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2003-0423

Attachment B

Superior Court of the State of Washington
for the County of King

Richard D. Eadie
Presiding Judge

King County Courthouse
Seattle, Washington 98104-2381
(206) 296-9095

May 6, 2003

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MAY 12 2003

DISTRICT FOUR
KING COUNTY COUNCIL

The Honorable Cynthia Sullivan
Chair, King County Council
Room 1200
COURTHOUSE

Re: Response to Motion 11491 Provisions

Dear Councilmember Sullivan:

Attached is the King County Superior Court's response to the 2003 budget proviso directing the court to provide a report detailing how the Superior Court will meet the provisions of Motion 11491. This analysis includes proposals for additional revenue, reduction in jail population, and also changes in caseload management. While some proposals have been fully developed, others require further study. Those suggestions which can be implemented soon will be reflected in the Superior Court's 2004 budget submittal in July 2003. The benefits of several of the suggestions would carry over to 2005 and 2006.

I will make myself and our staff available to you, or your staff, to answer any questions you may have about our report.

Sincerely,



Richard D. Eadie

PLS:RDE:jmt

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CLERK
KING COUNTY SUPERIOR COURT

The 2003 King County Superior Court Budget Proviso contains the following:

\$50,000 shall be expended or encumbered only after the council approves by motion a report detailing how the Superior Court will meet the provisions of Motion 11491. The court should submit its report by May 1, 2003. The report should, at minimum, contain a detailed and quantified analysis of the court's budget projections for 2004 through 2006 and its quantified estimates of how it will reduce or otherwise contain expenditures, and identify options for helping reduce other law and justice agency expenditures. In addition, the court should identify alternative sources of revenues for itself and for the other law and justice agencies.

The Superior Court is engaged in continued budget review, to assure that all efficiencies and new budget sources have been identified.

The following analysis is offered in response to the 2003 budget proviso:

1. Jail ADP Reduction Through Increase in Good-Time Credit

SB 5990 increases the amount of earned release time, from one-third to one-half, that can be earned by certain of our sentenced felon jail population, generally those felony property offenders identified as low-risk, who do not have a criminal history of sex or other violent offenses. We do not know exactly how many of our jail population this will affect, but early estimates indicate that implementation of this law may result in a reduction of up to 100 ADP, with a cost reduction of more than \$500,000. King County Superior Court recommends that the County Council immediately prepare an ordinance or policy to implement the earned time increase, subject to the Governor supporting the bill, which we expect because of the very strong bi-partisan support for the bill.

2. Criminal Caseload Efficiencies

The Superior Court is actively involved in the work of the Criminal Justice Implementation Committee, identifying options which may reduce jail or other system costs. The Community Corrections Division's creation and management of alternatives to secure detention, including the use of Electronic Home Detention, Work/Education Release, Day Reporting Center and Work Crew, has provided the Superior Court judges, in making independent decisions on individual cases, with additional options which have been fully utilized. The data indicating usage of these provided programs shows that several of the programs are reaching full utilization.

The Superior Court has also proposed, in response to another 2003 Budget proviso, the development of an Intake Services Unit pilot project. The pilot will result in increased information being provided by the Community Correction Division to the Superior Court and others in the criminal justice system on individual cases. This additional information will assist in the decision-making process, including determination which if any alternatives to incarceration may be

appropriate on individual cases. The intake services pilot specifically provides additional information at arraignment, sentencing and perhaps at warrant return to allow judges to make responsible decisions regarding the use of alternatives to total confinement; provides for treatment in lieu of incarceration for specified cases, with an ability to apply the treatment time to required incarceration time; provides for quicker in-jail competency evaluations; and provides improved scheduling in order to maximize EHD, WER, Work Crew and Day Reporting usage. These changes will result in ADP reductions. The report describing the proposed Intake Service Unit is attached.

