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# **STRENGTHENING CRIMINAL JUSTICE SYSTEM PRACTICES IN CHEMUNG COUNTY, NY**

Prepared for:  
**Chemung County Executive and Legislature**

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## SUMMARY

CGR (Center for Governmental Research Inc.) was hired by Chemung County to assess the County's criminal and juvenile justice system practices, including its alternatives to incarceration (ATI) programs, and to determine their impact on the County's jail and detention populations.

In early 2005, Chemung County jail bookings had reached 10-year highs, and jail overtime costs were escalating. County officials were concerned that the criminal justice system was too fragmented, and in need of better methods for measuring overall performance and outcomes. This report addresses ways to improve the system and to reduce the jail population.

County officials also asked CGR to assess programs initiated in recent years to divert as many young people as possible from extensive involvement in the juvenile justice system. A separate report (*An Assessment of the Chemung County, NY, Juvenile Justice System*) was also completed in May 2006 to address those issues.

During our investigation, CGR held interviews and group discussions with more than 75 key policymakers and criminal and juvenile justice officials and staff. We also analyzed a wide range of quantitative data from the State, County, courts, jail, Probation, and other areas. We were impressed with the willingness of County staff to share insights and information and found that one of the particular strengths of the County is an interest in exploring new approaches.

## Major Conclusions and Recommendations

The study resulted in the following major conclusions and recommendations:

- ❖ Significant, cost-effective reductions in the jail population are achievable. Using seven key strategies, CGR conservatively estimates the County can reduce the daily jail population by an average of at least 60 inmates each day. This reduction equates to 21,900 fewer inmate days annually. A reduction in inmates of this magnitude represents, over the course of a year, a 29% reduction in the average daily jail census from 2005 levels (from 205 to 145).

The table below lists the seven strategies and the estimated reductions associated with each one:

**Proposed Inmate-Reduction Strategies & Estimated Jail Bed Days Saved**

Strategy/Opportunity	Average Beds Saved per Day
1) Revise existing procedures to effect earlier releases of people in jail on low bails, low risks	6-12*
2) Expedite earlier releases for defendants released after 45 days for lack of timely prosecution	4-8*
3) Expedite PSI processing for defendants in jail, and schedule sentencing closer to PSI completion	16
4) Changes in Project for Bail practices	3-5*
5) Expanded dedicated focus on Intensive Supervision Program caseloads	9
6) Creation of Electronic Home Monitoring capability within criminal justice system	20
7) Streamline Drug Court screening and admission process	2
<b>Total impact</b>	<b>60-72 beds</b>

\* Strategies 1, 2 and 4 may involve some overlaps with reductions achieved through other strategies; thus ranges are given that reflect potential for duplication.

CGR notes the reductions outlined in the table do not take into account the potential for additional jail bed savings through even more comprehensive implementation of electronic home monitoring, which we recommend occur over time. The table also does not include the potential for jail bed savings that may result from the County's current effort to revamp its Work Order program. We estimate an additional 1-2 jail beds a day, on average,

*Proposed inmate-reduction strategies should reduce the average population in the jail by at least 60 inmates each day, or 21,900 inmate days per year—a 29% reduction from 2005 levels.*

***Implementing the seven strategies could lead to benefits to local taxpayers of more than \$1.1 million a year in added revenues and/or reduced jail expenditures as a result of reducing the average daily jail census by about 60 beds a night.***

can ultimately be saved as a result of the proposed restructuring of that program.

- ❖ Implementing the seven strategies outlined in the table could lead to benefits to local taxpayers of more than \$1.1 million a year in added revenues and/or reduced jail expenditures. The actual estimated savings depends upon which of the following three options the County decides to pursue:
  - 1) Close two or more jail units, for an estimated savings of \$500,000.
  - 2) Use two-thirds of the jail beds saved to house inmates from other counties and/or the federal government, at \$80 per inmate per night. An average of 40 additional boarded-in inmates per night throughout the year would generate an estimated \$1,168,000 annually, once the seven strategies were fully implemented.
  - 3) Implement a combination of Options #1 and #2 by closing one unit and boarding in 30 additional inmates. Closing the unit would result in a savings of \$250,000, and new board-ins would add estimated revenues of \$876,000. The net result would be a combined taxpayer benefit of \$1,126,000 per year.

In addition to the savings outlined, the seven strategies are likely to lead to additional taxpayer benefits resulting from the County not having to hire all of the new corrections staff the State has mandated. The NYS Commission of Correction has ordered the County to create eight new positions to meet State jail standards, based on the jail's existing configuration and population. Three of these positions have already been filled, but it is likely that the requirement for the remaining five would be negated (or at least reduced) depending upon decisions/timeframes regarding the seven suggested strategies. Possible additional savings may accrue from reduced overtime as a result of the reduced jail population.

***The County can also save nearly a quarter million dollars by changing the way it assigns defense attorneys in Family Court. Hiring two new defense attorneys, one each in the Public Defender and Public Advocate offices (and a part-time support person for each office), would cost about \$160,600, compared with an estimated \$400,000 in Assigned Counsel Family Court costs that could be eliminated.***

- ❖ The County can save nearly a quarter million dollars annually by hiring two additional defense attorneys, one each in the Public Defender (PD) and Public Advocate (PA) offices (and a part-time secretary for each office) to represent cases in Family Court that are now represented by Assigned Counsel. The total cost for additional staff would be about \$160,600, compared with the estimated \$400,000 Assigned Counsel Family Court costs that could be eliminated as a result of the proposed PD/PA attorneys.

## Other Major Recommendations

In addition to these core conclusions and recommendations, other major recommendations include:

- ❖ The County should hire a full-time Criminal Justice System Coordinator to oversee the process of reviewing our report findings and recommendations, establish a process to determine the County's highest priorities, develop a strategic action plan, and monitor implementation of the plan. This person should be in or directly report to the County Executive's office. (Note: CGR recommends in its companion report on the juvenile system that the same person also oversee changes/improvements in that system.)
- ❖ The Criminal Justice Council should be reactivated and strengthened, and guide the process for implementing system changes.
- ❖ The District Attorney (DA) should hold discussions with the Public Defender, Public Advocate, County and City Court judges, and representatives of the justice courts to define ways to more effectively expedite cases between lower courts and County Court. The potential for expanding use of Superior Court Informations (SCIs) as an alternative in some cases to Grand Jury Indictments should be part of these discussions.
- ❖ The DA should routinely and promptly screen arrest cases in order to: a) expedite case processing, b) establish priorities for prosecution, c) establish guidelines for sentencing (including, where appropriate, expanded use of alternatives to incarceration), and d) reduce the numbers of cases that fail to meet prosecution deadlines.
- ❖ The DA should improve communications and training with law enforcement officials about what is needed in arrest documents and evidence in order to ensure that cases meet standards necessary for effective prosecution.
- ❖ DA, PD, and PA internal management systems are inadequate and should be upgraded. Each office should establish improved internal case-tracking and performance evaluation systems. The DA should also hire an office manager to improve office efficiency and more effectively manage the flow of cases in the office. Consideration should be given to adding at least a part-time assistant DA to help with the high volume of cases in City Court.

***Reducing jail bed costs requires that PSIs for defendants in custody be expedited, and that courts reduce the time between completion of a PSI report and the sentencing date. CGR suggests 20 days to complete these PSIs and 14 days from PSI completion to sentencing.***

- ❖ Probation should guarantee completion of pre-sentence investigations (PSIs) within 20 days for defendants in custody. The work should be done by a Probation Officer on a .5 FTE basis.
- ❖ Courts should reduce from 24 days to 14 days the time it takes to sentence the average case following completion of a PSI report.
- ❖ Judges should request PSIs only when absolutely required, and when they have legitimate needs to obtain more information before pronouncing sentences. Wherever possible, “short form” or “conditions of Probation” PSI reports should be utilized. PSI reports should explicitly encourage use of ATI sentencing options wherever possible, especially as recommended expansions and modifications of programs are fully implemented.
- ❖ There is a wide variation between courts and between judges within the same courts in various practices, case processing times, setting bail, and use of alternatives to incarceration. Courts and judges/justices should examine their practices and consider changes that can be made to strengthen the processing of cases throughout the justice system.
- ❖ Project for Bail (P4B), which functions as the County’s pre-trial release program, should remain an independent agency, but it should operate as a formal contract agency with the County, with agreed-upon performance standards against which the agency will be judged on an annual basis. It should be housed in a County facility, and receive additional funding to ensure adequate staff salaries and support systems.
- ❖ P4B should institute a series of changes designed to strengthen the program: a) expansion of the defendant pool considered for release, with fewer automatic exclusions; b) more explicit, less cautious recommendations regarding release; c) greater visibility overall and more visibility in key justice courts; d) a restructuring of staff hours to increase program impact; e) significant improvements in internal management systems (i.e., upgrading computer systems and making them compatible with both the County system and the jail’s management information system); and f) periodic review and/or reassessment of defendants who remain in custody.
- ❖ Work Order (WO), an ATI and/or sentencing option that has been a stand-alone program in the County, should become a

Probation program. WO needs to supervise participants better, add more work sites, and take steps to restore the program's credibility. A Probation Officer on a .5 FTE basis should direct WO, splitting time with expediting PSIs for defendants in custody (see above).

- ❖ Probation recently instituted a model for its Intensive Supervision Program (ISP) for supervising high-risk offenders that involves two dedicated officers with ISP-only caseloads. This model should be maintained, and should lead to reductions in the sentenced jail inmate population.
- ❖ Since the County currently utilizes electronic home monitoring (EHM) with just its juvenile population—and only 51% of the available capacity was used between 2000 and 2005—the unused capacity should be shifted to the adult criminal population. A pilot project should be undertaken, and if successful, EHM should be expanded. This is likely, when fully implemented, to necessitate one additional FTE in Probation.
  - ◆ Staff now providing coordination for Drug Court participants do not have adequate time to expedite initial screening for eligibility or for adequate supervision of all participants. Ideally, Probation should have one full-time officer dedicated to direct case supervision, and the County should urge the State to add one more staff person to the Coordinator function to help facilitate the introduction of the City Drug Court program. More Probation resources may be needed if the new City Drug Court grows significantly.
- ❖ To reduce unnecessary days spent in jail by individuals ultimately admitted to Drug Court, the County must expedite access to treatment. This will likely require putting in place new processes to ensure continuation of Medicaid coverage for those in custody so inmates can be admitted into treatment immediately upon admission to Drug Court.
- ❖ Enhanced staffing recommended for ATI programs should be covered through the addition of one new Probation position and reallocation of responsibilities among existing Probation staff, as a result of internal strategic planning and rethinking the Department has been doing concerning caseloads and reallocation of staff resources.

***Creating an electronic home monitoring process for adults in the criminal system will lead, CGR believes, to the most significant reductions in jail beds of any of the 7 strategies. A pilot program should be instituted utilizing unused capacity now dedicated to juveniles.***

## Context for Some Key Recommendations

- ❖ The County and its individual criminal justice agencies and programs should set up much more intentional systems and processes to monitor performance and outcomes, in order to determine the impact of new policies and practices.

CGR found that the first and easiest step the County can take is to address procedures that are causing people to be detained longer than necessary prior to their release from jail. We found, for example:

- ❖ In a typical week, at least four defendants are remanded to the jail on misdemeanor or violation charges, have no holds, and bail set at \$500 or less – and yet remain in jail an average of 12 days each (totaling 2,500 jail days annually) before ultimately being released.
- ❖ There are instances where bail was not set, there were no holds and no subsequent incarceration sentences, and the defendants were ultimately released by court order, yet only after spending months in jail. The cases we identified averaged 80 days in jail.

Other factors have also impacted the jail in recent years:

*If misdemeanors were remanded to the County jail at the same rate as in neighboring Steuben, the jail would house 53 fewer inmates a night. Making greater use of appearance tickets in Elmira would further reduce jail admissions, since one fifth of all remands from City Court are for minor violation charges.*

- ❖ There are disproportionately large numbers of defendants remanded to the jail on misdemeanor and violation charges. If, for example, misdemeanors were remanded to the County jail at the same rate as in neighboring Steuben, the Chemung jail would need to house 53 fewer inmates each night. Analysis shows one fifth of remands to the jail from the City are for minor violation charges.
- ❖ The County is mandated to house state parole violators (at low daily reimbursement of \$35), and their numbers are so high (in 2005, the average was 22 a day) that they are a significant, undesired, costly contributor to the County's jail population.
- ❖ Significant income has been earned as a result of dramatically stepping up the amount of "boarding in" of inmates Chemung does for other counties, with boarded-in inmates filling empty cells in staffed units. Board-in revenues grew from less than \$4,000 in 2001 to more than \$400,000 last year.

## *Arrests, Jail Admissions & Daily Census Trends*

***Both County jail admissions and the average daily jail population have grown in recent years at rates that outpaced arrest rates.***

***CGR conservatively estimates that about 125 defendants a year are released from jail after 45 days due to lack of timely prosecution. If the jail time for these individuals could be cut in half, almost 8 fewer persons would need to be housed in jail every night.***

With the exception of 2004, when arrests were up, total felony and misdemeanor arrests in the County have remained relatively stable since 2001. Both jail admissions and the average daily jail population, however, have grown in recent years at rates that outpaced arrest rates. Although most defendants remanded to the jail are released within days, we found the average inmate spends about 25 days per admission in jail including subsequent sentences. Of particular note:

- ❖ Cases often sit in jail or remain on court calendars for long periods of time because the DA's office fails to prosecute in a timely fashion.
  - ◆ CGR conservatively estimates that about 125 defendants a year are released from jail after 45 days due to lack of timely prosecution. If the jail time for these individuals could be cut in half, almost eight fewer persons would need to be housed in jail every night.
  - ◆ Defense attorneys are often willing to wait, counseling their clients to "sit tight" and spend unsentenced time in jail because it may result in a better outcome, i.e., a better plea agreement and sentence than they would obtain otherwise, or even a dismissal of the case. Thus, the DA and defense attorney, along with the defendant and in many cases the judge, are making decisions that, in essence, "sentence" defendants to "unsentenced" jail time, deemed to meet the needs and best interests of all parties—except, of course, those of the jail and local taxpayers.
- ❖ Pre-sentence investigations, based on available resources in Probation, typically take seven weeks to complete. On average, it takes another 24 days from the time a PSI is completed until a person is sentenced in court. Shortening by 24 days the time an inmate spends in the jail pre-sentence, awaiting PSI completion, and reducing the time between PSI completions and sentencing dates to no more than two weeks, could reduce the jail population by almost 16 inmates every night. Recommending ATIs as part of PSIs more often could further reduce the jail population.
- ❖ Individuals released prior to the disposition of their cases are not generally detained for lengthy periods, but the significant volume of defendants who are detained for even a few days—combined with those who are released but only after one or two months as

## *Unsentenced Inmates*

***Unsentenced inmates fueled growth in the average jail population between 2001 and 2005: up by 51%, while the overall daily jail population grew 31%.***

unsentenced inmates—adds up to significant numbers of beds occupied daily, even before factoring in sentenced inmates.

On any given day, two-thirds of the County jail population is typically made up of unsentenced inmates. Indeed, this group of inmates fueled growth in the average jail population between 2001 and 2005. They grew by 51% during this period, while the overall daily jail population grew by 31%.

Of unsentenced inmates in the past three years, 55% were admitted on misdemeanor charges, 28% on pending felony charges, and 18% on a variety of less serious charges such as violations or vehicle and traffic offenses.

Chemung County has significantly higher rates of incarcerating people on misdemeanor and violation charges than neighboring Steuben County. Defendants arrested on misdemeanor charges are more than 2.5 times more likely to be jailed predisposition in Chemung than in Steuben. In Chemung, there are six times more unsentenced defendants in jail on traffic infractions and violation charges than in Steuben.

## *Sentenced Inmates*

***More Chemung residents are sentenced to jail on traffic and violation charges than on felony charges.***

Sentences are disproportionately meted out to defendants convicted of lesser offenses. Although the vast majority of sentenced inmates are serving time for misdemeanors, only 12% are in jail for felonies, while 22% are sentenced to jail on minor traffic infractions and violation charges. As with unsentenced cases, six times more Chemung residents are sentenced to jail for minor charges than in neighboring Steuben.

Almost a third of all jail *sentences* were ordered in justice courts, while about one-fourth of all unsentenced jail admissions originated in those courts.

## **Impact of 3 Key System Components**

### *District Attorney's Office*

Various component parts of the County's criminal justice system play pivotal roles when it comes to impacting the jail population. We highlight three: District Attorney, Defense Counsel and Courts.

Most cases prosecuted by the DA involve Grand Jury Indictments, and only a small fraction are prosecuted using SCIs. The latter involve a collaborative process that is designed to move felony arrest cases more rapidly through the criminal justice system, but Chemung opts for SCIs at a rate that puts it among the lowest of any county in the state. A case handled via SCI in the County takes

one month, while prosecutions involving Grand Jury Indictments take four or more months. Other key findings:

- ❖ The ratio of dispositions to felony arrests suggests that a growing number of felony arrests are simply not being prosecuted. (Dispositions reflect all cases that were prosecuted, including successful convictions, and cases that were dismissed or resulted in acquittals.) The data suggest both law enforcement agencies and the DA's office may need to strengthen procedures to ensure more "good arrests" that hold up under prosecution.
- ❖ The proportion of dispositions resulting in convictions declined from about 82% in 2000 to 77% in 2003 and 2004.
- ❖ At the County Court level, the proportion of convictions reached via pleas declined from 95% in 2000 to 79% in 2004. During the same period, more County Court cases went to trial, increasing from 17 in 2000 to 49 in 2004.
- ❖ Cases dismissed at both lower and County Court levels have increased. As recently as 1999, about 10% of all felony arrest dispositions were dismissals. In three of the four most recent years, between 18% and 20% were dismissals.
- ❖ Opportunities appear to exist for more extensive use of alternatives to incarceration, especially for misdemeanor and violation charges, to help reduce the jail population.
- ❖ CGR found numerous other issues stem from the following:
  - Inadequate initial screening of cases, and inefficient allocation of resources to address prosecutorial needs in a timely way;
  - Poor communications within the DA's office and between DA staff, defense attorneys and police officers;
  - Young assistant DAs learning through on-the-job training with little backup support or guidance;
  - Lack of an effective electronic method for processing and tracking the progress of misdemeanor and violation cases, resulting in heavy reliance on cumbersome paper records and cases getting "lost" in the system.

*The proportion of dispositions resulting in convictions declined from about 82% in 2000 to 77% in 2003 and 2004.*

*Defense Counsel – PD & PA Offices*

The PD and PA offices are responsible for cases that qualify for indigent defense coverage. The two provide virtually identical

services but not for the same individuals. For example, when there is one case with two defendants, the PD's office can represent only one, and the PA typically can represent the other.

Although the information that was available was inconsistent, it appears that the PD office defended about 75% of all felony arrests in the County over the past four years, and represented about 60% of all misdemeanors in recent years.

Available data indicate that overall defense costs—impacted since 2004 by both NYS-mandated increases in reimbursement rates for Assigned Counsel (AC) and the opening of the new PA office—have not yet been reduced as a result of having the PA office. Although there are hopeful signs the PA office is beginning to reduce AC criminal costs, the AC Family Court costs continue to escalate. There are no uniform standards for determining eligibility for ACs, and judges often make the determinations based on cursory information. Family Court cases are the major driver of Assigned Counsel costs. While overall AC costs increased by 83% between 2003 and 2004, Family Court AC costs grew by 147%. The latter now cost taxpayers more than \$430,000 a year.

***Family Court cases are the major driver of Assigned Counsel costs. More than \$430,000 have been spent on Family Court AC costs in each of the past two years.***

## Courts

Felony cases represent a relatively small proportion of all cases in the County but the attorney and court staff resources these cases require, their impact on the jail, and their impact on lower courts before they are prosecuted at County Court, are all out of proportion to their numbers. Based on an analysis of all cases filed in the final quarter of 2004:

- ❖ The average amount of time between lower court arraignment (where three-quarters of felonies start) and ultimate disposition of a case was more than nine months, and about a quarter of all cases took more than a year. Processing time for defendants in custody was shorter, but averaged seven months.
- ❖ For the average case, three months were spent in lower court prior to filing in County Court – with 25% of cases staying at the lower court five months or longer. A contributing problem is that multiple courts are covered by assistants in the DA office (as is true for PD/PA offices), which can lead to attorneys not being present at court appearances, in turn leading to adjournments and further delays at lower court levels.

***Delays prevent speedy disposition of felony cases, and they are attributable to a variety of systemic issues across all components of the criminal justice system.***

- ❖ The time a case remained in a lower court was significantly less if the defendant was in custody, since there is a legal requirement for prosecution to begin within 45 days in such cases. However, many defendants remained in custody right up to, or in some cases beyond, this deadline.
- ❖ Once cases do reach (or if they begin in) County Court, it takes, on average, almost six months from filing to sentencing. CGR found: a) significant time differences—an average of 50 calendar days—between judges, b) much of the time is spent awaiting PSIs.

#### City Court Cases

***About 35% of unsentenced inmates from City Court have either no bail set or bail amounts of \$5,000 to \$10,000 or more.***

By far the highest volume of criminal cases originates in Elmira City Court. At least 55% of all felony arrests and 70% of all misdemeanor arrests in the County originate in this court. Overall, about 11% of City Court cases (including lesser charges such as violations) remain in custody prior to disposition, and others are released only after being detained for several days on relatively high bail amounts. Judges in City Court usually set relatively low bail amounts, but also frequently set bail at the high end. About 35% of unsentenced inmates from City Court have either no bail set or bail amounts of \$5,000 to \$10,000 or more.

Jail sentences outnumber probation sentences in City Court by 3.6 to 1, suggesting relatively few viable sentencing ATI options available to City Court judges in the past. This should begin to change if the report's recommendations are fully implemented.

In recent years, City Court judges have been processing and disposing of cases more rapidly than in the past, particularly for defendants in custody.

#### Justice Courts

There is wide variation in justice court practices, but in the aggregate, felony cases initiated in the town/village courts typically take longer than City Court cases to reach County Court for prosecutions; justice courts are also least likely to make use of Project for Bail in making release/custody decisions; and they tend to take more time from PSI completion to sentencing than other courts.

## **Specific Impact of ATI Programs and Drug Court on the Jail**

ATI programs and the Drug Courts already impact the jail population but some have even greater potential to reduce the average daily jail census in the future. Some key findings, by program:

### **Project for Bail**

P4B is generally well respected and has an enviable failure-to-appear in court rate (less than 5%). If P4B did not exist, we estimate that as many as 56, but more realistically 14 to 28 additional beds, would be needed in the jail every night.

Some judges and justices, however, indicated a willingness to use the program more often if they had more information about P4B release recommendations, which currently are simple assessments of eligibility, often not delivered in person or in writing. Of defendants assessed by the program as “eligible,” only about 55% were actually released to P4B by the courts. For justice courts, that percentage was less than 40%.

In 2005 P4B interviewed 55% of all defendants, which was down from 70% in 2004. We believe the program may be missing opportunities to interview more potential candidates, as well as opportunities to safely release some defendants as a result of ignoring relatively frequently the “point scores” from its own assessments—in favor of a more “gut-level” approach to eligibility determinations. With recommended changes, CGR believes the program could help make possible a further reduction of at least five fewer inmates per night within the next year.

### **Work Order**

In recent years Work Order has had minimal impact on reducing the jail population. It has been used about 90% of the time as a sentencing option (i.e., penalty), rather than in lieu of incarceration. Over a recent five-year period only 55% of assigned hours were actually completed. For the same period of time there was considerable erosion in use of the program by County and City Court judges. With recommended changes in the program, it has the potential to help reduce the sentenced jail population by perhaps one or two inmates per night.

## **ISP**

In 2005, 15 of 26 individuals in this program were identified by Probation officials as having been diverted from the County jail. If just under half of them complete the program successfully, the program will have reduced the jail census an average of more than four inmates per day. There is now expanded dedicated focus on ISP caseloads, and it seems reasonable to assume that by 2007, there will be at least nine fewer sentenced inmates in the jail each night as a result, with no added costs to the County.

## **Drug Courts**

An average of 107 days elapsed from the date that incarcerated defendants were initially referred to the Drug Court for consideration, to final admission to treatment. Most of the defendants involved spent that entire time in jail, and were only released when they were formally admitted to treatment.

If proposed changes in the Drug Court screening and admissions process are implemented, it should be possible to save at least 900 jail days per year (2.4 beds per day).

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**Staff Team**

Donald E. Pryor, CGR's Director of Human Services Analysis, directed this project and wrote the report. Vicki Brown co-directed the project, collaborated on much of the field research and analysis, and drafted portions of the report. Kate McCloskey, Sarah Boyce and Jen Syverud made major contributions to the data analyses that were critical to our conclusions.

## 1. BACKGROUND AND CONTEXT

CGR (Center for Governmental Research Inc.) was hired by Chemung County to assess the County's criminal and juvenile justice system practices, including its alternatives to incarceration (ATI) programs, and to determine their impact on the County's jail and detention populations.

### The Context

As this study began in 2005, Chemung County jail bookings had reached 10-year highs within the previous two years, and overtime costs of operating the jail had been escalating. At the same time, the County Executive and the Legislature, as well as some of the leading officials of the County's criminal justice system, were expressing frustrations with the status quo, suggesting that the system and many of its component parts were fragmented and not functioning as effectively as they should be in the public's overall best interests. Officials suggested that the various components of the system should be able to work and communicate more effectively and efficiently, and more cost effectively, with better measurable outcomes, than had been the case in recent years.

Although the project's primary emphasis was on finding ways to strengthen and streamline components of the criminal justice system, the County was also interested in addressing issues related to the detention and out-of-home placements of young people involved in the County's juvenile justice system—with a particular focus on assessing the impact of various initiatives designed in recent years to divert as many youth as possible from extensive involvement in that system. For a discussion of those issues, see the separate report entitled *An Assessment of the Chemung County, NY Juvenile Justice System*.

### Focus of the Study

At the request of the County, the following key issues were addressed during the criminal justice study discussed in this report:

- ❖ A broad overview of criminal justice programs, providers and practices currently in place, and of interactions between the various components of the systems;
- ❖ Analysis of recent trends in numbers and characteristics of the Chemung County jail population, including changes in the

numbers and types of jail bookings, and related costs of jail overtime and jail-related revenues;

- ❖ Examination of sentenced and pre-sentenced populations in the jail, and of the processing of cases within the various Justice, City and County Court levels;
- ❖ Review and analysis of current Alternatives to Incarceration (ATI) programs operated or funded by the County;
- ❖ Determination of the impact of existing programs and practices throughout the criminal justice system on the County's jail population to date, and likely in the future;
- ❖ Assessment of the impact of existing programs and practices on (1) time spent by defendants in the justice system, (2) system staffing and other resources, (3) efficiencies within the system, and (4) costs to the system and taxpayers within the County;
- ❖ Examination of opportunities for enhancement of existing alternatives programs, and identification of opportunities for new or modified programs and practices for County consideration;
- ❖ Recommendations to build on strengths of the existing system while creating new opportunities to develop more integrated approaches to the provision of criminal justice services that are consistent with the public's needs for public safety and protection provided in the most efficient, cost-effective manner possible.

Among the key questions addressed by the study were the following: Are there opportunities to reduce the future costs to local taxpayers of the jail and other parts of the criminal justice system? At the same time can the County institute strategic changes to improve the functioning and working relationships of the various components of the overall system? CGR views the study as an opportunity for Chemung County to affirm and build on the significant strengths of its existing programs and practices, while identifying strategic, cost-effective improvements to prepare for the needs of the future.

## Methodology

CGR's assessment focused on obtaining a clear understanding of the range and impact of criminal justice system practices and programs currently in place within Chemung County. Our approach combined qualitative information, obtained in detailed interviews and group discussions, with quantitative analysis of

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empirical data, obtained from New York State and from the County jail, various other County agencies and programs, and the courts.

- ❖ Much of the information that shaped CGR's understanding of the programs and practices currently in place, and many of the ideas and insights that helped us reach our conclusions and recommendations, were derived from extensive interviews and group discussions with more than 75 key policymakers and criminal justice officials. Those interviewed included the County Executive and Deputy County Executive; the Chair of the County Legislature; the Chair of the Legislature's Corrections and Law Enforcement Committee; Supreme, County, Family and City Court judges; 12 magistrates/representatives from the town/village Justice Courts; the Sheriff (previous and current) and Jail Superintendent; Director of Probation; the District Attorney; the Public Defender and Public Advocate; Court administrators, clerks and other key court officials; Commissioner of Human Services; Director of Community Mental Health Services; Director of Budget and Research; and selected key staff from major agencies, County and City Drug Courts, and alternative programs (including Project for Bail, Work Order/Community Service and Adult Intensive Supervision).
- ❖ A wide range of quantitative data were analyzed from the NYS Division of Criminal Justice Services, NYS Commission of Correction, NYS Office of Court Administration, County and City Courts, the County jail, and the various agencies and programs included in the study. Where possible, comparisons were made between Chemung and other counties, and data were compared over several years in order to determine trends and their implications.
- ❖ The analyses of the quantitative/empirical data and of the information obtained in the interviews are summarized in this report. Based on those analyses, CGR developed a series of conclusions, implications and recommendations for the County's consideration. Those conclusions and recommendations are summarized in the report's concluding chapter.

## 2. CHANGING ARREST PATTERNS IN CHEMUNG COUNTY

In order to put the discussion of criminal justice practices, ATI programs, and jail inmate trends in perspective, it is first important to examine the recent patterns in criminal activity in Chemung County. Since arrests drive what happens in the rest of the criminal justice system, it is instructive to analyze arrest totals for recent years. Table 1 below indicates the number of reported adult arrests in the County from 1999 through 2005.

**Table 1: Felony and Misdemeanor Adult Arrests in Chemung County, 1999 - 2005**

Year	Total Arrests	Felonies	Misdemeanors
1999	2,643	553	2,090
2000	2,712	635	2,077
2001	2,485	543	1,942
2002	2,520	575	1,945
2003	2,483	573	1,910
2004	2,753	629	2,124
2005	2,499	632	1,867

Source: NYS Division of Criminal Justice Services, "Adult Arrests, Chemung County: 1994 – 2005."

### Relatively Stable Overall Arrest Rates

*Total Chemung arrests remained relatively constant 2001- 2005, except for an increase in 2004. Arrests in most surrounding counties declined during those years.*

In four of the five years since 2000, the number of arrests in Chemung County averaged about 2,500 annually, with little variation from year to year. The one exception was 2004, when arrests exceeded 2,750, before declining again in 2005 to just under 2,500. The relative stability in arrest patterns was consistent with the pattern of relatively little change statewide (outside New York City) from year to year during that period.

Closer to home, in the four New York counties bordering Chemung (Steuben, Schuyler, Tompkins, Tioga), total arrests during the seven-year period from 1999 – 2005 typically declined, except for an increase in 2005 in Steuben, following years of declining arrests in that county.

### More Felony, Fewer Misdemeanor Arrests

Although overall arrest totals have remained relatively stable in Chemung in recent years, there have been shifts in the level of charges. With the exception of 2004, when misdemeanor arrests in Chemung reached a seven-year high before falling back to a

seven-year low in 2005, arrests on misdemeanor charges have consistently declined in Chemung since 1999. This pattern of generally-declining misdemeanor arrests is consistent with misdemeanor arrest profiles in the non-NYC portion of the state, and in Chemung's four contiguous neighbors (except for a 2005 increase in Steuben).

However, felony arrests *increased* in the past two years in Chemung to more than 600 per year, after three years well below 600. In 2005, felonies accounted for 25.3% of all arrests in the County—a 12-year percentage high. This recent increase in felony arrests is consistent with statewide and regional patterns (except for a 2005 decline in Schuyler County). On the other hand, *violent* felony arrests in Chemung have remained stable at about 140 per year, with little year-to-year fluctuation since 2000.

***In 2004, both misdemeanor and felony arrests increased in Chemung. Felony arrests remained high in 2005, while misdemeanors declined to a seven-year low.***

Bottom line: Except for increases in the year 2004, overall arrest rates have remained relatively stable since 2001 in Chemung County, with a pattern of declining misdemeanor arrests, and increases in the past two years in felony arrests. For the most part, felony arrests in Chemung in the past two years have increased at more rapid rates, and recent misdemeanor declines have been at lower rates, than in contiguous counties. We will make reference to these reported arrest rates in subsequent chapters in the context of analyzing the numbers of defendants who wind up before judges with criminal charges and, of those, who wind up in jail.

### 3. RECENT INCREASES IN JAIL POPULATION

Following a reduction in the County's jail population in 2001, the number of annual admissions and the average daily inmate population have both grown since then, outpacing the rate of growth in the annual arrests throughout the County.

#### Growth in Inmates Exceeds Arrest Growth Rate

As indicated in Table 2 below, the number of jail admissions, and the average daily inmate population (census) both grew as the number of arrests and felony arrests increased between 1999 and 2000, and declined with declining arrests in 2001. However, in 2002 and 2003, as arrests remained relatively constant (and felony arrests increased by about 6%), the number of jail admissions grew by about 11% and the average daily population increased by almost 20%. Both jail population indicators continued to grow as total arrests and felony arrests increased in 2004, but when arrests declined again in 2005 (though *felony* arrests remained virtually unchanged), the average daily jail population continued to increase.

*County jail admissions and the average daily jail population have grown at rates that outpace arrest rates.*

In 2005, the jail was housing an average of 21 more inmates *each day* than it was just two years earlier, even though the total number of arrests in 2005 and 2003 were nearly identical. *Clearly, since 2001, the jail population has grown faster than the County's arrest rate.* Only the number of *felony* arrests appears to be directly correlated to increases and decreases in the numbers in jail, and even that does not explain the continuing growth in the daily jail population in 2005, when felony arrests remained constant.

**Table 2: Chemung County Arrests and Jail Inmate Population, 1999 – 2005**

Year	Total Arrests	Felony Arrests	Jail Admissions	Avg. Daily Jail Census
1999	2,643	553	2,638	191
2000	2,712	635	2,734	195
2001	2,485	543	2,511	157
2002	2,520	575	2,793	188
2003	2,483	573	2,771	184
2004	2,753	629	3,224	201
2005	2,499	632	3,029	205

Source: Chemung County Jail; NYS Division of Criminal Justice Services. Note: Includes parole violators and boarded-in inmates from other counties.

A further indication of the growth in the jail population in recent years is the fact that as recently as 2001, at no single time during the year did the population on any given day exceed 196. By 2004 and 2005, the *average* daily population throughout the year exceeded the single-day high of just three years earlier, and as many as 242 inmates, the jail's virtual capacity, were housed on a single day during both 2004 and 2005. Moreover, in five separate months during both 2004 and 2005, the jail population *every single day* met or exceeded the one-day high for all of 2001.

