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# **STRENGTHENING ALTERNATIVES TO INCARCERATION PROGRAMS AND CRIMINAL JUSTICE SYSTEM PRACTICES IN STEUBEN COUNTY**

Prepared for:  
**Steuben County Legislature**

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# STRENGTHENING ALTERNATIVES TO INCARCERATION PROGRAMS AND CRIMINAL JUSTICE SYSTEM PRACTICES IN STEUBEN COUNTY

November, 2005

## SUMMARY

Steuben County is currently planning a jail expansion because the daily jail inmate population has grown rapidly in recent years, often reaching levels that force the County to “board out” inmates to jails in surrounding counties. To help ensure that its new facility will meet local needs for the foreseeable future, Steuben County hired CGR (Center for Governmental Research Inc.) to assess the county’s alternatives to incarceration (ATI) programs and overall criminal justice system practices to determine their impact on the county’s jail population.

CGR conducted extensive interviews with more than 50 key policymakers and criminal justice officials throughout the county. A wide range of quantitative data, from the State, County, courts, jail, Probation and other areas involved in the criminal justice system were analyzed. CGR was impressed with the insights, suggestions and openness to considering improvements that we heard in virtually all our discussions.

Steuben County has many strong distinguishing components that characterize its criminal justice system. It has a strong array of Alternatives to Incarceration programs that compare favorably with similar counties around the state. A number of innovative criminal justice practices are in place or under consideration.

***If recommended changes are fully implemented, Steuben should be able to reduce its jail population by a minimum of 30 inmates per day.***

But a number of changes were also recommended throughout the study process, with many of the recommendations coming directly from those with whom we met. CGR recommends a variety of steps be taken by Steuben County that we conservatively estimate would cumulatively reduce the jail population by at least 30 jail

inmates per day. CGR believes if the recommended changes were to be adopted, their full impact would be felt within one year of implementation, with initial impact apparent within months.

***30 fewer inmates per day would translate to 10,950 fewer inmate days per year at County expense—an estimated \$876,000 savings annually for County taxpayers.***

If there were 30 fewer inmates a day (in jail or boarded out), there would be 10,950 fewer inmate days per year at County expense. Taking into account various factors, this would translate to an annual estimated reduction of \$876,000 in jail-related costs for County taxpayers.

Reducing the jail census in this manner would also have the added effect of making it possible to do one of two things with the expanded jail facility: 1) eliminate the need to open the second wing of the jail, saving more than \$200,000 annually or 2) open the second wing and use it to board in inmates from other counties and/or the federal government. CGR estimates that 20 boarded-in inmates per day could potentially generate about \$350,000 in net revenues for the County annually, after factoring in staffing costs.

## **Core Recommendations**

CGR makes a number of wide-ranging recommendations in the final chapter of this report. Some recommendations would involve utilizing a small portion of the identified savings to pay for a few new staff to help achieve the jail census reductions outlined above.

CGR's major recommendations include the following:

- ❖ The County should hire a Coordinator to focus on Jail Inmate Reduction. Responsibilities would range from conducting, within 20 days, pre-sentence investigations requested for jail inmates to following up on unsentenced jail inmates and determining if there are conditions conducive to helping facilitate a release strategy.
- ❖ One new position should be created in Probation split between Intensive Supervision and Community Service.
- ❖ The Senior Probation Officer position responsible for Electronic Home Monitoring and Community Service should shift focus full-time to EHM.

- ❖ The County should hire at least one additional Certified Alcohol/Substance Abuse Counselor (CASAC) to address evaluation and treatment delays now impacting the jail.
- ❖ Responsibility for ATI programs should be shifted from the current split of three separate Probation Supervisors to one Supervisor to oversee all ATI programs.
- ❖ Both the District Attorney and Public Defender should place particular emphasis on attempting to move felony cases as expeditiously as possible from lower courts to County Court as well as misdemeanor cases which remain in the lower courts, and to build in procedures, along with the new Coordinator, to monitor cases routinely to make sure they are not lagging. Tracking mechanisms are also recommended.
- ❖ County Court judges should commit to developing and implementing a unified court schedule and calendar designed to eliminate current, and significant, inefficiencies and case delays.
- ❖ A pilot project should be implemented for 3-6 months with one County Court judge to test whether involving Probation in Superior Court Information plea conferences will help expedite cases and further streamline PSI requests.
- ❖ The County should build on its recent efforts to shift as many defense attorney cases as possible from Assigned Counsel to County Public Defender and/or Conflicts Office staff, at reduced costs to County taxpayers.
- ❖ Town supervisors, village mayor and town/village justices in nearby jurisdictions should be encouraged to undertake a discussion to consider a pilot project tied to better use of resources between neighboring justice courts.
- ❖ The County should consider designating a person for the next 1 to 2 years who is specifically charged with overseeing the improvements to the criminal justice system that are outlined in this report.

## Context for the Recommendations

*From 1999 to 2004, overall arrests in the county fell 25%.*

*In a period of declining arrests, the jail population increased significantly.*

Our key findings about the context in which Steuben County operates follow:

- ❖ Total arrests in Steuben County have declined every one of the past six years, from nearly 2,660 in 1999 to just under 2,000 in 2004. Over the six-year period total arrests were down by 25%.
- ❖ Between 2001 and 2004, while arrests were declining, both the total number of inmate days in jail and the average daily jail census increased steadily year to year. Over the course of the three years, inmate days in jail increased by more than 12,000 days, and the average *daily* inmate census grew by 33 inmates.
- ❖ In addition to these jail census numbers, additional inmates have been boarded out to other counties, typically at a cost of about \$80 per night. While there was only an average of one jail inmate boarded out in all of 2002 and 2003, substantial increases in boarded out inmates began in early 2004, and peaked in an average of 37 inmates boarded out every night during the first three months of 2005. In part because the State has allowed the County to convert jail “program” rooms temporarily to beds, the boarded-out numbers have fallen, but by August, there were still an average of 11 inmates being housed daily in other county jails.
- ❖ In round numbers, the *average* number of inmates for whom the County has been responsible (in jail + board-outs) was:
  - 2001 – 122 inmates
  - 2004 – 165 inmates
  - 2005, 1<sup>st</sup> quarter – 198 inmates
  - 2005, April through August – about 177 inmates
- ❖ As the jail population has rapidly expanded in recent years, the County has lost both a source of revenues (board-ins from other counties) and added substantially to its out-of-pocket costs (board-outs). CGR estimates that in the first half of this decade, based on current projections, the County jail will have experienced about a \$1.25 million shift from income generator to net cost to the County.

*Increases in the  
Unsentenced  
Population is Key  
Driver in Inmate  
Numbers*

The increases in the average daily population have been fueled primarily by substantial increases in recent years among the unsentenced population. The number of unsentenced inmates increased 37% between 2002 and August 2005 – from 93 to 127. During this same period the sentenced inmate census (typically 30-35 daily) remained relatively stable.

CGR looked at unsentenced jail populations for 2004 and 2005 for Steuben, the non-NYC portion of the state, and 10 comparison counties identified by top Steuben officials. This comparison showed that usually 75%-80% of the inmates in the Steuben County jail each month were unsentenced versus the statewide-outside-NYC typical rate of 65% - 70%. In addition, Steuben generally exceeded 9, and often all 10, of the comparison counties.

*Sentenced  
Incarceration Rates  
Are Also Up*

Steuben County has historically had significantly higher felony conviction rates relative to the rest of Upstate NY, but until 2004 they did not translate into higher incarceration rates. Put another way, the County has traditionally imposed jail and prison sentences at lower rates than most other comparable counties, but in 2004 both jail and prison sentences increased significantly, which also contributed to the recent rapid increases in the jail census.

*Delays in the Criminal  
Justice System Also  
Impact the Jail  
Population*

Many factors contribute to the fact that there can be lengthy delays in moving cases quickly through the criminal justice system. CGR found the following are among the most significant:

- ❖ Felony cases represent a fraction of the criminal cases processed in the County, but their impact on the jail and on the lower courts before they are prosecuted at the County Court level are out of proportion to their relatively small numbers. We found:

*For felony cases, the time from lower court arraignment to final sentencing is 7 months, with 4 of those months spent at the lower court level.*

- The average County Court case required 7 months to complete, from lower court arraignment to final sentencing date.
- On average, almost four months of that time was spent at the lower court level.
- Of the three months from the time a case was filed in County Court until the sentencing date, much of the

time was spent awaiting Pre-Sentence Investigation (PSI) reports.

- In recent years, about 20% of pending County Court cases at year end were open beyond the state Standard and Goal (S&G) target of 180 days.
- The issue of having cases beyond S&G targets was not limited to County Court. Hornell and Corning City Courts were typically 15% to 20% over S&G for felony cases, and 40% of Hornell 60% of Corning misdemeanor cases were typically beyond 90-day S&G for misdemeanors.

***Significant numbers of cases in County and City Courts remain open beyond state Standard and Goals.***

***Significant amounts of “unsentenced” jail days, in essence, become initial portions of incarceration sentences.***

- ❖ Elements of what CGR refers to as “intentionality” played a critical role in delays. In the view of the Steuben County District Attorney, his office’s “best” pleas are often, especially in felony filing cases, negotiated with the current reality of jail hanging over the defendant. By negotiating a plea that factors in existing time served, the DA operates with the assumption that the defendant is more likely to agree to the plea than otherwise. Defense attorneys, for their part, often counsel their clients to “sit tight” and spend the additional time in jail, because it will result in a “better” plea agreement and sentence than they would obtain otherwise. Moreover, the Public Defender or other defense attorney, and the defendant, are often just as happy to have the defendant sit in jail building up “time served” to be counted against a negotiated prison sentence, for example, where the defendant prefers to spend as much of that sentence as possible in the jail, rather than at the more distant and hostile environment represented by prison. Thus the DA and defense attorney are often, in effect, complicit along with the defendant and at times a judge, in making decisions which have the effect of “sentencing” defendants to “theoretically unsentenced” jail time. This scenario can meet the needs of many parties—but not the needs of the jail or County taxpayers.
- ❖ Issues related to scheduling in County Court are significant. Various approaches to developing rational schedules have been proposed and tried (and efforts to adjust are on-going), but no one approach has met with universal support. Simply put, the

current approach basically has each court and judge establishing a court- and/or judge-specific calendar that attorneys are forced to fit into. In effect, that often has meant that attorneys (e.g., Assistant District Attorneys, Assistant Public Defenders, Assigned Counsel) are often expected to be in more than one courtroom at the same time. As a result, waiting in court for attorneys to arrive is a common occurrence.

- ❖ The Probation Department has been averaging well over 750 completed PSIs each year since 2000, with a high of 851 in 2004. Over the past two full years, due to resources available in Probation, PSIs, which can be mandatory or discretionary for a judge to request depending on the case, have taken an average of 8 weeks to complete. They were completed more rapidly for defendants in custody, but the average length of time even for inmates is currently 40 days. CGR's analysis found that by targeting PSIs for defendants in jail and reducing the time to complete them to 20 days, the jail could have about 11 fewer inmates per day, at boarded-out savings of more than \$300,000 annually.
- ❖ The sheer number of courts and the size of the county contribute to inefficiencies in the court system. Many of the 32 town and six village justice courts have few criminal cases a year, little clerical support, and infrequent court sessions. That means, for example, a delay in a court case can mean weeks of time and related time spent by some inmates in jail.
- ❖ Delays for evaluations for potential Drug Court participants are lengthy, and contribute daily to the jail census.
- ❖ Delays result because there is currently no central leadership to push for changes needed in various components of the criminal justice system.

### **Specific Impact of Probation's ATI Programs & the Drug Court on the Jail**

CGR found that Steuben County has a strong array of ATI programs that compare favorably to similar counties around the state. CGR also found that there is potential for greater use of ATIs and a need for certain changes. Key findings, by program, included:



**Pre-Trial Release (PTR):**

- ❖ Judges release fewer than half of all defendants recommended for release by PTR, and one quarter of all individuals released to PTR by judges were not recommended by the program. CGR suggests this disconnect be addressed. There is wide variation in release rates across courts, and there is also concern by many in the criminal justice system about a new screening tool currently being used by PTR.
- ❖ PTR has experienced a low failure-to-appear-in-court rate—1% for those the program recommended for release, and 8% for those on release who were not initially recommended for the program.
- ❖ Although clear indications are not available, a very rough estimate is that as many as about three dozen fewer people may be in jail each day as a result of PTR. Changes recommended in the report should in 1 to 2 fewer inmates in the jail per day.

**Community Service:**

- ❖ Community Service program usage has been on a downward trend since peaking in the late 1990s, in part due to low visibility for the program. Low visibility is related to the fact that only 20% of a Senior Probation Officer's time is dedicated to oversight of the CS program, due to Probation resource constraints.
- ❖ CGR estimates the program currently reduces the County jail population by 1.5 inmates per day, with an additional 1 to 2 possible with recommended changes.

**Intensive Supervision Program (ISP):**

- ❖ Depending upon the assumptions used, ISP reduces the jail population by between 1.7 and 4.7 inmates per day, based on current program success rates. Because of limited resources, there is only one probation officer assigned to ISP.
- ❖ Judges expressed interest in using the program more if additional individuals could be accommodated in the program.

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With recommended changes, an estimated 3 additional inmates could be eliminated from jail through expanded ISP sentences.

### **Electronic Home Monitoring (EHM):**

- ❖ The use of EHM has declined in recent years, and there is considerable unused capacity today. Only County Court and both City Courts have made significant use of this ATI, but judges in many areas of the county expressed to us an interest in using EHM more.
- ❖ CGR estimates EHM currently reduces the jail population by an average of nearly 15 inmates per day, but even with no additional equipment costs there could be a further reduction of 7 additional inmates per day if this ATI were used to available capacity.

### **County Drug Court:**

- ❖ Drug Court, though not formally among the County's ATI programs, is an alternative to prison, rather than to jail. However, the program does impact the local jail, in part due to the fact that it takes an average of 32 days from request for a substance abuse assessment to its completion for potential Drug Court applicants. Delays are due to understaffing at the County's Alcoholism and Substance Abuse Services office.
- ❖ With recommended changes, Drug Court could expand its impact to 2 to 3 additional beds saved per day.

