washington County's need for security does not match that of her large, urban cousins, but simple weapons checks and ready availability of security officers when a judge or prosecutor knows of intense emotions is a wise precaution.

Liaison with Law Enforcement. There needs to be better liaison with law enforcement to facilitate appearances in court. The legal system needs to recognize that officers should be on the street, not in a waiting room. Careful scheduling, and calling no more officers than necessary, would help this.

The presiding judge, through his calendaring system, promises to not schedule peace officers in to court to testify if 60 days' notice is given on regular days off or vacations, which is very helpful for anticipated, long-term schedule conflicts. But day to day problems remain, and too many hours are lost waiting for other cases on the calendar to be called. Most jurisdictions solve this vexing problem with a clerical position ("subpoena clerk") devoted to alerting officers and other witnesses that their case is coming up. Forewarned of the impending appearance and its approximate time, most Washington County witnesses should be able to show up with a half hour's notice.

Intermediate Punishment Options. The country is presently undergoing a veritable explosion in the development of intermediate punishment options which combine some custody time with other forms of penalty. While Washington County's caseload is not as desperate as many other American jurisdictions, expanded use of these programs would be very useful. Procedures for these are being refined in many jurisdictions throughout the country, so the county would not need to invent them.

Examples include: police diversion, pretrial release to drug or alcohol programs, prosecutor diversion, electronic monitoring, house arrest, community service, day fines, specialized treatment programs, shock probation, specialized return to custody facilities for probationers, county parole and halfway houses. These issues are reviewed more thoroughly elsewhere in this report.

B. PROSECUTION

Discussion of the District Attorney's Office

The District Attorney's (DA) Office has several advantages which make it an attractive office. It is located in a county which is growing, offering opportunity for professional advancement. The salaries paid are relatively attractive, compared to government attorney jobs in other urban or rural areas or the rigors of private practice. There is a congenial and collegial atmosphere in the office. The managers make a conscious effort to allow deputies to exercise professional discretion. It is a relatively youthful group. But perhaps the primary benefit of the office is its location in Washington County, where there are some interesting cases and plenty of work to go around but no surfeit of numbing, violent crime. The result is very low office turnover and good *esprit de corps*.

The District Attorneys Office is organized and operated in a fashion typical for a western prosecutor in a jurisdiction of Washington County's size. The FY1990-91 (recommended) staffing was 51 permanent positions. For FY1990-91, the office's adopted budget was $2,247,838 (excluding Victim/Witness Assistance). Office managers and outside observers both felt that the office had adequate attorney staff but insufficient support staff. There are no paralegals. Turnover is low, and as the county is growing, new staff are added fairly rapidly (12.5 since 1987-88, including both attorneys and support staff).

The stated operating philosophy within the office is one of allowing the attorneys considerable discretion in their activities. There are not many written procedural regulations as the staff are expected to know how to conduct themselves in a professional fashion. Judgment and individual flexibility are stressed; defendants should be handled according to their individual characteristics. ILPP has not further studied this aspect of operations.

Automation, which is primarily word processing, has come only rather recently to the office. The DA is also connected to the county's automated case handling system but has little input on system modifications; this has been a source of discontent.

The office is divided into two units: one for felonies and one for misdemeanors. The felony unit has three teams: one for drugs and associated crimes, such as forgery and burglary; a second for robbery and associated crimes; and the third for sex crimes, such as child molesting, rape and kidnap. Felony team leaders are experienced deputies and have credibility with the Courts.

The misdemeanors unit is divided into two teams: one for traffic, especially drinking and driving cases (DUII), and another for theft and domestic assault cases. There are six attorneys and one supervisor in the misdemeanor unit. Three attorneys specialize in domestic violence cases. Two do "diversion" cases in which prosecution of alcohol related crimes is suspended provided that the defendant meet certain conditions, such as participation in educational programs or self-help groups. One attorney handles a miscellaneous caseload, such as fish and game violations, failures to appear in court and fireworks cases.

All misdemeanor filings (except non-DUII filings) are first reviewed by the supervisor and then assigned out. All misdemeanor deputies share general intake responsibility for reviewing prosecution referrals for DUII, shoplifting and theft. By Oregon law, a deputy district attorney must review all citations issued by police, which is time-consuming, unproductive work and looked upon as a duty to be dispatched rather than fulfilled. In recent months, the supervisor has been personally reviewing all DUII cases in which the test results are below 0.08 percent.

Review of all new intake is done by misdemeanor deputies rotating through each week. This means that any individual deputy only has to review intake once every six weeks.

A remarkable feature of the misdemeanor unit is the lack of experience of its deputies. Most have less than one year's experience and the supervisor has only two and one half years, all of it as a misdemeanor prosecutor. This inexperience, coupled with the fact that they do the intake review, means that screening of the largest caseload in the court system, the one causing problems for all the other elements, is done by the newest and least experienced attorneys and then, only intermittently. Like many prosecutor's offices, the least experienced are assigned the lowest status jobs, with the result that many cases which should be screened out are left to clog the system.

District Attorney's Office Findings

1. STAFFING

Judicial and defense bar opinion about the staffing level in the prosecutor's office was unanimous and concurred with many prosecutors themselves: the overall staffing of attorneys was about right for the workload in late 1991, though perhaps a little high on the felony side of the office and a little low on the misdemeanor side. This shared opinion corresponded to frequent observation that felony prosecutors were generally well-prepared and misdemeanor prosecutors not always so well-prepared.

This is not to say that there were no staffing problems. A frequent complaint by defense attorneys is that it is difficult to get a phone call returned. The case overload of misdemeanor deputies is blamed. Prosecutors, surprisingly, felt that there were enough attorneys in the office to handle the caseload but that clerical assistance was lacking. Several judges interviewed strongly agreed.

Paralegals are not used at all by the District Attorney's Office.

Some judges noted without complaint that deputy district attorneys are notoriously late for court in the mornings, not because they are lazy but because they are busy shuffling so many cases around.

2. CASE SCREENING

The heart of a prosecutor's function in the American legal system is the decision to file charges. Known as "prosecutorial discretion," it is the last great uncharted area of discretion in American justice. The other two major functions of justice, the determination of facts and the most appropriate disposition or sentence, have over the last few centuries, been hedged about with rules and protections to prevent aberrations and encourage just outcomes. Only the prosecutor's decision to file or not file charges remains the sole province of that office, with virtually no significant intrusion from the judicial or legislative branches of government.

The decision is critical from two points of view. First, all subsequent participants in the system are affected because this is the gateway to the justice system. A case not filed is a case without a docket number, without a defense attorney, without a preliminary hearing, without a pretrial settlement conference, without continuances, without clerks making calls on it and without a judge involved in accepting a plea or conducting a trial. A case filed necessarily triggers all these things.

Secondly, and perhaps more importantly, the practical, legal standards for the community, and to at least some extent, the moral standards, are greatly influenced by the decision to file. The charging decision brings the microscopic scrutiny of the Courts' attention to bear on some human's behavior for all to see, while the decision to not file charges means the behavior is passed over, left in the amorphous mass of unexamined conduct.

It is an important decision and one which deserves special attention in a prosecutor's office. Typically, in the early decades of an office, little attention is paid to a decision which seems intuitive and not subject to much debate, except for the rare case. With the advent of growth and higher volumes, however, the charging decision begins to emerge as one which requires specific policies to govern it.

Washington County wonderfully illustrates this phenomenon. The funding measure which greatly increased the number of Sheriff's deputies on patrol resulted in a great increase in minor cases. Because there were no new resources devoted to the District Attorney's Office, no changes initially occurred there, and the "gate" was left ajar, flooding the Courts and correctional systems. As realization of these consequences grew, a policy was adopted requiring review of all "low blow" cases, DUII cases with test results below 0.08 percent. Judges and prosecutors in Washington County report a notable increase in the number of misdemeanor cases recently rejected by the prosecutor.

This closer scrutiny of DUII cases may have stimulated closer scrutiny of other cases as well. As shown below, in the first half of 1991, fully 25 percent of felony cases were rejected by the prosecutor, a dramatic increase over earlier comparable time periods according to the District Attorney. This tightening of prosecutorial policies is salutary, but apparently, it has not yet been accompanied by adoption of corresponding policies and procedures in law enforcement agencies.

Table 15
DA Case Filing Drop Rate, by City

DA Filings:	*Sheriff*	*Hillsboro*	*Beaverton*	*Tigard*	*Balance*
Felony 1991					
Filed	293	125	201	115	197
Dropped	122	39	46	14	35
Reviewed	415	164	247	129	232
Per cap	654.6	1,164.2	1,339.2	1,144.5	1,475.7
Drop rate (Jan-May)	29.4%	23.8%	18.6%	10.9%	15.1%
Felony 1990					
Filed	768	258	451	280	423
Dropped	258	51	74	33	63
Reviewed	1,026	309	525	313	486
Per cap	674.4	913.9	1,186.0	1,157.1	1,288.1
Drop rate	25.1%	16.5%	14.1%	10.5%	13.0%
Misdemeanor 1991					
Filed	388	196	40	263	179
Dropped	138	71	26	32	61
Reviewed	526	267	66	295	240
Per cap	829.7	1,895.3	357.8	2,617.4	1,526.6
Drop rate (Jan-May)	26.2%	26.6%	39.4%	10.8%	25.4%

Table 15 (cont.)

DA Filings:	*Sheriff*	*Hillsboro*	*Beaverton*	*Tigard*	*Balance*
Misdemeanor 1990					
Filed	803	499	110	658	363
Dropped	445	237	57	75	159
Reviewed	1,248	736	167	733	522
Per cap	820.3	2,176.9	377.3	2,709.8	1,383.5
Drop rate	35.7%	32.2%	34.1%	10.2%	30.5%
Misdemeanors as % of total cases reviewed					
1990	54.9%	70.4%	24.1%	70.1%	51.8%
1991	55.9%	61.9%	21.1%	69.6%	50.8%

There is some information available on the drop rate (percent of cases not filed) of cases presented to the DA by the law enforcement agencies. Data have been kept on these only since 1989, so it is difficult to be certain of a trend. Felony drop rates for 1989, 1990, and the first five months of 1991 were respectively, 17 percent, 17 percent and 26 percent. For misdemeanors, the corresponding figures were 19 percent, 29 percent and 23 percent.