### *Jail Population Far Exceeds Neighboring County with Similar Arrest Patterns*

***Chemung incarcerates far more inmates per arrest than does Steuben County.***

Over the past five years, Chemung County has experienced somewhat higher arrest patterns than in neighboring Steuben, yet much higher rates of incarceration. Chemung has averaged about 300 more arrests per year (14% higher than Steuben), and has averaged 590 felony arrests per year, just 1.5% more than the average of 581 in Steuben (though an average of about 28% more violent felony arrests per year). However, during those same five years, Chemung has admitted more than *twice* as many people into its jail *each year* than has Steuben. In effect, *in each of the past five years, Chemung has incarcerated just over one inmate per each arrest, compared to Steuben County, which has incarcerated about one inmate for every two arrests.* The impact of the multiple decisions made throughout the criminal justice system which lead to such booking practices (as discussed in subsequent chapters) is clearly demonstrated each day in the jail: *Chemung's average jail population during those five years has averaged about 40 more inmates every day than in Steuben* (including Steuben inmates boarded out to other counties). The effect of different levels of charges on incarceration patterns is discussed in more detail later in this chapter.

### **Biggest Growth in Unsentenced Population**

As shown in Table 3, *the increases in the average daily population have been fueled primarily by substantial increases in recent years among the unsentenced inmate population.* While the sentenced inmate census has remained relatively stable since 2001 (averaging between 64 and 68 inmates daily each year, except for an increase to 76 in 2004, presumably explained by the increase in both misdemeanor and felony arrests that year), the unsentenced population has increased significantly during that time.

The total average daily population for which the County jail was responsible (including a handful of boarded-out prisoners) grew by

*Unsentenced inmates account for about 2/3 of the jail's daily population, and are largely responsible for the significant growth in the jail population in recent years.*

an average of 48 inmates between 2001 and 2005 (from 157 to 205, a 31% increase). Most of that increase was accounted for by the unsentenced population, which increased by 51% during that same period, from an average of 93 to 140 per day in 2005. Unsentenced inmates represented 59% of the average jail population in 2001; by 2005 that proportion had increased to 68%. In other words, *two-thirds of the jail population on any given day are typically awaiting disposition of their cases and have not been convicted or sentenced on the charge that was responsible for their admission into the jail.*

**Table 3: Chemung County Jail Average Daily Population, 2001 – 2005, by Selected Categories of Jail Inmates**

Inmates	2001	2002	2003	2004	2005	1 <sup>st</sup> half 2005	Last qtr. 2005
<b>Total</b>	157	188	184	201	205	212	198
<b>Unsentenced</b>	93	121	118	125	140	143	142
<b>Sentenced</b>	64	68	66	76	64	69	56
<b>State-Ready</b>	2	5	2	2	3	3	3
<b>Parole Violators</b>	12	20	18	16	22	22	22
<b>Boarded-In</b>	0	1	5	7	14	23	8
<b>Boarded-Out</b>	2	4	3	1.5	1	2	0

Source: NYS Commission of Correction Daily Population Count Reporting System.

NOTE: Only selected subsets of categories are included in the table. State-Ready, Parole Violators, and Boarded-In are all subsets included in Unsentenced and Sentenced totals. "Boarded-in" refers to inmates housed by Chemung County at the request of other counties, and is separate from housing provided for federal, state-ready and parole violator inmates. "Boarded-out" refers to inmates housed in other county jails at the request of Chemung County, often due to classification limitations in the local jail. Unsentenced + Sentenced may vary slightly from Total population figures due to rounding errors. The full year of 2005 is included, but segments of the year are also shown to indicate changes from the first half to the latter part of the year.

It is also clear from the data in Table 3 that the average daily jail population was considerably lower toward the end of 2005 than it had been earlier in the year. The unsentenced population did not change, but there were substantial reductions in the numbers of *sentenced* inmates late in the year. It is not known whether this reduction represents systematic, conscious changes in prosecutorial and/or sentencing decisions and practices, or whether these numbers reflect simply a temporary reduction in sentenced inmates. Data from previous years suggest, however, that the daily jail population does tend historically to be lower

toward the end of the year, prior to increasing again in the next year. Indeed, the average daily population has begun to increase again in the first two months of 2006.

Chemung's growing proportion of unsentenced inmates is also apparent in monthly comparisons with all non-NYC counties in the state. In most months in 2005 and early 2006, two-thirds or more of Chemung's inmates have been unsentenced, with proportions typically similar to or slightly *higher* than the statewide average. Moreover, Chemung's unsentenced inmate proportion each month typically exceeds that of the jails in the four counties which share borders with Chemung.

## Major Expansion in Boarding-in Inmates

*The jail has increasingly boarded in inmates from other counties, with 7 times more inmate days and revenues in 2005 than in 2002.*

As indicated in Table 3, Chemung County has also experienced a significant growth in recent years in the numbers of inmates it houses for other county jails. From less than one a day in 2001, the number has steadily grown to an average of 14 per day in 2005, with an average of 23 during the first half of the year and a single-night high of 46 inmates early in the year. Although the numbers had declined to about 8 per night by the latter part of the year, boarding-in prisoners represented a significant source of revenue for the jail in 2005. As indicated in Table 4 below, the numbers of inmates, boarding-in days, and revenues have all grown dramatically since 2001.

**Table 4: Growth in Boarding-In Inmates and Revenues, Chemung County Jail, 2001 - 2005**

Year	# of Inmates	# of Days	Revenues
2001	9	53	\$3,981
2002	10	728	\$54,632
2003	123	1,970	\$147,752
2004	214	3,301	\$247,574
2005	186	5,064	\$405,120

Source: Chemung County Jail

The extent to which the County uses its jail as a source of revenue is, to some extent, within its direct control. If it can free up enough cells not otherwise occupied with County inmates, it can then make a conscious decision to market the availability of jail beds to other jurisdictions. Either because of conscious decisions by Chemung officials to reduce the number of board-in inmates, or because of fewer requests, the numbers, as indicated in Table 3,

### *Growth in Parole Violator Inmates*

***An average of 22 parole violators were housed in the jail each night in 2005, up from 12 in 2001. The County has no control over the number and length of stay of these state-mandated inmates.***

were substantially lower later in the year than had been the case when demand was high early in 2005.

The County makes conscious choices to house inmates from other counties as a source of revenues, at an average of \$80 per night per inmate. However, with less choice, the County has also experienced growth in the numbers of parole violators it houses. As indicated in Table 3, the average daily number of parole violators housed by the jail has varied up and down from year to year, but the average has been consistently higher each year than in 2001. The jail housed 174 such violators in 2005—up from 101 in 2001 and a previous high of 147 in 2004. The County has little say in how parole violation cases are prosecuted, so has little control over how long the inmates awaiting disposition of the cases must stay in the jail. Although these inmates are violators of parole following release from *state* prisons, increasing numbers of such violators are housed in the local jail awaiting resolution of the violation in the courts (which typically takes several weeks if not months). They can be housed locally even if, as is often the case, there are no local charges accompanying the violation.

*These inmates do represent a stream of income for the County—an average of more than \$200,000 each of the past several years (including almost \$275,000 in 2005), but the daily rate paid by the state (\$35) is significantly less than what the County is able to charge other counties, and they are inmates over whom the local jail and criminal justice system have little direct control. Thus these prisoners, who are technically the responsibility of the NYS Division of Correctional Services, represent a mandated, significant, and undesired contributor to the growth in recent years of the County's jail population.*

### *Future Options*

If the County were able to find ways to reduce its resident sentenced and unsentenced inmate populations, and to reduce or at least limit the numbers of parole violators in the jail, it would have the option, should it choose and should a significant market exist, to house more prisoners from other counties and/or from federal prisons, at income of \$80 per night. Only an average of six federal prisoners have been housed for limited periods of time by Chemung County in each of the past three years, but the Sheriff's office has maintained connections with federal prison officials in the hopes that significant numbers of federal inmates might be

## Growth in Jail Overtime

housed at some point in the future in the Chemung jail. Recommendations concerning expanded boarding-in of federal and other county inmates are discussed later in the report.

Between 2002 and 2005, the jail experienced a dramatic increase in the amount of overtime paid to corrections officers in the jail. Table 5 indicates growth in the number of overtime hours and resulting costs in just three years.

**Table 5: Growth in Overtime in County Jail, 2002 - 2005**

Year	Overtime Hours	Overtime Costs
2002	24,441	\$435,136
2003	23,922	\$457,012
2004	34,053	\$693,586
2005	39,419	\$841,434

Source: Chemung County Budget Office

The number of jail-related overtime hours increased by almost 15,000 (61%) between 2002 and 2005, and the resulting overtime costs almost doubled. Overtime costs represented 8% of the entire jail expenditures in 2002; by 2005 OT accounted for 16% of the jail's actual costs. And the 2006 budget projects that the costs of jail overtime will continue to grow, to more than \$975,000.

*Jail overtime costs have almost doubled since 2002, and now represent 16% of total jail costs.*

Jail and budget officials indicate that no overtime is needed to cover any additional inmates housed in the jail from other counties. Although boarding-in revenues and overtime costs have been increasing simultaneously in recent years, officials indicate that the additional board-in prisoners have had no impact on driving up overtime costs. Rather, they make the point that the added inmates are absorbed into areas of the jail where no additional staffing is needed, and that the revenues they generate help to offset the added overtime costs that would exist with or without the additional inmates being housed from other counties.

Three new staff positions have recently been created in the jail, and five more have been recommended by the NYS Commission of Correction. No decisions have yet been made about how many of those positions will be created. Jail officials indicate that they believe filling the positions would help to reduce the need for so much overtime in the future. Although that is likely to be true, it also appears from reviewing the categories of overtime hours that

at least a quarter of the hours would not be affected by hiring additional staff. The major increases in OT hours are in the categories of Illness, Training and “New Post Open.” The other largest category of overtime cost is allocated to “Inmate 24-hour coverage.” Based on our study, which did not include an analysis of jail staffing patterns, CGR is not in a position to comment on the merits of the recommended additional staff positions, or to say how those might impact on reduced overtime pay in the future. But presumably OT costs related to a new post could be reduced or eliminated if a post or unit of the jail could be closed through reduction in the jail population. We do comment later in the report on allocation of resources within the jail and other programs that could be of value in helping to reduce the jail population, and in the process have an impact on overall jail staffing in the future.

## **Age, Gender and Race/Ethnicity of Jail Inmates**

Descriptive information about inmates was available from the County jail on an annual basis for all new inmates admitted during the course of 2003, 2004 and 2005.<sup>1</sup> Additional information was available, based on extensive analyses of four “snapshots” of the jail population, conducted by CGR with the assistance and cooperation of County jail officials. The snapshots focused on tracking characteristics and dispositions of all inmates admitted to the jail during three representative weeks in March and June 2004 and January 2005, plus a separate snapshot of all inmates currently in the jail (new admissions plus previously-admitted cases) as of a particular day in January 2005. Together these snapshots provided detailed information on 501 sentenced and unsentenced inmates.

The information presented in the remaining sections of this chapter is based on a combination of the 2003 – 2005 annual jail reports as well as the snapshot data. For 2003, 2004 and 2005 combined (with no significant differences from year to year), the following characteristics can be noted about all new admissions to the Chemung jail:

- ❖ The large majority of all inmates are white, although almost a third are classified by the jail as black, with less than 1% “other.” About

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<sup>1</sup> “Chemung County Jail Sheriff’s Annual Report for the Calendar Years 2003, 2004 and 2005.” Other data were obtained from additional reports provided by the jail.

3% of the inmates during the three years were identified as Hispanic.

- ❖ About 18% of the County's jail inmates each year are women. Females account for a slightly higher proportion of the unsentenced population—about 19%—compared with about 15% of all sentenced inmates. Between 2001 and 2003, about 475 women each year were admitted to the jail. In the last two years, almost 600 women were booked into the jail each year. In 2001, there was an average of 20 female inmates per day in the jail; by 2005 that average had increased to 30 for the entire year, and an average of about 36 in the first half of the year (and as many as 48 in one night). This increase has necessitated the addition of a new female unit within the jail, at added personnel and overtime costs.
- ❖ Using the jail's age groupings, the following breakdowns have consistently appeared over the past three years:
  - About 13% of the inmates were between the ages of 16 and 18 when admitted.
  - About 43% were between the ages of 19 and 29.
  - A little over 20% were between 30 and 39; each year from 2000 through 2004 there were 600 or more inmates in this age range, but the number dropped below 550 in 2005.
  - About 20% were between 40 and 54. This age group has grown the most in recent years: In 2000, there were 362 in this age range (14% of the total inmates), and by 2005 there were 557 (21% of the total).
  - About 2% were 55 and older.

*Number of female jail inmates has increased in recent years, from an average of 20/day in 2001 to 30 in 2005, necessitating opening a new unit in the jail.*

## Profile of Inmates Remanded to Jail (Unsentenced Inmates)

As noted above, *on any given day*, about two-thirds of the Chemung County jail's population is typically made up of unsentenced inmates (remanded to the jail prior to disposition of their cases, as distinct from those convicted and sentenced to the jail). *But over the course of a year, the proportion is even higher. Focusing strictly on the 8,044 new admissions of County residents to the jail during the last three years (2003 - 2005), 87% entered the jail unsentenced, with the other 13% (1,050) entering as a result of jail sentences (not having been incarcerated at the time their cases were disposed of and their sentences determined).*

## Referral Courts

Of the almost 7,000 new admissions remanded to the jail (unsentenced) over the past three years, 28% were admitted with pending felony charges, 54.5% were admitted on misdemeanor charges, and 17.5% had various lesser charges, such as violations or vehicle and traffic offenses.

*Given the volume of cases coming through the Elmira City Court, it is not surprising that the majority of cases remanded to the jail were initiated in that court.* Court data are not presented in the Sheriff's annual jail reports, so data on courts comes from the snapshot sample. Given that the variables in the snapshot data that could be compared directly with full-year data from the jail were very consistent, it seems reasonable to project that the sample data on other variables is representative of what we would have found if we had had access to data for all jail admissions. Thus it seems reasonable to conclude that the 59% of remanded cases in our sample with cases pending in City Court is probably a realistic estimate of the proportion of all unsentenced cases in the jail during a typical year.

Another 18% of the unsentenced cases were remanded from County Court, including some unknown proportion of those who were initially remanded to the jail on a felony charge by a lower court and continued by County Court when the case was subsequently arraigned at that level. The only other courts that remanded significant numbers of defendants to the jail during our snapshot periods were the following justice courts: Southport, 7%; village of Horseheads, 5%; and Big Flats, 4%.

***About 60% of all remands to the jail each year have cases pending in Elmira City Court. Almost a quarter have cases in the justice courts.***

The relatively small number of admissions from the justice courts is consistent with the comments from most of the justices/magistrates interviewed as part of the study who indicated that they remand relatively few defendants to the jail, except in “the most serious cases,” cases where a defendant may not have community ties, or where the justice prefers to incarcerate a defendant for a “short period of time to get his attention or to sober him up.” Nonetheless, *23% of all remands to the jail have cases pending in the justice courts*, even if the numbers from most individual courts have been relatively small. Thus, with an average of more than 2,300 remands involving County residents each year, 23% adds up to a significant number of admissions—about 550 per year (and *when additional admissions for jail sentences are added to the*

*remand numbers, justice courts account for about 670 inmates in the jail per year).*<sup>2</sup>

***One-fifth of all remands to the jail from City Court are for minor violation charges.***

Of those cases remanded to jail on violation and vehicle and traffic charges, about three-quarters were detained by Elmira City Court. Indeed, *21% of all cases remanded from City Court were for such relatively minor charges. This number may be larger than it would otherwise be if greater use were made in the city of appearance tickets in lieu of admission to jail.*

### ***Bail Amounts***

***Defendants were detained without bail in 27% of the remanded cases, but most bails are set at \$500 or less. Some courts frequently set relatively high bail or no bail.***

*In about 27% of the unsentenced cases in our sample, no bail was set. City Court, County Court and the Big Flats justice court were the most likely courts to detain defendants without bail. Although the data are not clear in each case why defendants were held without bail, reasons appear to include: the seriousness of charges and/or perceived risk of flight, holds from other charges and, in some of the lower court cases, because of legal restrictions placed on the ability of lower court judges to set bail on certain felony cases, and on cases in which the defendant had two or more prior felony convictions. Whatever the reasons, this relatively large proportion of defendants detained without even the possibility of making bail, in some cases with relatively minor charges, raises questions as to whether there may be ways of expediting a bail review in at least some of these types of cases in the future, in order to safely release at least some such defendants (see further discussion below of potential releases of cases without holds or detainers).*

In cases in which bail was set, the amounts were typically relatively low. The average bail in our sample across all courts was about \$1,900. Most bail amounts for remanded prisoners were set at less than \$2,500, and about 60% of the cases were set at \$500 or less. *However, even at these low levels, it is not unusual for defendants to remain in jail for many days prior to their release, as indicated below.*

The courts most likely to set more restrictive bail were the following: County Court, with its more serious charges, with an average bail amount of more than \$4,300; Southport justice court,

<sup>2</sup> The actual number and percentage of cases which originated in both City Court and justice courts are actually higher than the numbers reported here, depending on how many of the 18% of unsentenced cases remanded from County Court were first arraigned in, and remanded from, one of the lower courts.

with an average bail of almost \$5,000 and half of the cases in our sample having either no bail set or bail amounts of \$10,000; and City Court, with a large proportion of low bails, but also 35% of the defendants with either no bail set or bail amounts of \$5,000 or \$10,000.

### *Time in Jail Prior to Release*

***Although most defendants remanded to the jail are released within a few days, many are detained for longer. Including subsequent sentences, the average inmate spends about 25 days in jail per admission.***

The average defendant admitted to the County jail was incarcerated an average of 25 days before being discharged from the facility (29 days for felonies, 26.5 for misdemeanors, almost 12 for violations). Not surprisingly, the 27% of the inmates in our sample who were ultimately sentenced to jail or prison had the longest stays in the jail. Those who were sentenced to prison spent an average of almost four months in the County jail before being convicted and transferred to a prison facility. Those initially remanded to the jail and subsequently also given a jail sentence spent an average of 90 days in the jail (combined unsentenced + sentenced time), versus those who had not been incarcerated prior to the disposition of their case but were subsequently sentenced to jail: their sentenced time averaged 48 days per case.

Those defendants who were released on bail (about 28% of all admissions) spent an average of 9 days in jail prior to their release. A few were detained for lengthy periods of time prior to making bail, but 90% were released within a week of admission to the jail, including 73% within two days. Those released on court orders (about 37% of all admissions), including release to the supervision of the Project for Bail program, spent an average of 11 days before being released, but 75% were freed within a week, including 59% within two days.

Thus most of those who are released prior to disposition of their case are not detained for many days. However, the significant volume of defendants who are detained for even a few days—combined with those who are released but only after one or two months as an unsentenced inmate—adds up to significant numbers of beds occupied on a given day, even before factoring in the addition of sentenced prisoners.

There is relatively little variation across courts in average time spent in jail per inmate, with the exception of County Court, which is understandable given its processing of more serious cases. The average time for County Court cases in jail is about 43 days,

while the other courts typically average between 20 and 25 days per case.

### *Holds Preventing Release*

In many jurisdictions it is not unusual to have substantial proportions of jail inmates being detained because of holds or detainers on other pending criminal cases. Although certainly a factor in some cases, this does not appear to be a major issue in Chemung. Only about 13% of all inmates remanded (unsentenced) to the jail during our snapshot periods had active holds affecting their release. This relatively low proportion of cases contributes to the fact that most defendants are able to be released within a few days while awaiting disposition of their cases. *However, even without holds, and even with low bails and relatively less serious charges, significant numbers of defendants each week have been convicted of nothing, but remain in jail for lengthy periods of time.*

### *Low-Hanging Fruit: Early Reductions in Jail Population*

A very conservative review of cases in our snapshot samples indicates that in an average week, at least four defendants are remanded to the jail on misdemeanor or even violation charges, have no holds, and bail set at \$500 or less—and yet remain in jail an average of 12 days each before being ultimately released on bail or court order, without ever being sentenced to jail. *Multiplying that single week's average by 52 indicates a total of about 2,500 days in jail accounted for by such undramatic cases, but cases which combine to account for the equivalent of 6.8 beds occupied each night of the year in the aggregate.* Most of these cases originate in City Court, though over a few weeks a few also enter from various justice courts.

It is conceivable that there may have been extenuating circumstances that cannot be captured in a jail database, but on the surface, especially given that these individuals were all ultimately released and never sentenced to jail, these would appear to be defendants with little reason to be held in jail for an average of almost two weeks. Most probably should have been released within at most two or three days, but even assuming that their time in jail could be cut in half on a consistent basis in the future, this would free up an average of 3.4 beds each night.

*And this is being very conservative.* Expanding the bail amount only slightly to \$1,500 would bring in other defendants who were ultimately released, with no jail sentences, but only after several days of seemingly unnecessary detention. *Releasing such cases in half*

*the time, and including those earlier releases with bails of \$500 or less, would easily reduce the jail population by at least five inmates each night of the year.* Thus simply modifying existing procedures, at no added costs to the system, to revisit cases remaining in jail beyond a few days with no detainers and low bail could reduce the average daily population in the jail, without any disruption to the judicial system or any negative impact on community safety.

Similarly, our snapshot samples identified several cases where bail was not set, but there were no holds, no subsequent incarceration sentences, and the defendant was ultimately released by court order, yet only after spending two, three or four months in jail. The cases we identified averaged 80 days in jail prior to being released. In each of our weekly snapshot periods, we identified one or more such defendants who went on to eat up significant jail time before being released. If the jail time of just *one* such admission each week could be reduced by 50% through more timely processing of cases (as discussed in more detail in subsequent chapters), *one such case a week across the year could free up 5.7 beds per night in the jail.*

None of the discussion thus far includes the potential for processing more rapidly the relatively few cases that have holds on them. More timely consolidation of such cases could also lead to earlier safe release of defendants who are eventually released now, but only after weeks of sitting in jail.

***By revising existing system procedures at no added costs, the jail population can be reduced by at least a dozen inmates per night simply by releasing defendants earlier than they are currently released.***

Adding these different easily-attained possibilities together, it is realistic to assume that within the next six months, *revised procedures should be fully in place, at no added costs to the criminal justice system, to enable a reduction of at least a dozen inmates per night in the jail, simply by earlier release of defendants already being released, but much later now than necessary to ensure court appearances or public safety.* (Revisions in procedures are discussed in more detail in subsequent chapters.)

## **Few Inmates Are Sentenced to Incarceration**

Of the 6,994 residents who were remanded to the jail in the past three years as unsentenced inmates, jail reports and snapshot data indicated that 19% were subsequently sentenced to either the jail or state prison. Thus the reality is that *more than 80% of those who are admitted to the County jail as unsentenced inmates do not also subsequently get convicted and sentenced to incarceration on the same charge.*

***Almost 75% of all inmates are only in the County jail as an unsentenced defendant, and do not get sentenced to jail or prison on the charge that got them admitted to the jail.***

## **Disproportionate Incarceration of Lesser Offenses**

### *Unsentenced Jail Admissions*

***In Chemung, 72% of all unsentenced admissions are for misdemeanor and violation charges, compared to 47.5% in Steuben County. Chemung jails 6 times more unsentenced defendants on lesser charges per year than does Steuben.***

And of all the more than 8,000 County residents who have been admitted to the jail either as unsentenced or sentenced inmates in the past three years, just over one-fourth (27%) ever were sentenced to jail or prison on the charge that got them admitted initially to the jail (including those who entered when sentenced plus those who received a jail sentence following their unsentenced time).

Thus it is clear that *the overwhelming majority (almost 75%) of all Chemung County residents who ever enter the jail each year do not wind up serving either jail or prison time as a sentenced inmate.* That is, the only time about 75% of each year's inmates spend in the jail is as an unconvicted defendant (many are subsequently convicted, but not sentenced to jail or prison, as discussed in more detail in subsequent chapters of the report).

As noted earlier, Chemung County has a much higher rate of incarceration per arrest than does adjacent Steuben County. Many of these inmates are incarcerated for very short periods of time, but that notwithstanding, enough remain in jail long enough to result in an average of about 40 more inmates per day in Chemung than in Steuben. This differential appears to be largely due to *significantly higher rates in Chemung of incarcerating people on misdemeanor and violation charges.*

As indicated earlier, of the almost 7,000 unsentenced inmates who have been admitted to the Chemung jail over the past three years, 1,954 (28%) were admitted on felony charges. These not surprisingly represent virtually all of the felony arrests made in the County during that time. But well over half of all unsentenced defendants (more than 3,800 during the three years, or 54.5% of the total unsentenced admissions) were admitted on misdemeanor charges, with another 1,227 (17.5%) admitted on various other lesser charges, such as violations or vehicle and traffic offenses.

By contrast, in Steuben County, with similar numbers of felony arrests each year, 52.5% of all unsentenced admissions in 2003 and 2004 (2005 data were not available) were admitted on felony charges, compared to 40.5% on misdemeanors and only 7% on lesser charges. *An average of 67 unsentenced defendants a year were incarcerated in Steuben on traffic infractions and violation charges, compared with an average of 409 a year in Chemung.*

***Defendants arrested on misdemeanor charges are just over 2.5 times more likely to be jailed predisposition on the charge in Chemung than in Steuben County.***

A comparison of misdemeanor arrests to jail bookings on misdemeanor charges shows the differences even more dramatically: In Chemung, there were 5,901 arrests on misdemeanor charges in 2003 through 2005. During the same time, 3,813 defendants were admitted to the jail on misdemeanor charges, a ratio of 646 incarcerations for every 1,000 arrests. By contrast, in Steuben, in 2003 and 2004 (2005 not available), there were 3,092 misdemeanor arrests, but only 774 jail bookings on misdemeanors—a ratio of 250 incarcerations per 1,000 arrests. *Defendants arrested on misdemeanor charges in Chemung County are thus about 2.5 times more likely to be incarcerated predisposition of their cases (i.e., admitted as an unsentenced inmate) than are defendants arrested on similar charges in Steuben County.* (For context, it should be noted that Steuben has also been experiencing significant increases in their jail population in recent years, and should not be considered “soft on crime” as an explanation for these differential rates between counties.)

### ***Sentenced Jail Inmates***

Even among those receiving jail sentences in Chemung County, the *sentences are disproportionately meted out to defendants convicted of misdemeanor or violation offenses.*

***More Chemung residents are sentenced to jail on traffic and violation charges than on felony charges. 6 times more defendants per year are sentenced to jail on lesser charges in Chemung than in Steuben.***

Of those sentenced to jail terms during the past three years in Chemung, two-thirds were serving time on charges adjudicated as misdemeanors (including both cases that began as misdemeanor arrests, as well as those that began as felony arrest charges but were reduced during the judicial process to misdemeanors), with 12% serving felony jail sentences and 22% serving sentences on other types of minor traffic infractions and violation charges. *During the three years, there were 159 more jail sentences on such lesser infraction and violation charges in the County than on felony charges (370 to 211).<sup>3</sup>*

By contrast, in Steuben, an almost identical proportion (two-thirds) of the sentenced inmates served time on misdemeanor charges. However, 27% of the sentenced admissions were serving felony jail sentences, and only 7% were sentenced on charges involving traffic offenses and violations. *In Steuben, an average of 20*

<sup>3</sup> These data only apply to jail sentences. Other defendants in the criminal justice system were sentenced to state prison, as discussed below.

*inmates a year are sentenced to jail on traffic and violation charges, compared with about 123 per year in Chemung.*

Clearly very different decisions about incarceration are being made in Chemung County than in Steuben County. The decisions, and the criminal justice system practices and surrounding circumstances contributing to them, are not necessarily better in one county than the other. But clearly they are different, and have different consequences. Subsequent chapters of the report explore in more detail the factors that contribute to these different decisions and outcomes.

### *Sentencing Patterns*

In addition to jail sentences, some additional defendants booked into the Chemung County jail ultimately received prison sentences. As noted above, 27% of all inmates received some type of incarceration sentence. Based on our sample analyses, those included 23% sentenced to the jail and 4.4% to state prisons.

Given that most of the incarceration sentences involved misdemeanors and violations, it stands to reason that the vast majority of incarceration sentences were pronounced in lower courts. In particular, based on sample data, 57% of incarceration sentences involved City Court, 12% County Court, and 31% various justice courts. As with unsentenced remands, the justice courts most likely to sentence residents to jail are Southport (9% of the sentenced cases), Big Flats (9%), and Horseheads (8%).

***Almost a third of all jail sentences are ordered in justice courts.***

Other than the state prison sentences, which have typically been for 1 to 3 years, relatively few defendants have received jail sentences of significant length. With the maximum county jail sentence by law capped at one year, only 7% of all sentenced inmates in the Chemung jail during the past three years received full one-year sentences. About 87% were sentenced to less than 6 months, including about 69% with sentences of 3 months or less and 37% of one month or less.

As emphasized throughout this chapter, jail *sentences* have not been used extensively in Chemung County, and have not been responsible for the growth in the jail population in recent years. When used, sentences tend to be relatively short, designed to provide measured punishment and get the defendant's attention. However, the average jail sentence is nonetheless significant—

***Sentences to the County jail account for an estimated 45,000 jail days per year.***

almost four months (118 days)—even when reduced by one-third for “good time.” Even at almost 80 days of actual time served on these jail sentences, with an average of 570 jail sentences in each of the past three years, *the sentencing impact on the jail is significant—and indeed accounts for far more actual jail days (an average of more than 45,000 days per year) than does the unsentenced population (about 33,000), even though the latter represents many more individuals (but at fewer days per case).* Ways of reducing, or eliminating, some of these sentences thus becomes important in any effort to reduce the jail population, and strategies for doing so are discussed later in the report.

## Key Questions and Observations

Numerous factors impact on the jail population. Among the issues and questions they raise:

***The Chemung jail would need to house 53 fewer inmates each night if misdemeanors were remanded to jail at the same rate as in Steuben County.***

- ❖ The jail population has grown faster than the arrest rate in Chemung County. Why? What policies, practices, demographic and societal trends contribute to this trend? What can begin to reverse it?
- ❖ Why does the unsentenced jail population continue to grow, and why are disproportionately large numbers of defendants remanded to the jail on misdemeanor and violation charges, compared to neighboring Steuben County? *If the unsentenced incarceration rate for misdemeanor arrests in Chemung could be reduced to the comparable rate in Steuben, all other things being equal, the jail population could be reduced by about 53 inmates per night.*
- ❖ Can the criminal justice system implement relatively simple processing changes that could facilitate earlier releases of low-bail, minor-charge, no-hold defendants who currently spend substantial time in jail before being released without jail sentences? *An estimated dozen fewer jail beds per night would be needed if so.*
- ❖ Can any accommodations be made with the state to facilitate more rapid processing of parole violators through the system and out of the jail?
- ❖ What should be the County’s policies and practices related to housing prisoners from other counties and from federal penitentiaries? Would the County prefer to use any reductions in jail days resulting from this study to reduce the scale, staffing and costs of the current jail, or to expand revenue-producing boarding-in of prisoners, or some combination of both?

- ❖ Are there actions that can be taken to reverse the recent growth in female jail inmates, thereby potentially enabling a jail unit (post) to be closed at savings to taxpayers?
- ❖ Would expanded use of appearance tickets in the County, and especially within its largest jurisdiction and court system in Elmira, help to reduce the jail population? Would that make sense, would it be feasible, and if so, what would need to happen to make that a reality?
- ❖ Is it possible to change the patterns of incarceration currently in place in the County, and to reduce the jail population in the future, consistent with community safety and efficient court operations? The remaining chapters of the report focus on the various key components and practices within the criminal justice system that can potentially play a part in answering such questions.

## 4. THE IMPACT OF THE DISTRICT ATTORNEY

Once arrests have occurred, the District Attorney (DA) plays the pivotal role in determining which cases get prosecuted at what levels, and with what commitment of resources. Decisions made by the DA, the Chief Assistant DA and the Assistant DAs (ADAs) shape much of what happens at both lower court and County Court levels, and have significant influence on the length of time it takes to resolve a case, how it gets resolved, and if and for how long a defendant stays in jail as an unsentenced inmate—and beyond that, what sentence will be imposed if he/she is convicted.

Data related to the DA function are limited, both within the County and in terms of comparisons with the rest of the state, to prosecution of arrests that originate as felonies, regardless of their ultimate dispositions. Although the DA's office also prosecutes cases that originate as misdemeanor arrests (and even some violations), neither it nor the NYS Division of Criminal Justice Services (DCJS) tracks the dispositions and sentences of those non-felony arrest cases, as they do for felony arrests. Thus, although it would be preferable to have prosecution data on all types of arrests, the discussion of data that follows is necessarily focused only on felony arrest cases.

### Prosecution of Felony Arrests

As indicated in Table 6 on the next page, the DA's office has in recent years prosecuted at the County/Superior Court felony level about 320 felony arrests, on average, per year—roughly 55% of the felony arrests each year. The vast majority of these prosecutions involve Grand Jury Indictments, with fewer than 10% typically being filed through Superior Court Informations (SCIs). The proportion of felony arrest cases prosecuted as felonies at the County Court level has typically been about a dozen percentage points higher in Chemung than among all Upstate felony arrest cases, and has been roughly comparable most years to the proportions in Steuben County, whose number of felony arrests has been similar to Chemung's totals in recent years.<sup>4</sup> The remaining initial felony arrest cases were typically prosecuted and

<sup>4</sup> NYS Division of Criminal Justice Services, "Dispositions of Felony Arrests, Chemung County, Steuben County and Upstate New York" reports.

resolved (usually by pleas) as misdemeanors in lower level courts (Elmira City Court and the County's 15 town/village Justice Courts).

**Table 6: Chemung County District Attorney Felony Prosecutions, 2002 – 2005**

Year	Felony Arrests	Superior Court Filings (with SCI #'s)**	% ***
2002	575	323 (28)	56.2
2003	573	309 (32)	53.9
2004	629	331 (25)	52.6
2005*	632	269 (18)*	NA*

Source: NYS Division of Criminal Justice Services Office of Justice Statistics and Performance, "New York State Felony Processing Reports, 2002 – 2005 (Preliminary Report, September 2005)".

\*2005 Felony Arrest data are complete for the year, but the Filings data only include information through September. Thus no percentage is provided in the final column for 2005, as it would understate the proportion for the year.

\*\* Total number includes number of Superior Court filings (felony level prosecutions at the County Court level), which include both Grand Jury Indictments and Superior Court Informations (SCIs). SCIs are identified separately in parentheses.