Recommendations made in the report, mostly based on recommendations from County stakeholders, can have a dramatic impact in reducing time spent by defendants in the criminal justice system, and in the County jail, with significant savings for County taxpayers. A strategic planning process, perhaps supervised by a Criminal Justice Coordinator, is recommended.

## TABLE OF CONTENTS

<b>Strengthening Alternatives to Incarceration Programs and Criminal Justice System Practices in Steuben County .....</b>	<b>1</b>
<b>Strengthening Alternatives to Incarceration Programs and Criminal Justice System Practices in Steuben County .....</b>	<b>2</b>
<b>Strengthening Alternatives to Incarceration Programs and Criminal Justice System Practices in Steuben County .....</b>	<b>i</b>
<b>Summary.....</b>	<b>i</b>
Core Recommendations .....	ii
Context for the Recommendations .....	iv
Increases in the Unsented Population is Key Driver in Inmate Numbers .....	v
Sentenced Incarceration Rates Are Also Up .....	v
Delays in the Criminal Justice System Also Impact the Jail Population .....	v
Specific Impact of Probation’s ATI Programs & the Drug Court on the Jail .....	vii
<b>Table of Contents.....</b>	<b>x</b>
<b>Acknowledgments .....</b>	<b>xiii</b>
<b>1. Background and Introduction.....</b>	<b>1</b>
The Context .....	1
Focus of the Study .....	2
Methodology .....	2
<b>2. Recent Reductions in Arrests in County.....</b>	<b>4</b>
<b>3. Recent Increases in Jail Inmate Population .....</b>	<b>6</b>
Unprecedented Jail Inmate Population in 2004 and 2005 .....	6
Jail Inmate Increase Primarily Due to Increases in Unsented Population.....	8
Impact of Boarding-Out Increases .....	9
Characteristics of Jail Inmates .....	10
Age, Gender and Ethnicity of Inmates .....	11
Status of Unsented Inmates .....	11
Status of Sentenced Inmates .....	14
Key Question .....	15
<b>4. The Impact of the District Attorney .....</b>	<b>16</b>
Felony Cases Prosecuted.....	16

Outcomes of Felony Arrest Cases.....	18
Dispositions and Convictions Up .....	18
Incarceration Rates Up .....	19
DA Practices.....	21
Staffing .....	21
DA-Defense Attorney Working Relationships.....	21
Impact of Plea Strategies on Jail Population .....	22
<b>5. Issues Related to Defense Counsel.....</b>	<b>24</b>
Growing Public Defender Caseload.....	24
Changes in Staffing Patterns .....	25
Impact of Shift from Assigned Counsel to Public Defender .....	27
Further Alternative to Assigned Counsel is Needed .....	29
More Rapid Engagement with Defendants and Courts.....	30
Public Defender-DA Working Relationships .....	30
<b>6. Impact of Existing Court Practices .....</b>	<b>32</b>
Long Delays Processing Felony Cases.....	34
Longest Delays in Lower Courts.....	36
3 Months to Process Average Case in County Court.....	36
Cases Not Meeting Standards and Goals.....	37
Issues Affecting Court Delays .....	38
Court Efficiencies.....	40
Value of SCIs .....	41
Court Scheduling .....	44
Relationship Between Detention and Sentencing .....	45
Pre-Sentence Investigations .....	47
Time Needed to Complete PSIs .....	48
Relation Between Detention and Sentencing.....	49
Potential for Saving Jail Days .....	49
Impact of PSIs on Judicial Decisions .....	51
Potential for District Courts .....	53
<b>7. Impact of Existing Alternatives to Incarceration Programs .....</b>	<b>56</b>
<b>Pre-Trial Release Program.....</b>	<b>57</b>
Impact on Court Decisions .....	58
Judicial Acceptance of PTR Recommendations .....	59
Impact of Changing PTR Screening Approach.....	60
Wide Variation in Release Rates Across Courts.....	61
High Percentage of Recommendations and Releases are Felonies.....	62
Program Success Rates.....	62
Impact on Jail .....	62
Impact of New Screening Approach .....	64
<b>Community Service Sentencing .....</b>	<b>65</b>

Declining Use of CS Program .....	65
Users of CS Program.....	67
Successful Completion of Program .....	67
Hours Assigned and Completed .....	68
Program Impact on Jail Days Avoided .....	68
Issues to be Addressed .....	69
<b>Intensive Supervision Program .....</b>	<b>71</b>
Users of ISP .....	71
Size of Program Limited by Staffing .....	72
Successful Completion of Program .....	73
Program Impact on Jail .....	74
<b>Electronic Home Monitoring .....</b>	<b>76</b>
Fluctuating Use of the Program .....	77
Primary Users of EHM .....	78
Program Impact on Jail .....	79
<b>Drug Courts.....</b>	<b>81</b>
County Court .....	81
Target Population.....	82
Program Impact .....	82
City Courts.....	84
Target Population.....	85
Program Impact .....	85
<b>8. Conclusions and Recommendations .....</b>	<b>86</b>
Jail Inmate Reduction Strategies.....	87
District Attorney and Public Defender Recommendations .....	91
Court Improvement Recommendations.....	93
Pre-Sentence Investigation Process.....	95
District Court Recommendations .....	97
Recommended ATI Staffing Changes .....	97
Other Recommendations Specific to ATI Programs .....	99
Pre-Trial Release .....	99
Community Service.....	100
Intensive Supervision .....	100
Electronic Home Monitoring .....	101
Drug Court .....	103
Other Potential Alternatives to Consider .....	104
Overall Coordination of Strategic Implementation Plan.....	104

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## ACKNOWLEDGMENTS

CGR gratefully acknowledges the leadership of Steuben County's Legislature and County Administrator in undertaking this study, and in understanding the value of conducting a thorough review of the criminal justice system at the same time as the County undertakes a jail expansion project. Because of their vision, potential efficiencies and improvements identified throughout this report within and across the various components of the criminal justice system should limit the future operational costs of the expanded jail and/or expand the revenue-generating potential of the new facility.

We particularly thank County Administrator Mark Alger for his vision, guidance and support, and Carolyn Scaife for her logistical support throughout the project.

Many people provided "over and above" help in conducting special data collection efforts on our behalf. We are especially grateful for the efforts of William Deninger and Lisa Preston in the County Clerk's Office; Frank Justice, Diane Argentieri, Joseph Baroody, Eugene Greeley and Bridi Kubiak in the Probation Department; Sheriff Richard Tweddell and Jail Superintendent Chris Lian; Drug Court Coordinator Elaine Gunn; and Kelly Van Skiver, Kelly Wightman and Katherine Mattoon from County Court. Their efforts are much appreciated.

Thanks also to the many department heads, judges, magistrates, legislators and other key staff who graciously gave us their time, thoughtful insights, and suggestions in numerous interviews throughout the project. The information and ideas they offered in these interviews were instrumental in developing this report and CGR's recommendations. We are grateful for their generous contributions, and hope the report justifies their efforts.

### Staff Team

This project could not have been completed without the monumental efforts of Vicki Brown, whose contributions are reflected on every page of this report. In addition, Kate McCloskey and Andrew Kurland made major contributions to the data analyses that were critical to our conclusions.

## 1. BACKGROUND AND INTRODUCTION

CGR (Center for Governmental Research Inc.) was hired by Steuben County to conduct an assessment of the county's alternatives to incarceration (ATI) programs and overall criminal justice system practices, and to determine their impact on the county's jail population.

### The Context

Steuben County's daily jail inmate population has been growing at a steady pace within the past few years. Most alarming to the County Legislature and Administrator, and New York State Commission of Correction officials, is the fact that the number of inmates has frequently exceeded the jail's capacity on many nights over the past two years, thus forcing jail officials to house (board out) increasing numbers of inmates in other county jails, at significant cost to Steuben County taxpayers.

As a result, County officials have initiated plans to expand the County's existing jail capacity by building an extension onto the current facility. But even as plans for the new construction are being drawn up, the Legislature, Administrator and criminal justice officials have sought to take steps to ensure that the expanded jail would be able to meet the County's needs for many years into the future, without becoming overcrowded shortly after its completion, as has happened in some new jail facilities in other jurisdictions.

As part of the County's efforts to limit the size of the new facility, while ensuring that it would be able to meet local needs for the foreseeable future, the Legislature requested this study of the County's criminal justice system practices, including an assessment of the impact of those practices and its ATI programs on the jail population. The study was designed with a particular focus on identifying changes that may be needed to streamline aspects of the criminal justice system and to limit the numbers of persons who need to be incarcerated in the future, consistent with community safety.

**Focus of the Study** At the request of the County, the following key issues were addressed during the study:

- ❖ Historical analysis of trends in characteristics of the Steuben County jail population;
- ❖ Examination of current and historical patterns of sentenced and pre-sentenced populations in the jail to identify potential ways of facilitating more expeditious processing of cases at the various Justice, City and County Court levels;
- ❖ Review and analysis of current alternative to incarceration programs operated by the County, including recent statistical trends;
- ❖ Overview of criminal justice system practices within Steuben County, and related issues of time involved at various stages of the criminal justice process;
- ❖ 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; and
- ❖ Examination of opportunities for enhancement of existing alternative programs and system practices, and/or identification of new programs and practices for County consideration.

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 Steuben County to affirm and build on the significant strengths of its existing programs and practices, while identifying strategic improvements that may be needed to prepare for the needs of the future.

## **Methodology**

CGR's assessment focused on obtaining a clear understanding of the range of criminal justice system practices and alternative to incarceration programs currently in place within Steuben County, and their past and likely future impact on the County's jail population. Our approach combined qualitative information, obtained in detailed interviews and group discussions, with



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quantitative analysis of empirical data, obtained from New York State, the jail, alternative 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 with more than 50 key policymakers and criminal justice officials. Those interviewed included the County Administrator; the Chair of the County Legislature; the Chair of the Legislature's Public Safety and Corrections Committee; County, Family, Surrogate and City Court judges; 12 magistrates/representatives from the town/village Justice Courts; the Sheriff and the Major in charge of the jail; Director of Probation; the District Attorney; the Public Defender; Court administrators, clerks and other key court officials; Director and key staff of the County Office of Community Services; Commissioner of the Department of Social Services; and selected key staff from various agencies, County and both City Drug Courts, and ATI programs (including Pretrial Release, Community Service, Intensive Supervision, and Electronic Home Monitoring).
- ❖ 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, the County jail, and the various agencies and programs included in the study. Where possible, comparisons were made between Steuben 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 presented in the report's concluding chapter.

## 2. RECENT REDUCTIONS IN ARRESTS IN 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 Steuben 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 2004.

**Table 1: Felony and Misdemeanor Adult Arrests in Steuben County, 1999 - 2004**

year	total arrests	felonies	misde-meanors
1999	2,659	614	2,045
2000	2,558	585	1,973
2001	2,419	547	1,872
2002	2,187	533	1,654
2003	2,160	560	1,600
2004	1,995	567	1,428

Source: NYS Division of Criminal Justice Services

In the past decade, 1999 represented the peak number of arrests in any given year. Since then, the number of annual arrests in Steuben County has declined in every year. *The number of arrests in 2004 was 25% lower than in 1999.* The decline in number of arrests in the County was substantially greater than in the non-New York City portion of the state. During the same period of time, non-NYC arrests declined slightly, by 1.3%.

***Total arrests in Steuben in 2004 were 25% lower than in 1999, compared with slight declines or even increases in arrests in adjoining counties and in the non-NYC portion of the state.***

Closer to home, in the six counties bordering Steuben (Allegany, Livingston, Ontario, Yates, Schuyler, Chemung), total arrests during the six-year period either increased or remained virtually unchanged, except in Ontario, where total arrests in 2004 were 14.3% lower than in 1999.

At the felony level, annual arrest totals in Steuben have fluctuated somewhat, but the totals in each year from 2000-2004 have been lower than in 1999. The 2004 total of 567 was 7.7% lower than the 1999 total, although the number of felony arrests for violent crimes was about the same in 2004 as in 1999. Statewide,

excluding NYC, the number of felony arrests during the same period actually increased by 3.3%. Four of the six adjoining counties also experienced increases in felony arrests during that time, with only Ontario and Schuyler joining Steuben in experiencing fewer felony arrests.

During the same six-year period, the number of misdemeanor arrests in Steuben steadily declined by 30%, compared to a 3% decline in the non-NYC portion of the state. Misdemeanor arrests also were down (by proportions much smaller than in Steuben) in three of the six surrounding counties during that time, and were up in the other three.

***Steuben in recent years has had proportionally fewer felony and misdemeanor arrests entering the criminal justice system than many adjoining counties and NYS outside NYC.***

Bottom line: at a time when the rest of the state outside NYC—and the counties immediately adjoining Steuben—were experiencing relatively small reductions in numbers of arrests, or even increases, Steuben was consistently reporting substantial reductions in the numbers of arrests that ultimately start the process of determining who winds up before judges with criminal charges and, of those, who winds up in jail.

### 3. RECENT INCREASES IN JAIL INMATE POPULATION

*Despite recent declines in arrests in the County, the jail population has continued to increase.*

*During the same period of time as arrests have been declining in the County, the number of jail inmates has been increasing at a rapid rate. As indicated in Table 2 below, the total number of inmate days spent in the jail per year increased by more than 12,000 between 2001 and 2004, according to data supplied by jail officials. The total number of inmates housed and the average length of stay per inmate fluctuated from year to year, but *the total number of days spent in jail and average daily inmate population have continued to increase steadily from one year to the next.**

**Table 2: Steuben County Jail Inmate Population, 2001 – August 31, 2005**

Year	inmates housed	days in jail	avg. daily Census	alos/ inmate
2001	1,239	44,636	122.3	36.0
2002	1,140	49,990	137.0	43.9
2003	1,355	52,002	142.5	38.4
2004	1,320	56,665	155.2	42.9
2005*	1,016	39,065	160.7	38.4

Source: Steuben County Jail.

\* Data through 8/31/05.

NOTE: “Inmates Housed” and “Days in Jail” represent annual totals. “Average Daily Census” = average inmates housed per day. “ALOS/Inmate” = average length of stay per inmate housed during the year.