3. Courtroom Staffing Configuration

We believe that savings can be realized through consolidation of the functions of our Judicial Assistants and Courtroom Clerks, resulting in a reduction of FTEs. Courtroom Clerks are Department of Judicial Administration (Executive Branch) employees, so any consolidation would require a working agreement with the Executive Branch. Technology improvements in civil case management are also expected to reduce operating costs. We believe that these changes could result in an annual savings of up to \$500,000.

4. Revenues

One source of new revenue is in an increase in filing fees from the current level of \$110 to \$200. This increase requires legislative action, which is currently pending in the legislature. If passed, this legislation will increase county current expense revenues by approximately \$1,350,000. As with all fees, exemptions are provided for low income litigants.

Significant additional revenue can be realized through implementing fees for filing motions in civil cases, such as cross and counter or third party claims; civil "discovery" and ex-parte motions; and summary judgment motions. As indicated in the attachment to this report, annual new revenue from these sources could be as much as \$1,750,000.

These ideas are not untested. Several states have had these fees in place for years. Adoption of state legislation, if required to implement these fees, can only be accomplished with the lobbying and leadership of the county executive and legislative branches. The Superior Court will provide technical assistance in any such effort but does not have legislative lobbying resources.

Superior Court is reviewing existing fees for services in the Family Court Services, Adoption, and Diversion programs with the goal of increasing these fees to reflect the actual cost of providing the services. It is estimated that increasing these fees would result in increased revenue of \$150,000.

Other new fees being considered include a one-time fee for services provided to

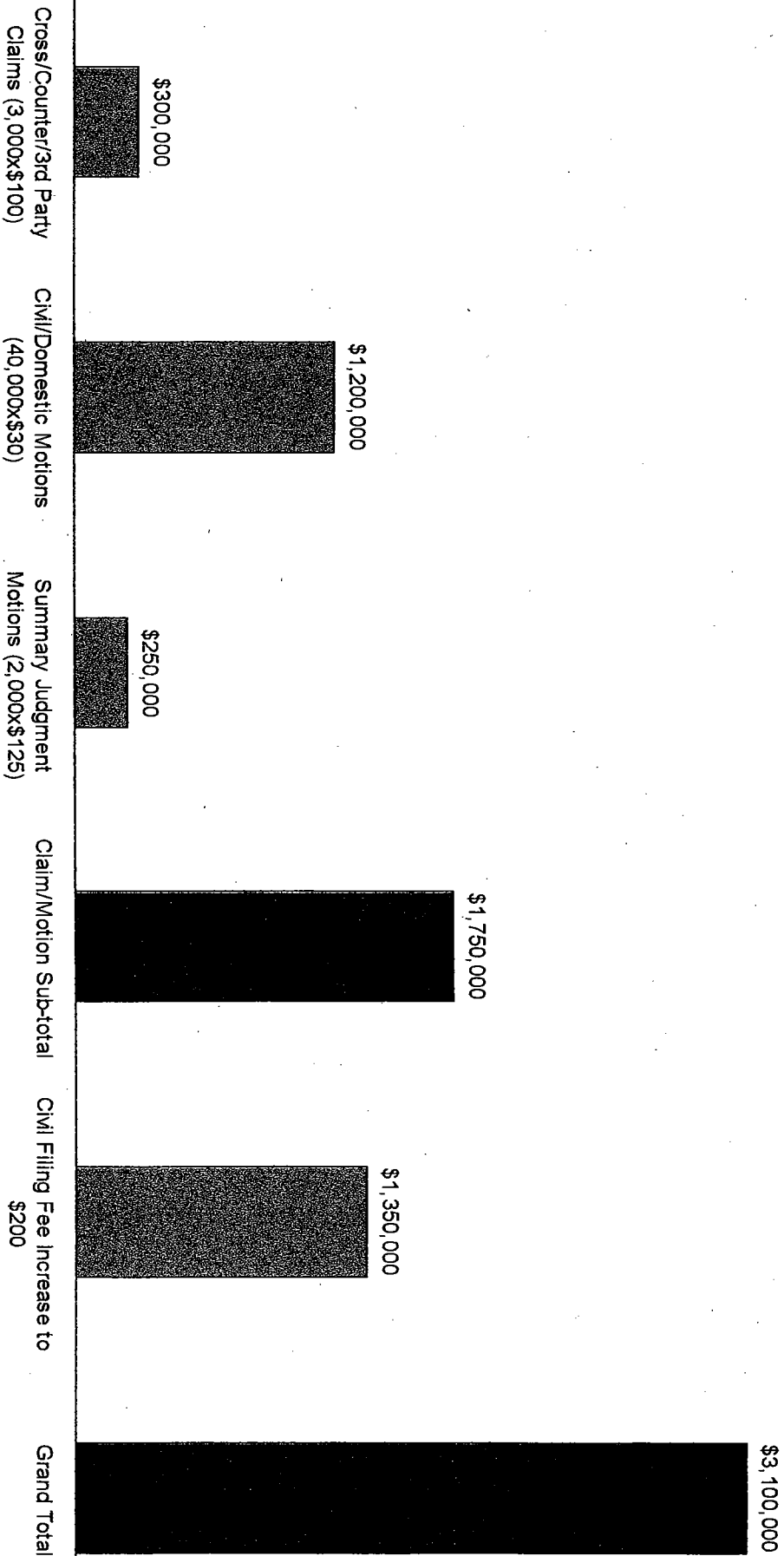
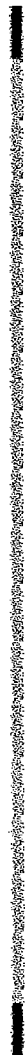
juvenile offenders placed on probation, a charge for the preparation of the adoption checklist, and a charge for services provided through the Adoption Confidential Intermediary Program. It is estimated that these new fees would result in an additional \$100,000 in revenue for 2004.