\*\*\* % refers to the number of Superior Court Filings as a % of all felony arrests for the year. In some cases, filings may begin in a different year from the actual arrest.

### *Under-Use of SCIs*

***SCIs are used in only 8% of all felony filings in Chemung, compared to 36% in Chemung's Judicial District counties, and 61% in Steuben.***

The use of SCIs represents a collaborative process between prosecutors, defense attorneys and judges that helps move felony arrest cases more rapidly through the criminal justice system, with particular potential value in helping to expedite the transitioning of cases between lower and upper court levels, as discussed in more detail in Chapter 6. As shown above in the table, SCIs are not widely used in Chemung County. Between 2002 and September 2005, *SCIs were the felony prosecutorial instrument, rather than going to the Grand Jury, in only 8% of all felony filings.*

Chemung's rate of usage of SCIs is among the lowest of any county in the state, and over the 10-year period from 1994 – 2003, was by far the lowest of the 10 counties in the 6<sup>th</sup> Judicial District. By contrast, SCIs are used in about 35% of all felony filings in the remainder of Upstate New York counties (36% in the Judicial District). Five of the 10 Judicial District counties had SCI usage rates well in excess of 40%. Even closer to home, in Steuben County, which has similar numbers of felony cases to prosecute, 61% of all felony prosecutions were handled by SCIs in 2004.

### *SCIs Can Significantly Expedite Case Processing Time*

***Disposition of average SCI cases is almost four months quicker than in typical Grand Jury cases.***

Data on case-processing time illustrates the value of SCIs in expediting cases through the system far more quickly than through use of the Grand Jury system. Granted, many variables and circumstances factor into the decision as to which felony filing (prosecution) approach to use, but such factors notwithstanding, Chemung County data are clear and consistent from year to year: *The time from arraignment to final disposition in the relatively rare cases in which SCIs have been used has been an average of almost four months shorter (116 days) than in Grand Jury cases.* Typically SCIs in the past four years have been completed within an average time of about a month per case, compared with the four to five months or more for Grand Jury cases. The Chemung findings are confirmed by composite Upstate county findings, where the differences are even more pronounced in favor of SCI processing of cases, and in a recent study of the Steuben County criminal justice system.<sup>5</sup>

As described in more detail later in the chapter, there are legitimate reasons why Grand Jury indictments are often preferred to SCIs, and such processing of cases is a long tradition among District Attorneys in Chemung County. But if SCIs are used much more frequently in nearly all other counties of the state, and to good effect in expediting cases, *it may behoove Chemung to consider making increased use of this approach in appropriate circumstances, as the District Attorney has expressed a willingness to do.*

### **Outcomes of Felony Arrest Cases**

As County felony arrests declined between 2000 and 2001, a decline in felony case dispositions would be expected. But as felony arrests increased the following year, leveled off, and then increased again in 2004, it would have been reasonable to expect increases in both dispositions and convictions to follow. Increased incarceration rates might also have been expected. But as shown below in Table 7, none of these expectations has occurred. Indeed, trends have been in the *opposite* direction from what might reasonably have been expected. What can these data tell us, and what questions do they pose for policymakers?

<sup>5</sup>NYS Division of Criminal Justice Services Office of Justice Statistics and Performance, “New York State Felony Processing Reports, 2002 – 2005 (Preliminary Report, September 2005)”; CGR, *Strengthening Alternatives to Incarceration Programs and Criminal Justice System Practices in Steuben County*, November 2005.

**Table 7: Outcomes of Felony Arrest Cases in Chemung County, 2000 - 2004**

Action	2000	2001	2002	2003	2004
<b>Felony Arrests</b>	635	543	575	573	629
<b>Dispositions</b>	548	485	457	442	428
<b>Convictions</b>	450	363	367	338	329
<b>Conviction Rate</b>	82.1%	74.8%	80.3%	76.5%	76.9%
<b>Prison Sentences</b>	133	76	75	60	61
<b>Jail Sentences</b>	163	123	134	123	117
<b>Incarceration Rate</b>	63.6%	54.8%	56.9%	54.1%	54.1%

Source: NYS Division of Criminal Justice Services, "Dispositions of Felony Arrests, Chemung County."

NOTE: Conviction Rate = % of Dispositions resulting in convictions.  
Incarceration Rate = Prison + Jail Sentences as % of Convictions.

### *Declining Dispositions and Convictions*

Earlier data in Table 6 showed the numbers and proportions of felony arrest cases that were initially prosecuted at the felony level. The data on dispositions in Table 7, on the other hand, indicate the total numbers of felony arrest cases prosecuted *at any level*, i.e., at both the County Court level as felony cases, as well as initial felony arrest cases prosecuted on reduced charges as misdemeanors at lower level City and Justice Courts.

Since dispositions reflect all cases that were prosecuted, including both successful convictions as well as cases that were dismissed or resulted in acquittals, one might reasonably expect that total numbers of dispositions would approximate the numbers of initial felony arrests. That expectation isn't completely reasonable, in that disposition of many arrests may not occur until a subsequent year. But even allowing for that reality, one would not logically expect a *decline* over time in the total numbers of cases prosecuted, as measured by dispositions, when felony arrests were increasing.

***The ratio of prosecuted cases/ dispositions to felony arrests has been declining, suggesting that the DA and law enforcement agencies may need to strengthen procedures to ensure more "good arrests" that hold up under prosecution.***

And yet total dispositions have declined each year since 2000. *In 2000 and 2001, the ratio of dispositions to felony arrests was between .85 and .89, but by 2004, that ratio had steadily shrunk to .68. These data would seem to suggest that growing numbers of initial felony arrests are simply not being prosecuted for various reasons.* As such, presumably both law enforcement agencies and the District Attorney's office would seem to have incentives to review these data and use them to help determine what each needs to do to ensure both that "better arrests" are made which can hold up under prosecutorial standards, and that such arrests will receive sufficient attention and

resources to ensure effective prosecution. This may suggest the need for more attention from the DA's office to be devoted to training and working even more closely with law enforcement officers to make sure that sufficient attention is given by officers to the quality of their arrests, witnesses and corroborating evidence.

***In addition to declines in prosecuted cases, more opened cases have also been dismissed as the cases proceeded, in proportions higher than in most other counties.***

As dispositions have gone down, it is not surprising that numbers of convictions on those dispositions would also decline. What is more troubling, however, is the fact that the *rate* or proportion of the dispositions resulting in convictions has also declined, from about 82% in 2000 to 77% in 2003 and 2004. *As conviction rates have declined, the numbers and proportion of cases dismissed at both lower and County Court levels have increased.* As recently as 1999, only about 10% of all felony arrest cases/dispositions were dismissed each year. Since then, the proportions have increased, to the point where DCJS data indicate that *in three of the four most recent years, between 18% and 20% of all felony arrest dispositions have been dismissed—compared to an average over those years of about 16% in Upstate counties, and about 10% in Steuben County.*

Nearly all convictions in lower courts are the product of pleas, with very few trials. However, *at the County Court level, the proportion of convictions reached via pleas has been declining, from as high as 95% in 2000 to 79% in 2004.* Upstate and Steuben County comparable proportions during those years have consistently been between 95% and 97%. During this period, more County Court cases have gone to trials, with increases from 17 in 2000 to as many as 49 in 2004, including 14 jury and 35 non-jury/bench trials.<sup>6</sup> Most of the increases have been in the non-jury trials, which typically involve presentation of stipulated facts to a judge, in cases somewhat similar to guilty plea cases. Many of these cases could potentially have been candidates for SCIs, typically with fewer court appearances and motions as a result.

Factors contributing to these data trends are discussed in sections of this chapter that follow the discussion of the data.

<sup>6</sup> DCJS, "New York State Felony Processing Reports, Chemung County, 2002 – 2004," DCJS, "Dispositions of Felony Arrests, Chemung County."

### *Declining Sentenced Incarceration Rates for Felony Arrests*

As indicated in Table 7 above and in more detail in Table 8 below, both prison and jail sentences for initial felony arrest cases have been declining, both in terms of specific numbers of sentences and as a proportion of all convictions. *Prison sentences declined by 54% between 2000 and 2004, and jail sentences declined by 28% during that time, with a drop in overall incarceration rates from 64% of all convictions to 54%.*

**Table 8: Sentences Imposed on Felony Arrest Cases in Chemung County, 2000-2004**

Sentences	2000	2001	2002	2003	2004
<b>Prison</b>	133	76	75	60	61
<b>Total Jail</b>	163	123	134	123	117
<b>Jail Alone</b>	114	78	95	94	82
<b>Jail + Prob.</b>	49	45	39	29	35
<b>Probation Alone</b>	93	90	90	71	85
<b>Fine or CD</b>	69	67	63	82	66
<b>TOTAL CONVICTIONS</b>	450	363	367	338	329

Source: NYS Division of Criminal Justice Services, "Disposition of Felony Arrests, Chemung County."

NOTE: "Total Convictions" also includes an average of about 2 additional "Other" or "Unknown" sentences per year not shown in the table. CD=Conditional Discharge.

*The County has historically imposed jail and prison sentences for felony arrests at somewhat higher rates than most other counties, but both types of sentences have declined in recent years, even as the overall County jail sentenced population remained steady or increased, suggesting the disproportionate impact of misdemeanors and violations on the sentenced jail population.*

Despite the decline in sentenced incarceration rates in recent years, the overall rates have remained around 55% of all felony arrest convictions in the past few years, which has continued to exceed by several percentage points the incarceration rates in neighboring counties and the Upstate combined rates for most years. What is perhaps most interesting about the overall declines in sentenced incarceration during this period in the County is that the rates have gone down even though the overall daily numbers of sentenced prisoners in the County jail have remained relatively constant during these years, except for 2004 when they increased. The numbers of persons sentenced to jail on initial felony arrest charges reached its *lowest* number in the past five years during 2004 (117)—the year the average daily number of sentenced jail inmates was at its *highest* in this decade (see earlier Table 3 in Chapter 3).

This seems illogical on the surface, except for the realization that the bulk of jail sentences were meted out to defendants convicted on misdemeanor and violation charges, as discussed earlier in Chapter 3. Thus, although unfortunately there are no DA statistics on the numbers or outcomes of original misdemeanor

arrest cases, it would appear that *as jail and prison sentences decline among those initially charged with felonies, these are apparently being offset with increasing numbers of jail sentences for those initially arrested on lesser misdemeanor and violation charges.*

### *Rate of Alternative Sentences Increasing*

***Opportunities appear to exist for more extensive use of alternatives to incarceration sentences to help reduce the jail population.***

Compared to the reductions in the use of prison and jail sentences, numbers of probation sentences and sentences for fines and conditional discharges have held relatively constant over recent years, thereby representing increasing proportions of the dwindling numbers of annual convictions. Some probation sentences involved specific alternatives to incarceration programs operated by the Probation Department and discussed in subsequent Chapter 7. Together, these trends would seem to suggest that if higher proportions of convictions on initial *felony* arrests are resulting in sentences to non-incarceration options, consistent with community safety standards, *additional use of alternatives to incarceration should be considered in the future as viable options to the currently-significant use of jail sentences for misdemeanor and violation charges within City and Justice Courts.* Obviously such sentencing decisions are heavily influenced by the District Attorney, but also by defense attorneys, judges, pre-sentence investigations, and the perceived quality of alternative programs, all of which will be discussed in more detail in subsequent chapters.

### **DA Practices**

Beyond the data related to District Attorney and court practices, other issues surfaced during the study's various interviews concerning the DA's office and practices. These are summarized below.

#### *Staffing and Other Resources*

The DA current staff includes 11.5 full-time equivalent (FTE) positions: the full-time DA and Chief Assistant DA, four other full-time Assistant DAs, three part-time ADAs, two part-time investigators, and three full-time clerical support staff. Although making frequent use of student interns, the staff has not included paralegals, as do many other DA offices.

This DA staff configuration has remained virtually the same for the past five years. During that time, as noted above, the numbers of felony filings have also remained relatively unchanged. The DA's office maintains no annual statistics on numbers of cases prosecuted in the lower courts, but data for Elmira City Court, by far the highest-volume court in the County, suggest that numbers

of new criminal filings have fluctuated up and down from year to year from about 2,600 in 2001 to highs of about 2,950, and back in 2005 to about the same level as in 2001. No data are available for Justice Court cases. On balance, the data that are available suggest that the overall workload of the office has remained relatively consistent over the five years, suggesting to some that maintenance of current staffing levels over that time may have been appropriate.

***Staffing levels and workloads have remained relatively consistent over the past five years. How internal office issues such as absence of voice mail and inadequate electronic case tracking mechanisms are addressed will determine future needed staffing configurations.***

Advocates and even some critics of the DA's office argue, however, that additional resources may be needed to enable the office to effectively represent the public. The combination of expanded full-time Public Defender plus Public Advocate attorneys is viewed by some as tipping the resource balance somewhat away from the DA, especially in coverage of lower courts, and even more specifically in terms of City Court, which is staffed routinely by only one full-time ADA. Others argue that more non-attorney support staff are needed, given the absence of voice mail within the office, and given the continued heavy reliance on manual records and little computerization in the office of non-felony cases.

By way of comparison with Chemung, the DA's office in adjacent Steuben County has one fewer full-time attorney, but two paralegals and two additional clerical support staff. The two offices prosecute similar numbers of felony arrest cases, but comparable data were not available for criminal misdemeanor and violation cases in the lower courts. But it was estimated that, across all courts, about 5,000 criminal cases were initiated in Steuben County in 2004. In Chemung, more than 3,000 cases were initiated in County and City Courts, but the numbers in the justice courts are unknown. Steuben ADAs must cover 38 separate justice courts, compared to 15 such courts in Chemung (involving 23 separate justices). But Chemung has a much higher-volume court in Elmira than any in Steuben. Given some important missing information, it is difficult to make direct comparisons of appropriate staffing levels in the two counties, but based on the information that is available, there would appear to be rough equity in staffing between the two offices.

However, workloads are affected by other resources available within offices. The adequacy of staffing must also be assessed in the context of the following realities currently part of the DA office landscape: absence of voice mail in the Chemung office; the lack of an effective electronic method for processing and tracking the progress of misdemeanor and violation cases prosecuted by the office; the resulting emphasis on paper/manual files and records to track such cases, coupled with the fact that felony cases originating in lower courts often wind up shifting back and forth between two or more attorneys within the office; and the sheer volume of City Court with its single ADA. These issues are discussed below. How they and other related issues are addressed will ultimately determine what staffing patterns are needed in the future.

### *Concerns with Management of Office*

Although most of those interviewed throughout the criminal justice system expressed appreciation for the volume of work carried out by the DA's office, and acknowledged the quality and efficiency of the work of most of the staff, a number of concerns were also raised about how effectively the office is managed, and about delays in processing cases that directly affect the outcome of many of those cases at all court levels. Many of these concerns were expressed not just by outsiders, but also from within the DA's office, including in some cases from the District Attorney directly. Many of the expressed concerns came with recommended actions in response. Many recommendations are presented in the final chapter of the report, but the concerns themselves are first summarized below, as we heard them. We include concerns we heard independently in numerous discussions and/or we were able to independently verify through observation or data analyses. The perceptions expressed may not be completely accurate in all cases, but they are typically strongly felt, and as such, the perceptions become reality in that decisions are currently being made and actions taken based on them.

- ❖ The leadership staff in the DA's office were often portrayed as too nice and/or too unwilling to institute tight management structures to manage either the overall office or its large caseloads effectively: "The DA should be in control, and has the power to shape how efficiently cases are processed, but too often it gets frittered away, and cases fall through the cracks and take forever to get resolved."

- Inconsistent Communications ❖ *The DA's office sends inconsistent messages to defense attorneys from case to case, and too often within the same cases at different times. Even just within the DA's office, inconsistent and often contradictory messages are expressed concerning policies, practices, standards and emphases. Externally, messages supposedly conveyed consistently to defense attorneys concerning guidelines and standards and expectations for pleas are often interpreted with disbelief and completely opposite reactions by the defense attorneys on the receiving end.*
- ❖ *More specifically, "firm, best offers" of plea agreements presented by DA officials are often discounted or ignored by defense attorneys who cite example after example of cases where the offers were ultimately changed in the defendant's favor the longer the case remained open. Indeed, many of those cases were ultimately dismissed with no convictions, as documented in the statistics reported above. Communications problems also result in increases in trials and reductions in pleas, as noted above—often the result of poor case management and the lack of trust between DA and defense attorneys. Numerous examples were also cited of agreements reached in principle by defense attorneys in discussions with one ADA, only to have another ADA subsequently involved in the case who was not aware of the first discussion and preliminary agreement. Such examples were most prominent in felony arrest cases initiated in a lower court, with communications problems arising in the transition of the case between the ADA representing the lower court and a different ADA prosecuting the case at the County Court level. Often defense attorneys are not sure to whom they should be talking, and may get conflicting signals from different ADAs.*
- ❖ *Few staff meetings appear to occur within the DA's office either to go over strategies and policies, or between lower court and County Court/felony ADAs to discuss smooth transitions of cases between different courts.*
- ❖ *Although there is frequent communication between the DA and his staff with law enforcement officers concerning cases, it often occurs late or in too cursory a fashion to enable problems with a case to be resolved in a timely fashion enabling the integrity of the case to be preserved. Too many cases wind up being dismissed or pled at a lower level than anticipated because actions were not taken soon enough, or with sufficient guidance from the DA, to meet standards for prosecution. Dismissals and*

***Poor communications within the DA's office and between DA staff, defense attorneys and police officers often result in case dismissals, trials rather than pleas, and delays in case dispositions.***

acquittals also leave the officers frustrated, and they don't always know why the cases were not successfully prosecuted. If cases do not go forward because of inadequacies in the initial arrest case, the officers need to know that and cases need to be used more effectively as "teachable moments" to help them learn so as to avoid similar problems in the future.

Dearth of Consistent Standards,  
Training and Accountability ❖

*There appears to be little in the way of written standards or policies governing the practices or guidelines concerning the prosecution of particular types of cases, and little formal training or orientation of new attorneys concerning appropriate and/or consistent approaches.* Attorneys tend to learn through on-the-job training, often in the cauldron of the high-volume, high-stress environment of Elmira City Court, with little backup support or guidance provided as a rule.

- ❖ Other than occasional anecdotal information, *there is no formal evaluation or accountability system in place to assess the performance of attorneys, or the office as a whole*, as judged by those throughout the criminal justice system with whom the DA staff interact on a regular basis. Heretofore there has been little direct observation by DA leadership of ADAs in most courts. The DA has indicated that during 2006 he will be making a concerted conscious effort to hold his office and its individual staff more accountable, and that cases will be tracked more carefully to reduce the incidence of cases being dismissed after long delays and periods of inactivity. He also has indicated that more emphasis will be placed on training, consistent principles, observations of attorneys in court, and offering direct guidance and support as needed.
- ❖ Even though a computer system tracks felony arrest cases, there continue to be cases "lost" within the office, and in particular in the transitions between lower and County Court levels, where different attorneys are involved. As described in more detail below, far too often cases reach legal deadlines for actions that result in dismissal of cases and/or release of cases from jail simply because actions were not initiated in a timely fashion by attorneys within the DA's office

Lack of Screening and Strategic  
Approach to Cases ❖

*There is only limited initial screening of cases as they are initiated within the office.* Such initial screening or review of a case, as occurs in many DA's offices in other counties, can be helpful in shaping subsequent actions, possible plea agreements, potential pretrial release and subsequent sentencing strategies—and, perhaps most

***Early, more consistent and thorough screening of cases by DA leadership could help expedite the processing of cases and reduce the number of dismissed cases.***

important, can provide clear, consistent guidelines for the timely processing of the case that transcend misinterpretation or different philosophies or approaches different attorneys assigned at different points in the process might otherwise bring to the case.

Most of those interviewed commented on the lack of any apparent guiding consistent philosophy at the heart of the DA’s office, with “too much being made up on a case-by-case basis, with little effort to devise a rational overall set of guidelines to shape the office’s practices across cases, courts and attorneys.” Too many important decisions, with little overall guidelines, are left to individual attorneys “who may have their own approaches or axes to grind, or feel they need to ‘make their mark’ by acting in certain ways.” Felony cases in particular need to be assigned sooner to the felony attorneys who will ultimately prosecute the case, so they can begin to formulate their strategies sooner, rather than, as is now often the case, at the last minute before a court deadline is imminent. *Better early screening, and clear assignments made in a timely manner, can have a major impact in expediting cases and in reducing the number of cases which are now dismissed.*

- ❖ In the past, often new ADAs in City Court have been too adversarial “before they learn how things operate and before they’re secure themselves in how to get things accomplished.” The current City Court ADA incumbent is viewed as being more reasonable and willing to negotiate in resolving cases. But with the volume of cases in City Court (between 2,500 and 3,000 new criminal cases a year, plus some traffic cases that need attention), and only one ADA covering the entire caseload, it is very difficult to make rational decisions on a case-by-case basis, or to have sufficient time in advance to work out agreements with defense attorneys—although that is becoming easier to do with less emphasis on assigned counsel, and more focus on full-time attorneys in the Public Defender and Public Advocate offices. Nonetheless, *there is a need for more guidance in determining consistent approaches and for more training and support from experienced attorneys to supplement the work of the ADA assigned to City Court.*
- ❖ The problem of lengthy delays in processing cases is not helped by the *absence, for cases with misdemeanor and violation charges, of any comprehensive computerized record of the cases, court schedules, pending motions, or other key aspects of the cases.* Even with felony cases, even

Outmoded Technology

though a computerized system is in place, it is described by leadership and staffers in the DA's office as a "second-class system." The combination of inadequate systems and poor management use of the data that are available has resulted in poor tracking of cases and inefficient allocation of resources to address prosecutorial needs in a timely fashion.

- ❖ The lack of a voice mail phone system within the office has reduced the efficiency of the DA support staff while exacerbating communications problems within the staff and especially between DA and defense attorneys.

### *Too Many Cases "Thrown Out"*

Most of those we interviewed described cases in which legal deadlines for prosecution were not met, with significant consequences for the cases. (1) In one set of cases, defendants had been held in jail unsentenced for 45 days with no required actions taken to indict the case, at which point the defense attorney can file motions to have the defendant immediately released from the jail, although the case would still be able to proceed. (2) In other cases, no Grand Jury Indictment or SCI had been filed within the legally-required 180 days from court arraignment, thereby inviting defense attorneys to file for dismissal of the case.

Unfortunately, repeated requests through the DA's office, judges and court clerks' offices failed to produce precise data about the extent to which cases were affected by these legal deadlines. However, we received relatively consistent estimates from knowledgeable people at various levels and positions within the judicial system concerning how frequently defense motions were made based on the deadlines not being met.

### 45-Day Motions to Release Defendants from Jail

Given problems outlined above regarding communications and poor management and tracking of cases in the DA's office, it is apparently not unusual for defendants to sit in jail for 45 days with no movement to indict their cases, or for movement to only occur just prior to the 45-day deadline. Some argue that this is a conscious strategy on the DA's part, at least in some cases, to obtain "as much jail time as possible for punishment" on cases where the prosecution's case is weak or not likely to result in a jail or prison sentence, even if convicted. In such cases, time officially considered *unsentenced* jail time is for all intents and purposes, if not

legally, more like *sentenced* time. To what extent “punishment” is a motivating factor in such cases cannot be determined, and most of those who raised this issue thought the bigger problem in most cases was not so much seeking informal punishment but simply the problems noted above of “sloppy case management and not paying enough attention to the status of the case until it is too late.” *Either way, in such cases, defendants are ultimately released from jail after 45 days who could just as easily have been released many days earlier if more timely action had been taken sooner within the DA’s office.*

Evidence suggests that at least some of the missed deadlines on the 45-day prosecution requirement while in jail is due to cases in which there are significant delays awaiting drug lab tests needed for the prosecution to proceed. The state lab is often backed up with tests, so it is not unusual for results not to have been returned within the 45-day limit. However, most attorneys believe that if there is a reasonably viable case, it should be possible to obtain a Grand Jury Indictment in most circumstances even without the lab results. Others mentioned that if the need was serious, emergency lab reports could be requested on an expedited basis. Thus while this is considered a factor in the delays, it is not considered a complete excuse for not proceeding in a more timely manner.

The most prevalent estimates CGR heard as to the frequency with which defendants are released from jail due to the 45-day restrictions ranged from about 3 to 5 a week to about 10 a month. Using the more conservative estimate, this could be as many as about 125 per year. Even if one assumes that part of the strategy in keeping people in jail for that long without taking action on the case is to exact a measure of punishment, that same goal could still be met through earlier efforts to either indict the case or release the defendant earlier. *If 125 such cases a year were expedited and the release time were cut in half, defendants would still have received just over three weeks of “jail as punishment,” and the jail population would have been reduced by 2,812 days a year—the equivalent of almost 8 beds freed up every day of the year.* Conscious strategies to manage these cases more effectively in the future could have a significant impact on the jail population without compromising the ability to prosecute the case, which could go forward regardless of whether the defendant was in jail as the prosecution proceeded or not.

***If cases released from jail for lack of prosecution after 45 days were released in half the time, almost 8 fewer inmates would need to be housed every day of the year.***

## Case Dismissals for Failure to Prosecute

A recent focus of the Supreme Court District's Chief Administrative Judge over the past year or so has been placed on "cleaning up" files on old felony cases that were still considered active on court calendars but which had long-since exceeded the 180-day Standards and Goals deadline for prosecution, after which cases can be legally dismissed for failure to prosecute in a timely manner. These cases may or may not have been incarcerated presentence, so it is not always clear that there are consequences for jail-day reduction in dismissing such cases. It is reasonable to assume that many of these cases may have been in jail awaiting action on their cases, but data were not available to document the extent to which cases were released from jail as their cases were dismissed.

Regardless of whether jail days are involved or not, the larger issue is the extent to which substantial numbers of cases have remained, and continue to remain, on court caseloads for 180 days or more, in some instances requiring court and attorney time along the way, but with no ultimate apparent intent on the part of the DA to actively prosecute the case. *Several options would appear to be more responsive to needs of the defendant and of the overall justice system, including: deciding to reduce the charges and prosecute at a misdemeanor level; dropping the charges altogether much earlier if the case is weak; or going forward with a plea offer on the original charge based on whatever evidence is available.*

Often cases are ultimately dismissed because evidence becomes stale, witnesses disappear or refuse to cooperate, or other reasons that are time-related. The advantage of simply going forward with the case in a timely manner, or reducing the charges and prosecuting at a misdemeanor level, is that it takes advantage of whatever evidence and witnesses exist, and at least attempts to make a case on that basis, rather than simply having the case "thrown out" with nothing to show for it.

***Conscious decisions to dispose of cases prior to the 180-day deadline have many public policy, court and jail reduction benefits.***

Having significant numbers of dismissals for failure to prosecute on the public record would seem to have no benefit, so expediting the processing of such cases, as the DA has indicated he is interested in focusing on more aggressively in the future, would seem to be good public policy while helping to streamline the justice system and, at least in some of the cases, reduce the jail population as well. Furthermore, judges pointed out that in some

of these cases, other charges were attached, so additional criminal cases would be disposed of as well with more timely prosecution, or dismissal, of the primary charge.

Estimates earlier this year were that as many as 26 active cases were eligible for dismissal for failure to prosecute in a timely manner.

### *DA-Defense Attorney Working Relationships*

As suggested above, the DA's office and defense attorneys have not always worked together as effectively as possible in the past to expedite and craft resolutions to cases, in large part because of a historical combination of relatively small District Attorney and Public Defender staffs, and a large number of assigned counsel (AC) attorneys making it difficult to operate efficiently. In addition, defense attorneys have not always believed or trusted what they heard from the DA's office, and conflicting messages exacerbated the problem. With the creation in the past couple years of the Public Advocate's office to supplement the efforts of the Public Defender, and the resulting reduction in emphasis on multiple AC attorneys, both the DA and PD/PA offices believe there should be greater opportunities for the development of improved working relationships and trust between the offices and individual attorneys, including development of at least informal understandings and guidelines, and more effective oversight of cases, both felony and misdemeanor, by leadership in each office.

### *Expanded Use of SCIs?*

The potential value of making more extensive use of Superior Court Informations (SCIs) as an alternative to prosecution via Grand Jury Indictments was noted above, with particular reference to the significant savings of almost four months in the resolution of SCI cases, compared to the typical time needed to complete dispositions of GJ cases. But how realistic is it to expect significant expansion of SCI usage in the future?

*Historically in Chemung County, the justice system has favored the Grand Jury system, with little focus on use of SCIs.*

Clearly a change in culture would be needed, to overcome years of history. Whereas the culture in nearby Steuben County has encouraged the steady growth of SCIs in recent years, several administrations of District Attorneys in Chemung County have relied on presenting cases to the Grand Jury in order to obtain indictments, with few efforts expended on obtaining plea agreements in the context of brokering SCIs. Judges have also historically been proponents of the GJ focus. Overcoming the

long-standing culture that says Grand Jury, not SCIs, is likely to take time.

Perhaps an equally important impediment to making a radical shift from Grand Jury Indictments to SCIs has to do with the issue of trust between DA and defense attorneys and between attorneys and judges. As noted above, defense attorneys have often been suspicious of what they have been told by attorneys in the DA's office, and have believed, with reason, that they could often obtain a better deal for their client by holding out and not accepting the first plea offer put on the table by the DA. Yet the premise of the SCI process is that agreements are reached earlier in the processing of a case whereby all parties agree to waive the process of accessing the Grand Jury in favor of the alternative SCI approach, and agree to terms of an agreement affecting the plea, the negotiated charge, and terms of a sentence.

If the defense attorneys continue to believe that there is no benefit to their client in terms of a reduction in charge or consequences and/or that there is often a better deal "around the corner if we're just patient enough to wait for it," then the ability to negotiate SCI agreements in a timely manner is unlikely. The need by defense attorneys for an agreement with the DA to provide earlier discovery in selected cases may also be key to significant expanded use of SCIs. Also, the affected County Court judges would have to be willing to enable the process to work, and not try to micromanage or unintentionally undermine the plea process. These each could represent serious barriers to overcome.

***The District Attorney has indicated a willingness to initiate discussions to expand the use of SCIs. Defense attorneys and judges have also indicated their willingness to seriously consider the issue.***

On the other hand, *the District Attorney—though traditionally a supporter of the Grand Jury process and a skeptic of how well the SCI process can work, given the barriers to change—has expressed a willingness to sit down with the Public Defender, Public Advocate and judges to attempt to establish parameters for at least a pilot test of expanded use of the SCI approach.* The defense attorney leadership has also expressed similar concerns about how well the process can work, and whether it would typically be in their clients' best interests, but is also willing to discuss the issue and try to find ways to make it work. *Court and judicial leadership, especially Judge O'Shea, have indicated the belief that there are clear benefits to the system of moving forward with expanded use of SCI filings, including the potential for reduced court*

time; fewer motions; reduced time spent in preparing for, conducting and recording Grand Jury proceedings; and potentially shorter periods of pre-conviction incarceration.

*Need for Strengthened Relationship with Law Enforcement Officials*

Because everything the DA and others in the judicial system do flows ultimately from the initial arrest decision, the District Attorney and the law enforcement leadership and individual officers must “be on the same page.” Evidence presented earlier, along with what we heard in interviews, suggest that this has not always been the case in recent years. Even though the DA indicates that he and his attorneys work closely with police officers in the development of the initial arrest documents and evidence, there are strong indications that officers often overcharge in filing the initial arrests, and that often evidence and witnesses do not hold up well enough for prosecution to proceed at the level of the initial charge, if at all in some cases. Some of those we talked with suggested that in too many cases the police officers and investigators were guiding and controlling the DA, when in fact the prosecution should be “calling more of the shots.” As one judge emphasized, “The DA should represent the public and not the police. The two don’t have to be incompatible, but when in doubt, the public’s [prosecutor’s] interests should be dominant. That may not always be the case now.” The DA may need to devote greater time and effort to the process of making sure the police and the prosecutor are working together to ensure that arrests can hold up under scrutiny more effectively than has often been the case in recent years.

*Community Prosecution Program*

This new crime prevention initiative from the District Attorney is in its early stages of creating partnerships between the DA, community residents and various community organizations both within and outside the criminal justice system. The initiative is designed to expand community resources in the fight against crime, and to respond to concerns of neighbors in selected areas of the community by addressing issues they raise, with intervention approaches agreed to in cooperation with neighborhood groups. The DA has spent substantial time in helping to create this initiative in the past year or so, and hopes that as the initiative gets underway, he will be able to devote less time to it and more time to the internal management and policy guidance issues raised above.

## Key Questions and Observations

Numerous factors impact on, and in turn are influenced by, the District Attorney's office. Among the issues and questions they raise:

- ❖ There have been recent declines in felony case dispositions, convictions and pleas, with increases in case dismissals and cases going to trial. Why? What policies and practices of the DA contribute to these trends, and what changes can the DA implement to expedite cases and strengthen the functioning of the judicial system?
- ❖ How can the DA improve internal and external communications and working relationships with the Public Defender and Public Advocate offices to improve trust levels and to help expedite the processing of cases in a timely fashion?
- ❖ What can the DA's office do, in conjunction with defense attorneys and judges, to increase the use of SCIs to levels more consistent with those of most other counties, in order to reduce the time needed to dispose of felony arrest cases?
- ❖ What should the DA do to improve communications and working relationships with law enforcement officers to strengthen arrest cases and reduce the number of cases dismissed due to overcharging, poor evidence and/or unwilling witnesses?
- ❖ How can the DA improve internal procedures to ensure more consistent standards and training, strengthened accountability, more effective processing of cases between lower courts and County Court, fewer "cases falling through the cracks," and fewer case dismissals because of not meeting legal requirements for initiating timely prosecution of the cases?
- ❖ Similarly, how can the DA improve internal procedures to reduce unnecessary unsentenced jail days in cases that currently miss 45-day requirements for prosecution of cases remanded to jail?
- ❖ Jail and prison sentences have been declining for initial felony arrest charges. How can the DA collaborate more effectively with lower court judges and justices, defense attorneys and Probation officers developing pre-sentence investigations to make greater use of alternatives to incarceration to reduce unnecessary use of jail sentences for misdemeanor and violation charges?

- ❖ Are staffing changes needed within the DA's office, especially to increase internal office efficiency, manage cases more effectively, and expedite cases throughout all levels of the judicial system? What staffing and technology changes are needed to more effectively track and expedite all felony, misdemeanor and violation cases through the system?

These and related questions must, to be sure, be addressed and answered primarily by the District Attorney's office. However, answers to most of the questions must also involve collaboration with and actions by other components of the judicial system. Related roles and responsibilities of these other components are addressed in Chapters 5 through 7, followed by specific comprehensive recommendations addressed to the entire system presented in the final chapter of the report.