The drop rate varies greatly by jurisdiction. Data on this are available only for 1990, and January through May of 1991. During this period, the drop rate was high for both felonies and misdemeanors from the Sheriff, high for misdemeanors but moderate to low for felonies from Beaverton, Hillsboro and the smaller police departments, and low in all cases for Tigard. It appears that Tigard does a much better job of screening its cases to the DA's liking than any other city. Beaverton, in particular, does a good job on felonies, but a poor job on misdemeanors in this regard.

Beaverton also presents far fewer misdemeanors for review than any other jurisdiction (less than 25 percent of the total presented, compared with 50 to 70 percent for the others); coupled with the high rejection rate, this means that only 15 to 20 percent of the filings from Beaverton are misdemeanors. For the other jurisdictions, half to two-thirds of the filings are misdemeanors. This pattern has been consistent for at least six years and is not explained.

The principal issue around intake in a DA"s Office is case screening. Law enforcement officers are concerned with arrests; they do not make the decision to prosecute. In virtually all jurisdictions it is found that a substantial percentage of cases referred to the District Attorney are discharged or dismissed. Sometimes the evidence is simply too weak, sometimes victims or witnesses retract their stories, and sometimes the offense is not deemed serious enough to warrant allocating staff time to it.

When promptly and properly done, early screening of all cases by both law enforcement and the prosecutor will get these weak ones out of the system before they reach the first judicial appearance. Doing this can greatly reduce both the DA's workload and the pretrial jail population. In Washington County, the DA's Office does screen yet sees a serious problem with incoming cases. Managers in the office expressed the opinion that supervising sergeants either do not screen at all or

routinely approve cases and send them on to the DA. They felt that departments do not conduct remedial training on rejected cases. The DA does not have funds to provide training for the police on case screening though a deputy is available around the clock for individual consultation. In fairness, the departments would have to pay overtime, for which they are not budgeted, to have their officers attend training sessions.

4. RELATIONSHIPS WITH LAW ENFORCEMENT AGENCIES

Once a month, the District Attorney meets with the Sheriff, the state police, and about 10 police chiefs. Information is shared and common problems discussed. These meetings, however, appeared to be opportunities to avoid major problems and conflicts among elected and appointed officials rather than policy sessions or a means for handling workaday issues. Thus, despite these high level meetings, there is little coordination between the prosecution and the law enforcement community. There appears to be no mechanism for routine liaison between the managers in the office and their counterparts, especially in law enforcement.

There were repeated illustrations from prosecutors, judges and defense attorneys of cases which should have never been referred for prosecution. There were also strong feelings by law enforcement that the DA was arbitrarily rejecting cases and when accepted, wasting officers' time meeting prior to trial and in the courtroom. Prosecutors and judges seemed to concur that there was insufficient training of law enforcement but did not seem to feel that the court system was responsible for training.

District Attorney's Office Recommendations

Case Screening Policies. The District Attorney's Office needs to build on recent policy innovations such as the close review of "low blow" cases (DUII cases testing below 0.08 percent) to develop recognized charging policies. Law enforcement agencies in the county deserve to know what will and what will not be prosecuted to assist in their job of deciding what will and will not be referred for prosecution.

Of course, policies must accommodate the need for flexibility and discretion to deal with the unusual case. Assistance can be sought from national and regional associations of prosecutors who have already developed written forms of these policies.

These policies should be implemented by intake deputies who would function to review all cases referred to the office by law enforcement agencies. Intake deputies must be very experienced prosecutors, with both felony and misdemeanor backgrounds. They can share other duties, such as team supervision, settlement conference responsibilities or a reduced trial load. But consistency of assignment is important, and there should be a conscious connection between the realities of intake and the policies developed.

Case Negotiation. Case settlement conferences for misdemeanors should be conducted only by experienced prosecutors whom the office has confidence will make appropriate decisions. In other words, a seasoned prosecutor should represent the office in settlement conferences and the matter assigned to junior deputies only when it is concluded that the matter must go to trial. This deputy must have full authority to settle cases, so that they can go out immediately and take the plea. Binding this deputy by previously written

instructions prevents reasonable accommodation to newly discovered facts or unexpected weakening of a case.

Of course, it should be expected that this deputy will operate within office policies, and indeed this deputy should be a source of significant influence on case settlement practices. In fact, it is likely that there would be several deputies, for both felony and misdemeanor cases, who could back each other up. Finally, these deputies should work closely with the intake deputy so the intake policies reflect the reality of dispositions achieved.

Policy Council. The District Attorney should consider forming either a Criminal Justice Coordinating Council or a Criminal Justice Policy Implementation Council. The former is composed of elected or appointed policy makers in the county and has counterparts elsewhere in Oregon, where it is reputed to have greatly improved coordination and information flow among criminal justice agencies. (While CJES fits this statutory committee except for a defense element, CJES is not an "official body.")

Alternatively, the prosecutor could form a more narrowly focused Policy Implementation Council composed of his chief deputy and unit supervisors and the assistant chiefs of the law enforcement agencies in the county.

Information exchange, standardization of county criminal justice information systems, use of common forms, development of referral policies and charging practices, and witness coordination programs could all be subjects of fruitful cooperation.

Use of Paralegals. Law offices have been among the last of the professions to develop the use of paraprofessionals. But today in large American cities everywhere, the paralegal has taken an accepted place in delivery of legal services. Paralegals have been extensively utilized by many large and small private law firms, and during the last decade, they have become an accepted feature of many government law offices.

Paralegals in prosecutor's offices generally follow one of two tracks. At the upper end of the range is the full paralegal, who has extensive academic training beyond a bachelor's degree. This full professional, a desirable commodity in any law office, is usually hired directly into the office as a paralegal and performs a wide variety of tasks, such as interviewing witnesses, making recommendations for or against prosecution of a case, appearing in court for infractions or certain misdemeanors as authorized by state law, or assisting in legal research and factual presentation at trial of major cases.

Another form of paralegal is the legal assistant with specialized training in legal matters. Usually promoted from within the office's secretarial or analyst ranks, the legal assistant prepares charging documents, manages court calendars, acts as liaison with daily law enforcement contacts, and uses acquired expertise in local office and court procedure to solve the daily crises which inevitably arise.

Use of paralegals gives a range of professional expertise more appropriate to the variety of tasks faced by a prosecutor's office, eliminating the need for attorneys to do routine or repetitive work, giving new attorneys a wealth of experience to draw upon and recognizing the professional services provided by those highly qualified analysts or secretaries who make an office run well.

Most of these tasks in the District Attorney's Office could be well performed by thoughtful use of paralegals.

Hearing Officer for Shoplifting/Theft/Bad Check Cases. Cases of shoplifting, minor theft and bad checks are the plague of criminal justice. If ignored, citizens and particularly merchants become outraged. They are clearly crimes and are indirectly the source of no little expense to the shopping public. However, especially with bad checks, they border on civil violations and come through the system in such number that they resemble the ancient Egyptian plague of locusts.

One technique for resolving many of these cases outside the courtroom, in addition to crime prevention measures discussed elsewhere for law enforcement, is the use of a hearing officer by the District Attorney to divert cases. A structured use of prosecutorial discretion, the prosecutor simply cites the accused citizen into the office at an appointed time and place and forgoes prosecution on condition that the defendant meet certain conditions. These might include counselling for the episodic shoplifter, alcoholism or drug addiction programs for the substance abuser or simply a warning that the sentence sought on a repeat offense will be more severe.

Prosecutors often like these programs because they give considerable control to the DA, create an early diversion for cases which are likely to end up on probation anyway and provide an appropriate disposition for many cases.

Clerical Staffing Levels. Judging from the comments of officials and attorneys trying to reach the prosecutor's office, there is a noticeable need for clerical help, probably most severe in the misdemeanor unit.

Videotape of DUII Arrests. Only a few police agencies in Washington County videotape drinking and driving arrests. The prosecution prefers to have these videotapes as evidence, even when the defendant does not appear to be under the influence, because it minimizes faulty memory and deceit as problems in the fact-finding process. In fact, most jurisdictions experience a dramatic drop in the number of trials, but more importantly, defendants who view themselves at the time of arrest usually hurry to plead guilty rather than face the possibility of having that tape run at a trial. Not only are there more guilty pleas, but they occur much earlier in the process.

While some police officers are reluctant to do the videotaping themselves, the failure to videotape is usually due to the initial expense for hardware and training up front by the police agency and ignorance of the benefits to the system further along. The District Attorney in Washington County should undertake a program to encourage law enforcement agencies to videotape their DUII arrests.

Automation. The benefits of office automation should be explored more systematically in the District Attorney's Office while conversion to automated systems is still in its infancy. Presently, some word processing is being utilized. A full use of merge, macro and Lexis type logic programs could help ease some of the clerical shortages currently experienced.

C. DEFENSE

Discussion

The defense of those accused of crime in Washington County is conventional in that there is a private bar, retained by defendants who can afford private counsel or sometimes appointed by the Courts, and a public bar funded by the taxpayer for the defense of indigent defendants. It is unique in that the public bar is made up of an odd assortment of private, nonprofit and for-profit firms which fill various niches in the indigent defense spectrum.

Many urban counties in the United States have a public office in county government known as the public defender. Attorneys are public employees who function as counterparts to the district attorneys and who are paid at a comparable rate. Most rural counties do not have a sufficient volume of cases to justify a separate government office and so rely on court appointments of local attorneys to represent the indigent. These attorneys are paid at a rate either fixed by statute or negotiated locally and funded from an account in the court's budget. This was the system followed in Washington County until about a decade ago. At that time, the Metropolitan Public Defender opened a branch office in Hillsboro.

The Metropolitan Public Defender is headquartered in Portland and primarily does the indigent defense work for Multnomah County. When the state government took over responsibility for payment of indigent defense in the early 1970s, it contracted with a specially organized, private, nonprofit law corporation to provide those services in Portland. As that firm, known as Metropolitan Public Defender, became established, it expanded into Washington County.

Metro, as it is commonly referred to, is comprised of 49 attorney positions supported by 99.25 support staff positions. The firm [12]contracts with the State Court Administrator in Salem to provide defense to indigents accused of felonies. While some low-grade felonies are handled by other firms, most felonies are handled by Metro. On occasion, Metro has represented a witness in a case in the past, or is representing a codefendant in a current case, and therefore has a conflict of interest. These "conflict" cases are referred back to the Courts, and a private attorney, or even another firm, is appointed to handle the case.