#### **Unprecedented Jail Inmate Population in 2004 and 2005**

Between 2001 and 2004, the average daily census (number of inmates housed per day) increased by 27%. In 2004, the jail was housing an average of 33 more inmates *each day* than it was just three years earlier. And averaged across the first eight months of 2005, the average daily 2005 census had increased by an additional 5.5 persons per day—31% more per day than in 2001.

Moreover, between January 2004 and August 2005, the average daily census increased by 21, or 14%—from 147 to 168 inmates (not including additional inmates boarded out to other county jails). In seven of the first eight months of 2005, the average daily census exceeded that of the comparable month in 2004 (in three of those months, the average increased by more than 10 inmates per day). In 10 of the past 12 months through August 2005, the

*The County jail inmate census has reached unprecedented levels in the past 12 months.*

average daily census was 160 or more, an average never reached in the years before that.

Furthermore, the total population line only reflects those housed in the County jail itself. To understand the true total of inmates for whom the County was responsible on a given night, one must add together inmates housed within the jail and inmates boarded out, i.e., those housed in other county jails, but paid for (typically at \$75 or \$80 or more per night) by Steuben County. As shown below in Table 3, substantial increases in boarded-out inmates began in early 2004, peaking in an *average of 37 inmates boarded out every night during the first three months of this year.*

**Table 3: Steuben County Jail Average Daily Population, 2002 – 2005, by Selected Categories of Jail Inmates**

<b>inmates</b>	<b>2002</b>	<b>2003</b>	<b>qtr 2-04</b>	<b>qtr 1-05</b>	<b>qtr 2-05</b>	<b>july '05</b>	<b>Aug. '05</b>
<b>Total</b>	136	145.1	155.7	160.7	158	161.3	167.8
<b>Unsentenced</b>	93	106.1	116.6	121.5	115.2	122.3	127
<b>Sentenced</b>	35	30.1	31	32.2	38	35.1	36.3
<b>Federal</b>	8	8.2	7	6	4.6	4	4.4
<b>State-Ready</b>	4	3.3	1.6	0.9	1.4	3.2	2.3
<b>Parole Violators</b>	9	10.9	14	15.3	16.8	16.5	14.4
<b>Boarded-In</b>	6	1.4	0	0	0	0	0
<b>Boarded-Out</b>	0	1	11.2	37	18.4	16.7	10.7

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

NOTE: QTR refers to quarter of year, e.g., QTR2-04 refers to the second quarter of 2004. Note also that the Total average daily census numbers for 2002 and 2003 in Tables 2 and 3 vary slightly. These differences reflect two different data sources and slightly different ways of calculating the averages, but the differences are slight and have no practical significance for planning and analysis purposes. "Boarded-in" refers to inmates housed at the request of other counties, as opposed to housing for federal, state-ready and parole violator inmates listed separately.

***Between April and August of 2005, the County has had to house and pay for an average of 55 more inmates per day than was true in 2001.***

Although that dramatic first-quarter 2005 boarded-out number has subsided in the months since March, in part due to a State-approved conversion of jail program rooms into space for up to 12 additional beds on a temporary basis, an average of almost 11 inmates per night were still being housed in other county jails in August. The bottom line: the average number of inmates for whom the County jail and taxpayers have been responsible each day increased steadily from 122 in 2001 (Table 2) to about 165

## **Jail Inmate Increase Primarily Due to Increases in Unsentenced Population**

*The number of unsentenced inmates increased 37% between 2002 and August 2005, from 93 to 127. This accounts for most of the increase in the County jail census (including board-outs).*

*The proportion of unsentenced inmates in Steuben County typically far exceeds the non-NYC state proportion and that of comparable counties.*

throughout 2004 to as many as an average of 198 per night in the first quarter of 2005, before then settling back to an average between about 176 and 178 from April through August. Thus Steuben has been responsible for about 55 more inmates each day between April and August of 2005 than was the case as recently as 2001.

As shown in Table 3 above, 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 2002 (typically averaging between 30 and 35 inmates daily), the unsentenced population has increased significantly. The total average daily population for which the County jail was responsible (including boarded-out prisoners) increased by an average of 42.5 inmates between 2002 and August 2005 (from 136 to 178.5, a 31% increase). Most of that increase was accounted for by the unsentenced population, which increased by 37% during that same period, from an average of 93 to 127

Monthly comparisons for 2004 and 2005 with all non-NYC counties in the state indicate that the Steuben County jail has consistently housed higher proportions of unsentenced inmates than nearly all other counties. In each month, the proportion of unsentenced inmates in Steuben County has exceeded the non-NYC statewide proportion, typically by 10-12% or more. Usually, between 75% and 80% or more of the inmates in the Steuben jail each month are unsentenced, compared with statewide (outside NYC) proportions in the 65% to 70% range. Compared with 10 counties identified by the Legislature and County Administrator as comparable in size of population and size of jail, Steuben's unsentenced inmate proportion each month typically exceeds nine and often all 10 of the comparison counties.

The other major contributor to the recent growth in the daily jail population has been the increased number of parole violators housed in the local jail. Although these inmates are violators of parole subsequent to release from state prisons, increasing numbers of such violators are housed in the local jail awaiting resolution of the violation in the courts (which often takes months). They can be housed locally even if, as is often the case,

*Parole violators housed in the local jail have increased in recent years, with little local ability to control the numbers.*

there are no local charges accompanying the violation. As shown in Table 3 above, the number of parole violators housed in the Steuben jail has grown from an average of 9 per day in 2002 to a daily average of about 16 thus far in 2005. These are inmates over whom the local jail or criminal justice system has little direct control.

Finally, in examining the makeup of the local jail population (Table 3), there continue to be a few federal prisoners housed in the County jail, even as it is boarding out large numbers of inmates arrested locally. The County is paid a daily fee for their housing, comparable to what the County pays out for its boarded-out inmates, so there is little net cost impact to taxpayers of the decisions to house federal prisoners, although it obviously leads to added displacement to other county jails of some prisoners arrested locally. County officials indicate they prefer to respond to federal requests for housing to maintain good relationships that they hope will lead to larger numbers of federal prisoners, at expanded revenues for the County, once the expanded jail facility is in operation. Nonetheless, as the overall jail census has increased and more local prisoners have been boarded out, the number of federal inmates has been reduced somewhat from an average of 8 per day in 2002 and 2003 to about 5 a day thus far in 2005.

### **Impact of Boarding-Out Increases**

As the jail population has rapidly expanded in recent years, the County has lost a source of revenues (board-ins), while adding substantially to its out-of-pocket costs (board-outs).

According to County jail data, between 2000 and 2002, the local jail housed an average of almost 200 inmates per year from other jurisdictions—state, federal and other-county prisoners. During the same time, it boarded out an average of about 30 individuals per year. As indicated in Table 3, as recently as 2002, not counting parole violators, for whom NYS pays minimal per diem costs (and none if local charges are also pending), the County was housing an average of 18 inmates per night from other jurisdictions (eight federal, four state-ready, and six from other counties). By 2004, inmates boarded in from other counties had virtually disappeared, and by 2005, the number of federal and state-ready prisoners had declined to a daily average of about 6 or 7 inmates.

***With boarding-out costs for the first 7 months of 2005 already exceeding such costs for all of 2004, projections indicate that the jail will have experienced a shift since 2000 of about \$1.25 million from net revenue generator to net costs to County taxpayers.***

## **Characteristics of Jail Inmates**

***Most inmates spend their only time in the County jail as an unsentenced defendant, and do not get sentenced to jail time on the charge that got them admitted to the jail.***

As a result, the County has shifted from net revenues, resulting from housing prisoners (and boarding out only a few), of almost \$850,000 in 2000 and almost \$630,000 in 2001 to a net projected outflow (boarding-out costs exceeding boarding-in revenues) for 2005 of almost \$400,000 (which may be a conservative estimate). *Boarding-out payments to other counties in the first seven months of 2005 had already exceeded total boarding-out costs for all of 2004 by more than \$100,000.*<sup>1</sup> Thus, in a span of only half a decade, the County jail will, based on current projections, have experienced about a \$1.25 million shift from income generator to net costs to the County—all of that shift borne directly by local taxpayers. Much of the discussion in the remainder of the report will focus on what has contributed to this revenue/expenditure shift, and on ways to reverse at least a portion of it.

As noted above, at any given time, between 75% and 80% or more of the Steuben jail's population is typically made up of unsentenced inmates. Focusing only on the 2,188 new admissions to the jail during the last two full years (2003 and 2004), 87% (1,910) entered the jail unsentenced, with the other 13% (278) entering as a result of sentences. Unsentenced inmates can wind up also spending subsequent time in the jail after being sentenced, but the reality is that *most of those who spend unsentenced time in the County jail do not also get sentenced to jail time on the same charge.*

Although information on ultimate convictions and sentences was not available from the County's jail data for all who entered as unsentenced defendants, we know from data presented in Chapter 4 that a substantial proportion of felony arrests wind up sentenced to prison, and roughly a quarter to jail. Yet even among felony cases only, more than half of all dispositions wind up with non-incarceration sentences. Although relevant data were not available, it seems highly likely that that proportion would increase among misdemeanor arrests. Thus it seems clear that the majority of individuals who enter the Steuben jail each year do not wind up serving time in the jail as a sentenced inmate.

<sup>1</sup> Data based on County "Department Revenue and Expenditure Detail" reports for the jail, from 2000 through August 2005 (special report of September 9, 2005).



### *Age, Gender and Ethnicity of Inmates*

Descriptive information about inmates is available from the jail on an annual basis for all new inmates admitted during the course of the year, although most of the information is not broken out by sentenced versus unsentenced inmates.<sup>2</sup> For 2003 and 2004 combined (with no significant differences from year to year), the following characteristics can be noted about all new admissions to the Steuben jail:

- ❖ The overwhelming majority of the inmates are white (84.5%), with 14% classified as black and 2% as Hispanic.
- ❖ Females made up 14% of the unsentenced population in the past two years, but only 8.4% of the sentenced population.
- ❖ The age breakdowns were as follows:
  - ◆ 288 of the inmates admitted in the past two years were 18 or younger (13.2% of the total);
  - ◆ 28.1% were between the ages of 19 and 24;
  - ◆ 26.2% were between 25 and 34;
  - ◆ 21% were between 35 and 44;
  - ◆ 11.5% were 45 or older.

Thus the majority (54%) were between the ages of 19 and 34, and three-quarters were between 19 and 44; 41% were younger than 25.

### *Status of Unsentenced Inmates*

Of the 1,910 unsentenced inmates who have been admitted to the County jail over the past two years, 1,002 (52.5%) were admitted on felony charges. These represent the vast majority of the 1,127 felony arrests made in the County in the last two years (see Table 1 in Chapter 2). Another 774 defendants (40.5% of the new unsentenced admissions) were admitted on misdemeanor charges, with another 134 admitted on various other charges, such as violations or vehicle and traffic offenses.

With the assistance of County jail officials, CGR was able to undertake analyses of two “snapshots” of the jail population, representing all inmates (including those boarded out) at two different points in time: 159 inmates on June 4, 2004, and 205 on

<sup>2</sup> “Steuben County Jail Sheriff’s Annual Report for the Calendar Years 2003 and 2004”

January 25, 2005. After factoring out federal inmates and those held on parole violation charges, there were 237 unsentenced inmates in the two snapshot samples. The following statements can be made about the combined unsentenced inmate population on those two dates (generally the proportions were similar within each snapshot):

- ❖ About 44% of the unsentenced inmates were booked on charges before a County Court judge. It could not be determined from the data if any of those inmates might previously have been booked into the jail while their cases remained in a lower level court, and simply rebooked when the case reached the County level.
- ❖ Of the cases known to have been booked by judges at lower court levels, the largest numbers, as would be expected, were from the two City Courts: 27 from Corning and 24 from Hornell (21.5% from City Courts). More than a third (35%, or 82 cases) surfaced in the town/village justice courts. The Bath village court was most likely to book unsentenced defendants into the jail, with 33 cases in the two snapshot periods. This represents a ratio of about one unsentenced inmate for every 20 criminal cases to come before that court in 2004. By contrast, 49 unsentenced inmates came from all the other justice courts, representing about one of every 69 criminal cases before those courts.
- ❖ Of the unsentenced inmates, 48% had been in jail for more than two months when the snapshot was taken, and 36% had been incarcerated for more than three months.
- ❖ No bail had been set for almost half of the unsentenced cases at the time of the snapshots (113 of the 237 cases). The majority of those 113 cases (67) were cases before a County Court judge, with the defendant held in jail without bail being set. Two-thirds of the unsentenced inmates with cases in County Court were held without bail. About half of the unsentenced inmates from the Hornell and Erwin courts, and just over a third of those from the Bath village court, were held without bail, compared with about 20% of all such cases in all other lower courts. It seems likely that many of these defendants were held without bail 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, although data to enable us to determine the extent to which this was the case were not

*There were significant differences among courts in the extent to which unsentenced defendants were detained, and in the rates of holding defendants without bail.*

available from the jail records. Whatever the reasons, these data raised questions for CGR as to whether there may be ways of expediting at least some of these cases in the future, as many had been in jail for more than three months at the time the snapshots were taken.

- ❖ Almost 60% of the unsentenced inmates (138) had no detainers or holds on them, including some who were being held without bail. About 60 of those with no detainers were arrested on misdemeanor charges, and 50 without detainers had been held in jail for at least two months at the time the snapshots were taken. It is reasonable to at least speculate whether some of these could have been released safely at no risk to the community or to their future appearances in court.
- ❖ Of those for whom bail had been set, significant numbers (42 of the 237 unsentenced inmates, or 18%) remained in jail with relatively low bails of \$2,500 or less, including 32 who had no detainers, about two-thirds of whom were on misdemeanor charges (and most of those with felonies were D and E level charges). There were 24 of these cases in one of the snapshots, and eight in the other. All but five of these cases were booked by judges in lower courts, including 11 in the village of Bath, eight in Corning City Court, and the rest in scattered local courts.
- ❖ The 32 defendants in jail on low bail with no detainers or holds from other cases included 17 cases with bail set at \$1,000 or less, and 7 with \$500 or less. There certainly may have been extenuating circumstances that cannot be captured in a jail database, but on the surface, these would appear for the most part to be defendants with little reason to be held in jail. *At the time of the snapshots, the 32 defendants had been in jail for a total of 1,150 days, or 36 days per case, and since the cases were all still open on the snapshot date, those numbers would have been higher, perhaps substantially so in some cases, before the cases were resolved.* In 14 of the 32 cases, the defendants had been in jail for more than 35 days at the time of the snapshot, including six in for more than two months. Establishment in the future of a process for revisiting cases remaining in jail for substantial periods of time with no detainers and low bail could in all likelihood help to reduce the average daily population in the jail, without any disruption to the judicial system or any negative impact on community safety.