## 5. COSTS AND IMPACT OF DEFENSE COUNSEL

Defense attorneys play a key role in determining how the criminal justice system operates. Although their role is primarily to react to actions taken by the District Attorney and decisions made by judges, they have immense influence in determining how smoothly and efficiently the system operates, how well defendant interests are represented, how long and under what circumstances some defendants are remanded to and remain in jail awaiting disposition of their cases, and the length of time it takes for cases to be disposed of by the courts.

### Overview of Public Defense Function

*Currently the County is perceived as having strong advocates for the defense on the public payroll—defenders who provide aggressive challenges to the prosecution efforts of the District Attorney.* But until recent years, Chemung County’s legal services for indigent residents were generally viewed as relatively weak and ineffective, with a relatively small Public Defender’s (PD) office with significant staffing by part-time attorneys, supplemented by a heavy concentration of Assigned Counsel (AC) private attorneys. Beginning in the late 1990s, that began to change, with movement to more full-time staff in the PD’s office. Furthermore, in 2004, the introduction of the Public Advocate’s (PA) office began to shift more of the mix and proportion of cases away from Assigned Counsel to greater representation by County-employed defense attorneys.

*Some concerns were expressed about public defense attorneys, but generally the two offices received favorable comments about their work.*

Although both the current PD and PA staff and leadership received generally positive comments from those interviewed throughout the criminal justice system, some issues were raised by various officials concerning: perceived occasional poor communications and lack of accessibility associated with certain assistant defense attorneys; occasional “no shows” or late appearances without notice at scheduled court dates; lack of contact between court dates; inconsistent approaches; inadequate preparation in advance of court appearances; and occasional lack of sufficient contact with defendants in between court appearances. Some concerns were also expressed that it would be helpful to have an assistant defender from at least one of the PD or PA staffs in City Court each day, which is apparently not always the case now (though defense attorneys indicate they are available

as needed at any time, upon court request). Despite those expressed concerns, which were viewed in general as being “the exceptions to the rule,” *comments provided by other attorneys, judges, magistrates and court staff were more typically complimentary about the work and flexibility of the PD and PA staffs.*

Some of the current PA staff had previously been on the Public Defender staff, and one APD had previous experience as the District Attorney in another county. Thus the attorneys on both staffs have significant experience and know the system, and often each other, well. As such, there appears to be a close working relationship between the two offices, with common standards and practices at least implicit, even if not formally documented. The offices often share various briefs, motions and other materials common to the work of both. Although, as with the District Attorney’s office, less experienced attorneys are often assigned to the high-volume Elmira City Court, there appears to be a more conscious effort in the two defender offices to train and provide support for new attorneys in that setting. However, like the DA’s office, there appears to be no formal performance evaluation system in place in either the PD or PA office, though informal discussions occur with people in the criminal justice system to obtain feedback about staff performance.

One final issue should be raised about the two defender offices: Their internal case tracking systems appear to be more effective than that of the DA’s office in monitoring the status of cases, and in particular knowing case status against 45-day and 180-day legal requirements for prosecution, and the offices are ready in advance to file appropriate motions if such deadlines are missed. However, it should also be noted that the computerized systems in place do not appear currently to be used optimally to generate consistent caseload data for either office, as noted below.

## **Growth in Public Defense Function**

Public sector staffing for indigent legal services in Chemung County has increased by about 67% since the late 1990s—from 6.8 to 11.5 full-time equivalent (FTE) employees overall, and from 4.5 FTE attorneys to 7.5 in 2005.

*Full-Time PD Staff  
Increases, but Remains  
Below DA Staffing*

Until the late 1990s, the Public Defender was a part-time position, as were the bulk of the Assistant PD positions. According to the County Budget office, including attorneys, investigator and clerical support staff, the Public Defender office was staffed by 6.8 FTE positions in 1998, compared to 12.9 FTEs within the District Attorney's office. Beginning in 2000, the Public Defender staff increased to 7.5 FTEs, which included expanded full-time attorneys—a level which has continued since, with basically the same staffing pattern in the intervening years: 3 full-time attorneys (the Public Defender and two Assistant PDs), a full-time investigator, 2 full-time clerical support staff, and three part-time (considered half-time) APDs. By way of comparison, during this period, the District Attorney's staff averaged 11.5 FTEs per year.

Each year, the efforts of the PD staff were supplemented by additional indigent legal services supplied by private attorneys under the Assigned Counsel program. Defendants qualifying for indigent defense representation were typically represented by the Public Defender, with the following exceptions: (1) some form of conflict existed in a case, such as with more than one defendant, in which case only one defendant could be represented by the PD; (2) some cases were assigned outright in some lower courts to an AC attorney; and (3) Family Court cases, which until 2004 were routinely represented by Assigned Counsel, due primarily to relatively low AC hourly costs and staffing constraints within the PD's office which made such coverage impossible.

*Creation of Public  
Advocate's Office*

In 2004, in order to control significantly-expanded costs associated with state-mandated increases that year in rates for Assigned Counsel, the County authorized the creation of a new Public Advocate's office to handle as many of the cases as possible that had previously been represented by AC attorneys. The PA office provides virtually identical services to those provided by the PD function, except that it also provides legal representation for parole violations and selected Family Court cases not previously served by the PD, as well as covering more of the lower court criminal cases and conflict cases previously assigned to AC attorneys.

Once it became fully staffed, the PA office has included four FTE positions: three full-time attorneys (the Public Advocate and two

Assistant PAs) plus a full-time confidential secretary. Initially one of the APA positions was part-time, and there was a part-time investigator, but in the past year that has evolved into a full-time APA and no investigator for the office (though the office has access to the investigator in the PD office).

*County Defense and DA Staff Now More Equal*

Thus, as shown below in Table 9, *the District Attorney and Public Defender plus Public Advocate staffing have become virtually identical, both in overall numbers as well as in both functional and full-time versus part-time configurations.*

**Table 9: Staffing of Public Defense and District Attorney Functions in Chemung County, 2005**

Staff Positions	Public Defense*	District Attorney
<b>Leadership</b>	2 (PD + PA)	2 (DA + Chief Asst.)
<b>Full-time Assistants</b>	4 (2 APDs, 2 APAs)	4 ADAs
<b>Part-time Assistants</b>	3 APDs (1.5 FTEs)	3 ADAs (1.5 FTEs)
<b>Investigators</b>	1 full-time	2 part-time (1 FTE)
<b>Clerical Support</b>	3 (2 PD, 1 PA)	3
<b>Total FTEs</b>	11.5	11.5

Source: County Budget Office, and PD, PA and DA offices. \*Includes total of Public Defender + Public Advocate staffing.

Numerical parity in staffing is not necessarily indicative of equity or appropriateness of staffing patterns, especially since one FTE in the PA office is devoted to non-criminal case processing (Family Court cases and parole hearings and appeals). On the other hand, the DA function is responsible for all cases being prosecuted, while the two public defense offices only cover those cases that qualify for indigent defense coverage—though partial data presented below suggest that a large majority of both misdemeanor and felony cases in the County are typically represented by public defense attorneys.

A detailed management study of each of the DA, PD and PA offices was beyond the scope of this project, but such a study would be needed to objectively determine equity of staffing between the prosecuting and defense offices. A variety of factors would need to be considered, such as caseloads, time spent per typical case, time spent on Family Court cases by defense attorneys (cases in which the DA has no responsibility), time spent in court versus other functions, and proportion of cases handled by the different defense offices, compared with AC cases.

*Chemung’s defense attorney staffing is equal to the DA’s, and is similar to PD staffing in Steuben County—but more study is needed to determine if the number and mix of DA and defense attorney staff are appropriate.*

Without conducting such detailed analyses, it is difficult to assess the appropriateness of the staffing between the offices, except to suggest that there is presumably greater parity and representation of the public's overall interests by having closer to the current 1:1 ratio of DA to defense attorneys than the roughly 1.5:1 ratio that existed before the addition of the PA function. Moreover, although again comparisons must be made with caution, it is worth indicating that in Steuben County, with previously-noted similarities to Chemung, there are also 11.5 FTE positions in the Public Defender's office, though the staff mix differs somewhat from that in Chemung—five rather than six full-time, and six rather than three part-time attorneys, no investigator, and 3.5 rather than three clerical staff.

*Case Volume Appears to be Increasing*

*Data on volume of cases represented by defense attorneys were inconsistent and incomplete, but what was available appears to indicate increases in numbers of cases.*

To better understand the appropriateness of staffing levels, it would be important to understand the volume of cases represented by the various defense functions. Unfortunately, we were not able to obtain consistent data to accurately compare the PD, PA and AC caseloads. The most complete data were available for the PD function, but four different sets of data made available by that office for various periods of time each showed significantly different accountings of cases defended per year. Moreover, limited caseload data were able to be obtained for the first full year of the PA office's existence, and only partial data were available concerning the numbers of cases represented by AC attorneys.

Table 10 below presents the most consistent data available concerning defense attorney caseloads over the past few years, subject to the noted limitations. It represents data presented by the Public Defender to the Budget office for the most recent four years.

**Table 10: Chemung County Public Defender Caseloads, 2002- 2005**

Type cases	2002	2003	2004	2005
<b>Felonies</b>	416	437	469	494
<b>Misdemeanors</b>	790	1,164	1,269	1,046
<b>Violations of Probation</b>	80	97	119	116
<b>TOTAL</b>	<b>1,286</b>	<b>1,698</b>	<b>1,857</b>	<b>1,656</b>

Source: Chemung County Public Defender data presented to County Budget Office.

*The Public Defender appears to represent about 75% of all felony arrests and 60% of misdemeanor arrests.*

These data suggest growing caseloads within the PD office in recent years, with the exception of 2005. However, other data presented by the PD office to CGR through November 2005 suggest that the total Table 10 numbers for 2005 may be too low, especially for misdemeanors. On the other hand, the felonies in this table are higher than the other reported data. Regardless of data used, however, the overall trends suggest that the PD workload has been growing since 2002, and that the PD office has been defending about 75% of all felony arrests in the County over the past four years (compared with earlier Table 1). Using data from the same table, the PD's office appears to have also represented about 60% of all misdemeanor arrests over that period.

A significant focus of the Public Advocate office's attention has been devoted to representing parties in Family Court, but it is also responsible for covering cases in lower criminal courts, and in all courts where conflicts are involved that had previously been represented by AC attorneys. For 2005, the PA office indicated that it represented 142 felony and 730 misdemeanor/violation matters in local criminal courts, as well as 206 Family Court cases, 140 parole hearings and "almost 100 parole appeals"—cases which would otherwise have been handled by Assigned Counsel attorneys. Anecdotally, CGR was told that the total numbers of criminal court cases represented by Assigned Counsel have been declining since the PA office was established, but we were unable to obtain data to independently verify those assertions. In fact, Elmira City Court data suggest that AC cases in that court have not varied substantially over the four years from 2002 – 2005: 424, 477, 469, 404. Consistent caseload data over time were not available either from the PA office or to document trends in AC caseloads in recent years, other than the City Court data.

It should also be noted that determination of total cases represented by defense attorneys is complicated by the fact that more than one attorney may be involved in the same case, representing different defendants. Thus a case may be counted more than once in PD and PA totals, though the numbers of separate defendants being represented should not be subject to double-counting.

## Overall Defense Costs Up Since New Rates Imposed

In the absence of comprehensive caseload data, it was especially important that data were available concerning budgets and expenditures for the combined defense functions in recent years (PD, PA and AC). Prior to January 2004, Assigned Counsel were reimbursed, according to rates established by NYS, with County tax dollars at the rates of \$40 per hour for court appearances and \$25 per hour for non-court time spent on cases. As of the beginning of 2004, state-mandated rates increased substantially to \$75 per hour for all time spent on felony and Family Court matters, and \$60 per hour for all time spent on misdemeanor cases.

### *Increased Costs Not Yet Offset by PA Office*

Between 2001 and 2003, before the AC rates increased, the County's overall costs for the PD function and for AC attorneys averaged about \$860,000 a year, with about 52% of that amount attributable to the Public Defender office. In 2004, when the increased rates took effect in January, and when the new PA office started operations in the second quarter of the year, the combined PD, PA and AC expenditures increased dramatically, as expected—to a total of almost \$1.5 million. At the time our report was written, available data were not complete for all of 2005, as final expenditures often take a few months into the new year before surfacing. But it appears as if the combined costs for 2005 were likely to be in the \$1.5 million range again, when all expenses were submitted. Thus on the surface it appears as if the creation of the PA office had not yet by itself, by the end of 2005, been able to reduce the overall indigent defense funds expended by the County.

***Overall defense costs have not yet been reduced by the PA office, though key data were not available to answer important questions, and additional steps may still need to be taken to reduce future costs.***

However, to answer that question more definitively, it would be necessary to contrast comparable cases and determine what AC costs in the past would have been with the new rate structure in effect, and to compare numbers of cases processed by the various courts, and cases (and vouchers, for AC cases) processed by the various defense attorney options, each year prior to and following the introduction of the new rates. But we were not able to obtain such information. By 2006, it seems reasonable to hypothesize that actual combined costs should begin to decline from 2004, when the new rates and the new PA office were introduced, and should decline compared to what they would have been without the new PA office in place to absorb more of the AC cases. It

may be that for sustained cost reduction to occur, additional steps may still need to be taken, as suggested below, to more effectively screen for eligibility for indigent defense services in the first place, and to have greater impact on the most costly source of AC expenditures, Family Court.

*Family Court Major Contributor to Defense Cost Increases*

An analysis of Assigned Counsel expenditures under both old and new rate structures indicates that Family Court accounted for more than 45% of all Assigned Counsel costs prior to the rate increases, but about 55% of such costs since the new rates went into effect in 2004. Moreover, Family Court is the only one of five specified AC budget cost areas (the others are County Court, Supreme Court, Justice Courts, and Grand Jury) in which actual expenditures every year from 2001 through 2005 consistently exceeded the budget. Although the data for 2005 were incomplete, the data for 2004 and partial 2005 data suggested that the use of AC attorneys in Justice Courts and in Grand Jury proceedings may be declining as a result of PD and PA joint efforts, with possible reductions also seen in the County Court area (though final data from 2005 would be needed to confirm that conclusion). *But what is very clear is that, even if there are hopeful signs of impact in reducing AC criminal costs, the Assigned Counsel Family Court costs continue to escalate, both in actual dollars and as a percent of overall defense attorney costs.* This seems likely to continue unless additional defense attorneys from the public sector can be used to replace AC attorneys, at reduced costs per case (see below).

***Family Court cases are the major driver of Assigned Counsel costs. More than \$430,000 have been spent on Family Court AC costs in each of the past two years.***

Thus even with the introduction of the PA office and its focus on Family Court cases, Family Court AC costs increased at faster rates than the overall AC cost increases from 2003 to 2004, when the new rates went into effect: *overall AC costs increased by 83% between 2003 and 2004, compared with a 147% increase among Family Court cases. In 2004 and 2005, Family Court AC cases cost taxpayers more than \$430,000 each year.* Although specific data were not available to answer the question definitively, it appears that overall Family Court cases determined by judges to need indigent defense attorneys increased substantially since 2003. Partial data from different sources indicate that there were 738 Family Court AC cases in 2003, pre-rate increase, and 860 AC vouchers for Family Court cases under the higher rate structure.

## Impact of New Public Advocate Function

*There are some indications that the new PA office has begun to reduce the costs of criminal cases represented by AC attorneys, but major savings may not be possible until additional investments are made to reduce costly Family Court AC cases.*

Although the investment in the new Public Advocate office has not yet resulted in a net reduction in the County's overall expenditures for indigent defense services, it is likely that the total costs are now lower than what they would have been had there been no intervention, given the PA's impact on criminal, Family Court and parole cases that would otherwise have been handled by Assigned Counsel. Unfortunately, as suggested above, CGR did not have access to data needed to make that definitive determination. However, *it is encouraging to note that actual AC expenditures even after the substantial rate increases appeared to be as low or lower than before the increases, both within Justice Courts and Grand Jury proceedings, and may have been lower or only slightly higher for County Court (depending on final voucher submissions). Furthermore, looking forward, data are presented in the section below (on further refinements needed in the public defense system) that suggest that significant overall cost reductions should be possible, especially within Family Court, if certain additional investments and enhancements are made to the staffing model currently in place.*

In addition to future direct savings to taxpayers, NYS began in 2005 to reimburse counties for at least a portion of their added costs associated with the mandate to increase AC rates. For 2005 (and presumably future years), this should add about \$180,000 to County revenues. This should mean, when all expenditures and revenues have been totaled for 2005, that the net costs of defense attorneys to County taxpayers would be between \$1.3 and \$1.4 million.

In addition to any current and future fiscal benefits of the County's decision to reduce its reliance on Assigned Counsel, a number of other benefits are likely to result, including:

- ❖ It should now be possible to undertake more extensive and consistent training and orientation with defense attorneys within the PD and PA offices than could ever happen with multiple AC attorneys with no central oversight. More routine internal review and discussion of criminal cases should also be possible between the PD and PA staffs, which should result in more consistent and flexible approaches and strategies for negotiations with ADAs and judges.

- ❖ As a result, most observers we spoke with expect more coordinated, consistent defense representation to occur, on a more timely basis, with fewer unnecessary court delays and adjournments, and more focus on cases than often occurs with AC attorneys.
- ❖ Court cases, pleas, bail decisions, etc. should be expedited and accomplished with fewer delays than has previously been the case, given the combination of fewer AC cases and more consistent oversight of the PD and PA offices and operations. Time should be reduced in the now-often-lengthy periods of transition between lower and County courts. More cases should be able to be resolved sooner, creating greater efficiencies in the courts at all levels, and potentially reducing time spent by defendants in jail awaiting case dispositions. As one observer noted, “It is easier to meet with one attorney to settle 10 cases rather than several Assigned Counsel attorneys to settle one case at a time.”
- ❖ The Public Defender and Public Advocate should be able to hold their attorneys more accountable for their actions and decisions, how they spend their time, and the ways in which they interact with other “players” in the system.

## Further Investment May be Needed in Public Defense System

As indicated above, comments made in interviews with several attorneys and judges suggest that the creation of the PA office has begun to result in reductions in numbers of criminal cases in which AC attorneys are involved. Although no confirming data were presented to indicate caseload or AC voucher reductions, expenditure data for 2004 and 2005, though incomplete, seem to suggest that such reductions may in fact have begun to occur. However, those same expenditure data also suggest strongly that unless and until significant reductions can be made in the numbers of Family Court cases represented by Assigned Counsel, the costs to taxpayers will continue to be significant.

### *Investing to Save Significant Dollars*

Best estimates available to CGR suggest that at least 860 Family Court cases a year continue to be assigned to AC attorneys, costing the County more than \$430,000 a year. In order to continue to reduce the remaining criminal cases assigned to AC attorneys to the bare minimum, including only those cases in which a conflict exists involving more than two defendants—and in order to handle *all* Family Court cases unless a conflict exists—further investment in additional County defense attorneys is likely

to be needed. Currently one Assistant PA represents one party in many of the abuse and neglect cases within Family Court, as well as in custody/visitation and termination of parental rights cases. But in many of these cases, Assigned Counsel represent the second party, at great cost to the County.

Given the needs and the savings potential, it may make sense to hire one additional Assistant attorney in both the PD and PA offices, since many of the Family Court cases will need representation for two parties. *If the goal is to reduce AC representation to a minimum, while also ensuring quality legal services for those who are eligible, hiring one additional full-time defense attorney in each office would seem to be justified.* Two full-time staff in Steuben County's PD office are devoted exclusively to Family Court, and between them have served an average of about 1,100 cases a year. With at least 860 AC vouchers reported for Family Court cases a year, plus additional criminal cases to also be represented, hiring two additional attorneys would seem to make sense, one per office. An additional FTE secretary is probably also necessary to provide additional clerical services, probably split into two half-time positions, one per office.

***Hiring two new defense attorneys should result in net County savings of about a quarter million dollars each year.***

If two attorneys were hired at \$42,500 each (with 50% benefits), and two part-time secretaries at \$14,000 each (with 20% benefits), total salary plus benefits would equal \$160,600. PD/PA leadership believe it should be possible to eliminate all but about 60 to 75 Family Court cases from AC representation with appropriate PD/PA staffing. Based on current AC Family Court costs of more than \$430,000 a year and elimination of all but 60 to 75 cases at an average of about \$500 per case, *about \$400,000 of AC costs should be eliminated per year if all other Family Court cases are represented by Assistant PD or PA attorneys.* Thus County taxpayers would receive a net reduction of about \$240,000 a year just in Family Court costs, after investment in salaries and benefits are factored in. In addition, further reductions would be likely as a result of additional cuts in AC criminal cases that could be covered with the same additional County defense attorney staff.

*Potential Value of Central Screening Function*

The County may also wish to consider a pilot test of a proposal that has been suggested for the creation of an "Indigent Defense Screener" position. It has been hypothesized by a number of

officials within the criminal justice system that potentially significant numbers of defendants now receiving indigent legal services in the criminal justice system—and perhaps even larger proportions of those currently receiving public defense services in Family Court—may not technically meet financial eligibility requirements for defense services. There have been no uniform standards for determining eligibility, and typically individual judges make the decisions, often on the basis of cursory information at best. Since a court case in 2001, judges have been reluctant to reject any request for appointed counsel in Family Court cases. *A central eligibility screening function could create uniform eligibility standards and apply them consistently throughout the various courts in the County’s judicial system.*

In addition, such a central screening function could make attorney assignments or at least suggest assignments to judges of attorneys on a rational basis, rather than leaving the assignments to individual judges who may be unaware of efficiencies possible under a centralized system. For example, a judge may be unaware of cases pending for a defendant in other jurisdictions. Under current arrangements, such a defendant may be assigned by different judges to multiple AC attorneys, thereby virtually ensuring inefficiencies, court delays, and added costs to the system. Similarly, a town or village justice might assign several different attorneys to several different cases on the same court date, rather than considering assigning a single attorney to several cases, thereby helping to reduce the costs of separate travel time and time billed by several attorneys waiting for their cases to be heard.

***A pilot project to test the feasibility of a central screening and attorney assignment function may result in cost savings and efficiencies across courts.***

Furthermore, with AC vouchers currently submitted to separate judges, there is no mechanism in place to analyze billing patterns and to compare costs against attorneys and courts. A central screening function could screen defendants for eligibility, assign attorneys rationally, and review vouchers (and even potentially be responsible for subsequent collection of fees if some Family Court cases were accepted for legal representation on a sliding-fee scale basis). As such, this function could potentially add to savings in public defense/indigent legal services expenditures each year.

With no experience to date in doing any of these screening and assessment functions, there is no way to realistically estimate whether the savings or other potential benefits would be sufficient to justify the costs of implementing such an approach, over and above savings likely from adding attorneys, as suggested above. *Thus the idea of initiating a pilot project for a limited period of time to test the proposition seems worth exploring.* If it proves to be cost effective, it could then be implemented on a permanent basis. If, on the other hand, the test does not justify the costs—or perhaps proves not to be needed if most AC cases have already been removed from the system via other approaches—the screening function could be eliminated following the pilot test, at no additional costs.

## Public Defender- DA Working Relationships

As noted in Chapter 4, cases often sit in jail or remain on court calendars for long periods of time before action is taken, or the case is dismissed for failure to prosecute. This results, in some cases, in defendants sitting in jail in officially “unsentenced” status, which for all intents and purposes may be no different than an unofficial “sentence” or punishment for that defendant. This approach, when accompanied by the DA’s historical reluctance to use Superior Court Informations as an alternative to Grand Jury Indictments, can have the practical effect of limiting a defendant’s and defense attorney’s options, and can certainly be the basis for contention between the parties.

*DA and defense attorney decisions often have the practical effect of keeping unsentenced defendants in jail on unofficial “sentences.”*

To be fair, however, defense attorneys are often willing partners to such discussions. They often counsel their clients to “sit tight” and spend unsentenced time in jail, because it *may* result in a “better” outcome, i.e., a better plea agreement and sentence than they would obtain otherwise, or even a dismissal of the case. Thus separate DA and defense attorney decisions, along with those of the defendant and in many cases the judge, often have the realistic effect of “sentencing” defendants to “theoretically unsentenced” jail time, deemed to meet the needs and best interests of all parties—except, perhaps, those of the jail and local taxpayers.

The DA’s office and defense attorneys have not always worked as effectively together as they should have to expedite and craft resolutions to cases, in part because of the historically large number of AC attorneys making it difficult to operate efficiently. *With the creation of the Public Advocate office, and gradual reduction in*

***Opportunities exist to build trust and more effective working relationships between PD, PA and DA offices, including the potential for expanded use of SCIs.***

*emphasis on AC attorneys, the PD, PA and DA offices are open to possible opportunities for the development of improved working relationships between the three offices, including the expansion of the use of SCIs as a potential way to reduce court processing (and in some cases jail) time. As suggested in the DA chapter, the key to such discussions, and the potential for future improved working relationships between the offices, is the establishment of enhanced trust between the leadership and the attorneys in the different offices. All key parties indicated in our interviews the willingness to embark on a process to build on and improve existing working relationships.*

## **Key Questions and Observations**

Various factors affect the future of indigent defense services in Chemung County. Among the key issues and questions raised in this chapter are the following:

- ❖ It may make sense to consider the establishment of an overall computerized tracking system with built-in efficiencies between the PD and PA offices. Both offices could benefit from better means of accurately and consistently monitoring and tracking over time such variables as numbers of cases, caseloads per attorney, outcomes, and time spent per type of case in both offices, and for cases represented by Assigned Counsel attorneys. Uniform definitions of cases would be needed for such a system to be effective. An enhanced case management system is expected to be installed in the PA office later this year.
- ❖ Taxpayers and the overall justice system may benefit from the establishment of consistent standards for determining eligibility for indigent defense services, and from development of a process for consistently assessing the eligibility of cases in courts throughout the County. What is the potential value of establishing a central eligibility screening function which could also help in the efficient assignment of attorneys to defendants and review of vouchers and potential collection of fees? Should the County consider a pilot project to test such approaches?
- ❖ Family Court accounts for the highest, and fastest-growing, Assigned Counsel costs. There is more flexibility in determining eligibility for Family Court indigent defense representation than is true in criminal cases. Eligibility issues deserve special scrutiny.
- ❖ Hiring two additional staff attorneys, one per PD and PA office, offers the potential for net taxpayer savings of a quarter of a

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million dollars or more annually, compared to current spending levels, particularly in reduced Family Court AC costs.

- ❖ How can the Public Defender and Public Advocate work with the District Attorney to improve trust levels and working relationships to help expedite the processing of cases in a timely fashion?
- ❖ Similarly, what can the PD, PA and DA's office do, in conjunction with judges, to increase the use of SCIs to levels more consistent with those of most other counties, in order to reduce the time needed to dispose of felony arrest cases?

## 6. IMPACT OF EXISTING COURT PRACTICES

The efficiency, speed and manner with which cases are processed through the courts/justice system have a direct impact on the jail population. These factors, as well as the perceived fairness of the process, also have direct impact on the lives of the defendants who come before the courts, as well as on the attorneys who prosecute and defend them, and on various alternative programs that interact with and are influenced by court decisions. This chapter focuses on the impact these various components of the criminal justice system have on the courts, and vice versa.

Information presented in this chapter was available from a number of sources. In addition to the insights obtained from a wide range of interviews, a variety of specific data were obtained from the NYS Unified Court System, a special analysis of a four-month sample of Superior Court Filings (indictments and Superior Court Informations) filed in County Court from September 1 through December 31, 2004, and a special analysis of Probation data on pre-sentence investigations.

By way of overview, what we know about criminal court cases in Chemung County on an annual basis is the following:

- ◆ An average of about 320 new felony filings (indictments and SCIs) have been initiated in recent years in County Court.
- ◆ From 2001 through 2005, an average of 2,785 new criminal felony, misdemeanor and violation filings were initiated in Elmira City Court, ranging between 2,600 and about 2,960 each year.
- ◆ We were unable to determine from the justice courts any data on the numbers of criminal cases initiated in the town and village courts within Chemung County. However, we know from jail data previously presented, and from PSI data presented below, that about a quarter of all remands to the jail and a similar proportion of PSIs requested each year originate in the justice courts. Although those proportions are not necessarily indicative of total cases prosecuted, their consistency suggests that it is reasonable to speculate that about

a quarter of all criminal court cases initiated in the County in a given year originated in the town/village courts. If that is the case, an average of about 1,035 criminal cases would have surfaced annually in recent years in the justice courts.

- ◆ If the justice court estimates are reasonably accurate, an annual average of more than 4,100 criminal court cases have been initiated in recent years in all County, City and justice courts throughout Chemung County.

In addition to the prosecution of these cases by the District Attorney's office, those criminal cases generated the following workloads for other key components of the criminal justice system (not including jail data, which were presented in Chapter 3):

- ◆ An average of more than 1,700 criminal cases were represented by the Public Defender's office in each of the past three years, in addition to almost 875 criminal cases in 2005 in which defendants were represented at public cost through the Public Advocate office, and unknown numbers of cases represented by Assigned Counsel attorneys (we know from partial data that these totals represent several hundred cases per year).
- ◆ Typically about 960 or more cases are under active supervision at any given time under the auspices of the Probation Department.
- ◆ Pre-sentence investigations (PSIs) may be requested by judges/justices before sentence is pronounced in criminal cases. Subject to applicable waivers under specified circumstances, PSIs are required for felony convictions, youthful offenders, and for misdemeanor convictions if probation sentences or jail sentences of more than 90 days are anticipated. Thus cases in which PSIs are requested tend to reflect the more serious cases being disposed of by courts at all levels throughout the system. Probation data indicate that an average of 855 PSIs have been completed each year from 2001 – 2005, with relatively little variation from year to year (ranging from a low of 833 to a high of 885 during that period).

## County Court Felony Cases

Although a relatively small proportion of all cases in the County's criminal justice system, County Court cases (all of which originated as felony arrest charges) have a disproportionately large impact on the rest of the system. The attorney and court staff

resources these cases require, their impact on the jail, and their impact on lower courts before they are prosecuted at the upper/County Court level, are all out of proportion to their relatively small numbers.

Most felony cases originate at one of the City or town/village lower courts, where the cases are arraigned and decisions made that determine whether the defendants will be initially detained, and if so, if and when and under what circumstances each defendant may subsequently be released. *The time between those decisions made shortly after the defendant's arrest and the ultimate disposition of the case is typically exceedingly long and drawn out.*

CGR analyzed 85 County Court cases filed between September and the end of December of 2004 (a sample thought by County Court officials to be representative of the full year's 331 case filings).

According to Court records, about 23% of the cases were filed directly with County Court. Just over half were initiated in City Court, and 26% were arraigned initially in one of the justice courts. Eleven percent waived Grand Jury proceedings and were filed as SCIs (slightly higher than the 8% figure for the entire year). About 55% were released into the community while awaiting disposition of their cases—half of those on bail, and the other half split about evenly between Release on Recognizance (ROR) and release to Project for Bail. More than a third (35%) were detained in the County jail throughout the processing of their cases, with another 7% detained in a state correctional facility (having been charged with crimes allegedly committed while already an inmate in that state prison).

***More than half of the cases prosecuted as felonies in County Court were not held in custody prior to sentencing.***

### ***Long Delays Processing Felony Cases***

As shown below in Table 11, of the County Court cases, the average amount of time from lower court arraignment to the final court date for sentencing was 283 days—more than nine months. Only 16% of the cases were resolved within six months and, at the other end of the spectrum, more than half (54%) of the cases took more than nine months from arraignment to final disposition, including a quarter which took more than a year.

*The average County Court case took more than 9 months from lower court arraignment to disposition. A quarter of the cases took more than a year to resolve.*

Jail Custody Cases Expedited

*Court processing time was significantly reduced for cases of defendants remaining in custody; still, the average case in custody took 7 months to complete.*

Lengthy Delays in Lower Courts

*About three months of the average felony case were spent in a lower court prior to filing at the County Court level.*

**Table 11: Average Days Between Events in Proceedings of Chemung County Court Cases with Filing Dates Between 9/1/04 and 12/31/04**

Court Process Stage	Total	Jail	Non-Jail
L.C. Arraignment to Disposition	283	218	308
L.C. Arraignment to County Crt. Filing	95	50	119
County Court Filing to Sentencing	177	154	196
PSI Request to Sentencing	69	47	83

Source: CGR analysis of sample data from Chemung County Court..

NOTE: L.C. = lower court (City Court and town/village justice courts); Jail and Non-Jail refer to custody status during processing of criminal case. The second and third rows may not equal the “L.C. Arraignment to Disposition” total due to missing data in a few cases. The fourth row is a subset of the third.

Despite the lengthy court proceedings, efforts were apparently made at various key points in the process to expedite cases of defendants who remained in custody, either because they were held without bail, were not able to make bail, and/or were not released ROR or through Project for Bail. As discussed in more detail below, at each of several junctures in the court proceedings, the court cases of those remaining in jail moved significantly faster than those cases in which the defendants had been released from the jail on bail, ROR or Project for Bail. This suggests some conscious effort on the part of various combinations of District Attorney, defense attorneys, judges and Probation to attempt to reduce the court processing time of defendants remaining in custody. Nonetheless, even with such efforts, it took seven months (218 days) to bring the average case of defendants in jail to closure, from lower court arraignment to sentencing.

About a third of the time needed to dispose of the average court case—95 days—was spent with the case remaining under the responsibility of the lower court. That is, it took an average of just over three months for cases to move from lower court arraignment to filing at the County Court level (either with a Grand Jury Indictment or an SCI date being set). About 38% of the cases took more than four months to reach the County Court filing stage, including 25% which took five months or more.

Cases of defendants who were detained in jail during lower court proceedings were processed more rapidly on average than were those who had made bail or been released either ROR or through the Project for Bail program. Defendants who remained in jail in

***Lower court cases in custody are processed much more rapidly than those which are released. But many fail to meet the legal 45-day deadline for prosecution; earlier prosecution decisions could reduce the average jail population by 8 beds per night.***

lower courts had their County Court cases filed within an average of 50 days, compared to 119 days for those who had been released. This is presumably directly related to the legal requirement for prosecution to begin within 45 days for felony cases which remain in custody. Nonetheless, one-third (six) of the 18 sample cases in custody were not released until after the 45-day deadline, and another four (22%) remained in custody for between 40 and 45 days before being released. Thus, even with the efforts to prosecute custody cases more rapidly to meet legal requirements, many defendants remain in custody right up to, or beyond, the legal deadline. *As suggested in Chapter 4, as many as 8 beds per night could safely be freed up in the jail if the 45-day deadline were more carefully adhered to, and prosecutorial decisions made and acted on earlier in the process.*

Felony cases originated in Elmira City Court typically took less time to reach County Court than did the average justice court case: cases opened in the City Court took an average of 86 days (including both those in custody and those released), compared to an average of four months (122 days) in the town/village courts.