5. District Court/Superior Court Administrative Consolidation

The Superior Court and District Court have been working together to determine if administrative consolidation between Superior Court and District Court provides greater efficiency and improved public service. The Superior Court is reviewing the District Court's budget history, service levels, caseloads, revenues, collective bargaining agreement and internal personnel policies to determine if this administrative consolidation offers a budget efficiency. This work is nearing completion but not yet finalized.

Several of these suggestions can be implemented as early as January 2004. The suggested increases in revenue may be achievable in 2004 or 2005, depending on necessary state or local legislative action. The benefits of any consolidation between Superior Court and the Department of Judicial Administration or District Court will be realized over a multi year 2004-2006 period.

Estimate of Potential Revenue for New Proposed Fees



King County Superior Court Proviso Requirements:

Included in the Superior Court's 2003 Budget is a proviso which provides:

"\$500,000 and 8.00 FTEs must be used solely for an intake services pilot program for the Superior Court after Council approval by motion of the court's plan for this program. The program should provide resources to the Superior Court's criminal division to expedite the release of appropriate offenders awaiting adjudication or to ensure that offenders are not incarcerated when other appropriate alternatives are available. It is the intent of the council that this intake services program provide a new service and not duplicate the work or reduce the current level of personal recognizance screening and other release programs, conducted by the department of adult and juvenile detention. The Superior Court shall develop a plan for the new unit that incorporates the recommendations of the adult justice operational master plan, ensures full utilization of the law justice technology integration plan and implements the recommendations of the county's criminal justice council. The court should submit its plan by March 1, 2003.

The plan required by this proviso must be filed in the form of 16 copies with the clerk of the council, who will retain the original and will forward the copies to each councilmember and to the lead staff of the law, justice and human services committee and the budget and fiscal management committee or their successors."