***In the two snapshots, there were 32 defendants who had been held in jail for significant periods of time with relatively minor charges, low bail and no detainers. They would appear to be reasonable candidates for release from jail at little risk to the community.***

## *Status of Sentenced Inmates*

Including inmates carried over from the previous year, a total of 550 defendants spent time in 2003 and 2004 as sentenced inmates in the County jail. Based on the jail data reported to the state, and the two snapshots described above, the following statements can be made about these sentenced inmates:

- ❖ Almost two-thirds of the sentenced inmates (361) 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 150 (27%) serving felony jail sentences. Another 39 inmates were serving sentences on other types of charges.
- ❖ Consistent with those proportions, the vast majority (61%) of the sentenced inmates were serving sentences pronounced in lower courts, including 39% in the justice courts. Corning and Hornell City Courts (11 and 7 jail sentences each in the two snapshots), and Bath village and Erwin town courts (9 and 7 jail sentences, respectively) were most likely to sentence defendants to jail (an average of about one jail sentence in our snapshot samples for approximately every 80 criminal cases before their courts), compared with one of about 160 cases in the other justice courts combined.
- ❖ As noted above, the majority of defendants sentenced in Steuben County, even for felonies, have not historically received jail or prison sentences. Furthermore, even among those who do receive jail sentences, relatively few receive sentences of significant length. With the maximum county jail sentence by law capped at one year, only 8% of all sentenced inmates in the Steuben jail during 2003 and 2004 received full one-year sentences. Almost three-quarters (72%) were sentenced to less than 6 months, including 61% with sentences of 3 months or less and 37% of one month or less. Sentences of 10 days or less were handed out to 62 of the 550 sentenced inmates (11%).

***Few sentenced prisoners receive full year sentences in the Steuben jail; in the past two years, 72% were sentenced to less than 6 months in jail, including 61% with sentences of no more than 3 months. Even further reductions of some sentences may be possible in the future.***

Thus jail sentences in the County are generally not used routinely, and when used tend not to be “draconian,” consistent with statements made consistently by judges and magistrates during our interviews, and with the view expressed by the District Attorney that relatively short sentences are often as effective as longer ones in getting the person’s attention and providing the needed

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punishment, especially with offenders not likely to be “career offenders.” To that point, significant numbers of jail days are represented by the 151 inmates sentenced to 6 months to a year in jail over the past two years, and the additional 62 with sentences of between 3 and 6 months. Ways of reducing some of these sentences, consistent with community safety, may be feasible, and possible ways of doing so will be discussed later in the report.

### **Key Question**

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 plays the pivotal role in determining which cases get prosecuted at what levels, and with what commitment of resources. Decisions made by the DA and his Assistant DAs (ADAs) shape much of what happens at both lower 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, neither it nor the NYS Division of Criminal Justice Services (DCJS) tracks the dispositions and sentences of those cases, as they do for felony arrest cases. Thus, although it would be preferable to have data on all types of arrests, the discussion of data that follows is necessarily focused only on felony arrest cases. However, from the standpoint of helping to understand implications for the jail population, the good news about this potential data limitation is that the felony arrests are those that have the biggest impact on the largest component of the jail population—the unsentenced defendants—as well as on many of the longest jail sentences.

### Felony Cases Prosecuted

Although felony arrests in Steuben County declined steadily from 1999 through 2002, as indicated in Chapter 2, the number has begun to rise again in the past two years, though it remains below the 1999 peak. As indicated below in Table 4, the recent increase in arrests (up 6.4% from 2002 to 2004) has been accompanied by a more significant increase during those same years (18.5%) in the number of felony prosecutions at the County/Superior Court level, and an increase in the number of prosecutions initiated by a Superior Court Information (SCI), as opposed to a Grand Jury Indictment. The number of Superior Court filings (felony-level prosecutions) increased by 31% between 2001 and 2004, from 288 to 378, and the proportion of felony arrests resulting in felony

prosecutions at the County Court level increased during that time from 53% in 2001 to two-thirds of all felony arrests in 2004.

**Table 4: Steuben County District Attorney Felony Prosecutions, 2000 – 2004**

year	felony arrests	superior court filings (with SCI #'s)*	% **
2000	585	350	59.8%
2001	547	288	52.7
2002	533	319 (174)	59.9
2003	560	335 (190)	59.8
2004	567	378 (232)	66.7

Source: Steuben County District Attorney.

\* Total 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). For the three most recent years, SCIs are broken out separately in parentheses.

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

The proportion of felony arrest cases prosecuted at the County Court level on felony charges is routinely 10 to 12 percentage points higher in Steuben than is true for all upstate felony arrest cases.<sup>3</sup> The increase in proportion of felony level prosecutions reflected in Table 4 also means that smaller proportions of initial felony arrest cases are being prosecuted and resolved (typically by pleas) as misdemeanors (from a high in 2001 of 259 to 189 in 2004). An average of a half dozen or fewer cases a year get dismissed at the County Court level, with an average of about 40 cases dismissed at the lower court levels (about 20% of all felony arrests prosecuted within the lower courts). The transitioning of cases between lower and upper court levels is often accompanied by lengthy delays, as indicated in more detail in Chapter 6. *The need for expediting such cases and reducing the time needed to move cases from one court level to another represents a promising area for change in the future.*

The use of SCIs represents one way of moving such cases along more rapidly. Between 2002 and 2004, as the total number of felony filings (prosecutions) increased by a total of 59, virtually all of the increase (58) was accounted for by a growth in SCIs, while

<sup>3</sup> NYS Division of Criminal Justice Services, “Dispositions of Felony Arrests, Steuben County and Upstate New York” reports.

*SCIs have increasingly been used in the County as an alternative to Grand Jury Indictments, in an effort to expedite the processing of cases through the criminal justice system.*

Grand Jury Indictments remained virtually constant. The total number of filings grew by 18.5% during that period, while the use of SCIs grew by 33%, representing a growth from 54.5% of all filings in 2002 to 61.4% in 2004 (232 of 378).

The significance of the increase in recent years in the number and proportion of SCI filings is that this collaborative process between attorneys, defendants and judges at least in theory expedites the processing of cases through the criminal justice system. The vast majority of all felony arrest cases (more than 90% of all County Court prosecutions and more than 95% of all felony arrest convictions in all courts) are resolved in pleas, with only about a dozen cases tried each year—and those pleas are typically negotiated earlier in the process when SCIs are involved than is usually the case when Grand Jury Indictments are involved. (See Chapter 6.)

## Outcomes of Felony Arrest Cases

As County felony arrests declined earlier in this decade, so logically did total dispositions and convictions. Incarceration rates (proportions of convictions resulting in either jail or prison sentences) also declined. But as shown below in Table 5, each of those totals has increased in the past two years, as arrests increased, with especially significant increases in 2004—thereby helping to fuel the rapid increases in the numbers of jail inmates in 2004 and 2005.

*Felony arrest dispositions, convictions and incarceration sentences have all increased in the past two years.*

**Table 5: Outcomes of Felony Arrest Cases in Steuben County, 2000 - 2004**

Action	2000	2001	2002	2003	2004
<b>Dispositions</b>	595	440	427	432	514
<b>Convictions</b>	518	389	362	371	461
<b>Conviction Rate</b>	87.1%	88.4%	84.8%	85.9%	89.7%
<b>Prison Sentences</b>	86	63	62	66	110
<b>Jail Sentences</b>	117	86	96	99	133
<b>Incarceration Rate</b>	39.2%	38.3%	43.6%	44.5%	52.7%

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

NOTE: Conviction Rate = % of Dispositions. Incarceration Rate = Prison and Jail Sentences as % of Convictions.

## *Dispositions and Convictions Up*

Dispositions on felony arrests (including both County Court and lower court dispositions) increased by 20% between 2002 and 2004. Convictions increased 27% during that time, as the



proportion of dispositions resulting in convictions increased from about 85% in 2002 to 90% in 2004. Conviction rates in Steuben County have typically been 10 to 12 percentage points a year higher than the upstate NY rates.

Of even greater significance is the fact that convictions in County Court, i.e., convictions on felony charges, increased by 41%, from 210 in 2002 to 296 in 2004. The proportion of convictions on felonies has traditionally been 12 to 15 percentage points higher each year in Steuben than the upstate rate, and the Steuben proportion grew from 55.8% in 2002 to 60.5% in 2004.

### *Incarceration Rates Up*

With the rapid increases in recent conviction rates, especially on felony charges, it is not surprising that incarceration rates also increased dramatically. As shown in Table 6 below, the number of prison sentences increased by 77% between 2002 and 2004, and jail sentences increased 38.5% for the same period (and 55% since 2001).

**Table 6: Sentences Imposed on Felony Arrest Cases in Steuben County, 2000-2004**

sentences	2000	2001	2002	2003	2004
<b>Prison</b>	86	63	62	66	110
<b>Total Jail</b>	117	86	96	99	133
<b>Jail Alone</b>	53	32	45	44	57
<b>Jail + Prob.</b>	64	54	51	55	76
<b>Probation Alone</b>	181	158	131	119	136
<b>Fine or CD</b>	126	81	72	85	80
<b>TOTAL CONVICTIONS</b>	518	389	362	371	461

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

NOTE: "Total Convictions" also includes an average of about 2 additional "Other" or "Unknown" sentences not shown in the table.

*The County has historically imposed jail and prison sentences at lower rates than most other counties, but both types of sentences increased significantly in 2004, contributing to the rapid jail census increases in 2004 and 2005.*

Despite the historically significantly higher conviction and felony conviction rates of the Steuben DA, relative to the rest of upstate, they did not translate into higher incarceration rates in the past. From 1997 through 2002, Steuben's rate of incarceration sentences (jail plus prison), as a percentage of convictions, averaged about 8 to 10 percentage points *lower* than the comparable upstate rates, and was even further below the proportions of five of its six adjoining counties. But in 2004, not only did the numbers of jail and prison sentences increase as the

number of convictions increased, but the overall *rate* of incarceration also increased, so that for the first time in the DCJS recorded historical data, the County's incarceration rate exceeded 50% (see Table 5), and for the first time, Steuben's rate was comparable with the overall upstate rate.

Steuben County's relatively low overall rate of incarceration sentences over the years—even as the felony conviction rate has been relatively high compared to other counties—has been consistent with the DA's stated emphasis on getting as many felony convictions as possible, but without exacting punitive jail or prison sentences beyond what is deemed appropriate and necessary to get the defendant's attention, given his/her criminal history and perceived probability of future criminal behavior. Historically, between 55% and 60% of all County Court cases—typically the most serious cases prosecuted by the DA's office—have resulted in jail or prison sentences, compared with about 20% of felony arrest cases that are prosecuted at lower court levels as misdemeanors. Cases that begin and end as misdemeanors presumably have even lower incarceration sentencing rates, though data are not available to document this assumption.

***Although around 60% of all felony cases processed in County Court are sentenced to jail or prison, that proportion drops to about 20% of felony arrests ultimately prosecuted as misdemeanors, and presumably lower proportions for arrests that started as misdemeanors.***

It seems clear that the 2004 increase in proportion of convictions resulting in incarceration sentences has contributed significantly to the rapid increase in the jail's census in 2004 and 2005. *A key question in planning for the future becomes one of whether 2004 was a one-year "blip" or aberration in the use of expanded jail and prison as sentencing options in the County, or whether the DA and judges will revert back to the historical trends of lower incarceration rates.* And, if the latter, with what alternative sentences used instead?

In most years, between 30% and 35% of all convictions on cases that originated as felony arrests have involved sentences to probation (excluding combination "probation plus jail" sentences). Some probation sentences were to specific ATI programs operated by the Probation Department and discussed in subsequent chapters. In addition, as shown in Table 6, more than half of all sentences to the County jail (between 55% and 60% in most years) have also involved a combination of jail and probation.

Including regular probation sentences with those involving a combination of jail plus probation, an average over the years of close to half of all convictions involving initial felony arrest cases have involved some degree of probation in the sentences. How the use of formal ATI programs has factored into that mix, and what impact they may be able to have in affecting future incarceration rates, will be discussed in more detail in subsequent chapters.

## **DA Practices**

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

### *Staffing*

The DA currently has a staff of four full-time and two part-time ADAs, in addition to the full-time DA, two paralegals, an investigator, and five clerical support staff. This relatively small staff is responsible for covering more than 40 courts in a county geographically as large as the state of Rhode Island. Because of the workload and access issues faced by a small staff needing to cover such a large territory and so many courts, there is little time for training and orienting the attorneys concerning consistent practices, policies and standards.

Attorneys are often expected to be in more than one court at the same time, and considerable time can be spent in transportation to the various courts. Some issues were raised during the study about communications and accessibility issues, inconsistent approaches, and occasional inflexibility of some of the DA staff. Nonetheless, on balance, despite those occasional concerns and the hurdles faced by the DA staff, comments provided by other attorneys, judges, magistrates and court staff were generally complimentary about the quality and efficiency of the ADA staff.

### *DA-Defense Attorney Working Relationships*

The DA's office and defense attorneys have not always worked effectively together in the past to expedite and craft resolutions to cases, in large part because of a combination of the large numbers of justice courts, relatively small District Attorney and Public Defender staffs, and a large number of assigned counsel (AC) attorneys making it difficult to operate efficiently. With the hiring this year of two new Assistant PD attorneys and gradual reduction in emphasis on AC attorneys, both the DA and PD offices believe there should be greater opportunities for the development of

*Impact of Plea  
Strategies on Jail  
Population*

improved working relationships between the two offices, including development of understandings and guidelines between the District Attorney and Public Defender (see further discussion in Chapter 5).

The County District Attorney is on record advocating incarceration “only for people who need to be there,” and the data indicate that County rates of jail and prison sentences have been historically low relative to other areas of the state, at least prior to 2004.