All administration of public defender contracts is done from Salem. The State Court Administrator attempts to keep the cost of indigent defense down by stimulating competition in the legal markets. Contracts are sometimes for a single year, sometimes for two, or less often, for 18 months. The contract specifies how much support staff is permitted, how big a library is permitted and many other details of the operation. Contracts in Washington County are currently awarded to Metro for felony work and to four private, for-profit firms. One of the contract firms takes mostly traffic cases, while another takes misdemeanors, and the takes third lesser felonies.

These for-profit firms are called "boutique" firms, because they are very small and very specialized. Some believe that the State Court Administrator keeps these firms under

12 ILPP estimates that the total expenditure for the public defender function is $2,264,000 for FY1990-91.

contract in a somewhat artificial effort to lower the market cost of attorney services. These firms are paid $200 for misdemeanors, $220 for C class felonies and $400 for more serious felonies. To handle cases at these rates, only new attorneys can be used, and the time spent on each must be kept to an absolute minimum. Even then, most attorneys and law firms refuse to bid, and those who do bid are interested only in basic cash flow and must rely on other cases to provide income.

Metro emphasizes the use of paralegals who do all the initial client interviews, acting as trial assistants doing trial briefs and organizing evidence and witnesses for trial. In addition, some specialize in presentence reports offering alternatives to incarceration for clients. Metro also has a Spanish language translator on staff and emphasizes Spanish-speaking cases. This service is especially valuable as there are no specific Spanish language services at the jail.

Finally, the judges also appoint private attorneys to handle conflict of interest cases and leaven the mix. The court-appointed attorney list is subdivided into those who represent lesser felonies, serious felonies, and murder. These attorneys were paid $30 an hour for many years, and only recently was that rate increased to $40. However, the Courts rarely scrutinize the number of hours submitted, and while there was no hint of padding the billable hours, private attorneys at least felt they would be paid for the hours they put in. One judge remarked that the Courts liked to keep about 25 percent of the cases in private attorneys' hands, and these seem to be mostly the more serious felonies not handled by Metro.

Appeals are handled by the State Public Defender in Salem.

Defense Findings

1. INDIGENCY DETERMINATIONS

In many counties, the determination of when a criminal defendant is sufficiently poor to warrant appointment of a lawyer at public expense is controversial. Sometimes, defendants lie about their assets or income to get a free lawyer and there are often defendants who have at least some ability to pay for a lawyer utilizing the services of the public defender.

These kinds of questions seem to be well-handled in Washington County. The county employs indigence verifiers who examine asset and income information and apply a formula using the national standards for poverty. There is also a system for partial recovery of costs when there is an ability to pay them. The Courts not infrequently enter orders requiring repayment of attorney costs.

The public defenders, the private defense attorneys, the prosecutors and the Courts all expressed few concerns about Washington County's indigency determinations. The only issue raised during interviews was the practice of at least one judge to order repayment of attorney costs from bonds or assets posted to obtain release from custody on bail.

2. QUALITY OF DEFENSE

The consensus of opinion of those interviewed was that Metro did an outstanding job representing its clients. Even the prosecution conceded that most Metro attorneys were well-prepared and did a good job. Judges in particular praised the Metro attorneys. Metro attorneys themselves, unlike their beleaguered urban cousins, felt they had enough time to prepare and saved their complaints for the pettiness of the State Court Administrator in negotiating the contract.

The reputation of the four "boutique" firms under contract was quite variable. Some were considered fairly good and some were generally considered bad. All were considered to be working large numbers of cases for very poor compensation and necessarily directed by the dollars they receive into providing short representation. One of the contract firms pointed out that the goals of the contract firms conflicted with those of the State Court Administrator. The firms wanted to be adequately compensated for a quality defense and the state wanted the cheapest defense which would be legally sufficient. There was a great deal of hostility among public defenders toward the State Court Administrator.

The private attorneys who accepted court appointments also varied in quality. Clearly, some of the best attorneys doing criminal defense work in Washington County were in this group. But some of the strongest complaints about shoddy work were also aimed at attorneys in this group. This variation in quality is probably the result of appointments by different judges who have had varying experiences with attorneys.

The rates are so low that some private attorneys cannot even cover their overhead and will not accept public cases. (Murder is the exception; adequate use of experts and investigation is allowed.) Although there is not an official public scale of the fees for defense, fees were reported in the interviews. These fees are much lower than what would be charged to private clients. Firms appear to accept the contracts out of a sense of public obligation or for public relations, sometimes when they are newly organized and need the cash flow. In order to break even, the contracting firms must represent many clients at a time, so attention to each case suffers.

Defense Recommendations

Quality of Representation. The quality of the defense for felonies cannot be seriously faulted. The Metro public defender seems to rank among the best anywhere, and most attorneys appointed from the private sector do their jobs well. The few privately appointed ones who do poorly should be individually handled.

Misdemeanor representation is another matter. Clearly, the State Court Administrator in Salem is pushing the limits of minimally acceptable quality with the contract structure in place in Washington County. This is not so much attributable to the poor quality of the attorneys themselves but to the economic pressure generated by incredibly low fees. Misdemeanors are funded at $200 per case, which would buy about 45 minutes of a divorce lawyer's time in most large American cities. Even given a much lower going fee scale, this hardly allows time for client interview, file review, discovery, court appearances and the inevitable phone calls.

And it shows in court. Judges, prosecutors and other attorneys cited poorly prepared cases in the courtroom.

Cost Recoupment. Many jurisdictions in recent years have developed an automated system for reviewing state income tax refunds to check for certain individuals who owe debts to the state, particularly child support debtors. Consideration should be given to adding partially indigent defendants to the list of debtors automatically checked against income tax refunds due each year.

COMMUNITY CORRECTIONS

COMMUNITY CORRECTIONS

A. OVERVIEW

The primary responsibility of the Washington County Department of Community Corrections is to supervise over 3,000 adult offenders, operate an 88-bed Restitution Center providing custody to jail inmates and prepare presentence investigations for the District and Circuit Courts. Funding totals $1,065,730 for the Restitution Center and $2,833,554 for the Department of Community Corrections.[13]

Washington County was the first county in the state to participate fully in the Community Corrections Act and has worked energetically to meet state-imposed operational standards for more than 11 years. However, this department is now faced with many new challenges because the state is unable to significantly augment funding as client-driven service demands increase (e.g., temporary shelter care, housing, in-patient services, treatment programs). Increasing caseloads have forced the movement of cases to the lowest level of supervision in instances where more intensive, client-oriented services were routinely provided in the past.

This is particularly painful in this department where the primary focus is on client redirection and rehabilitation. It is clear that the department will need to make some difficult decisions in the future about which clients receive the limited services available if referrals continue to grow and resources become scarce.

The inability of the corrections component of a criminal justice system to supervise clients closely and to quickly intervene when problems occur contributes to higher violation rates. It can also increase formal revocation actions. Returning cases to court is costly and escalates jail overcrowding. Although the Department of Community Corrections has not yet been forced to place a significant number of clients into minimal service caseloads, this will soon become a reality if additional resources are not provided.

Overall, the department has done well in meeting the complex and demanding standards imposed by the state and local entities. Staff appear dedicated, enthusiastic and well-focused on meeting agency goals. Within this environment, creative and promising new programs have emerged.

Set forth in B, Effectiveness Measures, is an outline of measures which may be used to evaluate program effectiveness. This is followed by sections corresponding to components of the Department of Community Corrections. For each component, issues are identified and discussions, findings and recommendations are presented.

13 Washington County, Adopted Budget 1990-91.

B. PROBATION AND PAROLE SUPERVISION

Among the activities of the Washington County Department of Community Corrections Field Division are:

- Development, upon request, of presentence investigation reports for the District and Circuit Courts;
- Supervision for adult parolees and probationers;
- Operation of a Restitution Center (now housing primarily jail inmates);
- Operation of an Intensive Custodial Home Supervision program; and
- Operation of a Community Service Program.

These programs must operate within a complex web of state mandates and local requirements; they face continual change as a result of internal and external demands and resource restrictions.

The following are six areas within the Probation and Parole Supervision section. Each will be examined separately in terms of the discussion, findings and recommendations.

1. Presentence Investigations

DISCUSSION

In FY1989-90, approximately 130 presentence investigations (PSI) were completed for the Circuit and District Courts. These were completed by two investigators who also had other duties assigned. In FY1989-90, 31 percent of the Circuit Court in-custody reports and three percent of the out-of-custody reports were submitted late to court. The District Court also experienced a late PSI report problem, although not as severe. PSI reports submitted late to court on in-custody cases cause continuances and therefore clearly contribute to the jail overcrowding problem. The department expects to complete approximately 360 PSI reports this fiscal year; approximately 60 will be on misdemeanant offenders.

Washington County uses a state-designated PSI format that results in lengthy reports which may well contain information not particularly helpful to judges. Some information could be provided in a checklist or streamlined format. Streamlining the format could make a significant impact on the problem of reports submitted late to court by increasing the productivity of those staff preparing them. Any format changes would need to be approved by the state.

There are other issues that appear to contribute to late PSI reports. Among these are the inability to find almost 25 percent of the DA files needed; the requirement that the department copy everything needed from DA files, which requires an 0.5 full-time equivalent (FTE); the limited access department staff have to jail inmates (two hours each day); the limited terminals available to do records checks and request

police reports; and a cumbersome and time-consuming process required by the court to prepare a notarized affidavit on every PSI report, attesting to the probation officer's competence in developing the report.

FINDINGS

The preparation of PSI reports in Washington County is an inefficient and costly process. It is apparent to everyone that PSI reports submitted late to court create unnecessary and expensive continuances, and for in-custody cases, escalate jail overcrowding.

RECOMMENDATIONS

Charging for PSIs. Pursue legislation permitting the department to charge for PSIs using a sliding scale with a full-cost charge for defendants who are employed. Use any new revenue collected to hire sufficient staff to assure timely preparation of PSI reports.

Streamlining PSIs. The department should meet with the Courts and attempt to develop ways of streamlining the PSI to reduce report preparation time. Ideas should be shared with other Community Corrections Act counties, and a proposal should be submitted to the state. Give in-custody PSIs priority over noncustody cases.

Eliminating PSI Referrals. Consideration should be given to eliminating PSI referrals from the Circuit and District Courts on misdemeanor matters and to providing the court with court officers to respond to special questions and issues (e.g., determining restitution, clearing criminal records, providing sentencing options).