Almost 6 Months to Process  
Average Case in County Court

***Once a case reaches County Court, it takes, on average, almost 6 months to complete, from filing to sentencing, with significant differences by judge. SCI cases, and those involving custody, were processed more rapidly than other cases.***

Once cases reached, or began in, County Court, it took an average of almost another six months (177 days) from filing to final sentencing, with an average of 5.8 court appearances per case, including the final sentencing date. There were often delays of two to three weeks between the filing and arraignment at the upper court level. Although cases going to the Grand Jury reached County Court faster than SCI cases, once there they took much longer to resolve, as noted in Chapter 4. SCI cases involved an average of 3.4 court appearances, compared to 5.9 for GJ cases.

As also shown in Table 11, cases involving custody reached final disposition and sentencing an average of 42 days sooner than did the cases of defendants who had been released. Cases of one County Court judge with the reputation for streamlining and expediting cases reached final disposition an average of 50 calendar days sooner than the typical case for the second County Court judge. Just over half of the second judge's cases took more than seven months to be completed, compared to 16% of the first judge's; by contrast, 44% of the first judge's cases had reached

final disposition and sentencing within four months, compared to 17% of the second judge's cases.

*Much of the time between County Court filings and sentencing is spent between PSI requests and final sentencing, with custody cases being completed more rapidly.*

Of the average of 177 days from County Court filing to sentencing, almost 40% of that time was typically spent between the time a verdict was reached, and the final sentencing date. That is, an average of 69 days was spent between the time a Pre-Sentence Investigation (PSI) was requested and the final sentencing date for these County Court cases. Again, as discussed in more detail below, there appears to be an effort to expedite the processing of PSIs for cases remaining in custody, with the time from request for a PSI to the final sentencing date taking about 36 fewer days for those in custody than those already released to the community.

### *Issues Affecting Court Delays*

*Delays in reaching disposition of cases in County Court are attributable to a variety of systemic issues that need to be addressed across all components of the criminal justice system.*

Clearly a significant proportion of the felony cases prosecuted in Chemung County Court take several months to wend their way from arrest and lower court arraignment to final disposition and sentencing. The issue is systemic in nature. As noted above, a significant portion of the delays in resolving cases has been between the lower courts and County Court—i.e., getting the cases onto the County Court dockets in the first place. Even longer portions of the delays have to do with processing cases within County Court itself, including significant periods awaiting completion and processing of PSI reports in many cases. (This topic is covered later in this chapter.)

Thus the overall length of time to process cases cannot be attributed to one or two simple issues that can be easily resolved. Making any significant reductions in the length of time currently needed to dispose of criminal cases in the County requires addressing a number of systemic issues, and will need the active support of people and agencies across all levels of the system. Among the issues that will need attention are the following:

- ❖ Strengthening the Public Defender's and Public Advocate's offices with additional full-time attorneys is key to earlier and more consistent defense representation. As long as substantial numbers of criminal cases need to be represented by Assigned Counsel—with little ability of anyone in the criminal justice system to effectively manage the time and quality of such representation, and little ability to enforce consistent standards—there will continue to

***Continuing to reduce the County's reliance on Assigned Counsel should help expedite cases and reduce unnecessary detention of unsentenced defendants.***

be more delayed cases and more defendants detained in custody than need to be there to meet community safety goals. Creation of the Public Advocate office has begun to chip away at this issue, but further expansion of the PD and PA offices appears needed to fully resolve it, and save County dollars at the same time.

- ❖ Because lower court judges (City and town/village) cannot set bail or accept pleas on certain felony charges and/or charges in which defendants have two or more prior felony convictions, and because judges do not always have the information to even know in many cases what the defendant's prior record is, some defendants may be detained unnecessarily. Some defendants who do not have prior felony charges may be good candidates for release, but if the local judge does not have the necessary information to determine the criminal history in a timely fashion, the judge may exercise understandable caution and remand the defendant to jail pending additional information. A defendant detained at arraignment may not appear again before the judge for several days or even weeks in some courts. Judges and justices may reconsider release/bail decisions between court appearances, but this does not always happen. Defendants in some cases remain in jail longer than necessary as a result.
- ❖ Such concerns early in the judicial process are exacerbated at times by the problems inherent in limited staffing of both the PD/PA and DA offices, combined with multiple courts covered by these attorneys, which can lead to attorneys not being present at all of the limited appearances of certain courts, in turn leading to additional adjournments and further delays at the lower court levels. There is currently no systematic way for the courts to routinely review the custody status of cases, other than through the attention of individual judges or attorneys, and cases can easily languish not by design or bad intentions, but simply because of the nature of the current system and the stresses it places on each of its components. There is currently no central leadership pushing the various components of the system to collaborate more effectively to try to find ways of expediting cases and minimizing those that need to be in jail.
- ❖ And, on top of these issues, there are the issues referenced above of poor communications and conflicting signals historically between the District Attorney's office and public defense counsel,

***There is currently no central leadership to push for changes needed throughout all components of the criminal justice system.***

especially concerning terms of plea agreements and how firm they are perceived to be. In particular, the historic lack of use of SCI filings has added significantly to court time, compared with other counties.

- ❖ *There are significant differences between courts and individual judges in efficiency, personality, style and court management that affect time spent to dispose of cases and time spent in jail awaiting case disposition.*

### *Relationship Between Detention and Sentencing*

In our four-month sample of County Court cases, two-thirds of the defendants wound up convicted on a felony charge, with about a third reduced to a misdemeanor. Two-thirds were also sentenced to incarceration, including 47% to a prison sentence and 18% to jail. About 30% received combinations of probation, work order, fines, conditional discharge or other types of non-incarceration sentences. About 5% of the cases had not yet been sentenced at the end of the data collection period.

These sentences were clearly significantly correlated to their custody status while awaiting disposition of the cases. For example, of the 19 defendants who received a probation sentence, 18 had been released on their own recognizance, through Project for Bail, or had posted bail. On the other hand, of 40 defendants sentenced to prison, 27 had been detained in jail through the court process. Of the 15 receiving a jail sentence, their unsentenced custody status had been mixed, with 5 spending at least some time in jail, and 10 released in various ways.

Looked at from the opposite perspective of their custody status prior to sentencing, of the 30 who had been detained pre-sentence, all but two received either a jail (7, including 3 for time served) or prison (21) sentence. Of the 46 who had been released ROR, on Project for Bail, or by posting bail, almost half (22) received a probation or other non-incarceration sentence, although 14 were sentenced to prison and 9 to jail (one sentence unknown).

***A defendant's custody status awaiting felony case disposition is clearly related to subsequent sentence received. The cause and effect relationship is less clear.***

Clearly at the felony charge level, there is a strong relationship between the custody status and the ultimate sentence. What is less clear is the cause-effect relationship: Do the judge and DA have a projected sentence in mind when the pre-sentence custody determination is made, and if someone is considered a good risk for release or low bail, does that suggest that prison or jail is not needed to send a sentencing/punishment signal to the defendant?

Or does it operate the other way, such that the custody or release status at the time of sentencing helps to influence what happens to the defendant as the sentencing decision is made? Or some combination of both effects?

Many of those who are in jail pre-sentence appear to be the harder core defendants, particularly those who are prosecuted on felony charges. The DA position, and one we even heard from some defense attorneys, is that most of those in jail on felony charges as unsentenced inmates are there for reasonable reasons, and are by and large likely to “need” a more serious sentence involving at least some incarceration. It may be that some of these defendants could in the future be released through expanded use of alternatives to incarceration, as discussed in more detail in subsequent chapters, and/or some could perhaps have reduced levels of incarceration in conjunction with other alternatives at the sentencing stage.

But it is fair to say that most of those we interviewed expressed the view that the majority of defendants in jail awaiting disposition of *felony* charges at the County Court level would probably continue to need to be held in custody in the future for at least some period of pre-sentence time, no matter what ATI options are in place. Those expressing such opinions typically added their views that there are others within the jail pre-sentence, on less serious charges from lower courts, who in some cases may not need to be there.

## City Court Cases

As noted earlier, by far the highest volume of criminal cases in Chemung County originates in Elmira City Court. In each of the past five years, between 2,600 and just under 3,000 criminal cases have been filed in that court. We were able to obtain from the NYS Unified Court System selected data on the cases initiated in City Court for each year from 2002 – 2005.

### *Most Arrests for Misdemeanors and Violations*

Over the four years, about 13% of all the cases arraigned each year in City Court originated on felony charges—an average of about 350 cases per year, representing between 55% and 60% of all felony arrests in the County each year. About 53% of each year’s arrests originated as misdemeanors—an average of 1,390 a year, which represents about 70% of each year’s misdemeanor arrests.

### *Release/Custody Status*

***About 11% of City Court cases remain in custody prior to case disposition; others are released only after being detained on relatively high bail amounts.***

Another 31% of the arrests were for violations (about 814 a year), and about 90 a year involved arrests on infractions.

Most City Court cases are released from jail pending dispositions of their charges. Over the four years we analyzed, about 11% of all the cases remained in custody throughout the pre-disposition period—an average of about 280 defendants per year. That proportion expanded significantly among felony arrests, to about 40% of all such arrests which were either held without bail or had a bail set that defendants could not post. About 60% of all defendants were released on their own recognizance (presumably including Project for Bail releases, which were not separately identified), with another 29% released at some point after posting bail.

A number of the stakeholders CGR interviewed expressed the view that City Court judges tend to frequently set disproportionately high bail or not set bail at all. The data suggest that both judges in City Court frequently set relatively low bail amounts, but about 35% of the unsentenced inmates in the jail from City Court did have either no bail set or bail amounts of \$5,000 to \$10,000 or more—amounts that are at the high end for typical unsentenced jail inmates. One judge indicated that he typically sets low bails, but added that he occasionally uses higher bail or no bail as a means of “getting a defendant’s attention.”

### *Dispositions and Sentences of Cases*

Nearly two-thirds of the City Court cases each year are resolved by pleas, with trial verdicts typically in fewer than 20 cases a year. About a quarter of all cases are dismissed, including cases adjourned in contemplation of dismissal. Each year about 7% of the cases, about 185 a year, that originate as felony arrests in City Court are eventually filed through indictments or SCIs with County Court, thereby being removed from City Court jurisdiction unless some subsequently return with charges reduced to a misdemeanor.

Once convicted, relatively few cases receive jail sentences. Almost 45% receive various combinations of fines and restitution, sometimes combined with other non-incarceration sentences. Another third receive some type of conditional discharge, with 5% receiving probation sentences. About 18% over the four years, about 305 per year, received jail sentences. Those sentences

***About 18% of City Court cases result in jail sentences—typically of 3 months or less. Jail sentences outnumber probation sentences by 3.6 to 1, suggesting relatively little use (partly due to little current availability) of alternatives to incarceration by City Court judges.***

averaged about 3 months in length for a straight jail sentence (which would result in actual sentenced time of about 60 days once “good time” is applied); sentences involving jail in conjunction with something else, such as probation or a fine, averaged just over two months in length (about 66 days before good time). About 40% of all these jail sentences involved 30 days or less, with about 5% exceeding six months.

Although the proportion of jail sentences is relatively low, jail sentences outnumbered probation sentences by 3.6 to 1, which seems unusually high for a court which sentences defendants convicted of only misdemeanor and violation charges. Moreover, more than 85% of all those initially held in custody while their cases were being resolved wound up also serving additional jail time as part of their sentences. This proportion is comparable to what would be expected for felony charges, as noted above in the County Court discussion, but appears to be high for a misdemeanor court. With the relatively small number of cases sentenced to probation per year (an average of about 84 a year from City Court), it appears that City Court judges make relatively little use of probation or Work Order. Other alternative sentencing opportunities such as intensive supervision and electronic home monitoring are not currently available to lower courts. These issues will be explored in more detail in the next chapter.

### *Time to Disposition of Cases*

Felony arrest cases originating in City Court typically remain there for three months or more before prosecution begins at the County Court level. Misdemeanor and violation cases that begin and end in City Court are typically processed more rapidly than felony cases. Time from arraignment to final disposition (not including final sentencing) averages just over two months (65 days) for all non-felony cases. Misdemeanors average about 83 days per case, and violations about half that.

Half of all misdemeanor and violation cases are disposed of within 24 days, and a third within a week, including 17% on the same day as the case is filed. On the other hand, 22% of all cases over the past four years have taken more than 90 days to resolve, including 10% more than 180 days. Those proportions seem relatively low, but given the volume of cases in City Court, these represent about

***Despite significant numbers of cases taking more than 90 or 180 days to resolve, overall cases in City Court are being disposed of more rapidly in recent years, including shorter processing times for cases held in custody pre-sentencing.***

600 cases a year that exceed 90 days, and 271 in excess of 180 days (and 68 exceed a year before disposition is reached).

More encouraging is the fact that, as with felony cases, cases in which the defendant is in custody awaiting case disposition are completed within an average of about 50 days, compared to 63.5 if released on recognizance or 83 if on bail.

In addition, there have been clear reductions in case processing time in the past four years. In 2002, the typical City Court case averaged about 79 days from arraignment to disposition. By 2004, the average was 61 days, and in 2005, the average case was completed within about 45 days. The data offer no explanations as to why this significant 40% reduction has occurred over such a short period of time, and the reductions were not alluded to by anyone familiar with the courts in our interviews. One possible explanation for at least part of the reduction could be related to the current ADA assigned to City Court. He is universally viewed as being much more reasonable and easier to work with than some of his predecessors, and as more willing to explore reasonable resolutions to cases. It may be that that is having some impact in reducing the time cases remain open, although reductions of such magnitude are likely to have other contributing causes as well, including conscious actions by the presiding judges.

***The time from disposition of cases to sentencing in City Court has been reduced by almost 50% since 2002.***

In addition to reductions in time needed to reach disposition of City Court cases, the time from disposition to sentencing has also been reduced over time. The average time over the past four years has been 17 days, but that has gradually declined from 21.5 days in 2002 to 11.9 in 2005. In almost three-quarters of all cases, disposition and sentencing occur on the same day. But if not, the time becomes considerably longer, presumably because PSIs have been requested. Thus 11% of the cases need more than 60 days between disposition and sentencing—an average of almost 180 cases per year. Further discussion of PSIs and their impact follows later in the chapter.

### *Issues Facing City Court*

The issues affecting court delays that were discussed in the context of County Court also apply to City Court, and therefore will not be repeated here. Additional issues germane specifically to City Court are briefly summarized below:

- ❖ In the District Attorney chapter, the issue was raised of the number of cases that have exceeded the statute requiring prosecution of a felony case within 180 days of initial arraignment. Separate Elmira City Court data indicate that this issue is not limited to County Court. Typically between 10% and 20% of pending felony cases still in City Court exceed the 180-day goal, but the 90-day misdemeanor goal in the past three years has also been exceeded in sample months in between 30% and 40% of the pending misdemeanor cases across the two City Court judges.
- ❖ The issue of appropriate levels of bail needed to ensure court appearances should be addressed in City Court. Although bail amounts are typically set at a very low level, there are other cases where no bail is set at all, or is set at levels higher than might be expected given the charge and lack of holds against the defendant. Obviously the data available to us in a research capacity cannot replace the range of information and experience available to a judge, so this comment should not necessarily be construed as a criticism of judicial decisions. But given the numbers we have seen, and comments made in numerous interviews, we simply raise the issue to invite reflection about judicial practices and decisions that clearly impact on the jail population.
- ❖ Issues were raised about City Court scheduling and the effective use of attorney time. Recognizing the difficulty of scheduling in a high-volume court, exacerbated at times by the relative inexperience of attorneys serving the court, nonetheless the issue was raised in frequent interviews concerning whether there might be more efficient ways of scheduling blocks of court time, so that attorneys can plan their time more effectively—both in terms of coordination with clients and opposing attorneys, as well as to minimize time spent waiting, reportedly not infrequently for more than an hour, for cases to be called. A related issue was the expressed desire to have more clarity from the bench in terms of what is expected, by whom, and by when prior to the next scheduled court appearance.
- ❖ The issue of inexperienced DA and PD/PA staff in City Court was a recurring theme, although concerns about this seem to be muted at the current time due to perceived strengths of attorneys currently assigned to the Court. Historically, however, the need for more experienced attorneys on both prosecutor and defense

sides has been an issue, and in general the number of attorneys covering such a large court continues to be a concern.

- ❖ Several of those interviewed suggested that fewer City Court defendants would need to be held in jail if the City of Elmira made more extensive use of appearance tickets for minor offenses. No data were available on the extent of current use or the potential future impact of expanding their use, but it may be worth discussing the potential value of increased future use of such tickets in the City.

## Pre-Sentence Investigations

By law, written Pre-Sentence Investigations (PSIs) are required before a sentence can be pronounced on all felony convictions, youthful offenders and for misdemeanor convictions where a jail sentence of more than 90 days or a probation sentence is anticipated. They can also be requested in any other case, regardless of the requirements. Mandatory PSIs can be waived by consent of the affected parties if imprisonment can be satisfied by time already served, a probation sentence has been agreed to by all parties, or a previous PSI has been prepared in the preceding 12 months. As noted earlier, the Probation Department has been averaging more than 850 completed PSIs each year since 2001, with a high of 885 in 2002. Typically about two-thirds of the PSIs are completed for misdemeanor charges and one-third for felonies.

Administratively, the completion of PSIs involves most of the Probation staff who supervise adult criminal offenders. Most Probation officers complete PSIs for individuals on their caseloads, as well as doing additional PSIs as needed, rather than having designated PSI officers, as is the case in some counties. Estimates within the Probation Department are that, on average, a PSI takes a full person-day to complete, including investigations, victim impact statements and report writing.

### *PSIs Increasingly for City Court and for Defendants Not in Custody*

CGR's analysis of more than 2,400 PSIs undertaken by the Department during the three years from 2003 through 2005 indicated that, across all court levels, PSIs have been carried out primarily for defendants who were not being held in custody at the time of the PSI request. As indicated below, almost 75% of all PSIs were completed for defendants who had been released on

their own recognizance, released through the Project for Bail release program, or made bail.

***Almost three-quarters of all PSIs are requested for defendants who have not been detained in custody.***

<u>Type of Release/Custody Status</u>	<u>% of PSIs</u>
ROR	40
Bail	22
Project for Bail	11
Jail custody	21
State prison custody	4
Unknown	2

It is not clear that the PSI database from which these numbers were derived was always clear about the distinction between ROR and Project for Bail. But assuming that those categories were clearly distinct from release on bail, more than half of all defendants for whom PSIs were completed were considered safe enough risks to return to court that they were released with no financial conditions.

Even though it is by far the highest-volume Court, City Court orders only slightly more PSIs than the much smaller County Court, given the reality that proportionately, County Court is much more likely to be ordering incarceration sentences. However, it is significant that from 1997 through 2000, County Court consistently ordered about 45% of all PSIs each year—an average of 390 per year. In the past five years, that average has declined by 21% to about 307 per year—about 35% of all PSIs annually. While justice courts have remained virtually constant in averaging about 235 PSIs a year during those comparative periods, City Court has increased its annual average 22%, from 256 through 2000 to 313 in the years since then—from 28% of all PSIs to 37% in more recent years. *This would appear to be consistent with the trend noted earlier for fewer incarceration sentences to be pronounced in County Court, and more in lower courts, and raises questions about whether PSIs for City Court cases could at least become more of a vehicle for recommending greater use of alternative sentencing options.*

***Increasingly, PSI requests come from City Court, though the vast majority of County Court dispositions lead to PSI requests.***

It is also worth noting that around the time of the increase in requests for PSIs in City Court, a practice ended whereby a Probation Officer was assigned to City Court to screen cases, interview defendants and provide background information to the

### *Time Needed to Complete PSIs and Sentences*

***It takes about 7 weeks to complete a typical PSI, but courts have typically taken an additional 4 weeks to schedule and impose sentencing. In the past 3 years, however, courts have reduced time from completion of PSIs to sentencing from 31 to 24 days.***

***Sentencing in justice courts typically occurs a full month after PSIs are complete.***

### *PSIs Expedited for Defendants in Custody*

***PSIs are completed in one week's less time for defendants in custody.***

Court's ADA, who was often able to use the information to help craft plea bargains involving non-incarceration sentences on the spot. Unless there was a lengthy criminal history and the likelihood of a jail sentence, the need for PSIs could be avoided in many cases.

In the earlier discussion of County Court cases, our analyses indicated that it took an average of 69 days from the request for a PSI to final sentencing for felony cases. Because of longer delays in responding to PSIs in the justice courts, the average across all courts is 78 days from request to final sentencing. It is important to break out the different components of the process.

The actual time needed by the Probation Department to complete PSIs has remained relatively constant over the past three years—about 51 days, or roughly seven calendar weeks. However, it has typically taken another four weeks after that for final sentencing to be scheduled and completed by the courts. This amount of time has been declining over the past three years, from 31 days in 2003 to 24 days on the average in 2005. Thus courts have been responding more quickly to PSIs once they are completed, but it should still be possible to expedite the process even more rapidly, knowing how long it typically takes Probation to complete the PSI document. *Once a PSI is ordered, it should be possible to schedule a court date for the sentencing to coincide much more closely with the actual completion of the PSI.*

Some courts are clearly better at linking sentencing schedules to PSI completion than others. County Court sentencing typically occurs about 20 days after PSI completion, but City Court has an average of 26 days between the two events (though declining in recent years), and justice courts on the average lose a full month between PSI completion and the sentence court date.

Although Probation officials indicate that, given workloads, they are not typically able to give priority to completion of PSIs for defendants in custody, the data suggest that they have been able to expedite completion of such PSIs by about a week per case. That is, rather than the overall average of about 51 days, average completion time for cases involving inmates in custody has been about 44 days (and 38 days for those in state prison custody, as PSIs for prison cases require less documentation and are faster to

complete). And as noted above, courts have also begun to shorten the time from PSI completion to sentencing, but further reductions are possible.

### *Potential for Saving Jail Days*

Shortening time to complete PSIs for those in custody has potentially significant implications for reducing inmate jail days. Only about 20% of all PSIs ultimately result in jail sentences. And the County can even benefit from shortening jail custody time for those inmates receiving prison sentences, as the sooner a defendant in the local jail can be transferred to the responsibility of the State Division of Correctional Services (DOCS), the less the cost to Chemung County.

Specifically, in County Court, out of 30 defendants in our four-month sample who had been retained in custody in the jail pending disposition of their cases, 21 wound up being sentenced to prison, two to non-incarceration sentences, and three to time already served. Only four received additional sentences to the County jail. *Thus, shortening the time spent in the jail pre-sentence awaiting PSI completion could have had the practical effect of saving jail time in 26 of those 30 cases.* (It is assumed that shortening PSI time for those in custody who were subsequently sentenced to jail would have had no net impact in reducing jail time, since they would have received credit for that time otherwise spent in custody against their subsequent sentence.)

Projected across each year, the implications of further reducing the time between ordering a PSI and final sentencing could be substantial for the jail. If resource changes were made within the Probation Department, as recommended in the final chapter of this report, CGR believes that it would be possible to significantly reduce the length of time needed to process and complete PSIs for the detained population. It is already a week less than for other cases. *We believe that it should be possible to further reduce the average time for PSI completion in the future to 20 calendar days for any defendant who is in jail at the time his/her PSI is requested (subject to a few cases taking slightly longer due to unavoidable delays, e.g., in obtaining victim statements as part of the PSI process).* Moreover, *we believe that by simply having courts pay more careful attention to scheduling, it should be possible, with no change in resources, to reduce the time between PSI completion and final court sentencing by at least 10 days per case in each court.* If that combination

***By targeting PSIs for defendants in jail pre-sentence, reducing the time for PSI completion to 20 days, and reducing time from PSI completion to final sentencing, the County could reduce the jail population by almost 16 inmates every night of the year.***

of circumstances becomes feasible and the norm for all detained defendants (and we believe these assumptions may even be on the conservative side), the following would be possible, based on the three years of PSI data we analyzed:

For each of 170 detained cases a year for which PSIs are ordered, an average of 24 days could be saved in the Probation PSI completion process (from the current 44 to 20), and an additional 10 days could be saved by shortening the court time between PSI completion and sentencing date. *Thus a total of 34 days per case should be able to be reduced from the pre-sentenced detention “waiting period.” Multiplied by 170, this would reduce the number of jail beds in use by 5,780 during the year—an average of 15.8 fewer inmates every night of the year.*

*PSIs could also have a further impact in reducing the jail population if they recommended sentencing alternatives to incarceration more often.* Several judges and attorneys expressed the hope and belief that in the future, PSIs would more aggressively and more frequently recommend the use of specific ATI options in lieu of jail sentences. Such options are discussed in more detail in the next chapter.

## Justice Courts

We were unable during the course of the study to obtain specific data on the numbers of criminal cases processed by each of the County’s 15 town/village justice courts, or on the time spent processing cases or the use of incarceration in each court. Nor were we able to obtain information about the budgets and clerical support available for each of the courts. However, we were able to piece together some information about these important components of the justice system, based on selected partial data from various sources, as well as what we learned from our interviews with various magistrates and attorneys who work in those courts.

As indicated earlier in this chapter, we estimate that about 1,035 criminal cases per year are initiated across the County’s justice courts. The town courts of Big Flats and Southport and the village courts of Elmira Heights and Horseheads appear to be among the largest courts, based on the information available to us.

Using PSIs requested as a surrogate measure for overall court cases processed each year, the volume of criminal cases in justice

courts appears to be relatively unchanged from year to year. Over the past several years, the number of PSIs requested by justice courts has consistently averaged around 235 per year.

***Cases initiated in justice courts typically take longer than other cases to reach County Court for prosecution, and time from PSI completion to sentencing typically takes longer in justice courts.***

In the aggregate, felony cases originated in town/village courts appear to take longer to reach County Court for prosecution than do cases initiated in City Court. Our sample County Court data indicated that justice court cases take an average of about four months to be filed in County Court, compared to just under three months for City Court cases. Similarly, the average time from completion of PSIs to the final sentencing is longer in justice courts than in either City or County Courts: an average of a month in justice courts, compared to 26 days in City Court and 20 in County Court.

The justice courts vary in number of scheduled court dates and clerical support, depending on volume of cases processed. Several people interviewed during the study indicated that “the quality of justice you get can be affected by where you get arrested and what justice court you get arraigned in.” Lower-volume courts typically meet infrequently, and often there is little communication between attorneys and justices in between the scheduled court dates. In several courts, if an attorney misses a scheduled court appearance, an adjournment can mean a potential delay of several weeks in moving the case forward. In some cases this can contribute to defendants spending lengthy periods of time in custody awaiting disposition of their cases, though defendants can be released in between court appearances if information is made available to the presiding justice by Project for Bail and/or defense attorneys in the interim.

In order to provide more consistent justice and processing of cases at the local level, some of those we interviewed suggested that consideration be given to grouping the town/ village courts into one or two larger district courts in the county. Although the idea is appealing from the perspective of consistency of justice, and enabling more efficient use of ADA, APD and APA attorneys, it is not likely that such an idea could be implemented, as it would require State approval and would face considerable opposition from the magistrates association and other local officials, who understandably value the local connections that would be lost with

any move toward more centralized courts. There is also concern about the creation of a high-volume, less convenient court if the district court idea were to be implemented. On the other hand, some local officials view district courts as a way to reduce local costs and shift much of the cost burden of local courts to the state.

Given the political realities that on balance make the idea of eliminating justice courts and consolidating them into district court(s) unlikely, at least in the short term, *town/village and criminal justice officials may at least wish to consider creating one or more voluntary pilot projects in which combinations of two or more neighboring justice courts consider how they can share services by combining resources in various ways.* Such efforts may start with something as simple as sharing clerical support services, or sharing the same justice, as occasionally happens now. Consideration might be given to sharing “on call” services so that at least one justice from neighboring courts is available in between court dates to receive and process new information for any of the collaborating courts that becomes available during interim periods. The towns of Baldwin, Erin and Van Etten have already entered into a service sharing agreement that may be a model for other justice courts.

There may also be value to having periodic meetings of justices and possibly justice court clerks with representatives of other components of the criminal justice system to improve communications and consistent practices between all components of the system.

## Key Questions and Observations

Among the key questions and issues raised in this chapter that need addressing are the following:

- ❖ Court officials and representatives of the District Attorney and defense attorney offices should meet to consider ways of expediting cases through the court system, with particular focus on reducing the time felony cases languish in lower courts awaiting prosecution. To what extent is it feasible to expand the rate of use of Superior Court Informations rather than Grand Jury processing as a means of reducing court processing time?
- ❖ More careful monitoring is needed to reduce the number of cases in which 45-day and 180-day case prosecution deadlines for the

prosecuting of cases are exceeded, thereby often resulting in defendants spending unnecessary time in jail.

- ❖ What needs to happen to process and complete PSIs more rapidly, especially for those in custody at the time of the request? Are fewer PSIs needed, consistent with legal requirements, and/or could simplified PSI reports be used more frequently to shorten the process? Significant reduction in jail days could result from expedited processing of PSI requests for those in custody. More frequent PSI recommendations for the use of ATI sentences could also help reduce the jail population.
- ❖ More careful attention to scheduling of sentencing dates could expedite closing of cases and also save significant jail time during the year, with no public safety implications.
- ❖ Courts and individual judges should examine their practices to consider ways of building on strengths while at the same time acting to expedite cases through their courts to help streamline the overall justice system while at the same time reducing the jail population where possible, consistent with community safety.
- ❖ Could the expanded use of appearance tickets for minor offenses help to reduce the jail population? Should this option be explored within the City of Elmira?
- ❖ Are there opportunities and benefits that would result from expanded sharing of resources across neighboring justice courts? Are there opportunities for intermunicipal agreements that should be explored?

Recommendations related to these issues are presented in Chapter 8.

## 7. IMPACT OF ALTERNATIVES TO INCARCERATION PROGRAMS

Most of the discussion to this point in the report has focused on a variety of systemic, cross-cutting issues affecting, and affected by, key components of the overall criminal justice system. At this point we shift attention to the impact of the County's alternatives to incarceration (ATI) programs.

ATI programs, if used appropriately, can help the various components of the criminal justice system (e.g., the courts, DA and PD/PA offices, the jail) operate effectively and efficiently. By the same token, alternative programs have only limited impact if the context in which they operate—the overall system and its key components—are not strong and working effectively together. The previous chapters have suggested that elements of such a strong system are in place, albeit with areas in which performance can be significantly improved—and improvements appear likely in the future given the openness to change indicated by many throughout this study process.

This chapter focuses on how each of the County's ATI programs works with other components of the system, the specific impacts each has on the jail population, and potential opportunities for strengthening the programs individually and collectively. The programs addressed are Project for Bail, Intensive Supervision Program, and Work Order/Community Service. The potential value of Electronic Home Monitoring is also discussed. In addition, although Drug Court is not always considered an ATI program, we discuss the County and City Drug Court programs, given that they do operate as alternative options available to selected individuals within the system.

### OVERALL PROBATION PERSPECTIVE

We were not asked to evaluate the Probation Department and what in some ways is the ultimate alternatives program—basic probation supervision. Such a broad assessment of the department was beyond the scope of this study. Nonetheless, it is impossible

to address the alternatives programs and the overall criminal justice system without making reference to, and offering suggestions about, the Probation Department,<sup>7</sup> given the crucial and wide-ranging impact it has throughout the system.

In the late 1990s, about 865 criminal cases were under active probation supervision at any given time. Since then, the annual average has increased by some 12% to about 965 active supervision cases a year. *The number of adult criminal cases supervised has remained very consistent since 2001, ranging between 952 and 963 except for a high of 1,006 cases in 2003.*

According to Probation annual reports, adult criminal staff peaked in 1999, with a total of 14 (a Supervisor, three Senior level and 10 regular Probation Officers). Each year since 2001, there have been 13 adult/criminal staff (with varying combinations of Sr. POs and POs). Probation officials point out that increasing numbers of staff each year have been dedicated to specific caseloads needing specialized attention, including intensive supervision, sex offenders, and a transition caseload of young offenders between the ages of 16 and 19 who have aged out in some cases from the juvenile system and entered the adult criminal justice system. The sex offender program began in 2005, with a PO dedicated exclusively to that caseload. Both the intensive supervision and transition programs also added additional POs in 2005. Thus the officers dedicated to specific target population caseloads increased from two to five in one year.

***The number of active criminal probation supervision cases has remained consistent in recent years, but average caseloads had recently increased, due to the impact of having more specialized target programs where caseloads are smaller. However, due to accelerated case closings in 2006, average caseloads for regular Probation Officers have again declined closer to earlier levels.***

As a result of these changes in staff allocations over the years, *the average caseload of regular POs not assigned to specialized caseloads increased over time from 75 in 1999 to 96 in 2005*, according to annual report data. More recently, according to the Probation Director, concerted efforts have been made in early 2006 to balance personnel requirements and realities with supervision needs and requirements, thereby resulting in the removal of an estimated 10% to 15% of the cases from active caseloads. A number of these cases were officially closed, given their progress and PO perceptions that supervision was no longer needed; other cases were removed to supervisory levels with no regular reporting

<sup>7</sup> The previous chapter provided an overview of the Pre-Sentence Investigation process operated by the Probation Department.

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requirements. The net effect of these reductions has been to reduce active caseloads from the 96 average in 2005 back to closer to 80 active cases per Probation officer.

Probation is currently considering establishing a more formal process for accelerating case closings where active Probation services are perceived to have no ongoing value, and where both Probation and the defendant's oversight judge concur.

These staffing and caseload shifts should be kept in mind in the discussions about ATI programs that follow. They will also be factored into the discussions in the final chapter concerning specific staffing recommendations. (Note: comparison analyses of Probation's juvenile staff and programs are included in the companion report on the County's juvenile justice system.)

We begin the alternatives discussion at the front, or pre-sentence, part of the system with the Project for Bail program.

## PROJECT FOR BAIL

The Project for Bail (P4B) program is designed to reduce the incidence of unnecessary incarceration by facilitating the non-financial release of low-risk defendants who might otherwise be held in custody while awaiting disposition of their cases—and to help ensure that those released appear for all scheduled court appearances. P4B is an independent agency serving the County via an informal funding relationship with the Probation Department. Even though the program is partly funded by the County, there is currently no direct oversight or supervision of the four-person P4B staff by any County employee or department.

The program is responsible for interviewing unsentenced defendants subsequent to their arrests, either at court arraignment or in the jail during weekdays. Defendants arrested and detained in jail from roughly mid-day Friday through Sunday are not interviewed by the project until Monday, given lack of weekend program staffing and limits on access to the jail during weekends. During the interviews, information is obtained concerning various aspects of the defendant's background, living and employment/school arrangements, criminal history, and other information related to community ties that help the program assess the defendant's probability of remaining in the community and appearing at any scheduled court appearances until his/her criminal case reaches final disposition.