However, the DA’s emphasis on hard-nosed negotiation of pleas, and a virtual unwillingness to plea SCI or Grand Jury Indictment cases to anything below felony charges, has led to the use of jail as a negotiating tool to motivate/coax pleas resulting in sentences that would otherwise be more severe were the defendant not in jail while the plea deal was being negotiated. That is, in the view of the DA, “best” pleas are often, especially in felony filing cases, negotiated with the current reality of jail hanging over the defendant, with the implicit if not explicit threat that if the person were not in jail, the offered sentence would be less favorable. By negotiating a plea that factors in existing time served, the DA believes that the defendant is more likely to agree to the plea than otherwise, thereby helping to move the case along more rapidly.

As such, *some of the ostensibly “unsentenced” jail time becomes in effect a “down payment” or preliminary phase of a sentence, thus suggesting that some of the high proportion of “unsentenced” jail time in the County, compared with elsewhere in the state, is in reality a form of unstated sentenced time.* That is, if some of the defendants currently in jail on unsentenced status were to be released prior to disposition of their cases, they would be likely to receive comparable—or more—jail time added to their sentences. This issue and its implications for the jail population are discussed in more detail in Chapter 6 and in the subsequent discussion of the pretrial release program and its actual and potential impact on the jail’s unsentenced population.

***Significant amounts of the County’s “unsentenced” jail days appear, in effect, to be equivalent to initial portions of incarceration sentences.***

The implications of DA practices suggest little willingness to negotiate reduced bail amounts or releases from jail prior to resolution of felony cases prosecuted at the County Court level. On the other hand, in the majority of other cases prosecuted at lower court levels, where prison sentences are not considered and

jail sentences are less likely, the DA is less likely to use jail as a negotiating strategy. Thus there are presumably more opportunities for defendants in these lower court settings to seek earlier release, with less resistance from the DA's office, without jeopardizing plea negotiations. However, there are indications that this implicit, unstated "guideline" is not always consistently followed in practice by all ADAs, given the lack of consistent orientation or training of new ADAs, or update reminders to veterans. This is due in large part to workload issues raised above, e.g., the lack of time for anything other than "getting the job done through on-the-job training," as one ADA described the day-to-day reality of meeting the demands of the office and the judicial system.

## 5. ISSUES RELATED TO DEFENSE COUNSEL

Although defense attorneys do not play as pivotal a role in driving the judicial system as the District Attorney plays, 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.

Historically Steuben County has had a relatively small Public Defender's (PD) office, staffed for the most part by part-time attorneys, supplemented by a heavy concentration of Assigned Counsel (AC) private attorneys. Within the past year, a shift has begun to occur in the mix and proportion of cases represented by the Public Defender and Assigned Counsel.

### Growing Public Defender Caseload

As indicated below in Table 7, the number of cases represented by the Public Defender office has grown substantially since 2002. (Data are not presented for 2000 and 2001, due to inconsistencies in the way the data were categorized; however, the overall numbers of cases represented appear to have been similar to the 2002 numbers, so the growth seems to have occurred primarily in the past two years.)

**Table 7: Steuben County Public Defender Caseloads, 2002 - 2004**

Type cases	2002	2003	2004
<b>Misdemeanor/Violations</b>	1,150	1,232	1,219
<b>Felonies</b>	72	112	140
<b>Family Court</b>	940	1,132	1,200
<b>Prob./Parole Viol'ns + Risk Assessment</b>	107	76	92
<b>TOTAL</b>	<b>2,269</b>	<b>2,552</b>	<b>2,651</b>

Source: Steuben County Public Defender Annual Reports.

The total number of cases represented by the Public Defender office grew by 16.8% between 2002 and 2004. Much of the growth was in the office's Family Court practice, managed primarily by two full-time attorneys. Family Court cases increased by almost 28% in those two years. Misdemeanor/violation cases

*Cases represented by the Public Defender office increased by 17% from 2002 to 2004, including dramatic increases in the felony caseloads.*

increased by 6%, even though misdemeanor arrests in Steuben County declined by 8.8% during those two years (see Table 1 in Chapter 2). Meanwhile, as felony prosecutions increased in the DA's office (see Table 4), the number of felony cases represented by the PD office almost doubled between 2002 and 2004. Moreover, with the addition of new full-time PD attorneys to take over more of the responsibility for primarily D and E felony cases previously represented by Assigned Counsel (see below), Public Defender felony cases had already exceeded the 2004 total by almost 75% through August of this year (a total of 243 cases represented by that time).

During this same period of time, Assigned Counsel attorneys represented substantial numbers of cases as well. Historically, based on PD annual reports, AC have represented defendants in about half as many cases each year as the totals reflected in Table 6 above, i.e., between about 1,150 cases in 2002 and 1,325 in 2004. Defendants qualifying for indigent defense representation were typically represented by the Public Defender unless: (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; or (2) the case was a D or E felony charge. Until this year, all D and E felony cases 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 until this year, when the County Legislature funded additional staff to represent defendants in such cases.

## **Changes in Staffing Patterns**

Historically the Public Defender office has been staffed largely by part-time attorneys who also maintained a part-time private practice. Even the head of the office, the actual Public Defender, operated as a part-time position until less than two years ago, when the current Public Defender was appointed full-time. Until this year, the only other full-time positions in the office have been, and continue to be, two attorneys who focus almost exclusively on the PD's large Family Court caseload. In addition, two part-time Assistant Public Defenders have traditionally handled the A and B felony cases assigned to the office, and four part-time Assistant PDs have split the large misdemeanor caseload in the more than 40 separate city, town and village courts scattered throughout the county.

This year, in order to control costs associated with the state-mandated increases in rates for Assigned Counsel, the County authorized the hiring of two additional *full-time* APDs to focus almost exclusively on handling D and E felony cases previously represented exclusively by Assigned Counsel. One of those attorneys began work with the office in April, and the other started in August. Even with the cumulative equivalent of less than six full months of actual representation of cases across these two attorneys, 140 cases have been represented during that short period of time—all cases that would have been represented by AC attorneys in previous years.

Unlike the District Attorney staff, the Public Defender office does not have paralegal support, nor does it have an investigator on staff. Like the DA, the PD attorneys are responsible for criss-crossing the large county and its broad array of large and small courts. Because of all the transitions within the PD office, the lack until recently of a full-time PD, the fact that much of the defense attorney work has been done by Assigned Counsel outside the PD office, and the workload issues faced by a relatively small staff needing to cover so many courts across such a large territory, there has been little time for any consistent training and orientation of the attorneys concerning common practices, policies and standards. The same issue was noted as a concern within the District Attorney's office.

As with ADAs, PD and AC attorneys are often expected to be in more than one court at the same time, and considerable time can be spent in transportation to access the various courts. Partly as a result, some issues, often significant ones, were raised during the study by various officials in different positions across the criminal justice system concerning: perceived poor communications and lack of accessibility associated with certain APDs; "no shows" or late appearances without notice at scheduled court dates; lack of contact between court dates; inconsistent approaches; inadequate preparation; and occasional lack of sufficient contact with defendants in between court appearances. Nonetheless, on balance, despite those concerns, comments provided by other attorneys, judges, magistrates and court staff were often complimentary about the work and flexibility of the APD staff. The Public Defender is aware of the issues he inherited, and most



of those we interviewed expect that once staffing stability has occurred within the office, and fewer cases are being processed outside the office by AC attorneys, more consistent standards and practices will be in evidence across the PD office, with fewer of the problems noted in the past.

An issue that was raised by several of those interviewed has to do with whether the PD office should continue its primary reliance on part-time APD staff, as opposed to hiring a greater proportion of full-time staff. It is generally perceived that many of the part-time attorneys are providing more than half-time work for their part-time pay, so the County may be receiving good returns on its investments. On the other hand, part-time APD responsibilities are balanced against their private practice demands, which may lead to conflicts resulting in court delays. Since the County already pays full benefits for its part-time APDs, the added costs of converting at least some of the part-time positions at some point in the future may be relatively small, with potential significant resulting benefits in terms of consistent, timely defense representation.

### **Impact of Shift from Assigned Counsel to Public Defender**

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 \$65/hour for all time spent on misdemeanor cases. As noted earlier, the County Legislature responded by shifting the responsibility for representing defendants on D and E felony cases from AC attorneys to two full-time APD attorneys hired directly by the County.

Early results appear promising. As noted above, in less than six months of full-time equivalent coverage, 140 felony cases otherwise represented at the higher rates by AC attorneys had been represented by APDs. In addition, the Public Defender through August had represented 37 felony cases, mostly at the C felony level. Based on previous experience equated to the current hourly rates, the PD assumption is that representation of these

cases by AC would have averaged costs to the County of about \$1,000 per case.

Projected to full staffing for a full year, the PD estimates that between 275 and 300 felony cases will be represented annually by PD attorneys that would otherwise have been assigned to AC attorneys, at an annual estimated cost of \$275,000 to \$300,000. Estimated annual salary and benefits for the two new full-time APD attorneys would total about \$104,000. Thus, estimated annual savings of between about \$175,000 and \$200,000 are expected to result. Such savings may be even greater, given the assumption that the AC costs of representing C felony cases now covered by the PD may have exceeded \$1,000 per case. Either way, the County appears to have made a wise decision to shift as much responsibility as possible for felony cases away from Assigned Counsel.

***Shifting responsibility for D and E felony cases from Assigned Counsel to new full-time APDs should save the County about \$200,000 a year, compared with not making the change. In addition, the County is now receiving about \$190,000 annually from NYS to further offset added AC-related costs.***

In addition to the direct savings to taxpayers, beginning in 2005, NYS has begun to reimburse counties for at least a portion of their added costs associated with the mandate to increase AC rates. For 2005 (and hopefully future years), this will add about \$190,000 to County revenues through the PD office. Thus the net fiscal effect of the two actions—the decision to add PD staff and the state decision to help pay for the added mandated AC-related costs—will be a reduction in annual costs to County taxpayers of between about \$365,000 and \$400,000, compared to what they would have been without the changes, based on current assumptions and continuation of state payments.

In addition to the 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 training and orientation with defense attorneys within the PD office. More routine internal review and discussion of felony cases should also be possible between the APDs and the PD, 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 court delays and adjournments. In addition, there should be better coordination and ongoing working relationships with judges and the District Attorney's office.

- ❖ 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 office 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.
- ❖ The Public Defender should be able to hold his attorneys more accountable for their actions, decisions, time, and the ways in which they interact with other “players” in the system.

### **Further Alternative to Assigned Counsel is Needed**

Despite the benefits to date, and anticipated, of the shift of D and E felony cases away from Assigned Counsel to internal APD staff, the Public Defender expects that there will continue to be substantial number of cases that will need Assigned Counsel, because of co-defendants or other conflicts that prevent representation by the PD. Just as it is proving to be cost effective to shift D and E felony cases from AC to full-time PD attorneys, the Public Defender believes that all but about 5% of the remaining cases now covered by AC could be represented by a newly-created County Conflicts Office (CO), separate and distinct from the Public Defender's office. By creating an office of attorneys distinct from the PD, with its own separate staff and management, the PD believes that it could offer legal representation for most cases where conflicts exist with the PD office, at less cost to the County than if AC hourly rates had to continue to be paid. Neighboring Chemung County has begun the establishment of such an office, which is expected to generate significant savings for Chemung taxpayers.

Preliminary figures presented by the Public Defender suggest that this approach could be cost effective in Steuben as well, with projected costs of staffing the potential Conflicts Office less than the anticipated costs of having the same services provided by Assigned Counsel. The assumptions underlying the outline of a CO proposal shown to CGR are at this preliminary stage too

vague to make definitive judgments. More detailed budget figures and estimates are needed of numbers of cases expected to be covered by each attorney, and of the expected numbers to be shifted away from AC, before final conclusions can be drawn. However, the concept appears promising, and should be seriously considered, with a more detailed proposal drawn up before any final decisions are made.

### **More Rapid Engagement with Defendants and Courts**

Partly because of the large number of cases represented by Assigned Counsel in the past, and in part because of poor communications and poor follow-through by previous Public Defender administrations—and in some cases lack of adequate information provided by various courts—there appear to have been significant numbers of cases over the years in which there were delays of several days or even a week or more in getting indigent defense counsel identified and linked up with defendants. Such delays often were detrimental to the processing of the defendant's case, and to the defendant's options for avoiding or minimizing the time spent in jail awaiting disposition of his/her case.

An administrative court order from the NYS Unified Court System in the spring of 2005 placed requirements on all town and village court justices to immediately inform their Public Defender about any cases that might require legal representation provided by the public. That requirement, in conjunction with reduced use of AC attorneys and more attention to details by the current PD administration, appears to be minimizing this problem of delayed representation. Anecdotal evidence (no hard data are available to document the extent of such occurrences) suggests that public defense attorneys are now assigned more efficiently and rapidly, resulting in fewer delays in having defense representation at early stages of the judicial process.

### **Public Defender- DA Working Relationships**

As noted in Chapter 4, the District Attorney often uses “unsentenced jail” status and/or decisions about bail and pretrial release as part of the negotiation process to motivate defendants to agree to plea deals that they might not otherwise agree to—or that the DA might not otherwise make. Such negotiation tactics can have the practical effect of making “unsentenced” time in such situations for all intents and purposes no different than an

unofficial part of a sentence for that defendant. This approach, when accompanied by the DA's stated policy not to negotiate Superior Court Filing cases to anything lower than a felony, has the practical effect of limiting a defendant's and defense attorney's options, and can certainly be the basis for contention between the parties.

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 will result in a "better" plea agreement and sentence than they would obtain otherwise. Moreover, the PD or other defense attorney, and the defendant, are often just as happy to have the defendant sit in jail building up "time served" to be counted against a negotiated prison sentence. For example, a defendant may prefer to spend as much of the sentence as possible in the local jail, rather than at the more distant and hostile environment represented by the prison to which the client is being sentenced. Thus the DA and defense attorney are often complicit, along with the defendant and in many cases the judge, in making decisions which 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.