Eliminating Affidavits with PSIs. The court should eliminate the requirement to submit an affidavit with each report. A probation officer's signature on a report should be sufficient assurance that the report was prepared to the best of the officer's ability and accurately reflects the facts as known at the time it was prepared.

Additional Computer Terminals. Two more computer terminals should be installed in the Community Corrections field office to assure that staff can have immediate access for preparation of backup material needed to complete PSI reports.

DA File Check-Out System. The DA should consider initiating a check-out system for its files with Community Corrections staff required to return files within ten working days. This will save an 0.5 FTE now invested in copying case material. In lieu of this, the Department of Community Corrections should consider assigning a half-time clerk to the DA's office to copy needed data.

PSI Preparation Time. A reasonable time period for preparing the type of PSI report used in Washington County is 28 calendar days from the date of referral. The department has used 17 days as a goal, but recently requested additional time because of an upsurge in referrals. The court can reduce preparation time by as

much as two days by installing a facsimile machine to send referrals to program staff on the date of referral.

Interview Space at the Jail. The Sheriff should look for ways to provide private interview space in the jail to Community Corrections staff at least five hours each day.

2. Probation Violations

DISCUSSION

As a result of a recent court case suggesting that probation officers may be personally liable for not informing the court about probation/parole violations, Community Corrections staff noted that they were docketing more technical violation cases where clients tested positive for drug/alcohol use. Although the state recently passed legislation giving probation and parole officers immunity with respect to not reporting certain types of technical violations to the court, some concern still exists, and it appears to contribute to early revocation actions.

Community Corrections staff feel that they screen violent cases thoroughly and ask the jail to hold only the most serious violators. Nevertheless, a third of all jail inmates are felony or misdemeanor probation/parole violation cases. The Director of the Department of Community Corrections estimates that as many as two-thirds of parolees who are "revoked" are reinstated on parole by the court (this figure includes the in-custody group). Some probation staff feel that if they had a more severe graduated sanction like an electronic surveillance program for violators facing revocation, they would book fewer of them into the jail and utilize short-term jail time as a sanction less frequently.

FINDINGS

The probation/parole revocation process needs more interagency collaboration (Courts, Department of Community Corrections, DA, Sheriff). Collaboration should be aimed at the development of a policy to reduce the dependence on jail incarceration prior to a court hearing and to expedite the hearing process for remaining in-custody clients. The present system is costly and contributes to the jail overcrowding problem.

RECOMMENDATIONS

Revocation Court. Consider designating a "revocation court" to hear all revocation matters at least twice each week. Develop a short, check-list type of report (including a recommendation section) for in-custody revocation matters so that court reports can be filed earlier with the court (within seven to ten working days of placing an offender in jail).

Guidelines for Minor Technical Violations. The Department of Community Corrections should Work with the court to develop new guidelines for probation officers detailing appropriate options for dealing with minor technical violations that do not require revocation action.

Use of Graduated Sanctions. With assistance from the Courts, the Department of Community Corrections should consider initiating an ex parte informational report for the court, letting judges know about more serious technical violations in cases where the probation officer believes imposing a graduated sanction short of incarceration and court intervention is appropriate. Full-blown revocation hearings are not necessary until the probation officer has decided that the probationer or parolee should be revoked, and a severe sanction requiring the court's intervention is necessary.

Develop a series of graduated sanctions short of jail, including electronic surveillance/house arrest, that probation/parole staff can implement with supervisory approval, thus greatly reducing court hearings and incarceration.

3. Specialization/Case Transfer

DISCUSSION

The Department of Community Corrections has developed a specialized approach to dealing with offenders in an attempt to improve service delivery and supervision efforts. In some cases (e.g., the sex offender program), this has resulted in what appears to be an excellent program.

One specialized unit is the Drug Team which supervises approximately 560 offenders. Staff in this unit noted that their program was not significantly different from general supervision efforts and thought that cases moved through the unit too quickly. The Director of the Department of Community Corrections estimates that at least 80 percent of the department's clients are drug dependent, suggesting that staff need to have an expertise in drug and alcohol issues no matter what types of caseloads they manage.

The 1989-1991 Community Corrections Option I Plan shows that the DUII/traffic (DT) program deals with approximately 800 offenders (approximately 27% of all supervision cases), of which 90 percent are misdemeanants. The staff ratio for the program is 1:90. The profile data in the Option I Plan describes these DUII clients as demonstrating responsible behaviors in areas of employment, education and family.

Given the number of total cases under supervision and the policies requiring case transfer between programs, specialization has contributed to the swift movement of many cases between units, confusing the client and processing too many cases across the probation officer's desk.

The specialized approach, however, causes a fair amount of movement of cases from one caseload to another as clients' circumstances change.

FINDINGS

Probation and parole cases move between units and officers too swiftly, resulting in officers not being able to diagnose problems and intervene as effectively as they might if they retained supervisory responsibility for longer periods of time.

DUII clients are a relatively stable population that clearly needs some intervention. However, given the significant demand for additional staff and other resources to handle more unstable, more problematic clients and respond in a timely manner to the Courts' requests for PSI reports, a more efficient model for supervising DUIIs should be developed.

RECOMMENDATIONS

The Drug Team Unit. Eliminate the Drug Team unit and combine cases and staff with the general supervision caseload. Implement an automated call-in urinalysis testing system for all offenders whose committing offense or underlying problem is substance abuse. Since substance abuse is a problem impacting most offenders, provide a training program to all staff covering substance abuse assessment, symptomology, treatment strategies and relapse prevention.

Banking of Cases. Bank all low risk and most DUII cases, implement a computer caseload management system to handle these cases, and initiate an automated call-in system to notify offenders of urinalysis testing times.[14] Use case aides to collect urine samples and maintain testing records. This will slow the movement of cases among case workers and free staff resources to concentrate on higher risk cases. It should be noted that simply banking cases does not mean that supervision efforts will be ineffective. The number of cases in the bank and number of officers assigned will dictate the amount and type of service provided. Even with banks of 250 to 300 cases per officer (assuming some clerical support), an officer using a computerized caseload management program can be expected to assure that regular urinalysis testing is done, to track payment of fines, fees, costs and restitution and to monitor participation in treatment programs.

After 18 months of formal probation, consider moving banked cases in full compliance with their court orders to bench probation or asking the court to consider an early termination of probation supervision. With savings generated from automation and possible staff reductions, hire clerks to assist with data input and record keeping.

Move low-risk cases directly into banks without first being supervised at a more intensive level. Within one week of assignment, case workers should be expected to have one personal contact with all offenders initially assigned to the banked unit.

DUII Diversion Program. Seek state legislation for a diversion program allowing the court to order treatment as the primary intervention for first-time DUII cases. Prosecution can be avoided for those who successfully complete the program. Probation could easily monitor compliance, and diversion/treatment agencies can urine-test defendants as a condition of program participation. All costs could be borne by the defendant. The DA would experience some reduction in prosecution workload.

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14 "Banking" is a term used to describe prioritizing cases where real impact can be expected. Cases requiring maintenance contacts only are put on a larger caseload (or "bank") with decreased attention and regular but minimal checks.

The Telephone System. Increase the efficiency of probation and clerical staff by upgrading the phone system with one that provides voice mail and a WATS (Wide Area Telecommunications System) line. This will relieve receptionists from some telephone answering functions and free them to be more responsive to clients visiting the office and assist with other clerical functions. It will also increase the efficiency of probation officers who are often paged for telephone calls while they are already on the telephone handling another call. The voice mail and WATS line should result in an immediate cost savings.

Assignment of a Court Officer. Consider assignment of one permanent court officer to the court handling the largest number of felony sentencing matters. This officer should be expected to familiarize himself/herself with all matters on calendar and represent the probation officer of record. Since the officer is in court each day, he/she should be able to keep the department informed about problem cases and resolve issues for the court as they arise.

4. Graduated Sanctions and Community-Based Offender Resources

DISCUSSION

In addition to the sanctions already in use in Washington County, an electronic surveillance program (ESP) is recommended for appropriate cases in lieu of jail incarceration. Increased funding for 30-day, drug/alcohol, residential treatment beds, as well as out-patient treatment programs, would allow intervention that would delay or eliminate the need to place offenders in jail at a later date. More temporary shelter care beds and long term housing for homeless offenders are also needed; without them, offenders would be expected to recidivate more quickly and eventually end up in jail or fail to report, necessitating the issuance of an arrest warrant. The provision of critically needed sanctions and resources is far less costly than rearrest, revocation and incarceration, not simply from the viewpoint of custody costs, but also from the perspective of criminal justice processing costs.

Client groups appropriate for an ESP include: higher-risk home supervision clients; Restitution Center inmates released early as a result of jail overcrowding; inmates with serious medical problems (AIDS, terminal cancer, etc.) who have caregivers in the home; some probation violators when less restrictive interventions have failed; pretrial releases from the jail; and multiple DUII offenders during the first 30- to 90-day period of probation. Note that some ESP systems can provide automated alcohol testing in the home. This is an effective way to assure sobriety, especially for DUII clients who are alcohol-dependent.

There are distinct advantages and disadvantages to private or public operation of an ESP. These issues should be discussed among county officials who may use ESP (Sheriff, Courts, Community Corrections). If the county decides to pursue a private contract, the National Institute of Corrections (NIC) may assist without cost in developing a request for proposals (RFP) and identifying national firms with experience in operating such programs. Ultimately, all participating departments should have input into the selection of equipment, policy formulation and the choice of the ESP provider. An ESP should cost the county little or nothing if agencies

use the program and rigorous efforts are made to hold offenders accountable for paying fees.

FINDINGS

With jail overcrowding escalating, the court will need to consider more sentencing options other than jail. Community Corrections staff will need to consider an increase in the use of graduated sanctions in lieu of placing offenders in detention as a result of technical violations and find ways to fund additional residential and treatment programs.

RECOMMENDATIONS

Electronic Surveillance Program. Implement an ESP, either operating it as a county function with all costs offset through offender fees or having a private firm respond to a county-initiated RFP. If a private operation is preferred, the RFP should require that all Community Corrections staff costs be absorbed as part of the contract, with the private entity paying all program costs from client fees. Fees for such programs can range from less than $5 per day to as much as $15 depending on the type of equipment used, client contact expectations and drug/alcohol testing requirements.

Drug Treatment. Provide more in-patient drug treatment beds and increase funding for out-patient treatment programs. Dedicate any new revenue generated by the Department of Community Corrections to fund these programs.