Summary of Proposals by King County Superior Court:

This proviso response focuses on 1) expediting the release of appropriate offenders awaiting adjudication and 2) ensuring that offenders are not sentenced to incarceration when other appropriate alternatives are available as required by statute. RCW 9.94A.680 provides "For sentences of nonviolent offenders for one year or less, the court shall consider and give priority to available alternatives to total confinement and shall state its reasons in writing on the judgment and sentence form if the alternatives are not used." This response also describes potential process improvements which involve the Department of Juvenile and Adult Detention and the Prosecuting Attorney's Office that the court believes will reduce the jail population through improved efficiency and effectiveness in criminal case management.

These proposed intake services will assist the court and others to determine reasonable alternatives to incarceration by obtaining valuable information more quickly; by providing longer-term solutions through treatment for those charged with nonviolent crimes involving drugs or property, and by assuring that the recommendations of the CJ Implementation Group are implemented, monitored and modified, as appropriate.

In considering an intake services pilot, the Superior Court looked not only at its own operations, but sought to enhance services available to others involved in the criminal justice system. Development of the intake services pilot program is based on the enclosed flow chart, with the portions indicated in blue as the key custodial decision points involving Superior Court.

The Superior Court recommends the following components for inclusion in an intake services pilot program:

1. **Additional information is needed at arraignment and sentencing to make timely and informed decisions on release and bail.** Jail Screening, which was reduced by 3 FTEs in 2002, screens a portion of all cases for possible FARR Guideline Releases. In 2002, the screeners released only 175 non VUCSA FARR and 58 VUCSA FARR. This reduces the population subsequent to booking, but does not assist the court at either in-custody arraignment or at sentencing, with information pertinent to alternative placements for detainees who may not have been initially screened.

To more thoroughly review all cases at booking, an estimated 5 FTEs would be needed. The responsibility of these FTEs would include preparing a summary of booking information, criminal history, court dates and pending matters. They would also complete a financial review, helpful to OPD for early assignment of counsel and to DJA on LFO collection efforts. They could further be used to determine placement via preliminary ADATSA screening. These positions could be used to complete preadjudication screening which would facilitate early placement into alternative programs. The proposed placement of these positions is into the new Community Corrections Division, since the positions would focus on placement into the alternative programs.

2. **Additional background is needed prior to arraignment, sentencing and perhaps at warrant return to enable judges to make responsible decisions regarding the use of alternatives to total confinement.** When a judge considers a defendant for possible alternative placement, the judge must be confident that accurate information is provided. This accurate information is critical in at least three different points in the detention process. At each point the possibility of alternatives exists. The first point is when a defendant's counsel requests release on Personal Recognizance, but this is denied. If the judge has accurate information, alternative placement is an option when Personal Recognizance may not be. Second, during the negotiating phase between defense counsel and the Prosecuting Attorney's Office, a request by defense counsel for an assessment broadens the options which may be suggested for court consideration. And third, in preparation for sentencing, a request can be made for an assessment, so that the Prosecuting Attorney may subsequently recommend alternatives. The court is also currently looking at ways to effectively use additional information on warrant returns as well as to establish a procedure for a "next day" warrant return calendar for those defendants who fail to appear for various court dates resulting in the issuance of a warrant as well as for those who have had warrants issued on sentence modifications.

At each of these steps, factual information is critical. The recommendation is for 2 FTE's, to complete the assessments. This estimate is based on an average of 40 cases per case worker. The case workers would not be making any decisions regarding release. It is recommended that these positions also be managed within the new Community Corrections Division, as part of the appropriate placement into these alternative programs.

3. **Pretrial defendants should be offered treatment, and subsequently allowed to apply that treatment time, if successfully completed, toward any required incarceration time.** Numerous defendants in jail for drug or other nonviolent crimes (pretrial,

sentenced or sentence violation), have significant drug, alcohol or mental health issues. These issues may have been the underlying factor in committing the crime. Significant reduction in jail time could be achieved. Additionally, once treatment had concluded, judicial officers would have further options for placing these individuals into alternatives to incarceration, such as EHD, WER or Work Crew, for any remaining required time of sentencing.