*DA and defense attorney agreements, ratified by judges, often have the practical effect of keeping unsentenced defendants in jail to offset subsequent sentences.*

Despite such tacit agreements which are often reached by attorneys on both sides to leave defendants in jail to further the respective interests of both parties, 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 large part because of a combination of the large numbers of justice courts, relatively small District Attorney and Public Defender staffs, and a large number of AC attorneys making it difficult to operate efficiently. With the hiring of the new Assistant PD attorneys and gradual reduction in emphasis on AC attorneys, both the PD and DA offices believe there should be greater opportunities for the development of improved working relationships between the two offices, including, as noted in Chapter 4, development of clearer understandings and guidelines between the Public Defender and District Attorney.

## 6. IMPACT OF EXISTING COURT PRACTICES

Data related to court practices and their implications for the jail and the rest of the criminal justice system are most extensive and readily available for felony cases processed at the County Court level. Data are far less available about the processing of cases at the lower/misdemeanor court levels. But enough “pieces” of information were available about each level of the courts—and enough information (factual and perceptions) was obtained from extensive interviews with attorneys, judges/justices and clerks who are intimately involved with the different courts—that we believe the key issues pertaining to how the courts function, and the impact of their various practices on the overall system, can be accurately summarized in this chapter.

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 conducted in conjunction with the Chief Clerk’s office of the County and Supreme Courts of all Superior Court Filings (indictments and SCIs) filed for a 3-month period from September 1 through November 30, 2004; a special analysis by the Chief Clerk’s office of cases not meeting standards and goals over several months in 2004 and 2005; and a special analysis of Probation data on pre-sentence investigations, aided by the County’s Information Technology Department.

By way of overview, what we know about criminal court cases<sup>4</sup> in Steuben County on an annual basis is the following:

- ◆ An average of more than 310 new felony filings (indictments and Superior Court Informations) were initiated in each of the past two years in County Court and, including cases initiated in earlier years, an average of more than 325 dispositions were completed per year.

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<sup>4</sup> Family Court issues were typically not within the scope of the project CGR was requested to undertake. Therefore, specific data about Family Court are not presented in this report. However, to the extent that issues pertaining to Family Court are germane to understanding the criminal court system, they are addressed.

*More than 5,000  
criminal cases were  
processed in the  
County in 2004.*

- ◆ For each of the past two years, an average of about 575 new criminal filings were initiated in Hornell City Court; comparable data could not be obtained from Corning City Court, although we know it is a larger court in terms of cases filed than is Hornell.
- ◆ In 2004, 4,037 criminal cases were reported in the town and village courts within Steuben County. Of those, almost 1,500 (37%) were processed in just three of the 38 reporting courts: 646 (16%) in the village of Bath court, 507 (12.6%) in the town of Erwin, and 340 (8.4%) in the town of Bath. The next highest-volume courts were the town courts of Corning and Addison (265 and 264 cases in 2004, respectively).
- ◆ Thus, had Corning City Court data been included, we know that well over 5,000 criminal court cases were initiated during 2004 across all County, City and town/village courts throughout Steuben 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):

- ◆ More than 1,300 criminal cases represented by the Public Defender's office in each of the past two years, in addition to about 1,000 other cases in which defendants were represented at public cost through Assigned Counsel attorneys.
- ◆ Typically about 800 or more cases under active supervision at any given time under the auspices of the Probation Department. In 2004, more than 1,300 separate cases were supervised at some point during the course of the year.
- ◆ 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 767 PSIs have been

completed each year from 2000 – 2004, with a high of 851 in 2004.

CGR analysis of 1,559 PSI cases requested/begun in 2004 and the first eight months of 2005 indicated the following breakdowns by levels and locations of courts:

<u>Court</u>	<u># PSIs</u>	<u>%</u>
County	655	42.0
Corning City	185	11.9
Hornell City	102	6.5
Bath Village	90	5.8
Erwin Town	82	5.3
Bath Town	38	2.4
Other Town/Village	183	11.7
Other Counties	139	8.9
Family Court	<u>85</u>	<u>5.4</u>
TOTALS	1,559	100.0

Thus, using PSIs as a rough barometer of the more serious cases resulting in convictions throughout all levels of the court system, more than 40% in recent months have been convicted in County Court, 18.5% in the two City Courts, and just over a quarter in the town/village courts. Compared with the total numbers of cases filed in each level of the courts, these numbers mean that nearly all of the County Court cases wind up with PSIs requested, but relatively few of the more than 4,000 justice court cases.

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

Although they represent a relatively small proportion of all cases in the County's criminal justice system, County Court cases 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.

Nearly all felony cases originate at one of the City or town/village lower courts, where the cases are initially arraigned and where decisions are typically made that determine whether the defendants will be initially detained, and if so, if and when, and under what circumstances, the 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 exceedingly long and drawn out.*

CGR analyzed all 86 County Court cases filed between September and the end of November of last year (a sample thought by County Court officials to be representative of a full year's cases); final dispositions had been reached in 85% of those cases by the time of final analysis for this report.

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

Two-thirds of the cases were filed by waiving the Grand Jury process and filing SCIs. Of the sample, 45% were detained in jail throughout the judicial process (including 30% held the entire time without bail being set, and 15% unable to make bail); 46.5% were released (37% on ROR or Pre-Trial Release, and 9% as a result of making bail); 6% were remanded to jail portions of the time and released at other points during the process; and the custody status was unknown for 2% of the defendants. Thus even among these felony cases, about half of the defendants were released during some or all of the pre-sentence process.

As shown below in Table 8, of the County Court cases, the average amount of time from lower court arraignment to the final court date for sentencing was 210 days—seven months. The median was 192 days.

***The average County Court case requires seven months to complete, from lower court arraignment to final sentencing date.***

**Table 8: Average Days Between Events in Proceedings of County Court Cases with Filing Dates Between 9/1/04 and 11/30/04**

court process stage	total	gj	sci	jail	non-jail
L.C. Arraignment to Sentencing	210	264	186.5	191.5	219
L.C. Arraignment to County Ct. Filing	116	96	125	102	128
County Ct. Filing to Sentencing	93.5	168	61	96	87

Source: CGR analysis of sample data organized by Chief Clerk's office of County and Supreme Courts of Steuben County.

NOTE: L.C. = lower court (City Courts and town/village justice courts); GJ = Grand Jury Indictment; SCI = Superior Court Information filing; Jail and Non-Jail refer to custody status during processing of criminal case. The last two rows may not equal the "L.C. Arraignment -> Sentencing" total due to missing data in two cases.

### *Longest Delays in Lower Courts*

***Almost four months of the average felony case was spent in a lower court prior to filing at the County Court level.***

Only 16% of the cases were resolved within four months and, at the other end of the spectrum, a quarter of the cases took more than nine months from arraignment to final disposition, including 8% which took more than a full year.

The majority of that time—55% of the 210 days—was spent with the case remaining under the responsibility of the lower court. That is, it took an average of 116 days 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 30% of the cases took more than five months to reach the County Court filing stage, including 14% which took six months or more. Only a quarter of the cases reached the County Court felony prosecution stage in less than two months.

Cases of defendants who were detained in jail were processed more rapidly on average than were those who had made bail or been released either ROR (release on own recognizance) or through the Pre-Trial Release program. Defendants who remained in jail had their County Court cases filed within an average of 102 days, compared to 128 days for those who had been released. Indicted cases were filed more rapidly than were those prosecuted through the SCI process (96 days versus 125, respectively). Felony cases originated in Corning City Court and the Erwin town court took longer to reach County Court, compared to the overall average time (125 and 138 days, respectively, compared, for example, to 96 days in Hornell).

### *3 Months to Process Average Case in County Court*

***The average Grand Jury case takes about 100 days longer to complete within County Court than do SCI cases.***

Once cases reached County Court, it took an average of another 93.5 days before final sentencing, with an average of 3.6 court appearances, including the final sentencing date. There were often delays of several weeks between the filing and arraignment at the upper court level and the next court appearance, typically in cases involving the Grand Jury. Indeed, although cases going to the Grand Jury reached County Court faster than SCI cases, as noted above, once there they took much longer to resolve (an average of 168 days from filing to sentencing for Grand Jury cases compared with 61 days for SCI cases, which were typically resolved in one appearance, except for final sentencing). Thus, cases involving Grand Jury Indictments get to County Court about a month sooner than SCI cases, on average, but take more than three

months longer to dispose of once indicted, so that total time from lower court arraignment to sentencing was 264 days for Grand Jury cases, compared with 186.5 days for the average SCI case (see Table 8).

As also shown in Table 8, although there appear to have been some efforts made to expedite the processing of cases for defendants held in custody at the lower court level, no further reductions in case processing time were observed among unsentenced custody cases during the time spent in the County Court system.

*Except for Grand Jury cases, much of the time between County Court filings and sentencing is spent awaiting PSI results.*

Of the average of 93.5 days from County Court filing to sentencing, two-thirds of that time was typically spent between the time a verdict was reached, and the final sentencing date. That is, an average of 63 days was spent between the time a PSI was requested and the final sentencing date for these County Court cases.

Once cases reached County Court, there was considerable variation between the three judges in the speed with which cases were resolved: the average time from filing to final sentencing, depending on the judge, was 70 days, 101 days, or 176 days. In part these differences were a function of the proportions of cases each had that went to a Grand Jury, but even controlling for that factor, considerable differences remained in their average case-processing times. About 60% of one judge's cases were closed out within two months of reaching County Court, while the comparable proportions for the other two judges were 24% and 11%, respectively. At the other end of the spectrum, 44% of the cases of one judge took more than six months to be completed, compared with 3% and 16% for the other two.

### *Cases Not Meeting Standards and Goals*

Further evidence of the length of time many felony court cases remain open in Steuben County is provided by analysis of Standards and Goals cases (S&G). State standards call for felony cases to be closed/disposed of within 180 days of arraignment. Each 4-week court term, and annually, court data are reported to the state indicating the numbers of cases which have surpassed the S&G goal, i.e., cases remain open after the 180-day period has passed. From 2002 through mid-2005, Steuben has consistently reported higher proportions of pending cases that are over the

180-day limit than similar counties across the state, with one County judge being responsible for most of the over-goal cases.

In recent years, about 20% of the pending cases in County Court at the end of the year have been open beyond the 180-day goal—a proportion that has consistently exceeded the proportions of all but about half a dozen counties in the state (exclusive of NYC counties). Moreover, eight months of 2004-05 court data indicate that even after the cases reach the maximum allowable period, *it takes an average of 120 additional days—four additional months beyond the goal—for the cases to be closed, with an average of 3.25 additional court appearances after reaching the goal deadline.* One quarter of the cases over goal took more than five additional months on top of the 180 days before the cases were closed.

***Significant numbers of cases in County and City Courts remain open beyond state Standards and Goals. In County Court, they often continue to remain open well beyond the 180-day goal.***

Separate City Court data from Hornell and Corning indicate that this issue is not limited to County Court. Not only are 15% to 20% of their felony cases typically over goal, but the 90-day misdemeanor goal in recent years has also been exceeded in sample months in between 40% (Hornell) and 60% (Corning) of the pending cases in the two jurisdictions. Both City Court rates were typically higher in the sample months than comparable rates for other City Courts in the 7<sup>th</sup> Judicial District: Auburn, Canandaigua, Geneva and even Rochester. *Thus it appears as if delays in disposing of cases in a timely manner is an issue not only at the County Court level, but also at the two City Courts as well.* No comparable data were available at the justice court levels.

## **Issues Affecting Court Delays**

Clearly a significant proportion of the felony cases prosecuted in Steuben 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, the major 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. Other shorter, but nonetheless significant portions of the delays have to do with processing cases within County Court itself, including significant periods awaiting completion of PSI reports in many cases.

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

***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.***

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

***Lower court judges need criminal justice history more immediately, and justices need better ways of accessing and acting on information between scheduled court sessions.***

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 office with stronger full-time management and more full-time attorneys is key to earlier and more consistent defense representation. However, as long as substantial numbers of defense attorneys need to continue to be hired as Assigned Counsel—with little ability of anyone in the criminal justice system to effectively manage their time and quality of representation, and little ability to enforce consistent standards—the issue of timely and effective representation is likely to continue to be a problem. CGR believes that as long as substantial numbers of cases continue to be represented by Assigned Counsel, there will continue to be more delayed cases and more defendants detained in custody than need to be there to meet community safety goals.
- ❖ Because lower court judges (City and town/village) cannot set bail or accept pleas on certain felony charges and/or felony charges in which defendants have two or more prior felony convictions, and because judges do not always have the information needed from rap sheets or Pre-Trial Release forms 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. And since many of the justice courts meet only monthly or at most weekly or every other week, a defendant detained at arraignment may not appear again before the judge for several days or even weeks. Some judges and justices reconsider release/bail decisions in between court appearances, but this does not always happen, and some courts do not have fax machines or email access, and/or have them but do not routinely check them in between court appearances. Defendants in some cases remain in jail longer than necessary as a result.

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

*Expedited discussions of cases between defense attorneys and ADAs can help move cases along faster, while still meeting legitimate goals and needs of all parties.*

- ❖ Such concerns early in the judicial process are exacerbated at times by the problems inherent in limited staffing of both the PD 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 elements of intentionality that play a crucial role as well. As noted earlier, it is clear that motivations to coax plea agreements on the DA's part, and to obtain the most advantageous sentences and avoid prison incarceration on the defense attorney's part, can and do contribute to delays in processing cases. As such they contribute to defendants sitting in jail to help make possible pleas that attorneys on both sides can be comfortable with. This balancing of objectives is not likely to change, but it should be possible to begin to change the dynamics of the discussions and to find ways to expedite the process by which these decisions get made.
- ❖ A significant portion of the delay in resolving cases is related to the length of time it currently takes to have Pre-Sentence Investigations completed on numerous defendants. This is partly a resource issue, but it is one that has the potential to be resolved in ways that can not only reduce the times some cases remain open, but also reduce the jail population without compromising community safety, as discussed in more detail later in this chapter.