Homeless Offenders. Increase funding for temporary shelter care and long-term housing for homeless offenders by:

- Considering elimination of "mandatory" assessments on all cases and focusing mental health assessments only on those cases where the probation officer needs guidance in formulating a case plan. Reallocate any savings to funding shelter care or treatment programs. Train all probation staff in drug/alcohol assessment issues and relapse prevention strategies.

- Providing "seed" money to private agencies to establish "Living Sober Residences" to provide for long-term housing for Community Corrections clients committed to living sober. Seed money could be payment of three to six months' rent plus a stipend for equipment costs. Private agencies selected to receive funds should have experience in operating such programs and agree to continuous operation of any facility opened with county funds for at least two years.

5. Abuse Prevention Team

DISCUSSION

The Abuse Prevention Team (APT) focuses on all sex offenders under supervision with the Department of Community Corrections (approximately 235 clients). These offenders range from high- to low-risk on the department's assessment scale. This

team uses an aggressive supervision approach, including periodic lie detector exams.

FINDINGS

The supervision model used in this unit is innovative and appears very effective in detecting violation activities. Sex offender risk scores dictate different client contact expectations for the various clients in this unit. This makes case management cumbersome since it forces staff's attention on varying contact requirements rather than on client need.

Since this is such an innovative program, the department may want to seek funding from the National Institute of Justice to conduct a long-term evaluation of the effectiveness of this approach. If it is as effective as it appears, it should be shared with other jurisdictions across the nation.

RECOMMENDATIONS

Setting an Offender Contact Standard. Approval should be sought from the state to set a single reasonable offender contact standard for all clients in the program.

6. Accelerated Caseload Team (ACT)

DISCUSSION

Approximately 760 offenders (56% felons and 44% misdemeanor) are served by this program with the goal to have each assigned probation officer carry approximately 130 cases. The intent is to move as many cases as possible to bench probation or termination status once supervision goals are accomplished. These are all low-risk cases or cases down-graded from other caseloads once compliance has been achieved. As workload increases, these caseloads will need to increase and some higher-risk clients will be down-graded sooner.

FINDINGS

As caseloads increase, the ACT will need to be expanded and the agency must prepare for banking a significant number of cases. Plans will be needed to achieve greater efficiency in managing these types of caseloads as this occurs. The following recommendations are made to assist Community Corrections staff if caseloads increase and additional resources are not available.

RECOMMENDATIONS

Expanding Caseloads. As a first step, increase caseloads to 250 to 300 per officer with one data entry clerk for every two probation officers.

If caseloads move over 400, consider a team of one probation officer, one clerk or one case aide for each caseload.

Provide an automated caseload management system.

Separate urinalysis testing for this group and assign the function to case aides with the probation officer responsible only for responding to positive tests.

Limit probation officer responsibility to: reviewing cases for early termination or bench probation; taking action on positive urinalysis tests; collecting fines, fees, costs and restitution; and responding to any violation, including new offenses.

C. RESTITUTION CENTER/INTENSIVE CUSTODIAL HOME SUPERVISION

Discussion

The Restitution Center houses approximately 90 sentenced jail inmates. Although opened many years ago as a restitution/treatment oriented operation, jail overcrowding has forced it to change its emphasis to housing and processing sentenced inmates. Likewise, jail overcrowding resulted in the development of an Intensive Custodial Home Supervision (ICHS) program to permit the early release of inmates with some intensive post-release supervision. Center staff naturally expressed the wish to return to a treatment focus, feeling that this was a more effective approach.

No field supervision is provided for custodial supervision clients, or inmates released during the day into the community for work or education. Urinalysis testing occurs on a limited basis and there is some concern that there is no funding for a more vigorous testing effort. Although screening criteria exist, center staff indicate they accept all court referrals.

Findings

The failure to provide direct supervision of Restitution Center offenders in the community and to strictly adhere to screening criteria, as well as limited drug testing result in some vulnerability in terms of protecting the community from the harm these inmates could do.

Although the center appears to be doing well in collecting fees, the sliding scale does not include a full-cost charge, and there may be ways to improve overall collections.

Recommendations

Substance Abuse Tests. Purchase an Alcosensor Device (breath test, $500) to routinely test inmates for alcohol use on return to the center. After purchase of the initial unit and calibration equipment, tests should cost $0.10 to $0.20 each in comparison to the approximately $4.80 for a urine-based alcohol test. It would also provide immediate results.

Increase the urinalysis budget to permit 100 urine samples to be tested each month.

Field Contacts. Add three field officers to the Restitution Center budget to provide random field contacts to inmates released into the community during the day and to custodial supervision clients. Such activities will uncover problems, most of which can be dealt with by center staff who will need to develop a series of sanctions aimed at assuring appropriate conduct while offenders are temporarily released into the community.

Restitution Center Fees. Reevaluate Restitution Center room and board fees and include a full cost charge in the sliding scale.

Tax Intercept System. Seek legislation to implement a tax intercept system on all delinquent accounts.

Drug Treatment. Seek grant funding to provide a drug treatment/therapeutic community program at the Restitution Center.

D. COMMUNITY SERVICE COMPONENT

Discussion

Approximately 1,400 cases are received annually by the Community Service Program (CSP) operated under the Field Services Division. This operation collects approximately $1,500/month ($18,000 annually) in client fees. Corrections staff noted that one revenue crew was in operation when ILPP visited. Most labor is provided directly to community projects or nonprofit agencies. The Restitution Center has a few inmates who provide labor directly to indigent and disabled citizens. This effort was initiated many years ago when the center opened in an effort to provide services to needy individuals living in the immediate vicinity of the center. Currently, however, inmates are referred to communities outside of this general area.

Findings

It is expected that the use of the Community Service Program by the courts will increase significantly as jail overcrowding worsens. CSP is a useful and important sanction that directly benefits the community. Efforts will need to be made to prepare for a significant program expansion carried out with concern for cost and optimizing efficiency in processing and tracking referrals.

Recommendations

Community Service Referrals. Eliminate the Restitution Center program component which permits direct assignment of inmates to needy private citizens to assist them on private work projects. This process creates the "impression" of a conflict of interest and puts the agency in an unfortunate position of justifying why one citizen gets help and another does not. The goal that the Restitution Center wishes to accomplish with this program is worthy and should continue to be accomplished in one of several ways. Needy citizens requesting assistance can be referred to a nonprofit agency and the center can refer appropriate inmates to work projects carried out by the agency. As an alternative,

appropriate inmates can be referred to the department's Community Service Program for assignment to clean-up activities in the community surrounding the Restitution Center. Before any work by inmates or Community Service Program workers is done on private property, legal advice should be obtained.

Community Service Automation. Automate the Community Service Program referral, assignment and tracking process.

Community Service Fees and Revenue. Reassess program fees and implement a sliding scale assessment system with full-cost reimbursement expected of all employed participants.

Review the possibility of putting more full-cost reimbursement/revenue-based crews on line as program referrals increase. Full cost would include the salary of a probation staff crew supervisor, vehicle lease and maintenance costs, and possibly, participant stipends. It is possible to put these revenue crews on line (including staffing) without incurring additional direct costs. Contracts should be with agencies with significant funding from special funds (state highway funds, school districts, public transit districts, agricultural districts, etc.). The movement toward operations based on revenue crews need not significantly impact the department's commitment to providing "free" labor to nonprofit efforts. An effective program can be developed that meets both goals with all program activity aimed at providing meaningful assistance to the community and its citizens.

E. VOLUNTEER/PUBLIC INFORMATION COORDINATION

Discussion

This agency had an active volunteer program for several years, but recently had to cut the full-time volunteer coordinator position. Since that time, recruitment and placement of volunteers has been almost nonexistent. The use of volunteers to assist staff with ever increasing caseloads by providing direct services can reduce subsistence costs and helps probation staff in tracking client participation in various court-ordered programs. This in turn assures a higher quality of case management. The department has recognized the importance of an active volunteer program by citing increased use of volunteers as a goal in its Community Corrections Plan. However, no funding for this program is currently available.

Additionally, the role of the Community Corrections agency does not appear to be understood in the community and does not seem to be perceived as particularly important within the criminal justice system. These are problems confronted by most probation and parole agencies.

Findings

The Department of Community Corrections is in need of reestablishing an active volunteer program geared toward recruitment of case aides and professional service providers. Additionally, the department is in need of establishing a goal-oriented public relations program to educate the general public as well as other criminal justice agencies about its role and the important part it plays in providing for the public's protection.

Recommendations

Establishing a Volunteer Program. Fund a full-time volunteer coordinator who will also take on selected public information functions.

Establish a nonprofit Volunteers in Corrections group with a Board of Directors representing business and community functions. Under this board, set up fund-raising activities that the board can take a leadership role in coordinating. Request the board's assistance in acquiring grants from private foundations to augment subsidy program activities (treatment, medical/dental services, temporary residential costs).

Volunteer Recruitment. Volunteer recruitment should be aimed at professional staff who may be willing to provide direct service free of charge to: a specified number of clients each year, the retired community, the college student population, multi-cultural and bilingual individuals, and other interested citizens.

Volunteer Background Checks. Procedures should be established to do at least a limited background check on volunteers who will work directly with clients. This is particularly important in light of federal and state training requirements and restrictions on the disclosure of criminal offender record information.

Public Information Program. Develop an organized, goal-driven public information program, including development of brochures on various community service programs and a speakers' bureau involving interested probation staff and aimed at community groups (clubs, associations and public forums).

F. COMPUTER INFORMATION AND MANAGEMENT SYSTEMS

Discussion

The Department of Community Corrections managers recognize that their existing computerized management information system is inadequate and management reports are not always generated in a timely manner. Line staff are especially critical of the program (PROBER) claiming it creates a tremendous paperwork burden by requiring redundancy in the completion of forms. The intake file alone has many forms requiring similar information. The state is beginning to look at the possibility of developing their own case management system rather than purchasing existing software developed specifically for probation and parole functions. ILPP, encouraged by the Criminal Justice Planning Coordinator, attempted to create a profile of probationers employing the existing system. It could not be done efficiently.

Findings

The existing management information system in use in the Department of Community Corrections is ineffective and inefficient. It does not provide case management automation capabilities. Developing software to provide effective management information and caseload management functions is a very costly and time-consuming undertaking.