*Technically P4B does not make a formal release recommendation to the court, as do most pretrial release programs.* Instead, it simply indicates to the court that the person meets the program's "eligibility" requirements for release, based on the information obtained about the defendant's background and current status. The program usually only offers information about defendants considered "eligible." No information is typically conveyed about other defendants unless a judge asks specifically for information about a case. Information about eligibility is forwarded to appropriate courts.

Other than daily Monday through Friday staff interviews of defendants in City Court, and regular Monday and Friday County

***P4B offers courts assessments of a defendant's eligibility for release, rather than specific recommendations. These are often not in writing or in person.***

Court staff coverage, program staff typically do not appear in court to present or expand upon the information being presented in the screening summary document, and in many cases a simple verbal “eligible” message is faxed or called into the appropriate court, usually within a day of completing the initial eligibility-assessment interview. In some cases, a follow-up letter may be faxed to the presiding judge indicating eligibility for the program (in some cases suggesting additional supervisory conditions that the judge may wish to consider).

In most cases, in contrast to most pretrial release programs, the information P4B obtains from defendants is accepted at face value, with little independent verification of the information obtained. Despite the absence of verified information, the program has historically had a low rate of failures to appear in court, suggesting that the process it uses is effective in assessing risk of non-appearance.

Beyond the program's important role of gathering, interpreting and presenting information to the courts, P4B also carries out a supervisory role. For defendants assigned by courts to P4B, the program monitors their whereabouts and actions between the time of release to the program and final case disposition. For the most part, this monitoring/supervisory role involves having defendants reporting on their status to the program. For misdemeanors and violations, defendants must report in person to the program once a week. Defendants charged with a felony must report twice a week to the program. Occasionally, especially for more serious charges, additional conditions of release may be added for the program to supervise (e.g., curfews, counseling, involvement with drug/alcohol programs, etc.).

The program was initially created, as the name suggests, as a bail fund to help low-income defendants post relatively small bail amounts (e.g., \$500 or less) that they would otherwise be unable to raise. Over the years, the focus of the program has shifted to helping facilitate releases without actual expenditure of dollars, and the existing bail fund of less than \$10,000 is by board policy only to be used under very rare circumstances; for all practical purposes, the fund does not exist at this point as a tool to effect releases from jail.

The program operates on a small annual budget of about \$120,000, with relatively small salary and benefit levels. The program is housed in a non-County facility, paying roughly \$16,000 a year in rent, building maintenance, phone and utility fees that might be avoided if it were to operate in a County facility. Most of the program costs are reimbursed through TANF funds and state ATI funds funneled to the program through Probation. Roughly a quarter of the P4B budget is paid directly from the County's general fund budget.

P4B is generally well-regarded by key participants in the criminal justice system. Most of those with whom the program interacts believe P4B to be a good investment for the County, and report a high degree of trust in the program's recommendations and supervision of defendants.

## Impact of P4B on Court Decisions

*P4B has experienced significant problems with its data systems, both internally and with access to jail data of value to the program.*

Project for Bail has had difficulty developing and maintaining effective computerized data systems for tracking the status of defendants in the program, linking supervised cases to subsequent sentencing decisions, comparing success and failure status of those deemed eligible for release and subsequently released to the program with those not eligible but released to P4B anyway, comparing court appearance status of those in the program with those released through other approaches, and objectively determining the appropriateness of the assessment instrument currently being used. The program has been particularly hampered by its inability to directly link to the jail's information system to help in assessing a defendant's charges, holds and previous record. P4B and the County have made some progress in this area, but the jail and P4B programs and systems are still not completely compatible.

Given problems with program data, compounded by changes in staff responsible for maintaining the database on defendants released to the program, it is perhaps not surprising that there has been little consistency from year to year in reported indicators of program activity and impact. After many weeks of effort by the program and jail, CGR was able to obtain and analyze information on the release and custody status of all P4B defendants whose program cases were closed in 2004 and 2005. We also analyzed P4B separate hard copy files of partial case information for all

defendants screened and interviewed by the program in 2004 and the first three quarters of 2005. In addition, we had access to data reported by the program to the NYS Division of Probation and Correctional Alternatives (DPCA). Unfortunately, as we compared the data from all three sources, we found major inconsistencies between data supplied to us and data previously reported to the state. Most of the data reported below are based on our analyses of information that was specially prepared for us, used because of the care and consistency with which the information was prepared by P4B and jail officials, and the fact that we could independently verify it. When our analyses revealed significant differences from earlier reported information, we noted them.

Key data on the outcomes of cases screened by the program during all of 2004 and the first nine months of 2005 appear in Table 12.

**Table 12: Project for Bail Program Activity and Court Actions, 2004 Through September 2005**

<b>P4B Action</b>	<b>2004-05 total</b>	<b>2004 cases</b>	<b>2005 cases*</b>
<b>Screened</b>	2,405	1,230	1,175
<b>Interviewed</b>	1,502	856	646
<b>Eligible</b>	1,033	551	482
<b>Eligible/ Released</b>	543 (52.6%)	322 (58.4%)	221 (45.9%)
<b>Not Eligible/ Released</b>	55	29	26
<b>Total Released</b>	598 (39.8%)	351 (41.0%)	247 (38.2%)

Source: CGR analysis of data supplied by P4B.

\* Defendants initially interviewed between January 1 and September 30, 2005.

NOTE: Eligible/released means P4B considered defendant a good candidate for release, and defendant was released by a judge to P4B program supervision. % equals proportion of eligible defendants who were actually released. Not eligible/released means defendant was released to P4B even though not considered eligible (i.e., a low-risk candidate) for release. Those interviewed represent individuals who had not been screened out for various program or system reasons and/or who had not already made bail or been otherwise released before the P4B process was completed. Total released percentage refers to the proportion of all those interviewed who were released to the program, whether considered by P4B to be eligible or not.

### *Judicial Acceptance of P4B Recommendations*

Over the 21 months included in the analysis, just over half (52.6%) of all deemed eligible for release by the program were actually released to P4B by the courts. The proportion was much higher

***In recent years, judges have released to P4B an average of just over 55% of defendants considered eligible for release by the program; however, that proportion dropped to about 46% in 2005. Of all those interviewed by the program, only about 40% have typically been released to P4B.***

(58%) in 2004 than in the first nine months of 2005 (46%). Reported data from earlier years was consistently in the range of the 2004 data, so the 2005 data may be an aberration. When all releases to P4B are compared with total numbers interviewed, the proportions from the two years were comparable with each other and with earlier years, at about 40% of those interviewed.<sup>8</sup> However, it should be noted that, for unknown reasons, the program interviewed smaller proportions of all defendants in 2005 (55% versus almost 70% in 2004).

Unfortunately, the program's data do not indicate how many of those defendants who were deemed eligible for release but not released to the program wound up remaining in jail throughout the pretrial period, and how many may have posted bail at some point. Thus the actual proportion of defendants who were released from jail at some time prior to their case disposition was almost certainly higher than the numbers in the table would suggest. Nonetheless, the data suggest that *the majority of defendants spend at least some time in pre-disposition custody beyond the point when P4B has determined their eligibility, due to significant differences in perceptions of risk of failure to appear for subsequent court appearances between P4B and the judge making the actual release decision.*

On the other side of the coin, a number of defendants are released by judges to the program—defendants not deemed eligible for release by P4B. In 2004 through September 2005, 55 defendants—about one of every 11 defendants released to P4B during that period—were released by judges despite not being considered good candidates for release by the program. This suggests a level of comfort among at least some judges with the program's ability to supervise defendants and help ensure their court appearances, even if they disagree with the program's judgment about eligibility.

***One of every 11 P4B releases had not been considered eligible for release by the program.***

<sup>8</sup> It should be noted that the 2004 data supplied by P4B showed significantly different numbers of interviews and releases to the program than data reported in other documents by P4B. Reports to the state DPCA indicated 725 interviews and 509 releases to the program, compared to the 856 and 351 comparable figures cited above. The numbers presented above are more in line with data from earlier years, and are based on precise case-by-case spreadsheets provided by the program, so we are confident in the conclusions reached from our analyses of these data.

No right or wrong/good or bad judgments should be implied by these data. Judges are under no obligation to follow P4B's recommendations, and both parties have different responsibilities in carrying out their functions that make disagreements all but certain. Judges are obligated to take into consideration many factors, legal and otherwise, that are not part of the purview of P4B. And in many cases, they are heavily influenced by arguments from the District Attorney. Most observers indicated that DA recommendations are particularly influential, compared with those of P4B, especially in many of the justice courts.

*There are often significant disconnects between P4B eligibility assessments and who actually gets released to the program, suggesting changes that may be needed in how the information about defendants gets processed.*

Nonetheless, with less than 60% of the P4B release eligibility judgments followed by judges, and 9% of those who are released to the program involving defendants whom the program did not consider eligible, the data suggest that more effective communications may be needed between judges and P4B, and that it may be time to revisit the criteria and processes used in making the release recommendations. It may also be important in the future to consider having a representative from P4B appear more routinely in courts, to the extent possible, to defend and clarify the rationale behind the release eligibility assessments—as happens in many other pretrial release programs around the country. The ability to do so would obviously have significant staffing implications, but clearly the data suggest that *at least some serious consideration should be given to determining why, despite high levels of respect among most judges for the program, there is currently a significant degree of disconnect between P4B and judges in determining who gets released, and in what ways, in the County's courts at this time.*

### *Significant Differences by Court and Judge*

As shown in Table 13 on the next page, there are wide variations in the extent to which courts and individual judges make release decisions that are consistent with the eligibility assessments of the Project for Bail staff. These differences occur both in the proportion of defendants considered eligible for release who were actually released to P4B and in the numbers of releases made to the program by judges even though the program did not consider the defendants to be good candidates for release. The variations were significant not only across different types of courts, but also between judges within the same court.

**Table 13: Differences by Courts and Judges in Extent of Agreement with P4B on Eligibility Assessments, 2004-2005\***

Courts/Judges	Eligible & Released	Eligible but Not Released	Not Eligible but Released	% Released of Eligible
<b>County Court</b>	<b>91</b>	<b>24</b>	<b>3</b>	<b>79.1%</b>
1 <sup>st</sup> judge	31	12	2	72.1
2 <sup>nd</sup> judge	60	12	1	83.3
<b>City Court</b>	<b>364</b>	<b>282</b>	<b>37</b>	<b>56.3</b>
1 <sup>st</sup> judge	172	174	24	49.7
2 <sup>nd</sup> judge	192	108	13	64.0
<b>Justice Courts</b>	<b>91</b>	<b>143</b>	<b>16</b>	<b>38.9</b>

Source: CGR analysis of data supplied by P4B.

\* Defendants initially interviewed between January 1 and September 30, 2005.

NOTE: “Eligible & released” means P4B considered defendant as a good candidate for release, and defendant was released by a judge to P4B program supervision. “Eligible but not released” means defendant was considered eligible by program but not released to P4B by a judge. “Not eligible but released” means defendant was released to P4B even though not considered eligible for release. “% released of eligible” equals proportion of defendants deemed eligible for release who were actually released to P4B (e.g., in County Court, 91 is 79.1% of the total of 91 + 24 eligible defendants).

The level of agreement is highest by far among County Court judges. Both judges agree with well over 70% of the eligible assessments, and very rarely release defendants to P4B who have not been considered eligible by the program. This high degree of agreement reflects respect for the program’s judgment by the judges, but is also a reflection of the fact that many of these release decisions by County Court judges are ratifications of release decisions previously made at lower court levels and then reconsidered once a case is filed at the County Court level.

There is considerable variation between the two City Court judges in their use of the program and its eligibility determinations. One judge (judge 2) releases to P4B almost two-thirds of all defendants whom the program deems eligible for release, while the first judge releases just under half of those who are eligible. On the other hand, Judge 1, although less likely to follow the program’s judgment, is also almost twice as likely to release non-eligible defendants to the program, believing that its supervision can make their release viable. The judge whose decisions are less in sync with P4B acknowledged in an interview that he tends to use the program less than in the past, citing a need for more pre-decision verification of information and especially a desire for expanded program supervision.

*There is wide variation in decisions to release defendants to P4B by the two City Court judges.*

*Town/village justices are far and away the least likely to follow the release assessments of P4B. Several magistrates/justices and attorneys indicated in interviews that many of the justices are highly likely to be more influenced in their release decisions by the District Attorney’s recommendations than by what P4B suggests. Moreover, several indicated that they rarely see anyone from P4B and receive little or no rationale in support of a defendant’s release other than a faxed page or a phone message suggesting that the defendant is eligible for release. Justices in many of the courts admitted that they do not always give serious consideration to the eligibility assessment, and indicated that *more visibility in their courts on the part of P4B staff, and occasional reminders of what the assessment means—along with a reminder of how few defendants released through the program fail to appear for scheduled court appearances—would be helpful in getting them to pay more attention to the messages from the program.* P4B staff indicate that they are happy to appear before justices if asked to do so, but that happens only rarely, and is not likely to happen often without initiation from the program itself.*

*Currently, fewer than 40% of the defendants deemed eligible for release in justice courts actually are released to the program.* As noted above, we have no way from the program data of knowing to what extent those not released through P4B wind up remaining in jail versus ultimately posting bail or being released in other ways, but it is clear that the program has considerable work to do in strengthening its impact among most of the town/village courts.

***Less than 40% of defendants eligible for release are actually released to P4B in justice courts, while other “non-eligible” releases are made. These patterns are consistent across justice courts.***

*Of the seven justice courts (involving 12 different magistrates/justices) that use P4B most often, not a single one released to P4B as many as half of the defendants considered by the program to be eligible.* Some were close to 50%, but most were closer to releases of a third or even fewer of the eligible defendants. In one of the seven courts, out of 16 defendants considered eligible during the 21 months being analyzed, only two were released to the program.

Not only are the justices unlikely to release “eligible” defendants to P4B, but they are also most likely to disagree with the program when it does not consider a defendant eligible. That is, justices are disproportionately more likely to release defendants to the program despite P4B’s determination that they are not suited for release. Village courts in Elmira Heights and Horseheads were

most likely to release non-eligible defendants for supervision by the program.

### *Program Success Rates*

***The P4B program has consistently reported relatively low failure-to-appear rates.***

Data were not available to enable CGR to independently assess the rate at which defendants released to P4B fail to appear (FTA) for scheduled court sessions, but data reported by the program to the state indicate that fewer than 5% of the defendants in each of the past four or five years have failed to make court appearances. FTA rates should be the program's primary measure of success, given its goal of ensuring court appearances. Such an FTA rate is low, and therefore good compared with most other similar kinds of pretrial release programs nationally.

Program data suggest that the proportions of released defendants terminated due to a rearrest while under supervision were similar to proportions terminated because of failure to adhere to program requirements, and to FTA rates. It is not typically clear from program data how serious the degree of non-compliance must be to warrant a recommendation for program dismissal, although program staff indicate that they try to give each defendant every benefit of the doubt before termination occurs. Unfortunately, we did not have the data needed to determine FTA rates and rates of other types of termination for defendants released to the program who were "eligible" versus those released despite being "non-eligible," nor has the program calculated such differential rates to date.

### *Relatively "Safe" Releases?*

***P4B is viewed as often being overly cautious in its approach to release recommendations and advocacy on behalf of defendants.***

Several of those we interviewed suggested that P4B does not take full advantage of the respect that it has among most key "stakeholders" in the criminal justice system. Those comments tended to focus on suggestions that the program could be more aggressive in making "actual release recommendations, rather than just a more passive eligibility determination," and that a more frequent visible presence and vocal advocacy may be called for in the future. Program staff acknowledged that they are likely to err on the conservative or overly cautious side in their approach, given their perception that the future of the program is tenuous (this was voiced in particular at a time when the TANF funding was in doubt, before being resolved in favor of the program). Empirical documentation, noted below, supports the implied criticism that P4B is overly cautious.

We have already indicated the need for different approaches to inform and motivate various judges and justices to make more extensive and appropriate use of P4B. One City Court judge has indicated some of what he needs to see, or at least a conversation he needs to have with P4B officials, to make more extensive use of the program in the future. In addition, town/village justices have indicated the need for the program to be a more distinct presence in their courts for them to consider using it more often.

For those defendants who have been released to the program in the past two years, the following at least suggest some indications that the program, and perhaps some judges making decisions about the use of the program, have been somewhat reluctant to take significant risks in who gets released to it.

#### Pre-Custody Releases

For most other pre-trial release programs nationally, defendants are released through their efforts in nearly all cases after the defendants have been detained in custody for at least a minimal period of time. However, in our analysis of cases closed from P4B in the past two years, *fully a third of the releases to the program had not been held in custody prior to entering P4B*. In some cases, these “releases” reflected simply transferring a case already released to the program from a lower court to County Court, with the release status simply being ratified and continued by a County Court judge. In some other cases, a release to the program occurred at arraignment prior to custody, such as with the use of an appearance ticket.

***One-third of those released to Project for Bail had not been in custody prior to the release decision.***

Raising this issue is not to minimize the importance of such releases, since at least some of them could easily have resulted in incarceration without the existence of the program. However, data do suggest that a substantial proportion of the defendants released through the program were not likely to be incarcerated while awaiting disposition of their cases. Our analysis also suggests that at least some of the cases counted as “releases” may be double-counts of defendants who are simply transferring from one court to another, since they currently get counted as a new release when a new judge continues the existing release status. The program should separately track the numbers of such continuation cases, without treating them for reporting purposes as if they were new cases.

Disproportionate Releases of  
Younger Defendants

Almost a third of those released to P4B (31%) over the past two years were 20 or younger. By contrast, of those admitted to the jail overall, about 16% to 18% were in that age range. Releases to the program appear to be disproportionately younger, presumably less hardened and with less experienced criminal backgrounds than the average jail inmate. It is clearly logical that such defendants might be considered more desirable candidates for safe release, but the data at least raise the question of whether greater proportions of older defendants should also be released under appropriate supervision.

Females Disproportionately  
Released to P4B

About 19% of the unsentenced jail inmate population have been women in recent years. Among the population of defendants released to P4B in the past two years, the corresponding proportion is 31%. The factors considered in the determination of release eligibility, and the factors that influence judicial decisions whether or not to release a defendant prior to disposition of his/her case, apparently tend to favor women. Again, this is not to question the logic or appropriateness of such decisions; rather, the question is whether the program and judges are making these appropriate “safe” releases without giving sufficient consideration to other defendants who may not seem as desirable on the surface, but may be just as likely to appear in court if released.

Fewer Black and Hispanic  
Releases to P4B?

There may be slightly fewer black and Hispanic defendants released to the program than would be expected by the overall jail inmate population, but it is difficult to make a definitive determination because no data were available on the racial/ethnic composition of the unsentenced portion of the jail population. The only data available were for the combined unsentenced and sentenced population. Using that profile, about 31% of the inmates in recent years have been black, and about 3% Hispanic. Among those released by judges to P4B, about 25% in the past two years were black, and 1.6% Hispanic. Better comparisons with the jail’s unsentenced inmates would be needed before drawing any conclusions, but these partial data at least raise the question of whether minority defendants may inadvertently be somewhat less likely to be released to the program and more likely to have to make bail or remain in jail than white defendants. To determine if there are any patterns of unintended bias operating here, it would be important to contrast P4B profiles with those of

other types of releases, such as ROR and posting bail, with charges and previous records also taken into account. Such data were not available.

Overly Cautious About Releasing Defendants with History of Non-Compliance and Fines?

As a rule, when P4B initially screens defendant cases to determine who will be interviewed, defendants with known histories of non-compliance with the conditions of the release program in the past are considered automatically ineligible. Similarly, defendants with previous bench warrants or failures to appear in court are not interviewed to determine eligibility. While the history of bench warrants and FTAs is logically an obvious indicator of potential similar future behavior, many other pretrial release programs at least interview such defendants to determine if there may have been extenuating circumstances and/or if more current circumstances may help offset a prior FTA, especially if it was an isolated event several years in the past. The program indicates that it takes such factors into consideration, but *if some cases are screened out from consideration based on prior FTA history without even the possibility of an interview, which appears to be the case from program spreadsheet data, some legitimate opportunities for safe releases may be missed.*

***P4B may miss legitimate release opportunities by not interviewing defendants with previous isolated FTAs, non-compliance with program requirements, and unpaid fines.***

With regard to the screening out of cases for previous non-compliance with program guidelines and expectations, there appear to have been about 33 such cases that were not considered for eligibility in 2004. Of those, six or seven were apparently released to the program anyway by judges overriding the absence of an eligibility determination. *Thus in almost 20% of those cases, judges saw no reason to let the previous behavior confine the defendant to unsentenced jail time. This would seem to suggest that such cases should be interviewed and not routinely screened out from any consideration of release eligibility.*

Similarly, between 25 and 30 cases in 2004 were screened out from P4B interviews as a result of unpaid fines (or occasionally restitution) from one or more previous charges. Again, there may be a logic to detaining such a defendant in hopes of getting the fines paid, but having the person detained may be the last thing that would be conducive to any likelihood of paying a previous debt. And if the person gets out on bail, the defendant would be unsupervised and therefore have little likelihood of being motivated to pay up. *It seems at least plausible that releasing a defendant*

*under P4B supervision could provide a greater likelihood of influencing the person to make arrangements to pay off any obligations than would either incarceration or other forms of unsupervised release.*

#### "Gut-Level" Eligibility Determinations

*The program may be missing opportunities to safely release some defendants as a result of ignoring its own point scores relatively frequently.*

The program admits to using a relatively "gut-level" approach to many of its release eligibility determinations. Although in theory, a point scale is used to determine who meets program criteria for eligibility—with a minimum of 4 points needed to be eligible, given various combinations of work, education, living arrangements and various ties to the community—that standard is routinely overridden by staff based on other information or gut reactions that transcend the point score. This is not necessarily bad, as a certain amount of discretion is needed in any good pretrial release program. But a wide range of defendants with point scores of well above 4 (as many as 10 points or more) were routinely not considered eligible for release by the program, although some of those were released to the program by judges anyway. The program may be missing opportunities to safely release some defendants as a result of ignoring P4B's own point scores relatively frequently. It may make sense for the program to undertake a pilot project of recommending release for more of those with high scores who have previously been considered as not meeting release standards, and tracking what happens to them over a six-month period, to see if more of them could be safely released in the future.

#### Impact on Jail

Determining the impact of Project for Bail on the jail population is difficult. It is reasonable to conclude that some—perhaps most—of those released to the program would, in the program's absence, have ultimately made bail or been released in other ways prior to disposition of their cases. Thus the program undoubtedly contributes to a reduction in jail days, but not a total prevention of custody in such cases. Also, defendants who are released but subsequently sentenced to jail may have only postponed their incarceration days, since had they been held in custody prior to disposition of their case, they would have received credit for that time against their subsequent sentence. Since there is no way of knowing if and when the defendant would have made bail without the program, and since the program maintains only partial data on subsequent dispositions and sentences imposed upon conviction,

### *Average Days on Release*

***More than 39,000 days per year were spent on release by P4B defendants in the past two years, an average of about 106 days per defendant.***

it is not possible to make precise determinations of jail days reduced as a result of being released to P4B.

Such caveats notwithstanding, we know that for those whose P4B release cases were closed in 2004 and 2005 and whose cases had been disposed of, the average length of time on release was about 106 days. The average for those released through County Court cases was more than that, about 126 days (ranging from 192 days for one judge to 91 for the other); about 100 days for City Court (averages of 85 and 113 for the two judges); and about 117 days across the justice courts. Taking the average of the two years, for those released to the P4B program, about 39,230 days per year were spent between the release date and the closing of the case.

For those individuals released to the program without ever being in custody, the average time from release to case closing was 110.5 days, compared with 103 days for those who had been booked into the jail prior to being released to P4B. For those who had been in custody, each had already spent an average of 4.3 days in jail before being released. In almost half of these cases, the release occurred within a day of admission to the jail, and almost three-fourths were released within three days. On the other hand, almost 10% spent 10 days or more in jail before being released. In general, the program and courts operate fairly efficiently in expediting releases for those who do get released to P4B. It may be possible to save a few days here and there in releasing a few of the defendants sooner, but by and large, any additional impact on the jail for existing releases would be minimal. As noted above, *the bigger potential impact would be by being able to gain release to the program for those who are currently eligible but not released, or being more aggressive in recommending release for those not meeting current program standards for eligibility.*

### *Wide Range of Estimates of Jail Days Saved*

In an attempt to come up with some conservative, yet realistic estimate of jail days saved per year by the P4B program, we made the assumption that all defendants released to the program without any pre-release custody time would have been released with or without the existence of P4B. It is highly unlikely that none of these roughly 125 defendants in each year would have spent no unsentenced time in jail without the program, but we make that conservative assumption for estimation of jail days

saved. After eliminating this group, the total days spent on release for the remainder of the P4B defendants—about 250 per year who had been booked into the jail prior to being released to the program—was about 25,500 per year.

*Developing realistic estimates of jail days saved as a direct result of the P4B program is very difficult, given many unknown factors. Depending on assumptions made, it seems safe to estimate that without P4B, as many as 56, but more realistically 14 to 28, additional beds would be occupied in the County jail each night of the year than is now the case.*

Our analyses of PSI and P4B data indicate that about 20% of those released to P4B subsequently received jail sentences. We applied that percentage to the average 250 P4B defendants per year who had been in custody, and estimate that about 50 of them would likely have served sentenced incarceration time. If we further assume that these 50 would have been sentenced to at least the average of 103 days that group spent on pretrial release (an assumption borne out by partial available data), and that those 103 days would therefore have not been saved but would have been spent in jail as part of the sentence, then their 5,150 days (50 defendants times the average of 103 days on release) would need to be subtracted from the 25,500 days on release for all the released-from-custody defendants, thereby leaving about 20,350 days in jail potentially saved. This represents the equivalent of almost 56 fewer inmates in jail every day of the year as a result of P4B efforts.

Even with our conservative assumptions noted above, CGR assumes that number still significantly overstates the direct impact of the P4B program, based on the assumption that most of the defendants would eventually have obtained release at some point by making bail. But *even if only a quarter of those days saved could legitimately be attributed to the impact of P4B, it is certainly reasonable to conclude that significant numbers of jail days have been saved as a result of P4B's existence.*

### *Likely Future Impact*

Whatever the current number of beds saved per night, it seems reasonable to assume that P4B could have even more impact than it is currently having. There are a number of actions the program could take to expand its impact, such as:

- becoming more aggressive in making formal recommendations rather than offering only eligibility assessments;
- becoming a more visible presence in various courts;

***Whatever P4B's current impact on the jail population, realistic changes should make possible a further reduction of at least 5 fewer inmates per night within the next year.***

- working more closely with the District Attorney and defense attorneys to get agreement on release recommendations on “tougher” cases; and
- becoming less restrictive in the use of program eligibility criteria and standards.

*With such a combination of changes in place, program efforts should be able to account for a further reduction in the jail population of at least five fewer inmates per night, over and above the current impact.* Furthermore, as discussed below, CGR believes more people could also be released safely into the community, pre-disposition under supervision, if electronic home monitoring were to begin to be used within the criminal justice system.

CGR also points out that P4B's efficiency has been hampered by limited hours of access to the jail and courts to interview defendants, and by a computer system that has not been able to interface with the jail's computerized management information system. The report's final chapter addresses these types of issues, along with other recommendations and staffing implications designed to help make greater impact of the P4B program a reality.

## **WORK ORDER/COMMUNITY SERVICE SENTENCING**

The County's Work Order program (WO) is ostensibly an alternative to incarceration, designed to provide punishment, a positive learning experience for the defendant, and a level of accountability for the defendant's criminal activity, while benefiting community agencies. The program is designed to have defendants assigned to specific work sites where they carry out assigned tasks, under supervision of a work site supervisor and, at least in theory, the overall supervision of the WO program director. The program, which has been in existence for many years, was designed to serve two different groups sentenced to probation:

- ❖ Individuals sentenced to serve Community Service time, under supervision, in lieu of going to jail (Work Order as an ATT).
- ❖ Individuals sentenced to Community Service time as a form of “penalty,” but not as an alternative to jail (Work Order as a sentencing option).

The program in recent years, however, has been used about 90% of the time as a sentencing option, according to the recently-retired director, rather than as an alternative to incarceration.

Virtually all programs like WO are probation programs, but that has not been the situation in Chemung County. The program director was not required to report to anyone in the Probation Department. The WO director technically reported to the County Executive’s office, based on an arrangement created by a previous County Executive. In practice, Work Order had become a self-contained operation, with no oversight of its records or performance. The WO director, who recently retired in his eighties, had worked two hours daily, did not make site visits, and rarely appeared in court to remind judges of the program’s existence.

## Loss of Program Credibility

Not surprisingly, given the circumstances, the program has lost considerable credibility and visibility within the criminal justice community. For example, when individuals were sentenced to Work Order they were able to choose whether to serve their time on weekends or during the week, depending upon their work or babysitter needs. On weekends, workers would report to the jail and be met by a supervisor who would oversee them as they worked on road or park or other projects. The weekend supervisor would notify the director if individuals did not show up as assigned. But during the week, individuals would report to work sites (e.g., Volunteers of America, Red Cross, animal shelters) on their own and the sites were responsible for reporting if someone didn’t show up as assigned. Often, sites failed to report such absences.

The former director recognized that many individuals failed to fulfill their Work Order sentences, but he had come to believe that filing violations on participants who failed to show up for work assignments was useless, because courts did not take action. Many in the court system and in Probation, on the other hand, reported

that they had lost faith in the program and could not rely on the accuracy of hours reported as served. Many judges throughout the County reported that they had turned to developing their own Community Service programs. Some judges and justices now assign an individual to Community Service and tell him/her to perform the service at a charity of choice and bring back a letter on the organization's letterhead saying the assigned hours have been completed, rather than using the WO program as a sentencing option.

The program in theory has as many as 50 to 60 work sites where sentenced individuals can be assigned to carry out their community service. However, with the lack of attention and oversight in recent years, many of those sites no longer are active, and the number of functioning placement sites has become a fraction of what it once was.

## Dwindling Program Impact

*Between 2000 and 2004  
there was a significant  
erosion in the use of  
the Work Order  
program.*

CGR reviewed available Work Order records for 2000 through 2004. Table 14 on the next page provides numbers on participants and outcomes for the five-year period, and shows that with each passing year the program has involved fewer and fewer individuals. In 2004, there were 45% fewer participants assigned to the core weekday program than had been the case in 2000. The number of hours assigned and completed declined even more dramatically over the same period, by 71% each. Over the five-year period only 55% of assigned hours were actually completed, and by 2004 that proportion had dwindled to 50%. During this period of time, use of the WO program declined substantially among all four County and City Court judges. Only justice courts, in the aggregate, maintained use of the program at consistent levels throughout the five years, with two or three village justices making significant use of the option in the past three years.

Table 14: Work Order Participants &amp; Outcomes, 2000-2004

	2000	2001	2002	2003	2004	TOTAL
# on Weekdays	157	136	109	104	86	592
# on Weekends	34	28	39	39	29	169
Hours Assigned	37,683	23,564	16,004	16,203	10,949	104,403
Hours Completed	19,319	13,608	9,388	9,811	5,498	57,624
% Completed	51%	58%	59%	61%	50%	55%
# Who Completed Hours	115	97	82	73	54	421
% Who Completed Hrs	73%	71%	75%	70%	63%	71%
# Violated	40	37	25	13	9	124
# Not Comp. - No Violation Filed	2	2	2	19	23	48

Source: Chemung Work Order Program

## Program Impact on Jail

*With appropriate leadership and rebuilding of the WO program, increased program visibility and credibility, and PSI recommendations for its use where appropriate, WO has the potential to have a modest impact as an ATI.*

Although the previous program director indicated that the program in recent years had been used as a true alternative to incarceration only about 10% of the time, an item in the program's database suggests that that proportion may have been closer to one-third of all referrals to the program in 2003 and 2004. There is no way of knowing from the data or our conversations with the former director how accurate the numbers are. But *the data do suggest the possibility that WO can be a viable ATI program in the future, with appropriate leadership, oversight and promotion of the program.*

In particular, CGR was told by some judges, justices and attorneys that there is real potential to save jail days by using a revamped Work Order program as an ATI if the program is strengthened and effectively promoted and monitored. Some suggested the importance of having this option recommended more frequently in pre-sentence investigation reports as an ATI. One attorney in particular made reference to WO's potential as an alternative, for example, to the seven days of jail time that are often almost automatic in certain cases for individuals found guilty of "2<sup>nd</sup> or 3<sup>rd</sup> degree aggravated unlicensed operation of a motor vehicle." Apparently in the past, WO was frequently used as an alternative to such jail sentences in City Court, but has since fallen out of favor. Presumably the potential is there for renewing that option.

## WO Future Being Planned

The Work Order program was being revamped at the time of this report. CGR recommends that the person put in charge be a Probation officer reporting through the Probation line of command, with all historical connections to the County Executive

severed. The director of the program needs to make this program a priority, be accessible during all court hours, and make site visits and periodic appearances in court to remind court personnel of the program's existence and value. The WO program needs to be periodically and rigorously assessed so that the County can determine whether it actually saves jail days and reduces costs, as we believe is possible. Its cost to the County has been relatively small (total annual costs of less than \$42,000, with \$16,000 of that covered by state funds, leaving the County with only about a \$26,000 investment in the program in previous years). See Chapter 8 for further discussion of recommendations related to this program.

## **INTENSIVE SUPERVISION PROGRAM**

The Intensive Supervision Program (ISP) operated by the Probation Department is designed to provide more intensive, targeted supervision with a smaller caseload than individuals assigned to "regular" probation. The ISP program receives State funding, since it is focused on keeping prisoners out of jail and especially state prison. In recent years, the County has received \$63,400 annually from the State, and the total has covered a little over half the cost of the program. The County share in 2006 will be about \$60,000.

### **Program Size Has Varied**

The number of individuals assigned to ISP has varied significantly in recent years, from as many as 44 new admissions (2001) to as few as 17 (2003), but has been around 25 in each of the past two years. Although the Probation Department has long had two ISP officers, for most of the past five or six years both officers also had other duties, including regular Probation caseloads and responsibilities for writing PSIs. In mid 2005, for example, at least one of the ISP officers had a total caseload of 50 individuals.