## **Court Efficiencies**

County Court judges effectively balance three different sets of court responsibilities (Surrogate, County and Family). CGR analyzed data from the NYS Unified Court System that compared courts across the state on various management measures. On one of the measures, appearances per disposition, the County has steadily increased from 2002 through the first half of 2005—from

3.69 to 4.97 appearances per County Court disposition. The ratio of appearances is fairly comparable to the upstate ratio, but is considerably higher than in the six counties adjoining Steuben. With the increasing use of SCIs as an alternative to the Grand Jury process, it would seem reasonable to expect that the number of appearances per disposition might have actually declined, rather than increased, in the years in which SCI use has increased. On the other hand, the increases coincide with the introduction in recent years of Drug Court, which requires more court appearances as part of the treatment plan. Thus it is difficult to draw conclusions from these data, but it may be worth further analysis by County and court officials to determine what is contributing to these increasing numbers.

A second “caseload management measure” used by the state refers to the number of “dispositions per judge day.” Number of dispositions, or closed cases during a reporting period, are compared with the number of judge days in criminal court during that period. For each year from 2002 through mid-2005, the County has averaged about .79 dispositions per criminal court judge day—about 20% lower than the upstate average of 1.0 during that same period of time. The County ratio has also been well below the corresponding ratios in Chemung, Livingston and Ontario counties. The interpretation of these data is not always unambiguous, as many extenuating circumstances need to be factored in. But the data seem to suggest that there may be opportunities for the overall system and its multiple components to operate more efficiently in the future, to expedite cases more rapidly, thereby helping to reduce the backlog of cases exceeding the S&G guidelines, while at the same time making better use of all resources within the system and helping to minimize the jail population. The next few sections discuss some of the ways that such efficiencies may become more feasible, by incorporating the efforts of those in all components of the system.

## Value of SCIs

Judges and attorneys have made substantial use at the County Court level of Superior Court Information filings as an alternative to the more time-consuming Grand Jury process, with increasing proportions of felony arrest cases going through the SCI process in recent years. Even though the concept seems well ingrained within the system at this point, and generally seems to meet with

the approval of most participants in the system, significant complaints arose from several quarters in our interviews related to the implementation of the concept.

As noted above, County Court cases in our 3-month sample reached County Court sooner through the Grand Jury process, on the average, than did cases filed through the SCI mechanism. However, once the initial filing had occurred, SCI cases moved much more rapidly, with fewer subsequent court appearances and much less time in the system, from filing to ultimate disposition and sentencing. *The key question becomes one of whether it is possible to expedite the front end of the process so that SCIs can be filed and the cases moved out of the lower courts sooner than they typically are now.*

Most of the complaints we heard about the SCI process had to do with lengthy delays in getting on the SCI calendar. People interviewed in virtually all components of the system routinely complained about lengthy delays of several weeks or more to get on a judge's SCI calendar. Data obtained during the study from judges and clerks suggest, however, that the complaints are not always well-founded.

In the past, the three County judges all shared responsibility for conducting the SCIs, in which ADA, defense attorney, defendant and judge sit down to work out a plea agreement, typically after the ADA and defense attorney have negotiated the outline of acceptable terms of a plea. With the growth of Drug Court, the County Court judge in charge of that initiative no longer retains a major responsibility for SCI sessions, but is available to pick up SCI cases as needed when they can not be fit into the regular SCI schedule.

The two remaining County judges each currently establish specific days each month when they are available for SCI conferences to be scheduled. Their combined schedules typically offer about 18 regularly-scheduled SCI "slots" per month for conferences. Based on the schedules alone, it is true that if all scheduled slots are filled and an attorney is requesting an SCI conference in a month when there are no available times left, there could be a several-week wait until another slot opens up. However, when slots are filled, or as attorneys request times on alternate dates, judges routinely make additional non-scheduled times available to hold conferences.



In the first eight months of this year, through August, CGR analyzed data from each judge's schedule and determined that, complaints about lack of available conference slots notwithstanding, nearly every month available slots on SCI calendars of both judges remained unfilled. And despite that, both judges in virtually every month added unscheduled conferences to accommodate attorneys. Judges appeared to be especially willing to schedule additional sessions when deadlines were approaching and when defendants were being held in custody.

***Despite complaints about accessing SCIs in a timely fashion, many scheduled SCI slots are not filled, and judges often add unscheduled conferences.***

Across the two primary SCI judges, of 152 total scheduled SCI slots through August, only 80 were actually filled (53%). In addition, another 29 were added at unscheduled times, bringing the total conferences held by those two judges to 109, representing 72% of the original scheduled times. In addition, the third judge added 16 unscheduled SCIs to his calendar as well. With all the conferences added together, 125 conferences had been held through this summer, still 27 below what the judges were scheduled for. *Thus there appears to be a bit of a disconnect between the perceived need and demand for SCI sessions and the actual scheduling of the conferences.*

Some of those we interviewed speculated that attorneys might not always understand that they can request non-scheduled times, and instead wind up settling for a later date, and then complain about the delay. It may be that a better job needs to be done of educating ADAs and defense attorneys about their options related to SCI requests.

***Better and more frequent communications between APD and ADA attorneys should help expedite the SCI process.***

Perhaps the bigger issue is developing better collaboration between defense and prosecuting attorneys that results in discussions earlier in the process to attempt to craft plea deals that can be brought to a judge more quickly than has been the case in the past. With full-time Assistant Public Defenders now on board and responsible for representing defendants with D and E felonies (instead of having Assigned Counsel covering all such cases as in the past), and a conscious effort on the part of the Public Defender to make earlier connections with defendants and ADAs, it should be possible to begin to develop plea agreements that can be taken to judges sooner, thereby helping to accomplish the initial

SCI goal of moving cases from the lower courts into the County Court decision-making arena more rapidly.

## Court Scheduling

Very much related to the SCI issue is the issue of overall court calendaring and scheduling. With three different judges responsible for balancing the demands of three separate County-level courts—Surrogate, County and Family—scheduling issues become difficult at best and contentious and inefficient at worst. Numerous approaches to developing rational schedules have been proposed and tried, but no one approach has met with universal support.

The current approach basically has each court and judge establishing a court- and/or judge-specific calendar that attorneys are forced to fit into. Attempts by one judge to establish a unified calendar for all courts appear to be honored more in the breach than in adherence to it. Thus it is not unusual for different judges to be holding criminal court sessions at identical times, virtually guaranteeing that one or both courts will be delayed at some point because two or more attorneys on both prosecution and defense sides are scheduled to be appearing before different judges and courts at the same time. This problem is difficult enough at the “upper court” levels, and has its counterpart in the multiple overlapping courts at the town/village court levels.

*No one has assumed responsibility and authority to impose a master calendar and scheduling that would help ensure a more rational, efficient system to better meet the needs of all participants in it.*

At the County level, the scheduling concerns are compounded by the fact that each judge has a secretary and court clerk, Family Court has a Chief Clerk, and County and Supreme Court has a Chief Clerk. At this point, the various secretaries and clerks assigned to specific judges essentially operate as “silos.” No one judge, and no one in the clerk’s offices, has, or has assumed, the authority to implement a schedule or approach to make the system work more efficiently. However, that is what appears to be needed to minimize the waste of time represented by having defendants and attorneys sitting around waiting for cases to be completed and/or waiting in court for an absent attorney trying to balance needs at two places at the same time.

As one observer commented to us, “The Court needs to be the Court, and not about individual judges or clerks. There needs to be a central schedule that is adhered to, and someone responsible for ensuring that it is.” Ideally, the three County judges would

agree to commit to an efficient scheduling approach, and then delegate to the Chief Clerks of County and Family Courts the responsibility to develop the details, and hold people accountable for making the process work within the agreed-upon guidelines. With such an approach in place, building on existing calendar efforts that have been tried before, it is likely that cases would be expedited through the system more rapidly, attorneys would be used more efficiently, and fewer cases would exceed the Standards and Goals criteria each month.

## Relationship Between Detention and Sentencing

In our 3-month sample of County Court cases (cases opened September – November 2004), three-quarters of the defendants were sentenced to some form of incarceration. About 40% received a sentence to state prison, about 36% received a jail sentence, and about a quarter received a sentence of probation, sometimes combined with a fine or community service. These sentences were clearly significantly correlated to their custody status while awaiting disposition of the cases. They were also related to SCI/Grand Jury filings: Of 32 defendants released ROR or through Pre-Trial Release, only four were indicted, whereas about half of the SCI cases were released without bail.

Of the 17 defendants who received a probation sentence, 14 had been released on their own recognizance or through Pre-Trial Release, and a 15<sup>th</sup> had made bail. On the other hand, of 30 defendants sentenced to prison, 23 had been detained in jail through the court process. Of the 26 receiving a jail sentence, their unsentenced custody status had been mixed, with 12 spending at least some time in jail, 9 released without bail, and 5 making bail.

Looked at from the opposite perspective of their custody status prior to sentencing, of the 37 who had been detained and had received their sentences, all but two received either a jail (12) or prison (23) sentence. Of the 36 who had been released ROR, on PTR, or by making bail, 15 received a probation sentence, although 7 were sentenced to prison and 14 to jail.

*A defendant's custody status awaiting 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 sentence the defendant ultimately receives. What is less clear is the cause-effect relationship: Do the judge and DA have a projected sentence in mind when the 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 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?

Either way, we know from the PSI data discussed below that most defendants are not incarcerated while awaiting case disposition, even though those who are make up a disproportionate share of the County jail population. But 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 most of the types 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.

One final note on the relationship between sentencing and custody status. There is not always consistency within and between judges. Of the three County judges, the one who was most likely to have defendants in custody pre-sentence (64% of the cases) was also most likely to pronounce prison sentences (also about two-thirds of the cases) and least likely to sentence to probation (11%). But on the other hand, the judge least likely to have defendants in custody and most likely to have released defendants pre-sentence

without bail (52%) was also quite likely to sentence to prison (44%), although also more likely than the others to use the probation option (28%). The third judge was in the middle on pre-sentence release decisions, but was most likely to sentence defendants to jail (52%), though least likely of the three to use the prison option (28%).

## 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 well over 750 completed PSIs each year since 2000, with a high of 851 last year. Typically about half of the PSIs are completed for felony charges and half for misdemeanors.

Administratively, the completion of PSIs is very labor-intensive for the Probation Department. Two Probation Officers are each devoted full-time to exclusively completing PSIs. In addition, most of the rest of the staff, including the Director and the Probation Supervisors, wind up also doing occasional reports. Expectations within the Department are that, on average, a PSI takes a full person-day to complete, including victim impact statements.

*A slight majority of PSI requests come from lower City and town/village courts, though the vast majority of County Court dispositions lead to PSI requests.*

CGR's analysis of 1,559 PSIs initiated by the Department during 2004 and the first eight months of 2005 indicated that, excluding out-of-county and Family Court cases, just over half of the requests came from lower courts, including 29.4% from the justice courts and 21.5% from the two City Courts. The remaining 49% represented a very high proportion of all dispositions from County Court.

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

Across all court levels, PSIs over the past two years 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 three-quarters of all PSIs were completed for defendants who had been released on their own recognizance, released through the Pre-Trial Release program, or made bail.

<u>Type of Release/Custody Status</u>	<u>% of PSIs</u>
ROR	60.6
Pre-Trial Release	6.5
Bail	6.5
Jail custody	26.4

It is not clear that the PSI database from which these numbers were derived was always clear about the distinction between ROR and Pre-Trial Release. But assuming that those categories were clearly distinct from release on bail, two-thirds 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 (only 6.5% were released on bail). And, if the ROR/PTR distinction is accurate, most had no reporting or supervisory restrictions on them either.

***Most defendants in the County who are released awaiting dispositions of their cases were released by lower courts; most of those detained during the PSI process were in County Court.***

Despite the high proportions of unsentenced inmates in the County jail, those inmates make up a relatively small proportion of all criminal cases in Steuben. They account for about one of every four defendants for whom PSIs were initiated during the 20 months ending in August 2005.

About 60% of the defendants who had been released pre-sentence (either via ROR, PTR or bail) were involved in lower court cases (City or town/village). By contrast, of those detained during the PSI process, 76% were involved in County Court cases.

### *Time Needed to Complete PSIs*

The previous chapter indicated that about two-thirds of the time between the felony case filing and the final sentencing in County Court was the time between the PSI request and the sentencing date—an average of about 63 days. That average was slightly higher than the overall average time for all PSIs, regardless of court.

***PSIs over the past two years have taken an average of 8 weeks to complete, though somewhat less in 2005. They are completed more rapidly for defendants in custody, with an average of 40 days in 2005 to date.***

### *Relation Between Detention and Sentencing*

***About a third of all defendants with PSIs were sentenced to incarceration, including  $\frac{3}{4}$  of those detained pre-sentence, but only about 20% of those released.***

### *Potential for Saving Jail Days*

***In 2004, more than 12,000 days in jail were spent by 236 defendants awaiting completion of PSIs.***

Across all PSIs initiated in 2004 and through August 2005, the average time to complete the report and return it to the court was 56 days—eight calendar weeks. Thus far in 2005, the time has been shortened by about a week, from an average of 58.5 days last year to 51 days to date this year.

Probation has made conscious efforts to produce PSIs more rapidly for those in custody at the time of the request. Over the two-year period, the average days to completion has been 59 for those released to the community, compared to 48 days for those in custody. And this year to date, the average time for those in custody has been further reduced to 40 days, just under six calendar weeks.

As with the County Court data presented above, across all courts there is also a clear relationship between custody status pre-sentence and the actual sentence handed down.

Based on the sentencing information available from the PSI database, it appears that about three-quarters of those who were detained in jail awaiting case disposition wound up with an incarceration sentence (about 58% prison and 19% jail). However, of those who were released, only about 6% received prison sentences, and 13% jail, and often the jail sentences were for fewer than 30 days. Most of the sentences for the released defendants consisted of various combinations of probation, conditional discharge, community service, fines and restitution. Across the detained and non-detained groups, a total of roughly a third of all defendants received some level of incarceration as part of their sentence.