Recommendations

Replacement of the Computerized Case Management System. Initiate meetings with other criminal justice agencies (Sheriff, District Attorney, Courts) to attempt to assure that any existing or new system purchased by the department is compatible with other existing systems or systems other agencies may be interested in purchasing.

Find a probation-oriented computerized caseload management system that is in use in other jurisdictions and that can also generate management information. Excellent cost-effectiveness and quality control data can flow from a caseload driven system.

Attempt to persuade the state to purchase existing software rather than develop its own. Although the purchase of an existing system can be costly, it can be molded to fit special jurisdictional requirements and put in place within six months. In contrast, it often takes years to develop a system from the ground up and in the end, costs a good deal more.

Assure that any new system eliminates dual entry of data and, as much as possible, duplicative forms.

Involve line as well as management staff in reviewing possible computer information systems and conducting on-site tests of any system under consideration.

Reassess the Community Corrections forms index and eliminate or combine forms that are duplicative. A good computer system should, at least, transfer client data from one form to another without the need to manually enter it on each separate form.

G. ASSET FORFEITURE

Discussion

Federal asset forfeiture laws permit law enforcement agencies to seize the assets in certain types of drug-related arrests. This is intended to increase the punishment or cost primarily to drug dealers when arrests occur. Typically, corrections agencies are not major players in drug forfeiture actions, even when intelligence regarding drug sales activities is provided by the agency.

Findings

The Department of Community Corrections needs to be an active participant in the asset forfeiture program, at least with cases under probation and parole supervision, when the intelligence gathered by departmental staff leads to a search where forfeiture occurs. This participation should result in sharing in funds and assets confiscated. There seems to be some misunderstanding among law enforcement personnel and the District Attorney's Office regarding what types of cases are appropriate for forfeiture actions.

Recommendations

Waivers for Drug-Related Probation Cases. Ask the Courts to impose a Fourth Amendment waiver condition (search condition) as a standard condition of probation in all drug-related cases. The department should retain a list of all offenders with a search condition and share this with law enforcement agencies.

Asset Forfeiture Task Force. A county task force of law enforcement and Community Corrections staff should develop a collaborative policy describing asset forfeiture targets and the manner in which asset forfeiture proceeds will be split when multiple departments (including the Department of Community Corrections) are involved.

Asset Forfeiture Account. In accordance with federal law, a Community Corrections asset forfeiture account should be established with expenditures being under the authority of the department's Director. Consideration should be given to spending any proceeds on a computerized caseload management system.

CORRECTIONS

CORRECTIONS

A. INTRODUCTION

The Corrections section discusses both the physical plant (facilities) and the operations of the County Jail. Volume III, Corrections Needs Assessment, provides an in-depth analysis of the corrections system. The facilities discussion is more fully developed in Volume IV, Master Plan and Facility Programs.

B. FACILITIES

Washington County currently operates two detention facilities with a total rated bed capacity of 277 beds. The Sheriff's Department operates the 189-bed, secure, pretrial and post-sentence detention facility (County Jail) in a four-story structure adjacent to the County Courthouse. The Department of Community Corrections operates an 88-bed Restitution Center for sentenced inmates next to the County Administration Building.

The Washington County Jail was constructed in 1972. The jail originally occupied the top two floors and portions of the ground floor and had a capacity of about 110 to 115 inmates. Five significant remodelling projects have been undertaken. In 1974, changes were made to increase bed capacity, including removal of the juvenile detention facility from the third floor and conversion of the detoxification cell to a trusty dormitory; in 1979, the third floor classroom was replaced with an 18-bed dorm addition.

Since the early 1980s, the County Jail has experienced periods of severe overcrowding; court mandates through a consent decree brought about improvements in jail conditions and housing expansion in the County Jail and the Restitution Center. In 1985, the first floor was remodelled to provide kitchen expansion and additional dormitory housing capacity (60 beds). Capacity at that time increased to 189 beds, which is now the court-ordered population cap for the County Jail. In 1990, major lighting and electrical system improvements were made on the second and third levels.

In 1976, the Department of Community Corrections began the operation of the Restitution Center. The initial program housed 10 sentenced misdemeanants who were involved in various community-based programs. In 1980, the program was expanded to 40 beds and relocated to the first floor of the existing facility which is adjacent to the County Administration Building.

In 1983, females were included in the program, and in 1984, following a consent decree on jail overcrowding, the programs were initiated to expand both the County Jail and the Restitution Center. Part of the expansion program included relocation of the jail work release program and the jail laundry to the Restitution Center. The second floor of the Restitution Center was remodelled to accommodate work release housing and general program expansion. The current rated capacity of the Restitution Center is 88 beds.

C. OPERATIONS

1. Organizational Structure/Staffing

DISCUSSION

The Sheriff's Department operates the County Jail located in Hillsboro. Corrections staff are responsible for booking, including photographing, fingerprinting, and helping determine whether or not the person should remain in the jail or be released to await trial. The County Jail is staffed with 56 corrections officers who provide inmate supervision 24 hours a day, including interagency transport, court supervision and security, jail visitations, recreation, commissary, library, social service referrals, laundry and general custodial care. Meals and medical services (nursing care only) are provided by jail staff as well. Corrections officers also provide court services, including the transport of inmates from the County Jail to the courtroom, and court security during trials, arraignments, and other court proceedings. Officers also provide transport services for inmates moving to and from state correctional facilities.

Table 16
Corrections Staffing

	Corrections	*Jail Commissary*
Captain	1	0
Lieutenant	2	0
Sergeant	6	0
Secretary 3	1	0
Assoc. Acct. Clerk	0.5	0.5
Assoc. Clerk	8	0
Sr. Corr. Off	11	0
Corr. Officer	38	0
C O. Trainee	7	0
Health Supervisor	1	0
Nurse	3	0
Comm. Health Worker	0.5	0
Kitchen Supervisor	1	0
Cook 2	6	0
Cook 1	1	0
Total	**87**	**0.5**

Jail Administration. Recent changes have occurred which have affected the organizational structure. The retirement of the undersheriff prompted the promotion of the jail captain to the undersheriff position and a lieutenant to the vacated captain's position. This has reduced jail administration positions from one captain and three lieutenants to one captain and two lieutenants.

Mid-Level Supervision. The County Jail employs six sergeants. They are assigned to three shifts, two per shift. Sergeant duties involve both administrative responsibilities and supervision.

Correctional Officers. Minimum staffing requirements for the County Jail call for eight designated posts which must be staffed at all times. This breaks down to two posts for the first floor, four posts for the second floor (one post is filled by the civilian booking clerk) and two posts for the third floor. Sworn staff are also used for court security, transportation and programs.

Civilian Personnel. In the actual jail operations area, the County Jail employs six civilian booking clerks, two per shift. Civilian personnel are also used for provision of medical and food service and for clerical support.

FINDINGS

Jail Administration. The promotion of the jail captain to undersheriff has left jail administration short one lieutenant. This appears to ILPP to be inadequate for optimal administration of the jail.

Midlevel Supervision. Because of the heavy load the sergeants carry for administrative responsibilities, it has been noted through interviews that jail supervision may suffer as a result. The ability to do programming also may suffer due to the heavy load of work sergeants must bear.

Correctional Officers. Staffing levels appear inadequate at times. At minimum staffing levels, which the jail often does not exceed, there appears to be inadequate coverage when an inmate must be escorted to another floor. At these times, a post must be vacated to escort the inmate.

Staffing does not appear adequate in the areas of court security, transportation and programs. See subheadings below for more discussion about these areas.

Civilian Personnel. The recent hiring of six civilian booking clerks has been seen as a step forward for jail management and staffing.

RECOMMENDATIONS

Jail Administration. Jail administration may need another lieutenant (for a total of three) to provide optimal administration of the jail.

Midlevel Supervision. One additional sergeant may improve jail supervision and provide more opportunities for inmate programming.

Correctional Officers. There may be a need to increase staffing to improve minimum coverage of posts within the jail (one more staff), court security (up to seven more staff), transportation (one to two additional staff) and programs (one to two more staff). See discussions under security, transportation and programming for more information.

2. Staff Training

DISCUSSION

Washington County provides basic training of a minimum of 30 hours per year, basic supervisory training at 80 hours per year and basic management training at 100 hours per year. The county appears to adhere to the state's minimum training standards.

FINDINGS

Interviews with jail administration reveal that while minimum training is met, additional training opportunities in such areas as classification, booking procedures and inmate disciplinary and grievance procedures would enhance jail operations.

RECOMMENDATIONS

Staff Training. Washington County should look into ways of enhancing staff training as a means of coping with overcrowding pressures.

3. Security

DISCUSSION

Jail. As discussed above under Organizational Structure/Staffing, minimum staffing requires a total of eight posts to cover the jail. At times when staffing is at this minimum, a post must temporarily be vacated to escort inmates to another floor.

Court. Five staff are assigned at present to court security. They cover court security for the 12 courts in Washington County.

FINDINGS

Jail. Minimum staffing levels appear inadequate if, at the minimum, a post needs to be temporarily vacated for inmate escort.

Court. Interviews with both jail personnel and the bench suggest that expanded court security is needed. The Courts have been recently more insistent about receiving increased security. At high-risk trials and hearings, there is a need for one security staff person to be stationed inside and two persons to staff the metal detector. Therefore, one such trial or hearing would require three of the five security staff to be present, leaving the 11 other courts to be covered by only two security staff. The rapid growth of the county may result in an increase in high-risk hearings and trials.

RECOMMENDATIONS

Jail. Minimum staffing requirements may need to be increased to include one to two floaters so that posts need never be vacated even temporarily.

Courts. Court security should be increased. Ideally, there would be enough security staff to cover most of the 12 courts. When a court was not in session, staff would be available to handle such things as high-risk trials, cover for sickness and leaves and provide backup for other jail staffing needs.

4. Programming

DISCUSSION

The Program Manager divides time between programming and duties as a Population Manager. No staff is directly assigned to programs at the jail. The County Jail provides the following programs. (See Volume III's Programs and Services section for more information.)

- Reading privileges (books and newspapers);
- Inmate indoor recreation;
- Inmate open air recreation;
- Educational programs;
- Inmate law library;
- Substance abuse treatment programs;
- Medical services;
- Mental health services;
- Religious services;
- Trusty status; and
- Sentence reduction.

FINDINGS

The County Jail lacks a fully-developed array of programs. Programs for literacy, life skills and job and treatment placement seem particularly needed. While the Program Manager and jail administration are interested in providing more programs, they are limited by lack of staff, problems regarding space for programs and problems resultant from the movement of inmates to and from programs.