Late last year, with vacant positions having been newly filled in Probation's criminal unit, the department was moving to streamline caseloads for the two ISP officers and to limit the

caseloads to high-risk offenders. The overall goal was to reduce each officer's caseload to a point more in keeping with state guidelines, which CGR was told is "21 ISP offenders per caseload." At another time, CGR heard the goal stated as 30-35 offenders per ISP officer. Regardless of the final number, CGR believes the change to a pure ISP program, with fewer offenders per supervising officer, will lead to expanded and more effective use of this ATI. For example, in an interview conducted when Probation caseloads were still mixed, a judge noted that he would use ISP more if the program was designed so that a "defendant was really feeling Probation on the back of his neck."

## **Users of ISP in 2005**

Historical breakdowns of ISP program performance were not available from Probation officials. However, the Department was able to provide a breakdown for the 26 new entrants to the ISP program for 2005, all of whom were convicted of crimes in County Court (including two cases from other counties). Of the 26 entrants, three had been convicted of A-level misdemeanors, two of C felony crimes, and the remaining 21 of D and E felonies. About half were convicted of DWI-related charges, and three others of a charge of Aggravated Unlawful Operation of a Motor Vehicle. The rest fell into many different charge categories. A significant majority (15) had not had previous felony convictions.

Eleven of the 26 had not been incarcerated for any time on the charge that led to the ISP sentence, seven had been detained for between one and four days at some point prior to being put on ISP, and three were incarcerated from 8-13 days. There were four individuals, however, who had been incarcerated for very significant periods of time prior to entering the program: 124, 106, 76, and 47 days respectively.

Individuals typically are put on ISP as the result of a PSI recommendation made by Probation to County Court. In 2005, 21 were recommended for the program by Probation, and three were not recommended but were put on ISP anyway by County Court judges. (Two other individuals were put on ISP by judges in other counties, and their cases were transferred.)

## **Program Impact on Jail**

There is no way to determine exactly how many individuals would have gone to the local jail, and how many to state prison, had the alternative ISP program not existed. However, based on the

***15 of the 26 individuals admitted to ISP in 2005 were identified by Probation officials as having been diverted from County jail because of ISP. If just under half of them complete the program successfully, they will have reduced the County jail population by 4.3 inmates each day throughout the year.***

information Probation provided to CGR, the program likely will have had a significant impact on reducing local jail days as a result of the 26 admissions to ISP in 2005, assuming that about half of the program participants successfully complete the 18-month program (they could be incarcerated if they do not successfully complete the program). Probation officials indicated that they believe 15 of the 26 individuals admitted to ISP last year (58%) were diverted from County jail because of the program (13 for a one-year sentence and two for an estimated six months each). The other 11 were identified as offenders likely to have received prison sentences. Thus the County appears to be doing a good job of balancing the state's requirements for a program that helps divert offenders from the prison system with local desires to reduce the County jail population.

Factoring in the assumption that only two-thirds of a sentence would be completed if it had to be served (due to "good time"), and conservatively assuming that only seven of the 15 "in lieu of jail" offenders successfully complete the program and thereby avoid a jail sentence, a total of about 1,560 jail days would be avoided by the program's 2005 entrants—the equivalent of about 4.3 fewer inmates every night throughout the year. *Higher successful program completion rates would of course increase that impact.*

***With expanded dedicated focus on ISP caseloads, it seems reasonable to assume that by 2007, there will be at least 9 fewer sentenced inmates in the County jail each night as a result of ISP efforts, with no added costs to the County.***

More to the point, expansion of the "pure" ISP program, along the lines we have discussed with Probation officials, would have even greater impact. Assuming a doubling of ISP admissions in future years, to roughly 50 a year, and assuming that PSIs continue to make frequent recommendations for admission to ISP, *it seems reasonable to project that by 2007, when most of the expanded number of ISP admissions in 2006 will have completed the program, ISP will be responsible for reducing the jail's sentenced population by about nine inmates each night of each year, even if the program is only successful with half its admissions.* With more focus on program participants than has been the case in the past, this may prove to be a conservative assumption. This would represent a substantial return on the County's \$60,000 annual investment in this program, and this added impact should occur with no additional program costs.

*Time Spent in Local Jail While on ISP*

Of the 26 program entrants in 2005, at year end only three had spent time in the County jail for violating the conditions of their

## Projected Future of ISP Program

Probation. One had spent four months in jail, another 45 days. The third person, after six months on ISP, had had his Probation revoked and been sentenced to a year in the County jail. That sentence has already been discounted and factored into the projected jail savings outlined above.

The overall data, since it is limited to 2005, does not allow CGR to draw a great many conclusions about this ATI. However, it seems reasonable to conclude that the more focused version of ISP should result in significantly reduced jail days for the County in future years, as long as the current balance of jail-reduction and prison-reduction strategies remains intact. The current balance seems appropriate and fair to both County and state funders of the program.

As the program expands, it would also be prudent for Probation to build in a careful assessment of the impact of the more focused ISP approach on overall caseloads, jail days and dollars saved over time. Such an assessment should also analyze the types of offenders with whom ISP has the greatest likelihood of being successful, and Probation should share the findings with County judges. Such an assessment, along with PSI recommendations based on such information—and judicial decisions based on the recommendations—should have the effect of continuously improving the program's track record with high-risk offenders in the future.

## ELECTRONIC HOME MONITORING

Electronic Home Monitoring (EHM) uses technology that can monitor the whereabouts of pretrial defendants as well as convicted offenders. Electronic devices send signals to determine if the person is where he/she is supposed to be at any given time, as matched against an approved schedule. EHM can be a cost effective, safe alternative to housing defendants/offenders in jail, and can be available as both a pretrial and sentencing option to all criminal courts.

However, in Chemung County, EHM is currently only used in the juvenile justice system. Many other counties use the technology to enable persons who would otherwise be confined in jail to remain in the community, carrying out most basic activities of life, but with restrictions on where they can and cannot be at specified times. EHM enables the person being monitored to retain a job, tend to family obligations and, as approved, attend services or treatment, but with appropriate restrictions designed to limit any “unproductive” activities.

Nearby Steuben County leases 35 electronic units for use in criminal courts, as well as occasionally for persons involved in Family Court proceedings. The program is monitored under the supervision of the Probation department. In recent years, use of the electronic devices has been almost equally divided between unsentenced and sentenced cases. A recent CGR study documented that *the Steuben County EHM program is currently reducing the daily jail population by an average of almost 15 inmates per day, with the potential at no added costs to expand EHM use to make possible a further reduction of seven additional inmates per day. It is reasonable to anticipate a similar impact in Chemung County, at relatively low operating costs.*

***EHM is used by many counties, but not Chemung, for unsentenced defendants and sentenced offenders, and can have a significant impact in reducing jail populations. Based on estimated impact in Steuben County, it is realistic to assume at least 20 beds per night could be saved in Chemung using EHM.***

Many of the judges and attorneys interviewed during this study expressed a desire to explore the notion of adding EHM to the County’s array of ATI options in the criminal justice system. The few concerns raised related mostly to costs and staffing needed to monitor the program. But those concerns were typically offset by the perception that the potential benefits to the County and jail reduction strategies could far outweigh any additional cost or staffing allocations.

Moreover, as suggested in the juvenile justice companion report to this document, *there is considerable unused electronic monitoring capacity in the juvenile system, with only one-third capacity utilization in 2005.* With 10 units currently leased by the County for use in the juvenile system, six or seven units might often be available for other uses. We suggest in the juvenile report and in the final chapter of this report that *the County should engage in a pilot project to shift these underutilized resources into the criminal justice system. Appropriately used, CGR has little doubt that they could almost immediately have an impact in reducing the average daily jail population.* Beyond a pilot project to test

that proposition, we believe that it would make sense for the County to invest in additional electronic units, as a cost-effective means of having an even greater impact on inmate-reduction strategies, as discussed further in Chapter 8.

## DRUG COURTS

Although not technically considered among the County's alternatives to incarceration programs, Drug Courts are increasingly options for offenders in the criminal justice system at both County and City Court levels. The County Criminal Drug Court began in mid-2003, and the City Court program was beginning to enroll defendants in early 2006. (Family Court also has a separate Drug Court, which has had almost no activity since it began in early 2005; it is outside the scope of this study.)

### County Drug Court

The County Drug Court (DC) program is overseen by a County Judge, who conducts the court once a week. The program is administered on a day-to-day basis by the Drug Court Coordinator under the State's Unified Court System. As such, her position is entirely State-funded. She is responsible for coordination of all three Drug Court programs, with the aid of an assistant hired during 2005. She is also responsible for the supervision of offenders in the program, a role typically provided in drug courts in other counties by the Probation Department, which has chosen not to be involved in the Chemung program (see below).

Drug Court is designed as an intensive four-phase program which takes at least 12 months to complete. Components of the program include, among others, reporting to DC on a regular basis as required, participation in recommended alcohol/drug treatment programs, random unannounced drug and alcohol screening tests, and involvement with various life skills, health, employment or education programs as directed. Following an admission of guilt, defendants must sign a contract agreeing that failure to meet the program requirements will result in a return of the case to the

regular criminal court docket for sentencing, which typically would involve incarceration in state prison.

### *Program Enrollment*

The County program is targeted primarily at non-violent felony offenders with a history of alcohol and substance abuse problems and unsuccessful treatment. Although the program is designed to address alcohol and substance abuse problems, those admitted to Drug Court need not be facing explicit drug/alcohol-related charges, and indeed, most are not. Alcohol and substance abuse problems are, however, considered as contributing to the defendant's criminal behavior. Most of those in the program have lengthy criminal histories, although that is not a prerequisite for admission. No defendants charged with sex offenses or the distribution of drugs are admissible to the program. Defendants must be at least 16 and Chemung County residents.

By the end of 2005, the County Drug Court had enrolled 67 defendants: 18 in 2003, 23 in 2004 and 26 last year. Of those, 30 remained active in the program at the close of 2005.

### *Program Impact*

***Of those who have completed Drug Court to date, 16 have successfully graduated, and 19 failed and were sent to prison. One-third successfully graduated in the program's first year, two-thirds since.***

The program expects to successfully graduate about 60% of its enrollees over time. At this point, it is not reaching that level of success, though it has improved substantially since its first year of operation. In addition to the 30 active cases, 37 had completed DC by the end of 2005. Of those, 16 had graduated and been successfully terminated from the program, 19 had been unsuccessfully terminated, one had died, and one was listed in program records as having "transferred."

More encouragingly, the program's rate of successful graduates has improved since its entering class of 18 in 2003. Of that group, only six (33%) graduated. Of 15 who have completed the program since entering in 2004 or 2005, two-thirds have graduated, with five sentenced to prison.

### *Impact on Jail*

Because the alternative sentence for participants is viewed as prison, the program does not have significant immediate impact on reducing the County jail population, other than perhaps helping to prevent recidivism and subsequent admissions to the jail. In fact, it is not unusual for participants to receive sanctions while in the program, some of which involve short jail time "to get their attention" (about a third of all program participants thus far).

The most significant future impact the DC program could have on the jail population would occur if it were able to shorten the time between referral to the program and the completion of an alcohol/substance abuse evaluation and subsequent admission to treatment. Of the program's 67 participants, 37 (55%) had been in the local jail at the time of referral to Drug Court. From the time they entered jail to their release upon actual admission into a treatment program, those defendants collectively accounted for more than 4,400 jail days, mostly waiting for program screening, evaluation and treatment admission to occur.

***Incarcerated defendants referred to Drug Court have spent about 3.5 months in jail awaiting completion of the DC and treatment admission process.***

*An average of 107 days elapsed—about three and a half months—from the date that incarcerated defendants were initially referred to the Drug Court for consideration, to final admission to treatment.* Most of those defendants spent that entire time in jail, and were only released when they were formally admitted to treatment. The following breakdown provides an indication of the amounts of time in various phases of the program admission process:

- 37 days from referral to initial screening for program eligibility (including a few days for legal issues to be resolved in about a third of the cases)
- 9 days from initial eligibility screening to evaluation/assessment
- 31 days from evaluation to contract/Drug Court entry
- 30 days from Drug Court entry to treatment admission
- 107 days from initial referral to treatment admission

With the workload of the Drug Court Coordinator (a single position for most of the life of the program, but now two positions) compounded by difficulties in accessing defendants in the jail in a timely fashion (see below), well over a month's delay typically occurred between the time a case was initially referred to DC to determine eligibility and the actual completion of the eligibility screening process. Once a determination was made that the defendant met the program eligibility criteria, subject to meeting the substance abuse requirements, a formal alcohol/substance abuse assessment was requested. That typically took a little over a week to be scheduled and completed. But even after the assessment was complete and service and treatment needs determined, it took an average of two additional months to formally access the needed treatment. There was a month

between the assessment and formal admission to Drug Court, and then another month before the treatment could be started.

The delays are primarily a function of DC staffing shortages, timely access to the defendants in the jail, the need for timely District Attorney case screening and signoff, and the fact that service providers do not begin treatment without an approved payment process. For defendants in jail, the latter often becomes a major barrier, as often those who may have been on Medicaid may have had that coverage ended while in jail, leading to delays in reinstating such coverage before treatment can be authorized.

The practical effect of all this is that the 15 offenders admitted to Drug Court in 2005 who had previously been detained in jail had spent a total of just over 1,600 days in jail awaiting various decisions along the way to ultimately being admitted to DC and required treatment services. This represents an average of 4.4 persons in jail every night of the year.

***With changes in the Drug Court screening and admissions process, it should be possible to save about 900 jail days per year (2.4 beds per day), and perhaps more if the efficiencies lead to other referrals in the future. Potential expansion could have staffing implications for the program.***

With improved DC staffing, better access to the jail, and a process in place to prevent the removal of Medicaid coverage for defendants in jail and/or to expedite the reinstatement of Medicaid once a defendant becomes a candidate for Drug Court admission, it should be possible to reduce the composite time from referral to treatment by at least 60 days, to a total elapsed time of about a month and a half. It should be possible, for example, to initiate practices across DC staff and the DA's office to expedite front-end processing of potential DC cases in which the defendant is in custody. *These estimated reductions would have the combined effect of cutting the equivalent of 900 jail days over a year's time—about 2.4 beds per day. In addition, such changes should make it possible to accept expanded numbers of referrals to Drug Court.* We understand that such referrals are not now being made, or are being delayed, in part because of the lengthy backlogs.

### *Concerns with Drug Court*

Although Drug Court has many supporters, a number of concerns have been raised about the program. Concerns have been raised both by detractors from and supporters of the program. Among the major concerns:

- ❖ Some officials believe the program is working with offenders in the criminal justice system who have already failed in various

settings, and DC represents a waste of County resources. On the other hand, supporters say it is precisely the fact that these offenders have a history of failure, and that nothing else has worked, that necessitates a new approach designed to get at the underlying problems, and provide an incentive to avoid what would be a lengthy state prison sentence. Supporters also argue that nearly all the direct costs associated with operation of the program are not charged to County taxpayers (staff and judges are paid for out of the State budget). On the other hand, the DC does require time commitments from County employees in the DA, PD and PA offices. And jail sanctions imposed by the DC can add to local costs. One partial resolution of this dispute would be to track over time the success rates of different types of defendants in the program to determine if some are more successful than others, as a means of helping to guide future referrals to the program, as well as to suggest needed changes.

- ❖ Chemung is one of very few counties in the state that does not provide Probation supervisory support for the Drug Court program. Probation officials have expressed concerns about the program and its ultimate value, and believe that it is not a good use of their resources to be involved in supervision of participants in the program, especially since some of them have already been unsuccessful on probation supervision in the past. As a result of the lack of Probation support, the Coordinator of the program spends time providing direct supervision that is not spent by most DC Coordinators in other counties. Realistically, given other job requirements and differences in professional training, case supervision does not receive the same level of attention that it would if Probation were involved. Supporters of Drug Court argue that it would be more successful if Probation were more directly involved. Detractors suggest that the program is not that successful anyway, and that there are limited local benefits since the alternative to the program for most defendants would be state prison rather than the local jail, so why should local Probation staff be allocated to the program anyway?
- ❖ A few concerns were raised about the timeliness of response on some cases from the District Attorney's office, which is the ultimate "gatekeeper" for the program. Defendants are only admitted to the program with the approval of the DA's office, and delays in review of cases can affect not only access to the program

***Chemung County is one of few counties in the state in which Probation has chosen not to participate in supervising Drug Court participants, given philosophical concerns and other staffing commitments.***

but, as we have seen, the length of time defendants must remain in jail custody. Others have expressed concerns that the DA may use Drug Court as a means of salvaging some cases that are considered relatively weak and might otherwise be dismissed or pled to less serious charges. CGR could determine no evidence to either support or refute this concern.

- ❖ The Medicaid coverage issue is viewed as having major implications for delays in accessing services needed to make the Drug Court program viable. Finding a way to maintain access to Medicaid services and/or to expedite reinstatement of the coverage when it is to everyone's benefit to do so could increase the DC's ability to impact the local jail population.
- ❖ Limited hours when the jail is made accessible to attorneys and staff such as the DC Coordinator contribute to delays in screening inmates for DC eligibility. This issue also affects Project for Bail access, as noted earlier.
- ❖ Supporters of the program are concerned that even with the recent addition of a DC support position, the introduction of City Drug Court, once it is fully operational, will create staffing problems all over again, with at least one additional staff person needed, and/or a different means of providing case supervision support.

## City Drug Court

Elmira City Drug Court is in its early months, with a focus on city misdemeanor crimes where drug/alcohol abuse is a precipitating factor. The two-person DC staff who oversee County Drug Court are also responsible for the City program. The assumption is that the City program will have a greater impact on the local jail than does the County Court program, since by definition it is dealing only with misdemeanor offenses where prison is not a sentencing option. Those with concerns about the viability of the City Drug Court program wonder if there will be sufficient incentives for defendants to commit to a year or more of intense activities and treatment in order to avoid a jail sentence. Since the program was just beginning as our study was ending, no comments are possible on the implementation and impact of the program.

## KEY QUESTIONS AND OBSERVATIONS

Among the key questions and issues raised in this chapter that need addressing are the following:

- ❖ What are the implications of the issues raised and the possible changes suggested for future Probation staffing and how staff are allocated across functions?
- ❖ More effective data processing and management and tracking of cases are needed across all ATI programs.
- ❖ Although Project for Bail appears to have significant impact in getting defendants released from custody, its impact varies by court and judge. How can it, and/or should it, become a less cautious, more aggressive advocate for defendants who are not now recommended for release by the program?
- ❖ What level of staffing and program changes will be needed to reestablish the Work Order program as a viable ATI program?
- ❖ Will the recent Intensive Supervision Program approach of having two Probation Officers fully dedicated to an ISP caseload enable the program to be expanded, increase the proportion of successful completers of the program, and generate the expected reduction in jail days?
- ❖ Electronic home monitoring offers the realistic potential to reduce the jail population by 20 or more inmates per night if the County purchases additional electronic units. Is the County willing to consider a relatively small investment to make this possible? Can a pilot project be implemented to test the hypothesis by making electronic units previously used exclusively in the juvenile system available for use within the adult criminal justice system?
- ❖ Does Drug Court justify the resources directed to it, and are even more resources needed? What are the implications for Probation and other staff?

## 8. CONCLUSIONS AND RECOMMENDATIONS

Chemung County's criminal justice system includes many strong distinguishing components. Several innovative criminal justice practices are in place or under consideration. County leadership and key officials of many of the components of the criminal justice system are committed to improvement and considering new directions and changes in current practices where it makes sense to do so—and indeed have made a number of suggestions for ways of strengthening the existing system.

Most of the recommendations that follow have been at least alluded to in the earlier chapters. Most important for their credibility and potential for implementation is the fact that most of them were suggested in one form or another in our discussions with knowledgeable stakeholders in the County. CGR has been impressed with the insights, suggestions and openness to considering improvements that we have heard in virtually all of the discussions we have had throughout the course of the project.

### Overall Conclusion

Our recommendations build on significant existing strengths. The challenge is how to modify existing programs and practices where necessary, and add new practices and approaches where appropriate, to create an even stronger, more cost-effective system for the future.

*The major conclusion is that significant reductions in the jail population are possible—and, we believe, relatively easy and cost effective to implement.* Table 15 on the next page summarizes promising, realistic jail-reduction strategies and opportunities that have been previously discussed. Based on our analyses and experiences in other communities, we believe that each of these strategies/approaches and the reductions in the jail population are not only feasible but also conservative, in most cases, in their underlying assumptions.

**Table 15: Summary of Proposed Inmate-Reduction Strategies and Estimated Jail Bed Days Saved**

Strategy/Opportunity	Average Beds Saved per Day
1)Revise existing procedures to effect earlier releases of people in jail on low bails, low risks	6-12*
2)Expedite earlier releases for defendants released after 45 days for lack of timely prosecution	4-8*
3)Expedite PSI processing for defendants in jail, & schedule sentencing closer to PSI completion	16
4)Changes in Project for Bail practices	3-5*
5)Expanded dedicated focus on Intensive Supervision Program caseloads	9
6)Creation of Electronic Home Monitoring capability within criminal justice system	20
7)Streamline Drug Court screening and admission process	2
<b>Total impact</b>	<b>60-72 beds</b>

\* Range reflects potential for duplication. See text below for explanation.

Table 15 does not include expansion of the Work Order (WO) program as an inmate-reduction strategy, but we believe that when fully restructured WO will have some additional jail-reduction benefits. Other approaches discussed in the previous chapters and in the recommendations below may also expand the numbers shown above.

On the other hand, even though we believe our individual strategies and targets shown in the table are based on generally conservative assumptions, it is likely that there is some overlap in the impact of the different approaches. Four of the seven strategies (3, 5, 6 and 7) are relatively stand-alone approaches, and their jail inmate-reduction savings do not overlap with others. But the strategies that specifically refer to earlier releases of relatively low-risk defendants at points prior to the disposition of their cases (approaches 1, 2 and 4) may involve some overlaps in assumptions and affected defendants. If we assume as much as 50% overlap in those three strategies, their combined inmate-reduction target of 25 would be reduced by 12.5. Rounded off, that would leave a *projected overall impact of 60 fewer occupied beds per day* (plus any additional reductions likely but not included in our assumptions, such as jail bed savings achieved as a result of restructuring WO, or the EHM potential, once fully-integrated into the adult side of

Probation, to achieve what we believe will be more than 20 beds saved per night).

*Proposed inmate-reduction strategies should reduce the average population in the jail by at least 60 inmates each day, or 21,900 inmate days per year—a 29% reduction from 2005 levels.*

Over the course of a year, a reduction in inmates of that magnitude would represent a 29% reduction in the average daily population of the jail—from an average of 205 in 2005 to an average of 145. This would represent about 21,900 fewer inmate days in jail over a year. The cumulative effect of the recommended changes should become fully apparent within a year of implementation of new and modified practices, with partial effects apparent within months.

Our primary recommendations follow:

## Recommended Jail Inmate-Reduction Strategies

- ❖ *The County should implement each of the inmate-reduction strategies outlined above during 2006.*

Responsibility for implementation of the various strategies/opportunities varies. In some cases, the responsibility resides primarily with a single entity, such as Probation, the District Attorney, or Project for Bail. Most, however, will involve collaborative efforts across various components of the criminal justice system, as suggested throughout the report. (Note: oversight responsibility for implementation is covered in a subsequent recommendation below.)

- ❖ *Implementing the strategies should enable the County to implement one of the following cost-saving initiatives within the jail:*

- ❖ *(1) Close two or more units (posts) within the jail, at estimated annual savings of about \$500,000.*
- ❖ *(2) Use the added space created by the reduction in local jail inmates to generate more revenues for the County by converting 40 of the 60 reduced beds per night into beds to house inmates from other counties and/or the federal government, at \$80 per bed per night. At 40 additional boarding-in inmates per night, the County would generate additional revenues of \$1,168,000 each year, once fully implemented.*
- ❖ *(3) Implement a combination of the two approaches, closing one unit and boarding in 30 additional inmates,*

*With the implementation of proposed inmate-reduction strategies, the County should be able to generate benefits to local taxpayers of more than \$1.1 million a year in added revenues and/or reduced jail expenditures.*

*for savings of \$250,000 and added revenues of \$876,000, for a combined taxpayer benefit of \$1,126,000 per year.*

Jail officials have indicated that if it were possible to reduce the size of the jail population by as many inmates as projected above, it should be possible to close at least two posts of the jail. The specific number and size of the units to be closed would of course need to be determined by jail officials consistent with various state-mandated inmate-classification categories and requirements for how inmates of various characteristics can be grouped within units. Jail management and budget officials have indicated that closing of any unit would involve a reduction of about five full-time staff per unit, at average salary and benefit costs of about \$50,000 per person. The number of staff would be the same regardless of the size of the units closed. Five staff per post are the number of positions needed to staff a unit 24/7 every day of the year, including coverage for time off for such things as vacations, sick pay and training. Thus we estimate savings of about \$250,000 for each unit closed (*not including any possible additional savings that might accrue resulting from reduced overtime*). We suggest that closing of units and reductions in staff occur through natural attrition, without layoffs.

In addition to the projected savings, the jail reduction strategies may have added taxpayer benefits, as the result of not having to hire additional corrections staff. The State Commission of Correction has ordered the County to create eight new positions to meet State standards for the jail, given the current configuration and recent inmate population growth. Three of those positions have been created, but *it is likely that the need for at least some of the remaining five positions could be avoided if the inmate-reduction opportunities we have proposed are realized.*

We believe generating revenues by housing inmates from other jails or prisons is a viable option. Even without the proposed inmate-reduction strategies, the jail averaged 23 boarded-in inmates per night during the first half of 2005, exceeding 40 inmates from other counties and federal prisons on some nights during 2005. Although some counties that in the past have housed their inmates in the Chemung jail are now building their own new or expanded facilities, there are other counties that need to use other out-of-county jails. Moreover, jail officials indicate

that there is the potential to house numerous federal prisoners within the Chemung jail on a regular basis. We believe our estimates of the potential market for housing inmates from other jurisdictions to be realistic, given our discussions with jail officials in Chemung and other counties. Jail officials have also expressed their belief that jurisdictions housing prisoners in other facilities tend to be careful in whom they send, in order to ensure minimal disruption in the receiving jail.

- ❖ ***The County should work with other counties to advocate for changes in the NYS practice of housing parole violators in county jails with maximum daily reimbursement of \$35 per inmate.***

This amount is well below the County's costs, and less than half of what is paid by other jurisdictions for housing their inmates. It is also less than it would cost the State to house these prisoners in their own facilities. Thus, the State has no incentive to change this practice. It will require a groundswell of criticism from counties across the state, and even then, it may not be possible to change the basic policy and practices. Advocacy over time, however, may at least create sufficient momentum to (1) expedite the processing of such cases to reduce the time they occupy County jail beds and/or (2) increase the daily reimbursement levels for counties in the future.

- ❖ ***The County should initiate discussions with Elmira officials concerning the possibility of having City police increase the use of appearance tickets for arrests on minor charges. The jail is currently used as a City lock-up to house inmates arrested by the Elmira Police Department. The City currently pays the County a lump sum of \$25,000 per year to cover the housing and booking costs. By proposing to convert instead to a per diem per inmate charge, the County may help create an incentive for Elmira officials to reduce their costs via additional use of appearance tickets, thereby helping to reduce the number of City inmates in the jail/lock-up.***

Sheriff and jail officials in Chemung estimated that as many as three to six jail inmates per night could be avoided if appearance tickets were used more frequently in the City. CGR has no way of independently verifying the extent to which appearance tickets are

currently used in the City, or of the accuracy of the claims for the potential impact on the jail population of expanding appearance ticket use. But given what we know about the extent to which unsentenced inmates are routinely in the Chemung jail for short periods of time on minor charges, it is worth exploring the issue with Elmira officials to determine whether changes in current practices among arresting officers are warranted and feasible, and whether any such changes would be likely to have an appreciable impact on the jail population. The Elmira Police Department has in place an extensive set of policies and procedures for the issuance of appearance tickets, so there would be considerable experience and practices to build on. The suggested discussions would be for the purpose of determining if it would be possible to modify the existing policies and practices to enable even greater use of appearance tickets to prevent jail bookings, consistent with the assurance of public safety and the needs of the Elmira City Court and Police Department.

❖ ***The jail should explore with representatives of Project for Bail, Drug Court and defense attorneys opportunities for expanding their access to defendants in the jail.***

Because of jail staffing limitations, it is common practice to limit access to defendants to certain restricted hours. For example, lunch hour is closed to outsiders, and access is limited after about 2:30 p.m. Since access is so restricted, Drug Court, Project for Bail and defense attorneys compete with pastors and other visitors to get access to defendants under the jail's time and space restrictions. With the projected reductions in the inmate population over the next year or so, some additional staff time may be freed up to supplement the efforts of existing jail staff to make it possible to expand access to the jail for those in positions to help expedite the earlier release of defendants, thereby contributing to the reduction of the inmate population. Even working out procedures whereby persons needing to have access to particular defendants could call ahead and ask for the inmate to be available at a specific time could help. Some options that could be explored include: (a) creating additional access times each day, (b) creating an additional block of hours on a specific day of the week, and (c) making expanded use of part-time deputies to help cover Post 14, where interviews occur.

- ❖ *Criminal justice officials should explore the value of circulating and following up on a weekly list generated by the Jail Management System of all unsentenced jail inmates, detailing their circumstances (e.g., including criminal charge, prior record, bail amount, detainers, status of court proceedings, time in jail, changes in status and dates of such changes).*

Such a list may already exist, but it is not routinely used throughout the County. Such a list could be used by judges, Project for Bail and defense attorneys to flag inmates where there may be conditions conducive to developing a release strategy, and/or where circumstances may have changed (e.g., a hold removed, changes in bail status) that might trigger new discussions about conditions for release. One justice suggested that it might make sense to put such a list on a website with restricted access, so that it could be easily reviewed without necessarily generating paper copies.

## Recommended Coordination of Implementation Plan

- ❖ *Since the recommendations cut across the entire criminal justice system, the County should appoint a person to oversee the process of reviewing report findings and recommendations, establish a process to determine the County's highest priorities, create a strategic action plan, and monitor implementation of the plan. This person should be someone in, or directly reporting to, the County Executive's office. Although it could be an existing respected County employee, we recommend the County consider hiring a full-time Criminal Justice Coordinator to work with all components of the system to ensure that they follow through on the recommendations and action plan.*

It is likely that such a position will not be a long-term appointment, and probably should not be. But we believe the implementation of the changes suggested in this report, and the establishment of strategic directions and an implementation plan, will initially need dedicated centralized leadership and direction. A coordinated plan, with an identified leader, is essential. It may be possible to assign such responsibilities to an existing County official, but we believe that the tasks may require full-time attention, and that this function should not be assigned to anyone with current responsibilities within the criminal justice system.

The Coordinator's responsibilities should include monitoring the progress of jail reduction strategies, and documenting the impact various approaches are having in strengthening the criminal justice system, improving the impact of ATI programs, and reducing the number of inmates in jail, including documentation of the cost and revenue implications of changes that have been implemented. The individual selected to fill this position should have experience that demonstrates significant knowledge and use of technology and management skills that include extensive use of data.

- ❖ ***The County should reactivate and strengthen the Criminal Justice Council to guide the process of implementing needed changes within the system.***

Although the Council previously existed, it has not met for some time. Potential changes in the criminal justice system provide the perfect opportunity to recreate the Council to provide perspective and guidance in the development and monitoring of an action plan. This group should meet regularly with, and advise, the proposed new Coordinator. The Council chair should be appointed by the County Executive and have a clear understanding of the criminal justice system, but not be directly connected with any of its component parts. If desired by the County, the Council could also be charged with discussing juvenile justice issues, and Council membership could reflect that broader perspective. Council members would presumably include persons such as the Sheriff, Jail Superintendent, District Attorney, Public Defender, Public Advocate, Probation Director, representatives of Supreme, County and City Court judges (and Family Court if juvenile issues were to be included within the Council's purview) and of justice court magistrates, DSS Commissioner, Mental Health Director, Project for Bail Director, and the City Police Chief.

- ❖ ***Each agency, program practitioner and judge/justice affected by this report should be urged to carefully review it for insights about current practices and how those practices might be changed to expedite court processing and jail reduction strategies. Ongoing efforts should be implemented to more effectively educate attorneys, judges and justices concerning the status of programs and practices within the criminal justice system, and their implications for courts at all levels.***

Many in the criminal justice system rightly have considerable discretion in how they make decisions, but the data and observations included in the report may offer insights that individual judges, program practitioners, attorneys and agency heads may find helpful in considering possible future changes that could be beneficial to the entire system. Thus, the findings from this report should be the basis for forums involving key people from all components of the system concerning what is currently available, what changes may be forthcoming, and how they could impact on judicial proceedings and decision-making at all levels across system components. Updates (e.g., through meetings, written materials, website) should be provided on an ongoing basis of the status of programs and practices, and the extent to which there are openings in various ATI programs in the future.

**District Attorney Recommendations** ❖ *The District Attorney, Public Defender and Public Advocate should meet to discuss ways they can promulgate policies and practices throughout their offices and the overall criminal justice system that are consistent with their competing roles yet responsive to the need to expedite cases more efficiently at all levels.*

With the recent creation of the PA office and reduced emphasis on Assigned Counsel attorneys, the timing is right for such “summit” discussions that could help shape how business is conducted in the future by attorneys at all court levels. Court proceedings and jail population makeup could be significantly affected by such discussions.

❖ *The District Attorney should convene discussions with the PD, PA, County Court judges and representatives of City Court and justice courts to discuss ways of more effectively expediting cases between lower courts and County Court, including the potential for expanded use of Superior Court Informations.*

As noted earlier, many cases languish within lower court levels before ultimately being filed at County Court, and Chemung County is consistently near the bottom of all counties in the state in its use of SCIs. All key parties indicated in interviews with CGR a willingness to put the SCI information on the table for serious consideration, and the District Attorney indicated a willingness to

convene an initial meeting. Because of the long time involved in processing many felony cases, the fact that processing of SCI cases is typically much faster than Grand Jury cases, the fact that many cases ultimately get dismissed or pled to lower charges, and the fact that many defendants spend lengthy periods of time in jail prior to being released after 45-day deadlines for prosecution are not met, all combine to suggest that the timing is right for such a discussion on expediting cases and potentially expanding the use of SCIs where appropriate and mutually beneficial to all parties within the criminal justice system.

- ❖ ***The District Attorney should routinely screen cases promptly as arrest charges are initiated in the office, in order to expedite the processing of cases, establish priorities for prosecution, establish guidelines for sentencing (including expanded use, where appropriate, of alternatives to incarceration), and reduce the numbers of cases dismissed and/or failing to meet prosecution deadlines.***

Early and consistent review of case files, as occurs in many DA's offices, can have significant impact in shaping subsequent actions and strategies within the DA's office, in framing possible consistent plea strategies, and in providing clear guidelines for the successful and timely prosecution of cases that help avoid misinterpretations and inconsistent approaches by different attorneys within the office. Development of more consistent prosecutorial strategies and practices can help develop trust, improved communications, and improved relationships and decision-making between DA staff and defense attorneys.