A pilot is proposed, beginning with nonviolent property and drug offenses. In a program similar to one already implemented in Spokane County, the court would review drug/alcohol/mental health data on each eligible defendant at the time of first appearance or arraignment to determine if benefits might be realized through treatment. Credit would be given for time served post-arraignment, at the time of sentencing, for all time spent in an approved inpatient treatment facility. RCW 9.94A.680(3) provides: "For offenders convicted of nonviolent and nonsex offenses, the court may authorize county jails to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to *RCW 9.94A.607. For sentences of nonviolent offenders for one year or less, the court shall consider and give priority to available alternatives to total confinement and shall state its reasons in writing on the judgment and sentence form if the alternatives are not used." RCW 9.94A.680(3) allows conversion of jail time to "an available county supervised community option". This may eliminate the ability to use private, but state certified, treatment programs. A legislative change is currently pending to make full use of the provision. A suggestion has been made to change "supervised" to "approved."

We believe that implementation of a similar program in King County could have significant impact on jail population.

As a related matter, the Felony Arraignment Notification program (FAN) should receive ongoing funding. FAN, which is operated by DAJD, has been highly successful in reducing the need for warrants for defendants who fail to appear for a court hearing. The effect of the FAN program in Kent has resulted in significant savings. Planning for expansion of the program into Seattle is currently underway. A similar proportionate benefit is anticipated for Seattle. It is our understanding that this project is currently funded from the Inmate Welfare Fund, which begins to run a negative balance in 2004. The negative balance is due in part to the reduction in jail population and the corresponding reduction in collect telephone calls made by inmates, which is the revenue source for the Inmate Welfare Fund. Given the significant program value, ongoing funding appears appropriate.

4. **Quicker in-jail competency evaluations are needed.** The criminal department encounters numerous cases in which the mental health of the defendant may be an issue. A review of in-jail competency evaluations indicates that a minimum of 104 such evaluations are ordered annually by the court. In a random sampling of 19 in-jail evaluations ordered by the court, between July 1, 2002 and January 10, 2003, the following was indicated:

# of cases	Delay in Receiving Report	Jail Days
1	> 30 days	30
5	20-30 days	100
10	10-19 days	100
3	< 10 days	---
19		230

While the evaluations are being completed, the defendant remains in jail. Jail time may be saved if, when a mental health specialist meets with the defendant in jail, a more rapid assessment is completed. Faster in-jail evaluations could help reduce the ADP by either getting the defendant back on the speedy trial clock or sending the defendant to Western State Hospital for competency restoration. Based on the sampling of the 19 random cases, an estimated 1,050 total jail days could have been saved, assuming that a mental health specialist could have completed an assessment within five days, for all defendants in the sampling.

To accommodate this need, the new services available at the Seattle Justice Center should be fully utilized. Of specific potential benefit is using the connection with Western State Hospital. For Seattle Municipal Court, the Program for Forensic Evaluations in Corrections and the Community (PFECC) provides pretrial criminal forensic evaluations on issues of Competency to State Trial; Mental State at the Time of Offense, and Dangerousness. If Western State Hospital has staff available at the Seattle Justice Center who could go to the jail and complete in-jail competency evaluations, this would reduce jail days (see item 1). The Resource Center also provides Job Readiness Training, Mental Health Services (Seattle Mental Health), DOC Moral Reconation Therapy (MRT), Access to BI – an Electronic Home Monitoring Vendor, a DSHS outpost for services, and the King County Housing Voucher Case Management Project. This later program may be of benefit to the Superior Court's Drug Court program.