RECOMMENDATIONS

Inmate Programs. The County Jail should provide a more fully-developed array of programs which would include such programs as literacy, life skills, job and treatment placement and expanded substance abuse programs.

An increase of one or two staff may be needed to provide an adequate number of programs for inmates.

5. Transportation

DISCUSSION

At present, two staff members are assigned to transportation. Areas of transport consist primarily of doctor and dental visits, psychiatric evaluation and the daily shuttle of transfer inmates between Hillsboro and Portland or Salem.

FINDINGS

The two transportation staff spend most of their time operating the daily shuttle of inmates between Hillsboro and Portland or Salem. Great expense is involved and some further analysis may be required as costs increase. A one-way trip to Salem takes approximately one hour. Since most of the transportation staff's time is spent in shuttling inmates, staff must be drawn from other areas to take inmates to doctor or dental visits and psychiatric evaluations.

Psychiatric evaluations are done by the Oregon State Hospital (OSH) in Salem. Until September of this year, staff could drop inmates off and return for them after the evaluation, which generally takes from four to six hours. However, now OSH requires an officer to stay with the inmate during the evaluation process. OSH attributes this policy change to the loss of personnel since the passage of Measure 5.

RECOMMENDATIONS

Inmate Transportation. An increase in transportation staff of one or two officers seems needed in order to provide required transport without having to pull staff from other areas. Further study of inmate transportation should be an integral aspect of all system planning.

6. Classification

An in-depth analysis of the County Jail and Restitution Center classification is presented in Volume III's Classification section.

DISCUSSION

The County Jail employs an objective classification instrument developed by the American Jail Association and observed by county officials in use in a Michigan jail. The instrument uses a decision-tree format as opposed to an assessment scale where points are added or subtracted to determine a final score for custody level (see Appendix II.B for the County Jail's classification form). Jail staff opted for this type of format because it was felt to be less complicated and time-consuming to use.

FINDINGS

While the classification instrument employed by the County Jail seems adequate, interviews with jail staff and extensive review of jail profile data reveal that several problems exist in the area of classification.

Staff doing the classification are not specifically trained in the area of classification. They receive basic training in classification only as part of their regular training. Specific ongoing training for classification is not provided. There is no classification "expert" on staff to serve as a resource.

There seems to be no regular review of the classification component to determine if revision of policies and procedures may be necessary.

Updating the classification of inmates does not occur on a regular basis.

Due to physical and staffing constraints at the County Jail, the midnight shift generally fills out the classification worksheet. This practice limits immediate access to inmates because no inmate interviews are done during that shift.

In addition, crowding at the County Jail hampers optimum placement of inmates. Despite receiving a specific classification, inmates must be housed on a space available basis. Staff has found this most problematic in the maximum security sections.

Finally, due to lack of space, women must all be housed together, despite their diverse classification.

RECOMMENDATIONS

In-House Staff Training on Classification. The County Jail should provide ongoing in-house training of all staff on the operation of the classification system. This training should go beyond the basic classification training staff receive as part of their regular training.

One or more staff should receive advanced training in classification to serve as expert resources to the staff and keep the system current on the latest research and innovations in the field. The expert(s) would also conduct a regular review of the classification component (see below).

Review of Classification Component. A regular review of the classification component should occur to review policies and procedures and to see whether the instrument is giving the jail the right "fit" for its housing and programming needs. This review should occur at least twice a year and be instituted after any major changes occur in jail housing policy or in the actual physical plant.

Classification Beyond Midnight Shift. The County Jail should consider conducting classification beyond the midnight shift to avoid limiting access to inmates.

Collect Classification Data. Information which breaks out the classification of inmates over specified dates (similar to the classification exercise in this report) should be kept. This information could be used to help determine optimum housing requirements for future jail planning.

Inmate Reclassification. Reclassification of inmates should occur on a regular basis, particularly after any change in housing, behavior or adjudication status.

Special Issues

SPECIAL ISSUES

A. CRIMINAL JUSTICE DATA PROCESSING SYSTEM

Discussion

Counties must manage a very large volume of data in pursuance of their criminal justice activities. There are two aspects to data management: the sort of information that is maintained and the physical system for doing so. Obviously, for an entity of the size of Washington County, electronic data processing is the only reasonable data processing system alternative.

The data management system consists of hardware, software (programs and data bases) and interconnections among users and other systems, both local and in larger areas. The term "system" may refer either to the entire aggregate of hardware and software or, more specifically, to the applications software and data bases; it is hoped that the meaning will be clear in context.

This overview will not concern itself with the technical issues of hardware and software except insofar as they yield (or fail to yield) the desired results. Hardware and their associated operating systems may consist of mainframes or minicomputers, professionally maintained and often shared with nonjustice users, or personal computers (PCs), either standing alone or networked. These are commercial products, and satisfactory configurations are readily available, though users constantly wish to upgrade them.

Applications software (programs) tended to be locally developed in the past, but commercial programs which can be adapted to almost any county's needs are increasingly marketed and can save development and debugging costs. In past studies, ILPP has found several users who were dissatisfied with their older, home-made systems and are considering acquiring a commercial product.

Data bases are simply the collections of data used by the software. How they are structured affects how easily the information can be extracted from them. Here again, there will be little technical discussion except to note that justice systems in general are set up more to provide case information than management data.

Each criminal justice agency (public safety, DA, Courts, Community Corrections) has its own data management needs, yet they also have a need to interchange some data with each other, implying some sort of system interconnection. There are three paths which a county may follow to attain this:

- Wholly separate systems with exchange of printed material;
- Independent but electronically linked systems; or
- An integrated system where all functions are present but users have limited access.

Choosing among these alternatives quickly gets into technicalities far beyond the scope of this study. However, the central issues can be stated briefly: less-integrated systems are

cheaper and less complex, but interchange of information is slow and cumbersome. Linked systems are more expensive and exchange some, but not all, information. Fully-integrated systems are expensive, complex and can do the most (assuming they work properly). Integrated systems can generally also process a much greater amount of data, allowing them to use more and larger data bases.

ILPP has identified five separate data systems used by the Washington County criminal justice system. These are described briefly below. The information comes partially from the long-range information systems plan update prepared by CMSI in 1989, supplemented by ILPP's interviews of the data processing managers at the agencies covered. (CMSI is the contractor operating the county's central data processing system.)

- OJIN (Oregon Judicial Information Network): statewide, state-operated network for court data;
- DAIS (District Attorney's Information System): DA's system, on the county mainframe;
- JMIS (Jail Management Information System): jail system, also on the county mainframe;
- JIGSAW: connection through the mainframe to state and national data networks (LEDC and NCIC), apparently supplanting RDIS; and
- PROBER (Probationary Client Tracking System): PC-based local system for the Department of Community Corrections.

DAIS, JMIS and JIGSAW reside on the county's mainframe and can exchange information. OJIN is not connected to these but can access LEDS directly. PROBER has an "eyes only" connection to JMIS, etc.; data can be displayed on the screen but must be manually reentered if needed on another system.

Users of JMIS and DAIS do not report serious interconnection problems. OJIN must manually reenter data but considers this a minor task. PROBER users feel that their interconnections are inadequate.

Concerning the data itself, there are two overall requirements which in practice sometimes conflict:

- Maintaining a complete case file on each individual who enters the system in order to process that case to its conclusion; and
- Generating a statistical picture of the criminal justice system which will provide information for its management and improvement.

Findings

For the purposes of this study, ILPP did not examine the case handling capabilities of the system in depth. The comments that did emerge indicated that in this regard, the system works adequately.

For statistical data, the situation is rather different. ILPP found that the county does not generate the type of report it needs for effective system management. The data is available in the data bases, but it is not extracted in this form. County staff familiar with the technical aspects of OJIN, JMIS-DAIS and PROBER all expressed confidence that the systems are capable of generating the relevant information if management personnel ask for it.

Users in the DA's Office, on the contrary, said that DAIS now does have some routines which ought to give good statistical information but are inaccurate and unreliable. As a result, the DA maintains all statistics manually. Some of the apparent contradiction between these statements lies in the fact that a good deal of effort (days, if not weeks) would be needed to correct and test the routines. Priorities and financial considerations have kept this from occurring.

In particular, jail system data is deficient. Improving the flow through jail requires breaking down the inmates into a large number of relatively homogeneous categories which can be studied individually. System improvements come as the result of making small improvements in entry or processing times within each of the various categories.

Washington County reports aggregate values (e.g., total annual bookings) without making such breakdowns. But the use of aggregate quantities does not yield useful information. Combining and averaging highly disparate categories gives a statistic which primarily reflects the relative sizes of the categories in this catch-all aggregate rather than changes in processing time for homogeneous subsets of the population. Since there are always statistical fluctuations in the relative sizes of these groups and the groups differ widely in their length of stay, a change in the mix of inmates can produce an apparent dramatic change in the population or ALS even if there are no actual changes in the process of each of the subgroups.

For example, population projections would be greatly improved if bookings and daily populations were broken down by offense and sex since it would then be possible to identify the areas of growth in admissions and ALS and to project trends in each of them separately. The effect of anticipated changes (e.g., new DUII definitions) could be much more closely predicted.

Jail trackings need details such as a greatly expanded set of release modes. For example, "release to other agency" includes several, highly disparate categories: persons held for other counties who are generally transferred quickly; felons who are held till trial and then sent to prison; probation and parole holds; extraditions; and persons who serve a sentence in Washington County first and then sent to another county. These are very different in the ways in which they are handled and the length of time that they stay.

Profile data should include more indication of substance abuse, even if that is not the booking charge, and educational and mental health characteristics as a guide both to individual treatment and to the development of new programs.

ILPP also finds that exchange of information between departments is limited. Although people talk to each other informally, there is no "criminal justice data users' group" to discuss systems needs and plan for improvements.

The physical system (hardware and software) is generally satisfactory, though interconnections are sometimes awkward.

The most troublesome system is PROBER, which may, within a year or two, be supplanted by a statewide community corrections network.

Individual case handling capabilities appear to be adequate, though this was not investigated in depth.

Although much of the raw data exists in the data bases, statistical summaries useful for managing the system were generally not extracted.

There are not designated data managers within the Sheriff's Department or DA's Office.

Recommendations

Data Managers' Working Group. The county should consider establishing a working group of data managers to resolve current issues and plan for overall system improvements.