- ❖ ***The DA should develop, and make more extensive use of, expanded internal training/orientation manuals and techniques, as well as internal evaluation procedures, as a means of ensuring consistent approaches by staff attorneys that meet high standards of performance.***

With the overloads faced by attorneys, and the fact that some are part-time, it is understandably difficult to make time to provide training/orientation updates for staff, but several observers, including some within the DA's office, acknowledged the need to have such approaches in place. Also, the office should have more comprehensive personnel performance evaluation systems,

including a “customer satisfaction” scale regarding responsiveness, that enables the DA to monitor and assess the performance of each attorney, as viewed by those with whom they come in contact throughout the system (excluding defendants).

- ❖ ***More effective communication, training and orientation, and feedback are needed between the DA’s office and law enforcement officers concerning what is needed in the arrest documents and evidence to ensure that cases meet standards for effective prosecution.***

Currently too many cases are dismissed, delayed in prosecution, or pled to lower levels than anticipated because of initial overcharging and/or insufficient or inadequate evidence, or because of insufficient guidance from the DA’s office in working with the arresting officers or investigators early enough in the case to correct any initial problems. It is important to take the time needed to ensure that the police and prosecutor are working effectively together to ensure that arrests will hold up under scrutiny more frequently than has been the case at times in the recent past. If there are problems in the prosecution of cases, feedback should be provided to the law enforcement officers in terms of what should happen in the future to prevent cases from faltering due to evidentiary problems that might have been avoided.

- ❖ ***The DA should consider establishment of a better internal management system such as computerized procedures for tracking status and progress of all cases through the system.***

The office has a rather antiquated system in place for tracking progress of felony cases and where they are in the system at any given time, and no ability to efficiently track misdemeanor cases. There is little ability to compare the processing and outcomes of cases in the aggregate to determine if there are patterns related to particular types of cases, particular attorneys, or particular courts or judges, that might prove helpful for taking corrective actions.

- ❖ ***The District Attorney should hire an Office Manager to more effectively manage the flow of cases through the office, with particular focus on 45-day deadlines related to prosecution of defendants in custody and 180-day deadlines for failure to prosecute cases.***

An office manager/case manager can help to create office efficiencies, ensure the effective use of computer systems to track and record and report on the status of cases, create and maintain effective measures of performance for judging the effectiveness of attorneys and of the office as a whole, and help ensure consistency of approaches between different attorneys who may be responsible for the same case at different times. Too many cases now “fall through the cracks” within the DA’s office, with implications for the rest of the system. CGR believes that an investment in this position can have significant benefits throughout the system, including reduction of jail days and expedited court cases, that will more than justify the expenditures involved.

- ❖ *More attention should be given to the training, supervision and support of inexperienced attorneys typically assigned to City Court. Serious consideration should be given to hiring an additional attorney, at least part-time, to help deal with the high volume of cases in City Court.*

At the very least, more nurturing and hands-on support is needed to help new attorneys, who are typically thrown into the cauldron of City Court with little or no training, to negotiate the early weeks in that setting, in order to minimize bad decisions and bad impressions being made simply due to lack of experience and understanding of how the system operates. Such training and supervision occur now to some extent, but they are generally regarded as being too little and inconsistent to be of much real value.

- Defense Attorney ❖ Recommendations** *The Public Defender, Public Advocate and District Attorney should meet to discuss ways they can promulgate policies and practices throughout their offices and the overall criminal justice system that are consistent with their competing roles yet responsive to needs to expedite cases more efficiently between lower courts and County Court, and throughout the system at all levels. These discussions should include the potential for expanded use of Superior Court Informations.*

For more discussion, see the similar recommendation in the DA section above.

- ❖ *The PD and PA should develop, and make more extensive use of, expanded internal training/orientation manuals and techniques, as well as internal evaluation procedures, as a means of ensuring consistent approaches that meet high standards of performance across attorneys in the offices.*

Again, the issues are similar to those discussed in the context of the District Attorney recommendations.

- ❖ *Both the PD and PA offices should consider establishment of better internal management systems such as computerized procedures for tracking status and progress of cases through the system. It may make sense to establish a single system across the two offices, but with data for the two maintained separately and not accessible to the other. Ideally the system would also enable tracking of performance of Assigned Counsel attorneys as well as those in the PA and PD offices.*

As with the DA's office, the defense attorney offices have systems that were not able to produce effective, consistent management data for purposes of this study, and even where data could be produced, several different reports, ostensibly discussing data on the same indicators, each produced significantly different numbers. Better management systems are needed to provide the ability to track the overall performance of the two offices, as well as for individual attorneys.

Currently there appears to be little or no ability to compare cases in the aggregate to determine if there are patterns related to particular types of cases, particular attorneys, particular courts or judges, or to compare workload and performance of PD and PA attorneys with Assigned Counsel attorneys. Such information is necessary in order to identify issues for which corrective actions may be needed. Consistent definitions are needed (e.g., what constitutes a case, and how are cases tracked when both PD and PA are involved in representing different defendants in the same case?). The PA's office has budgeted for the installation this summer of a state-of-the-art computerized case management system, which can hopefully be the key building block for making this recommendation happen.

- ❖ *We recommend that the County hire two additional defense attorneys, one each in the PA and PD offices (and a part-time*

***Expansion of the PD and PA offices would yield net benefits to County taxpayers of about a quarter of a million dollars per year in reduced Assigned Counsel Family Court costs alone, plus anticipated additional smaller savings in reduced costs in criminal courts.***

*secretary per office), to represent most of the remaining criminal cases still represented by Assigned Counsel, but mostly to focus on reducing the significant costs associated with representation by AC attorneys of Family Court cases. Even with the costs of this investment, we believe the County will save almost a quarter of a million dollars each year, just in reduced Family Court costs.*

Although key data needed to make the case for this recommendation were not available in full, enough data were available to give CGR confidence that the costs of this investment would be returned many times over, almost immediately. Based on data made available to us, *total salaries and benefits of the recommended positions would total about \$160,600, against our estimates of about \$400,000 a year in AC Family Court costs that could be eliminated as a result of the work of the new attorneys.* Further savings would be likely as a result of additional reductions in AC criminal cases that the additional PA/PD attorneys would cover.

- ❖ ***We also recommend that the County establish a pilot project to test the feasibility and potential value of a central screening and attorney assignment function that could result in additional cost savings and efficiencies across courts.***

Many criminal justice officials have postulated that many of those receiving indigent defense services in the County, particularly those in Family Court, may not technically meet financial eligibility requirements for the services. There have been no uniform standards for determining eligibility, and typically the decisions are left to individual judges to make, usually on the basis of unverified information. A central screening function could offer the potential for creating uniform standards and applying them consistently throughout the County's various courts. Although we heard considerable support for the creation of this function, we believe it would be premature to create a full-fledged screening function without first testing it, as it may not prove necessary or cost effective. On the other hand, we believe there is sufficient merit to the idea to test the concept for a six-month period, with the results carefully tracked during that time, prior to making a final decision about whether the function should be institutionalized.

## Court Improvement Recommendations

- ❖ *Court officials and representatives of the District Attorney and defense attorney offices should meet to discuss ways of more effectively expediting cases through the court system, especially between lower courts and County Court, including the potential for expanded use of Superior Court Informations.*

See the DA recommendations.

- ❖ *Consideration should be given to setting up a tracking mechanism linked to the local courts and DA and PD offices that would identify lower court felony cases when they are arraigned and/or come to the DA's attention. This should be followed up with assignment (and further tracking) of each case to a specific County Court judge, who would in turn call together the attorneys for each case after a specified period (e.g., one or two months, or prior to the 45-day deadline for prosecution for cases in custody), if no previous Grand Jury or SCI actions had occurred by then, in order to understand what is needed to move the case forward.*

Now cases often languish in the lower courts with no central oversight of their status, leading to the long delays discussed earlier in the report. Bringing these cases before the upper court level for a review at a specified time should add accountability to the system, force attorneys to provide attention to a case in a timely manner, help ensure that cases don't languish simply because they are in a lower court (that may rarely meet), and help ensure that if there are problems with the case, or a long period of detention that may not be necessary, there is a way of identifying and discussing actions that may help resolve these issues.

- ❖ *Courts at all levels should be conscious of the dates when pre-sentence investigations are requested, and expedite the scheduling of follow-up sentencing dates as soon after the targeted PSI completion date as possible. If the PSI recommendation below is followed to guarantee completion within 20 days for defendants in custody, it should be easy for courts to schedule sentence dates for soon after the PSI is due. Court requests for PSIs must also be conveyed to Probation immediately rather than waiting for several days to*

*process the request, as sometimes happens with some smaller justice courts.*

Sentencing for the average case for which a PSI is requested does not occur until four weeks after the PSI is completed (though the time had been reduced to 24 days in the past year). We assume it should be possible in most cases to reduce the time lag to no more than 14 days, or even less. If that were to occur, significant jail days would be saved, as noted earlier, for those in custody while awaiting sentencing. There will be some times when the 20-day period cannot be met, and Probation should communicate such delays as soon as they are known, so a new feasible court date can be scheduled.

- ❖ *Judges should examine their court scheduling/calendaring approaches and see if scheduling can be done more efficiently to minimize, as much as possible, wasted time of attorneys and defendants.*

Court scheduling appears to be far less of a concern in Chemung than in many other counties. However, particularly in the context of City Court, several stakeholders suggested that if cases could be scheduled in blocks for a certain hour, rather than having all defendants come at the same time and sit potentially for hours, attorney, defendant, victim and others' time might be more appropriately spent, rather than wasted waiting unproductively in court.

- ❖ *The Administrative Judge for the 6<sup>th</sup> Judicial District should encourage courts and individual judges/justices to examine their practices to consider ways of building on their respective strengths while at the same time utilizing the data in this report to initiate corrective actions to help expedite cases through their courts, help streamline the overall justice system, and reduce the jail population where possible, consistent with community safety.*

As this report documents, there are major differences on a number of dimensions between courts and between judges within the same courts. The differences do not necessarily imply better or worse, but the sheer magnitude of some of the differences hopefully will spur constructive reflection on practices and productive changes that will be beneficial to courts and the overall justice system. The

Administrative Judge should consider convening judges as a group to discuss the implications of the report, and meeting with individual judges to consider actions each could take to improve aspects of the criminal justice system over which they have control.

- ❖ *Town supervisors, village mayors and town/village justices in nearby jurisdictions may wish to consider pooling resources to establish pilot projects whereby voluntary “mini-district” courts or shared service projects are set up to determine if it might be possible to establish better use of resources between neighboring justice courts.*

Short of being able to establish a full-fledged district or regional court, which is politically unlikely and which may have other liabilities as well, the idea of pooling resources seems worth testing, potentially enabling justices to be formally on call to cover for more than one court, to enable rotating justices to deal with issues that arise between regular court appearances, to share clerical support, and other similar ways of pooling resources. The model recently adopted by the towns of Baldwin, Erin and Van Etten for a service sharing agreement may be a model other justice courts may wish to examine.

Also, as a means of improving communications, education and information sharing between justices and clerks of the justice courts with the more centralized “players” in the criminal justice system, it may make sense to convene periodic meetings involving the justice courts, DA, PA and PD, Probation, Administrative Judge, County and City Court judges and clerks, Project for Bail, and other appropriate officials.

## Pre-Sentence Investigation Recommendations

- ❖ *Probation and court officials should agree to expedite the completion of PSI reports within 20 calendar days for defendants who are in custody at the time of the PSI requests. If this were to occur routinely, in conjunction with commitments to schedule court appearances for sentencing within about two weeks of SCI completion, the jail population could be reduced by about 16 inmates per night.*

Focus on these cases should include deliberate attention to ATI options that might be realistic alternatives to a jail or prison sentence. With the expedited PSI process and more attention on

ATI options, it is possible that even more than the estimated reduction of 16 jail inmates per day could result.

It is recognized that for the 20-day goal to be met, courts must convey the PSI request immediately to Probation, as noted above. Probation should accept email and fax requests for PSIs, and these requests should trigger the 20-day time period, even if official paperwork is needed and arrives later via interoffice or U.S. mail. Proper procedures will need to be developed for this new approach to be successful.

Some PSIs may take slightly more than 20 days due to unavoidable circumstances such as inability to obtain a victim's statement in a timely manner or delays in reports from other agencies which may influence recommendations, but such delays should clearly be the rare exception. For full inmate-reduction savings to occur, both Probation and all court levels must cooperate in a systemic approach to expedite PSIs and sentencing dates for all defendants in custody at the time of the PSI reports.

- ❖ *Judges should be encouraged to use PSIs only when absolutely required, and only when they have legitimate needs for more information before pronouncing sentences. "Short-form" or Conditions of Probation PSI reports focusing on just the basic information needed to make a sentencing decision should be used wherever possible. At the same time as there is a desire to reduce the number of PSIs requested, wherever possible, the PSI reports that are done should explicitly encourage the use of ATI options, where possible. The two objectives need not be incompatible, as long as judges focus their requests for PSIs on any cases in which ATIs may be viable options that they are willing to seriously consider.*

Probation may wish to discuss with judges/justices what information is needed, under what circumstances, and offer options concerning full PSIs, "short-form" PSIs or "conditions of Probation."

- ❖ *Data on PSIs should be tracked electronically and analyzed more carefully in the future to determine their outcomes, the extent to which ATIs are recommended, the extent to which*

*the recommendations are or are not used by specific judges, and the extent to which PSI recommendations are or are not consistent with ultimate sentencing decisions.*

## Recommendations Specific to ATI Programs

To accomplish inmate-reduction strategies and other systems improvements, a number of specific changes are recommended for each of the current and potential ATI programs. They are indicated below, by program. A summary of the staffing implications for the Probation Department follows at the end of this section.

### *Project for Bail*

- ❖ *Organizationally, we recommend that Project for Bail remain an independent agency. However, the County should contract with P4B and develop performance standards against which the program can be judged on an annual basis. Performance standards should include numbers screened, number and percent interviewed, number and percent eligible (and recommended), number and percent released to the program consistent with eligibility/recommendations, number and percent released to the program despite not being eligible, FTA rate, and non-compliance rate. As the agency responsible for ATI programs within the County, Probation should coordinate with P4B and monitor the P4B contract on behalf of the County. Overall performance and program accountability should be monitored by the proposed Criminal Justice Coordinator, who should meet with the Probation Director and the P4B director monthly to go over program goals, performance against goals, and opportunities to strengthen the program.*

Some of those we interviewed suggested that P4B should be reconstituted as a County government program as part of the Probation Department. But there would be no financial benefits to the County to doing so, and we do not see any major service benefits either. To the contrary, some believe, probably with good reason, that the program may have more credibility with defendants if it is not viewed as being “another government program.” CGR believes that the program can be most effective by continuing as an independent entity, but with a closer working relationship for performance monitoring purposes with the County, which should routinely monitor program performance

against contractual expectations and outcomes, as should be the case with County contracts with any outside agencies.

- ❖ ***Sufficient additional funding should be allocated by the County to P4B through the contract allocation process so that the agency can raise staff salaries. Staff salaries and benefits are low compared with those of comparable County employees, and a significant adjustment can help get them closer to comparable County employee levels. Additional funds are likely to contribute to staff retention and reward staff for their historical role in keeping defendants out of jail, and recognize the level of work expected of staff in response to recommendations to strengthen the program.***

A number of changes are recommended below which will ask more of program staff than has been expected in the past. We believe the changes can be accomplished with existing program staffing levels, through greater efficiencies tied to improved technology and reallocation of some responsibilities across staff.

- ❖ ***When the current P4B lease expires at the end of 2006, consideration should be given to housing the program, as a non-profit contract agency, within a County facility in close proximity to the jail and to City and County Courts.***

Even though the program should remain as an independent agency, we believe it makes sense to have it housed within a County facility to enhance program security and in order to save money currently budgeted for rent, building maintenance, phone and utility fees that might be avoided, or at least reduced, in a County building. The potential savings of about \$16,000 could be reinvested in computer/technical improvements for the program and/or in additional salaries and benefits to create incentives to help retain staff within the program.

- ❖ ***The program's computer system should be upgraded and made compatible with the County system and with the jail's management information system, so greater program access and efficiencies can occur, thereby helping free up staff time for additional assignments.***

Information Technology staff from the County have been working with the program in recent months to help make the program's

computer system and terminals compatible with the jail and other County offices. Some progress has been made, but the goal of complete accessibility and compatibility with other agencies is not yet accomplished. The ability to access jail system data is critical, as it would enable the program staff to make some screening decisions without having to actually go to the jail. Given limited jail access hours in general, the more P4B can do to collect needed information without having to actually be physically present at the jail, the more productive the staff can be.

- ❖ *The program should become more aggressive in making explicit recommendations that defendants be released, rather than simply indicating that defendants are “eligible for release.” It may be that the program’s relatively low rate of releases compared to “eligibles” would be increased if judges knew that they were receiving a formal recommendation rather than simply a more passive statement that a defendant is eligible.*

This issue should be discussed in some detail with judges and justices by P4B staff. Some judges and justices indicated that in the past they were not always clear what information they were receiving from the program, and how they were supposed to respond to it. In some cases the information received was simply a phone call or phone message indicating that a defendant was eligible, with no further context. A more explicit recommendation, where possible delivered in person, would be a more forceful statement. National pretrial release standards recommend that programs make explicit release recommendations, and more than three-quarters of programs nationally do so in most or all cases.<sup>9</sup>

- ❖ *Consistent with making formal recommendations, the program should also be a more visible presence in as many courts as possible when recommending release, to “put a face on Project for Bail.” Now staff are present primarily in City and County Courts, with limited presence in justice courts, where release rates are by far the lowest. Even*

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<sup>9</sup> See *Pretrial Services Programming at the Start of the 21<sup>st</sup> Century: A Survey of Pretrial Release Programs*, July 2003. See also John Clark and D. Alan Henry, “The Pretrial Release Decision Making Process: Goals, Current Practices and Challenges,” November 1996 (Pretrial Services Resource Center).

*though being present in such courts may be less convenient for staff, consideration should be given to making at least periodic appearances in at least the larger justice courts as often as possible when release recommendations are made, to provide opportunities to explain the underlying rationale behind P4B decisions.*

Several justices indicated that they would have a better understanding of P4B and its services, and be inclined to pay more attention to its recommendations/eligibility assessments if they were delivered in person, with a supporting statement reminding the court of what the finding was based on and what the program would be doing to support their recommendation. P4B staff indicate that they are happy to respond to a justice's request to appear in court, but such requests are rare, and P4B should be responsible for taking the initiative to appear on their own as often as possible, especially in the higher-volume justice courts. The frequency, nature and potential value of these appearances, and under what circumstances they would be most helpful, should be discussed between P4B staff and justices. Because of the hours of most justice courts, staff appearances at these courts may mean the need to adjust work schedules, but we believe the time spent in the courts would be better spent than comparable time in the office in terms of increasing release rates, particularly in the justice courts. We also believe that greater computer-related efficiencies can help to free up additional time of staff to make possible other ways of allocating time to tasks of value to the program.

- ❖ *Consideration should also be given to undertaking a pilot project whereby staff would go to the jail early in the morning, say at 6:30 or 7, to conduct as many interviews with defendants as possible prior to appearing at City Court at 8 or 8:30. This may enable more defendants to be interviewed each day, and for more formal recommendations to be made, rather than having to interview defendants while court is in session. It is especially important to be able to conduct early interviews on Monday mornings, even if other days are not feasible, given the typical backup of cases from the weekend.*

It is possible that early morning interviews would not add appreciably to the total numbers of interviews that could be completed each day, or the numbers of defendants released to the

program. But it is worth testing for three to six months to determine whether the program has more impact by conducting interviews earlier, pre-court, than it has under current arrangements. Earlier interviews may also enable the program to do more verification of information obtained in the interviews prior to taking information to court. Conducting interviews in jail during early mornings, prior to court sessions, is typical of what many release programs routinely do. It is recognized that this would also represent a change in staff hours, at the opposite end of the day from the recommended evening justice court hours. This is one of the reasons why we suggested increases in remuneration for staff, in part in anticipation of changing expectations of their work. But it is also why we suggest that early hours be initiated on a pilot basis, with results carefully monitored, before any final decisions are made about whether this approach should be made permanent or not. If it has no demonstrable impact on program performance indicators after a reasonable test period, the program could go back to its current approach.

- ❖ *The program should be more aggressive in interviewing higher proportions of defendants than it currently interviews. We recommend that it not automatically screen out defendants with detainers from other charges, unpaid fines, history of non-compliance, or even those with previous FTA histories (unless they are excessive). Program data suggest that a number of defendants with such characteristics ultimately get released anyway, suggesting that judges believe that these indicators should not be automatic knockout factors in terms of assessing risk of failure to appear in court.*

Interviewing higher proportions of defendants would be consistent with national pretrial release standards, which recommend that *all* defendants in custody should be interviewed, even if interviewed by the program in the past, even if all obligations have not been met in the past, and even if immediate release is not likely, since circumstances may change, and information should be collected in anticipation of the possibility of a future release opportunity. Although we are not recommending that all defendants be interviewed, we do encourage the program to be less restrictive than it is now concerning the types of

characteristics noted above, as consistent with discussions in Chapter 7.

- ❖ *P4B should use lists of jail inmates (see proposed weekly circulation of list under jail recommendations) to periodically review the status of all defendants who are detained. We suggest that this occur every two weeks, with the focus on reassessing any defendants whose circumstances may have changed in the meantime and/or on assessing whether the DA and judge may be more willing to consider release under supervision after a defendant has spent some time in jail with no sign of being able to post bail.*

Again, national pretrial standards argue that programs should routinely review the status of all detained defendants, although most do not do so on a regular basis.

- ❖ *The program should compare court appearance rates for defendants recommended and released with those released to P4B without having been considered eligible. It should also determine, via access to jail data, what happens concerning subsequent release or jail status to those not released through P4B.*

Electronically tracking and analyzing such information would provide the program with important understandings of what impact it is having with particular types of defendants, what happens to cases not released through the efforts of the program, and where there may be opportunities to push more aggressively for “safe” releases for other defendants in the future.

#### Work Order

- ❖ *The staffing of this program should be strengthened, with primary focus on expanding the program, adding work sites, providing strengthened supervision of participants and of the work sites, restoring program credibility and convincing judges that it is a viable sentencing option and an effective alternative to incarceration, as long as it is effectively monitored. The coordinator for the program should clearly be a Probation employee, and be responsible to the appropriate Probation Supervisor, rather than continuing the historic relationship with the County Executive’s office.*

Such expansion and monitoring have not been possible with the limited staff time devoted to Work Order in recent years. We suggest that the program initially be staffed with a .5 FTE Sr. Probation Officer splitting time with another assignment (see below). Aggressive use of half a senior PO's time should be sufficient to get this moribund program back off the ground and functioning as a viable ATI program. However, it is not likely that this program will ever be a major contributor to reduction of jail days, based on reactions of stakeholders we interviewed. On the other hand, it may prove under new leadership to be a viable sentencing alternative which provides courts with a means of holding defendants accountable for their actions without a jail sanction. It seems plausible that it could contribute to perhaps one to two beds saved per day during the course of a year. If the program shows the potential for growth beyond what can be managed by a half-time coordinator, the function could evolve into a full-time position, but we believe that half-time should be more than sufficient to get the program restored as a viable alternative program.

*Intensive Supervision Program* ❖ ***CGR endorses the recently-adopted model of two full-time POs (at least one a Senior level PO) fully dedicated to an ISP caseload. This model offers far more promise than the previous approach of having dual caseloads including both ISP and regular probation offenders. Maintaining this service delivery model should be able to lead directly, by 2007, to a reduction of nine sentenced inmates a night from the jail, and perhaps more if the program's successful termination rate exceeds 50%.***

A 50% success rate seems to be a reasonable conservative goal for the initial year of this new dedicated-caseload approach. To the extent that a higher rate of successful program completions can be achieved, the impact on the jail could also grow, assuming that half or more of the successful participants would have been headed for jail instead of prison in the absence of ISP (as was the case as the new approach to the program was launched in 2005).

❖ ***Probation should carefully assess the impact of the more dedicated ISP-cases-only approach on overall caseloads, jail days and dollars saved over time. Such an assessment should also analyze the types of offenders with whom ISP***

*has the greatest likelihood of being successful, and Probation should share the findings with County judges.*

Assuming positive findings, and PSI recommendations in support of use of the program, this program should have no problem operating at capacity, and continuing to divert offenders from both jail and state prison.

### *Electronic Home Monitoring*

- ❖ *Significant unused capacity in the County's juvenile justice system electronic home monitoring devices should be used and tested on a pilot basis, at no cost to the County, to assess their potential impact in reducing the jail population. Currently the County is not using EHM as an ATI option at all within the criminal justice system, though other counties have been using it as a true alternative to jail.*

Assuming the County and funders approve the use of unused juvenile units in the adult criminal system, we expect that the introduction of EHM to adult cases will quickly verify its potential as a significant contributor to inmate-reduction strategies. Extensive use of the alternative in Steuben County, with both unsentenced defendants and sentenced offenders, has already resulted in about 15 fewer inmates per night in the jail, with further expansion projected to result in an additional seven fewer inmates per night in 2006. CGR believes that similar numbers should also occur in Chemung, once a program is fully implemented.

- ❖ *Assuming that the pilot test proves successful, CGR recommends that the County purchase additional EHM units, with the goal of approaching by 2007 the projected impact of 20 to 22 fewer inmates per day. We recommend that Probation be responsible for monitoring the program once fully implemented. Many attorneys and judges we met with during the study expressed enthusiastic support for having this alternative added to the County's ATI programs. We recommend that the units be used as an alternative to incarceration for both unsentenced and sentenced cases. We believe that the projected level of impact can be obtained with a total of about 35 leased EHM units.*

Total costs of leasing and monitoring that many units should not exceed about \$25,000 per year, based on the experience of Steuben

County and Chemung DSS with regard to the juvenile justice system. This relatively small cost would be recouped many times over in savings to taxpayers resulting from anticipated reductions in the jail population. Fully implemented, the staff implications are likely to be one full-time Probation Officer, or a combination of a half-time PO and a half-time Probation Assistant.

### *Drug Court*

- ❖ *While there are insufficient data to date to justify definitive conclusions about the ultimate value of the Drug Court programs in the County (given the length of time it takes to successfully complete the program), the reality is that significant commitments have been made to these programs by local and state judicial officials. Given that reality, and given the recent extension of the model to City Court, the programs should have the resources they need to prove their worth. Accordingly, the County should urge the State to add one additional staff person to support the Drug Court Coordinator function, if the City Court program grows rapidly, as some expect. Otherwise, there will be insufficient resources to expedite referrals and supervise participants in the City program.*

Current staffing levels are barely adequate to cover the existing County Court program and a modest City program, in the absence of participant supervision support from Probation. If the City program expands rapidly, levels of supervision for those in both adult programs will become stretched too thin, to the detriment of program impact in both cases.

- ❖ *Similarly, as long as the State commitment to the programs exists, Probation should be providing direct case supervision for at least one, if not both programs (depending on the ultimate size of the City DC program). It has chosen not to participate, as a result of philosophical concerns about the program, and as a result of staffing constraints. But if Drug Court programs are to continue, and have any chance of being viable in the long run, the County must commit to having an active supervision role played by Probation. At least one PO should be dedicated to Drug Court programming, with the potential for two if the City Drug Court grows rapidly.*

Chemung is one of very few counties in the state where Probation is not an active participant in Drug Court programs. Regardless of the merits of any arguments for or against Probation's involvement in either the County or City program in Chemung, the programs cannot survive successfully, in our judgment, unless Probation is actively involved in at least one if not both of the programs (its degree of involvement in the City program could also be influenced by the level of Coordinator support staffing provided by the State, i.e., Probation's involvement in the City program may be less necessary if the recommended additional State-funded staff position is created, as recommended above). *As long as the State continues its emphasis on Drug Court, we believe the County must make this Probation commitment or be willing to accept a program that will never fulfill its promise.* Some counties have been able to fund such supervision partially with TANF funds, and this option should be explored by Chemung County.

❖ ***CGR recommends that the County conduct an independent evaluation of its County Drug Court program.***

It is a relatively common practice for Drug Court evaluations to be undertaken when they have been in existence for about three years, thereby providing sufficient experience to adequately determine how well the program is performing.

❖ ***In order to reduce unnecessary days spent in jail by persons admitted to Drug Court who are unable to access treatment services in a timely manner, the Drug Court staff and DA's office need to expedite the front-end screening process to determine eligibility for the program, and the County should put in place a process to keep Medicaid status for jail inmates on an "inactive" status (rather than closing the cases when they enter jail) and/or to expedite the process of reinstating Medicaid coverage so that a person can be admitted to treatment immediately upon admission to Drug Court.***

Long delays are currently occurring while treatment providers delay admitting a defendant into treatment until Medicaid eligibility is reinstated. We believe that procedures should be able to be developed relatively easily that should reduce or eliminate

this problem. Expediting access to the program and to treatment could reduce the jail population by two to three persons per day.

- ❖ *In order to expedite access to treatment, as well as initial assessment of an inmate's alcohol/substance abuse status and treatment needs as part of the process of determining eligibility for Drug Court, the County and DSS may need to expand the funding available for a Certified Alcohol and Substance Abuse Counselor in the jail to process cases and help do the paperwork needed to access treatment. DSS currently funds 10 hours a week of such services in the jail, but the workload is closer to a full-time position. Although CGR was not able to fully assess the costs and benefits of funding such a position, consideration should be given to this possibility, as a partial solution to moving cases out of jail more rapidly.*

*Summary of  
Implications of  
Recommendations for  
Probation Staffing*

Summarizing the staff implications of these recommendations for the Probation Department, we offer the following conclusions, followed by summary recommendations:

Probation recently has been faced with increased mandated requirements from the State. As part of its efforts to respond to these mandates and to other changing needs, and as part of its ongoing efforts to operate as efficiently as possible, Probation has been undertaking an internal review of its staffing and caseloads, with an eye to finding ways to improve its services to probation supervisees in the most cost-effective manner possible.

One result of these efforts has been, as noted in Chapter 7, the earlier-than-scheduled removal of an estimated 10% to 15% of offenders from active caseloads by closing a number of cases and moving others to supervisory levels with no regular reporting requirements. These actions, which occurred earlier this year, have reduced active caseloads for regular Probation Officers from about 96 in 2005 to closer to 80 active cases per PO. At the same time, these changes have impacted the proportion of the active Probation caseload where the requirement for face-to-face contact is minimal. Prior to the actions described above, about 80% of the active regular probation caseload required only minimal in-person contact. Since most of the recent case closings were from this group, Probation officials, during this transition period, were not

able to estimate the current proportion of the remaining regular caseloads which need only minimal (i.e., once a month) supervision and face-to-face contacts.

Probation officials have also considered, for the remaining group requiring minimal supervision, providing group sessions incorporating valuable educational and support services in place of one-on-one meetings. Such a step would limit the amount of time each Probation Officer would need to spend with such offenders, but would allow Probation to meet reporting requirements and also provide useful information in a consistent manner to large groups of probationers. This approach has not been implemented, and has met with some reservations among POs, but is still under consideration, and in CGR's judgment is worth considering as a cost-effective use of staff and probationer time.

Also under consideration is the establishment of an ongoing process under which POs and their Supervisor would periodically (e.g., every other month or quarterly) systematically review their caseloads and cull from active rolls (with court approval) any for whom active services no longer have value (in effect institutionalizing the process used earlier this year to reduce active caseloads).

Probation should be commended for the process it has undertaken to restructure its resources, given changing demands for finite resources. As related to overall ATI staffing needs as outlined above, we offer the following overall recommendation, followed by staffing recommendations for specific programs:

- ❖ ***Probation should continue to review its caseloads and strategies for supervising probationers in the most cost-effective manner possible, including a review of how time is best spent in meeting probationer needs within staffing constraints. Based on what we know at this point, we recommend that the ATI staffing needs be met with the addition of one new Probation Officer position, and absorbing the other tasks through reallocation of resources among existing staff. These initial staffing assumptions should be evaluated at the end of this year to see if any changes are needed in the assumptions and resulting allocation of staff resources.***

***Probation has been reassessing its caseloads and staffing allocations. Based on reallocation of resources likely to result, we believe the additional recommended ATI program staff can be covered by adding one new PO and by reallocation of assignments involving existing Probation Officers.***

We believe, given Probation's creative approaches to case management, that these staffing assumptions are viable. But a process should be in place by the end of the year to assess our assumptions and the ways in which staff resources have been allocated. This review process should probably be undertaken by the Criminal Justice Coordinator, in conjunction with the Probation Director. If necessary, new staffing may be added at that time. But even if the worst case scenario occurs, and two additional projected staff positions need to be newly-created, the costs would still represent a small investment compared with the potential savings to taxpayers of more than a million dollars a year, as outlined at the beginning of this chapter.

More specifically, to summarize our previous staffing recommendations: We recommend the following concerning Probation staffing for ATI programs:

- ❖ ***One Probation Officer position should be split between directing the reinvigorated Work Order program and providing expedited pre-sentence investigations for defendants in custody when those reports are requested.***

We believe the Work Order program can be strengthened and managed on a half-time basis, and that the targeted PSI efforts for those in custody can also be done on a half-time basis, given the numbers of incarcerated defendants awaiting PSIs on an annual basis.

- ❖ ***We recommend that a full-time PO position be dedicated to the Drug Court initiatives.***

Given the State and County commitment to the Drug Court programs, and given existing and potential restructuring of other caseloads within the Department, we believe the resources exist and should be allocated to enable Probation to devote one position to Drug Court.

- ❖ ***If the recommended pilot project to test the impact of Electronic Home Monitoring is successful, and our full EHM recommendations are eventually implemented, one additional FTE person would be needed to oversee that program—either a full-time PO or Senior PO, or a full-time equivalent position split between a PO and a Probation Assistant to handle the more clerical aspects of the program.***

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Assuming a pilot test of the program would last into the latter portion of 2006, a fully-functional EHM program, with staffing implications, would probably not begin until 2007. We recommend, however, that the *Drug Court, expedited PSI and Work Order staffing changes should be implemented in 2006.*

Note: The companion juvenile report identifies many of the technology deficiencies that now exist in Probation and other areas within the juvenile justice system. Addressing these needs will have a positive impact on Probation staff efficiency. The companion report also recommends moving supervision of the two Probation Officers supervising adolescents (16-19) to the Juvenile Supervisor, thereby balancing supervision responsibilities more effectively between adult and juvenile components of the Probation Department, and freeing more time of the adult criminal Supervisor to oversee changes outlined in this report.