5. **Preemptive forced medication hearings should be eliminated.** Forced medication hearings are held to preemptively establish, prior to transport to Western State Hospital, that the defendant will not be required to take medication, if recommended at Western State. The law permits the court to compel that forced medication will not occur. These hearings can delay transport by 2 to 4 weeks, for each defendant. Of the nine competency hearings in Seattle in January 2003, 7 required forced medication hearings, with one hearing being stricken before the hearing. Assuming that 6 hearings occur each month and that each hearing delays transport by 3 weeks (21 days), 126 jail days could have been saved per month, or 1,512 jail days per year.
6. **To maximize EHD, WER, work crew and day reporting, additional liaison and scheduling is necessary.** Similar to work performed by supervised release, the placement of at least one scheduling clerk is recommended at both courthouses. The scheduling clerk would be responsible for a variety of tasks, including receiving the reports of compliance or non-compliance on Electronic Home Detention cases; serving as a liaison between the court, jail and Prosecuting Attorney on EHD, WER, WC or DRC program issues; setting the EHD and WER hearings; and assuring no delays in SRA

calendar scheduling. The scheduling clerks would focus on accountability and administratively implementing all other CJ Implementation Committee recommendations.

Changes to increase use of EHD are already well under way. Potential jail savings also exist on the in-custody SRA calendar. Changes made to the in-custody SRA calendar in early 2002 have significantly reduced strikes from the calendar. On average, it now takes 10 days from booking to be heard on the SRA calendar, with 67% receiving additional time after their hearing date. Even so, 19% of the cases continue to be stricken from the calendar, and of those 19%, it took 32 days from booking to modification hearing (excluding people with new felony charges). Of those stricken, 50% were released on the day of their sentencing with credit for time served; half received additional time after the sentence. The scheduling clerks could be given additional responsibility to reduce the 32 day delay through improving coordination between scheduling agencies and the court. The proposed placement of these positions is into the Community Corrections Division.

7. **The FARR Guidelines should be reviewed and possibly expanded.** In 1980, the FARR program was implemented, giving DAJD authority to implement an administrative release program for persons not yet appearing before a judge and who were being held without bail on investigative holds. While the FARR Guidelines remain in place, the number of people released pursuant to the FARR Guidelines has dropped from 30% of all releases in 1990, to 5% in 2000. A review of the FARR Guidelines is appropriate. A large percentage of property offenders are never charged, so early release should perhaps be considered. According to the AJOMP – Felony Report, a review of felony investigation bookings revealed that only 4% of property crimes were charged within three judicial days and 41% were not charged within three years following the booking. In addition, in 1991, the guidelines were changed to deny release of “drug traffickers.” This definition is broad and no review of the effect of this language has ever been completed.

Reinstating the FARR Guidelines was recommended as part of the AJOMP report. While concern was raised by the Prosecuting Attorney’s Office and police regarding inclusion of property offenders, the possibility of applying FARR Guidelines to certain drug related cases should remain an option for discussion. If the FARR Guidelines are reinstated, administrative support in DAJD may be appropriate to assist with compliance monitoring.

8. **Work crew should be expanded to include sentenced felony cases.** According to the DAJD variance report, use of work crew already significantly exceeds goal. Perhaps further capacity in this program should be developed.

Costs/Benefits

The Budget proviso provided up to 8 FTE and \$500,000 to form an Intake Services pilot program, based on 6 months of operation. While still preliminary, the estimated costs of establishing this unit include the following:

Costs

1. Additional Information at Arraignment 5 FTE Case Workers Range 52	\$335,000
2. Quicker In-Jail Competency Evaluations Contract Estimate	\$60,000
3. Alternatives to Incarceration Liaison and Scheduling 2 FTE Scheduling Clerks Range 47	\$106,244
4. Assessments Prior to EHD Placements 2 FTE Case Workers	\$119,602
5. Treatment for Pretrial Defendants 1 FTE Case Manager (Range 58) Treatment Funding	\$74,374. \$ (Separate source)
6. FAN	Encourage ongoing funding from Inmate Welfare Fund
7. Expansion of Work Crew	To be determined
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	Total: 10 FTE's \$695,220 Annualized