Community Corrections Automation. The PROBER system for the Department of Community Corrections should be replaced, and the caseload management should be automated. Redundant manual entry should be eliminated.

Management Data. Management data should be collected.[15] This would include the following items:

- For Law Enforcement and Jail Management: Monthly summaries of bookings and populations by sex, offense and level, and custody status; also, profile and tracking information as suggested above. Profile and tracking studies as presented in this report could then be conducted by the county itself on at least an annual basis. Data should be maintained on releases and subsequent FTAs.

- For Prosecution: Filing and drop rates, by jurisdiction; average caseloads, processing times and costs; filing and disposition summaries. Much of this is collected now by hand; it should be automated.

- For the Courts: Case filing and disposition details, including distribution of charges; discharges, dismissals, acquittals and reductions; times to disposition; caseloads; indigent and conflict cases; cost of public defense; and aging profiles at much more frequent intervals than is done now. Some consideration should be given to integration of the court and county systems (jail, prosecution, community corrections).

- For Community Corrections: Caseload and cost summaries, by function, with case characteristics and failure statistics. The section entitled "Effectiveness Measures" in this volume's introduction provides much detail on specific items of practical utility in evaluating the program.

15 See Appendix II.C for a summary of data elements useful for planning.

More detail and rationale for these is discussed in the sections of this report dealing with the particular agencies.

Information Access. Information should be more generally accessible among agencies, though each agency will probably wish to restrict access to some items and to control modification of its data bases.

B. SUBSTANCE ABUSE PROBLEMS AND JAIL POPULATION

Discussion

Substance abuse is often viewed as a psychological problem for the abuser rather than as a crime in itself. It may lead to the commission of a conventional crime of victimization, but even then, the abuser's inability to deal with the habit is seen as a major contributing factor. It is also well recognized that it is difficult for even a reasonably well-motivated abuser to divest himself or herself of the habit.

In Washington County a substantial number of County Jail and Restitution Center inmates have a history of alcohol or drug abuse. Unfortunately, this information is not directly noted in the case files, but sometimes, it can be inferred from tracking and profile data. Anyone convicted of DUII clearly has an alcohol problem; furthermore, as pointed out in the tracking analysis, most of the arrests for DWR/DWS (driving with suspended or revoked licenses) appear to reflect earlier DUII. In the following, both of these will be considered as alcohol-related.

In the tracking sample, 28 percent of the arrestees were charged with DUII or DWR/DWS. Even though their average length of stay was a little less than half that of other offenders, they account for about 25 beds if the County Jail is full. In the jail profile, 14 percent of male inmates and six percent of females have current alcohol-related charges. For the Restitution Center the corresponding figures are 33 and nine percent, respectively. Furthermore, about a third of the jailed males and nearly half in the Restitution Center have prior alcohol-related convictions or arrests. (The latter figures are not mutually exclusive and therefore not additive.)

Clearly, alcohol is involved in a substantial number of criminal cases in Washington County. Two of the county's practices relate to alcohol and require further attention. First, as discussed above, there is a difference of opinion between the DA and several law enforcement agencies over the criteria for DUII arrests. The DA contends that people are arrested on DUII charges which cannot be sustained. If true, this would contribute to the high DUII bookings found in the tracking study.

Second, as was pointed out in the sections on Corrections and Community Corrections, alcohol rehabilitation programs are inadequate and poorly utilized. For those who do have alcohol problems, the county does not offer much help with rehabilitation.

Drugs are a somewhat different issue. There were only 28 drug bookings in the tracking (compared to 199 alcohol bookings), and 20 of these were for sales. It is not necessarily the case, of course, that sellers of drugs are themselves abusers; indeed, there is anecdotal

evidence that sellers are aware of the hazards of the stronger drugs and consciously stay away from them. Even those charged with possession may be sellers rather than users.

In the County Jail and Restitution Center, similarly, there are 13 (of a total of 293) with drug charges. All are men, and eight were charged with sales. However, 10 to 15 percent of both men and women in both facilities had prior drug arrests or convictions.

Though drug treatment programs, like alcohol treatment programs, are also meager in the county, the available data do not indicate a great need for programs of this sort. However, there may be many more cases of drug use hidden in property offenses such as burglary and larceny. The information available does not allow drawing firmer conclusions on this point.

The other special issue pertaining to drugs is the question of prosecution versus asset forfeiture. Here again, it appears that the DA adopts a more cautious attitude than law enforcement agencies. Briefly, the DA believes that when assets are seized the case should not also be subject to criminal prosecution. This matter is discussed at length in the law enforcement section of this report. Forfeiture of assets in lieu of prosecution certainly saves jail beds but may not be easily controlled.

Findings

Alcohol-related arrests account for a substantial number of bookings and jail beds. Some of these are made on charges which the DA is unable to prosecute. Treatment programs for those who have alcohol problems are inadequate and underutilized.

From the information available, it does not seem that drugs are as great a problem in Washington County as in many other jurisdictions. Here again, programs are meager. The issue of prosecution versus asset forfeiture is still in dispute.

Recommendations

Reexamine Substance Abuse Offense Policies and Procedures. The county needs to reexamine its policies and procedures on alcohol and drug-related offenses. Expanded substance abuse programs or alternative sanctions deserve further consideration as they could, in the long run, save jail space and operating expenses, as well as lessen the impact of drunken driving on the citizenry.

APPENDIX II.A
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APPENDIX II.A
BIBLIOGRAPHY

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APPENDIX II.B
COUNTY JAIL CLASSIFICATION FORM

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WASHINGTON COUNTY
JAIL CLASSIFICATION WORKSHEET

NAME:_____
(last) (first) (middle)

BK #: _____

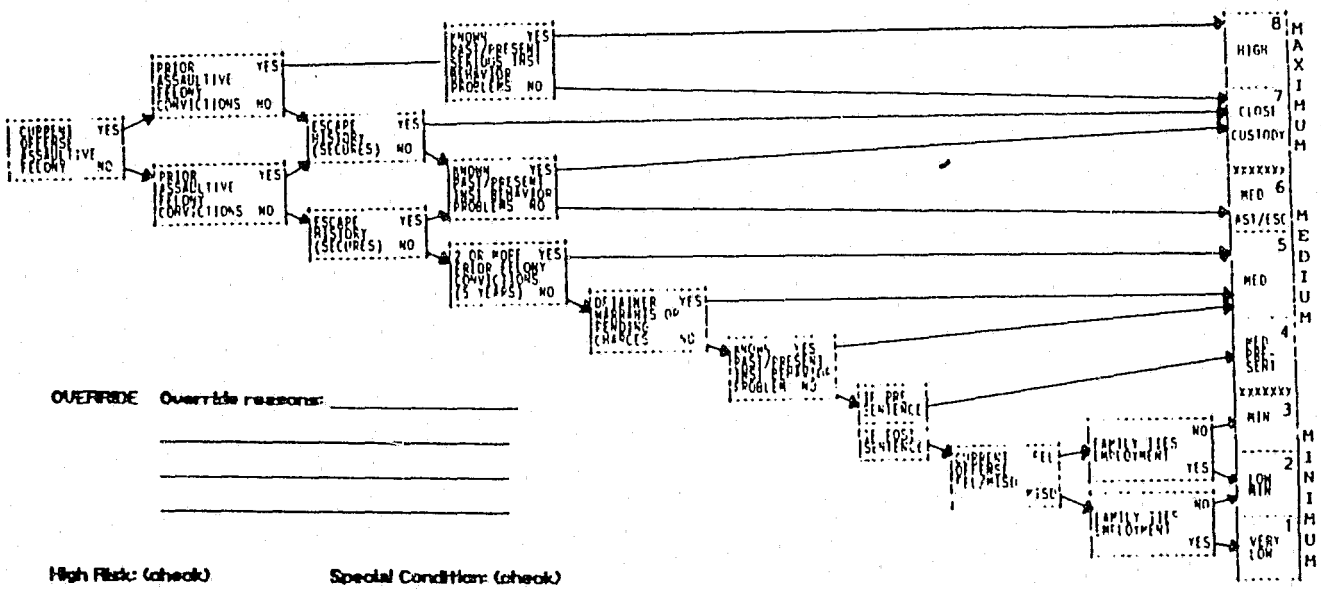
CHARGE(S):_____

Comments by staff:_____

Classified by:_____ BPST:_____ Date:_____

PRIMARY SECURITY LEVEL ASSIGNMENT

Booking date:_____



OVERRIDE Override reasons: _____

_____

_____

_____

High Risk: (check)

__ Assaultive
__ Escape
__ Suicidal
__ Mental

Other: _____

Special Condition: (check)

__ Protective Custody
__ Medical
__ Juvenile
__ Handicapp

Other:_____

APPROVED: _____ BPST:_____

SOCD #33

APPENDIX II.C
SUMMARY OF DATA ELEMENTS USEFUL FOR PLANNING

APPENDIX II.C
SUMMARY OF DATA ELEMENTS USEFUL FOR PLANNING

As part of the evaluation of criminal justice system components, ILPP reviewed previous studies, including a technical assistance report in 1982.[1] This report documented the county's efforts to plan for change locally, and stated that the county would find the following data elements extremely valuable in the planning process:

Population Measures

- Average daily population;
- Jail days;
- Total bookings;
- Net bookings;
- Felony and misdemeanor inmates;
- Male and female inmates;
- Pretrial and sentenced inmates; and
- Adult and juvenile inmates.

Inmate Profile Measures

- Legal status;
- Charge status;
- Charges (categorized);
- Age;
- Ethnicity;
- Education;
- Employment;
- Substance abuse;

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1 Voorhis Associates, Inc. (for National Institute of Corrections), Planning of New Institutions: Phase One - Technical Assistance Report, July 1982.

- Retardation;
- Emotional/mental health problems;
- Family ties;
- Residence;
- Length of stay;
- Means of release; and
- Any elements of special interest to the jurisdiction.

System Measures

- Arrest practices;
- Use of summons and citation for misdemeanor offenses other than traffic;
- Traffic related arrests for which inmates were detained;
- Alcohol related arrests for which inmates were detained;
- Bonding practices;
- FTA rate;
- Charges for which jail sentences have been given in the past two years;
- Percent of inmates released after first appearances; and
- Percent of inmates held for pretrial detention and then released to the community.

The report also noted that the data above are the broad parameters within which policy decisions must be made regarding the size, site, services and systems of the jail and the incarceration practices of the local criminal justice system.