For those for whom PSIs were initiated in 2004, a total of 12,301 days were spent by the 236 defendants detained in jail while awaiting completion of their PSIs. 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. *We believe that it should be possible to 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.* If that becomes feasible and the norm for all detained

defendants, the following would be possible, based on sample data from the 2004 PSI database:

- ❖ For the estimated 54 of the 236 detained defendants who received probation sentences (23%), 1,800 fewer days in jail would have been possible, based on a reduction from the average of 53 PSI days per person in that group to the proposed norm of 20. *That would translate into about 1,800 fewer days in jail per year, or an average of 4.9 beds per day.*
- ❖ For the 19.2% of the detained defendants (45) who received a jail sentence, a reduction of 2,075 jail days during the PSI process would have been possible, based on a reduction from an average of 66 days waiting for the PSI to the recommended 20. But this reduction in unsentenced days awaiting sentencing would mean nothing unless the sentences themselves were also reduced. Otherwise, days saved while awaiting the sentence would simply be included in the sentence, rather than being counted toward time served. But, as will be recommended in the final chapter, data suggest that about 18 of the 45 defendants in this group were sentenced to a full year in jail, and even the DA suggests that that is usually more than is needed to meet any punishment goals for crimes not serious enough to warrant prison. We believe it is reasonable to conclude that for those 18 sentenced to jail, the sentence could be cut in half, or some other combination of sentence days served, perhaps in conjunction with the use of Electronic Home Monitoring, to be discussed in the next chapter. Such a reduction, even factoring in a one-third reduction in sentencing time for “good time,” would be about equivalent to the 2,075 proposed days saved during completion of the PSI process, thus ensuring that these “PSI days” would represent real savings to the jail. *This would represent a reduction of 5.7 beds per day throughout the year.*



***By targeting PSIs for defendants in jail and reducing the time to complete them to 20 days, the jail could experience 10.6 fewer inmates per day, at boarding-out savings of >\$300,000 per year.***

***This may be a conservative estimate.***

### *Impact of PSIs on Judicial Decisions*

- ❖ Together, the proposed reduction in time to process PSIs for defendants in custody at the time of the PSI request—in conjunction with other sentencing adjustments consistent with DA standards, recommendations in this report, and community safety—would have made it *possible to reduce the number of inmates in the jail by an overall average of 10.6 defendants per day*. Annualized across the entire year, a reduction of that magnitude would have represented an estimated 3,869 defendants who would not have needed to be boarded out to other county jails, at an average of \$80 or more per night. Implementing such a strategy for next year, at \$80 or more per night, could save the County at least \$309,500 during the year, compared with boarding-out costs likely to occur if the status quo continues.<sup>5</sup>

Since many (and most in County Court) of the PSIs are completed after pleas have been negotiated, the actual impact of many of the PSIs, other than meeting legal requirements, is limited. Most judges acknowledged that once a plea agreement has been reached, the terms are rarely changed. Most add that the pleas and PSI recommendations are usually consistent, but they acknowledge that when they aren't, the initial plea deal is most likely to outweigh the PSI recommendation. Certainly when pleas have not already been negotiated, they have real significance, and judges find them helpful in those situations.

But the general tenor of the discussions with judges was that they wind up requesting PSIs in many more cases than where they are needed or helpful. Several judges said that they are actually already attempting to reduce their requests for PSIs, or will in the future in response to questions raised during this study, to only those where absolutely required by law, and even then to try to find wherever possible opportunities to qualify under the waiver provisions to either eliminate the need for the PSI or to request only conditions of probation, which could substantially reduce the amount of time needed to complete the investigation process.

<sup>5</sup> We erred on the conservative side and calculated no savings of jail days for those ultimately sentenced to prison. Many defendants and defense attorneys prefer time spent in jail to count as time served against prison time, thereby reducing actual days spent in prison. However, to the extent that quicker PSI completion expedites the sending of such inmates to prison, this could indeed add to potential jail days saved locally.

*It may be possible to place significant limits on the extent to which PSIs are requested in the future.*

Some of those we interviewed from various sectors of the criminal justice system (attorneys, judges, agency staff) suggested that perhaps as many as a quarter to a third of all PSIs could be eliminated in the future. One more extreme perspective regarding how many would be needed in the future is represented by the data suggesting that about one-third of all PSIs conducted in 2004 resulted in jail or prison sentences. Assuming that those sentences would have justified and in many cases mandated the completion of PSIs, one could argue that most of the remaining cases could have dispensed with PSIs, under waiver provisions, or could have settled for a more “bare bones” conditions-of-probation request. Such an extreme position on PSIs is not likely to be considered realistic, but it, along with other suggestions that were made to us during the study, should certainly become part of an active discussion about the extent to which PSIs should be requested, and under what circumstances, in the future.

*Judges and attorneys have requested that future PSIs specifically focus on the potential for greater use of ATIs.*

To the extent that PSIs continue to be requested consistent with law and judges’ wishes, several judges and attorneys throughout the county expressed the hope that in the future, the PSIs will more aggressively recommend the use of specific alternatives to incarceration. Several specifically mentioned a desire to consider expanded use of options such as Electronic Home Monitoring, but indicated they often were not aware that the option was available when they were making their sentencing decisions.

Finally, at least at the County Court level, significant discussions have continued concerning whether it would make sense for Probation officers to be part of SCI conferences when plea agreements are being shaped and agreed to, prior to requests for PSIs. Some believe that information provided by Probation staff at such discussions, based on their files on selected defendants, could be invaluable in helping shape the terms of the plea, so that possible disconnects between plea and PSI recommendations might be avoided, and so that the plea can reflect realistic assumptions about what options might be available. Such an approach might even prevent a more thorough investigation from having to be written in some situations. Opponents to this approach suggest that Probation officers in such settings may be asked to provide more information than they would be able to realistically provide, without thorough research and background

work that would go into a more formal PSI write-up. Simple resource constraints in terms of officer availability could also be a factor in determining the feasibility of such an approach. It may be that a pilot test of a carefully-designed and limited approach might be appropriate before making any final decision about such an option. More is said about this issue in the final chapter.<sup>6</sup>

## Potential for District Courts

As noted earlier, Steuben County is larger geographically than the state of Rhode Island. From a criminal justice perspective, in addition to the County Court and two City Courts, it contains 32 town and six village justice courts, with a total of about 45 different justices/magistrates.

Together the 38 courts processed a total of 4,037 criminal court cases in 2004, an average of 106 per court, ranging from as few as 7 cases to as many as 646. Most of the courts (23, or 60%) dealt with fewer than 75 criminal cases during the course of the year, including 17 with fewer than 50 and 11 with 25 or fewer cases. In addition, the courts processed more than 1,100 civil cases and more than 22,700 vehicle and traffic offenses (nine courts each processed more than 1,000 vehicle and traffic cases during the year).

*Most of the justice courts are small, many with fewer than 25 criminal cases a year, and many with annual personnel budgets of \$5,000 or less.*

Most of the courts have one justice, though a few have two, and some towns and villages share justices. Several have little or no ongoing clerical support outside the courtroom. Cumulative personnel budgets for the 32 town courts for 2005 total \$469,625, an average of \$14,676. Nineteen of the 32 town courts (59%) have personal services budgets of \$7,500 or less, including 13 below \$5,000 and six with budgets of \$2,500 or less. Many of the justices view their role as a form of community service, and certainly not as a major source of personal income. (Budget data were not available for the six village courts.)

<sup>6</sup> Some have also advocated more extensive use of pre-plea investigations (PPIs), which essentially provide similar information as PSIs, but provide the information earlier in the process, in time to more explicitly shape the plea agreement. However, in order to activate PPIs, all parties must agree in advance, and some attorneys have been reluctant to have the information shared at that point in the negotiation process. Data analyzed as part of the PSI analyses indicated that, to the extent PPIs have been used to date, they do not take any more or less time to complete, on average, than do the PSIs. Also, if PPIs were more routinely used, it is likely that PPIs would be done in some cases in which PSIs can ultimately be avoided. However, expansion of PPIs is an option that could be explored further.

Most of the courts have only a single monthly regularly-scheduled court date, with scheduled Assistant District Attorney and Assistant Public Defender appearances, with additional dates scheduled as needed. Some of the larger courts meet more frequently, but the norm for most courts is infrequent scheduled dates.

Several people interviewed during the study indicated that “where you get arrested determines the quality of justice you get in the county.” As noted throughout the report, lower-volume courts 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. Some courts make little if any use of email or fax machines to update information in between court appearances, so that opportunities to modify custody status, for example, can be limited.

Justices themselves have little formal legal training. Only four of the more than 40 justices are attorneys. The state, on the other hand, has established a resource center for magistrates that provides support on legal and other issues facing them. Beyond training and orientation provided by the state, and other than monthly meetings of the local magistrates association, which are generally modestly attended, there is little formal orientation and updating of justices on the status of various ATI programs or other practices and initiatives, despite the fact that there is frequent turnover among the magistrates. Little formal orientation is provided by local officials for justices concerning the overall criminal justice system, the interplay of various components within the system, and opportunities for greater collaboration between those components.

***The current justice court system has the strengths of being generally inexpensive and close to the people, and the drawback of being inefficient and inconsistent in its application of justice from an overall systems perspective.***

In order to provide more consistent justice and processing of cases at the local level, several of those we interviewed during the study suggested that consideration be given to grouping the town/village courts into two or three larger district courts in the county, perhaps centered around hubs of Bath, Hornell and Corning. Although the idea is appealing from the perspective of consistency of justice, and enabling more efficient use of ADA and APD

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.

On the other hand, there is a legitimate question as to whether an exception should be made in a county as large as Steuben, with so many courts of such varying sizes and accessibility. If the reality of creating district courts seems too daunting a prospect to pursue, County, town/village and criminal justice officials may at least wish to consider the potential for creating one or more voluntary pilot projects in which combinations of two or more neighboring justice courts consider ways 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. No one we met with offered detailed suggestions for how such a concept might work, but several suggested that the idea was worth pursuing.

*Consideration should be given to creating a pilot project whereby neighboring justice courts consider ways of sharing various services and resources.*

## 7. IMPACT OF EXISTING 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 various alternatives to incarceration (ATI) programs.

Steuben County has, over the years, developed an array of sound ATI programs that equals or surpasses what many comparable counties have in place. ATI programs are important tools that, used effectively, can help the various components of the criminal justice system (e.g., the courts, DA and PD offices, the jail) operate as effectively and efficiently as possible. By the same token, the best alternative programs will have only limited impact if the context in which they operate—the overall system and its key components—is not strong and working effectively together. The previous chapters have suggested that such a strong system is in place, albeit with areas in which performance can be improved—and is likely to be improved in the future given the expressed interests and 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 criminal justice system, the specific impacts each has on the jail population, and potential opportunities for strengthening the programs individually and collectively. The programs to be discussed are Pre-Trial Release, Intensive Supervision Program, Community Service, and Electronic Home Monitoring. In addition, although it is not always considered an ATI program, we also discuss the County and City Drug Court programs, given that they do operate as alternative options available to selected arrestees within the system.

With the exception of Drug Court, each of these programs is operated under the overall supervision of the Probation Department, and even the County Drug Court program receives significant staff support from Probation. We were not asked to evaluate the overall 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 the study as outlined in the initial request for proposals. 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.

We begin the alternatives discussion at the front, or pre-sentence, part of the system with the Pre-Trial Release program.

## PRE-TRIAL RELEASE PROGRAM

The County's Pre-Trial Release (PTR) program is designed to facilitate 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. The program is operated by a single person, a Probation Assistant, who is responsible for interviewing new unsentenced jail inmates each morning, Monday through Friday. Information is obtained and subsequently verified concerning various aspects of the defendant's background, living and employment 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.

Information obtained from the interview with the defendant, plus criminal history checks and any new information obtained in the verification process, is summarized and converted into a score and numerical "Risk Level" on a screening instrument. That information is forwarded on to the court with jurisdiction in the

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<sup>7</sup> In addition to the discussion of Probation's ATI programs, the previous chapter also included a discussion of the Pre-Sentence Investigation process operated by the Probation Department.

defendant's case. Typically the information about the defendant's probability/risk of appearing or not appearing for court appearances is mailed or faxed to the appropriate court, usually within a day of completing the initial interview in the jail. The Probation Assistant rarely appears in court to present or expand upon the information being presented in the screening summary document.

Beyond the program's important role of gathering, verifying, interpreting and presenting information to the courts, PTR also carries out a supervisory role. For defendants assigned by courts to PTR, the program monitors their whereabouts and actions between the time of release from custody to the program and final case disposition. For the most part, this monitoring/supervisory role involves having defendants reporting on their status to the Probation Assistant, typically on a weekly basis, usually by phone but occasionally in person, if requested by the judge. Occasionally, especially for more serious felony charges, additional conditions of release may be added for the program to supervise, including electronic home monitoring. The program is able to monitor about 80 released defendants at any one time, with about 60 as the norm.

## **Impact on Court Decisions**

Between 2000 and 2004, PTR was responsible for monitoring/supervising an average of 153 defendants each year, although the numbers of new defendants referred to the program ranged from a low of 107 in one year to as many as 182 in another. Using data supplied by the program, CGR conducted a more detailed analysis of PTR activity during 2004 and for cases interviewed during the first eight months of 2005. They indicate, as shown in Table 9, that the numbers released in 2004 were consistent with the five-year average, though if trends during the first part of the year continue, the 2005 total of releases to the program would decline somewhat to about 147.



**Table 9: Pre-Trial Release Program Activity and Court Actions, 2004 Through August 2005**

ptr action	2004-05 total	2004 cases	2005 cases*
<b>Interviewed</b>	941	556	385
<b>Eligible</b>	405	181	224
<b>Recommended</b>	428	198	230
<b>Recommended/ Released</b>	192 (44.9%)	110 (55.6%)	82 (35.7%)
<b>Not Recomm'd/ Released</b>	65	49	16
<b>Total Released</b>	257	159	98

Source: CGR analysis of data supplied by PTR program, with database created by Steuben County Information Technology Department.

\* Defendants initially interviewed between January 1 and August 31, 2005.

NOTE: Recommended/released means PTR recommended person as a good candidate for release, and defendant was released by a judge to PTR program supervision. Not recommended/released means defendant was released to program even though not recommended. Those interviewed represent those who had not already made bail before the PTR process was completed.

*Judicial Acceptance of PTR Recommendations*

Over the past 20 months, less than half (45%) of all program recommendations for release from custody have been followed by the courts. Unfortunately, the program's data do not indicate how many of those defendants who were recommended but not released to the program wound up remaining in jail throughout the pretrial period, and how many may have made bail at some point. Thus the actual proportion of defendants who were released from jail at some point prior to their disposition was almost certainly higher than these numbers would suggest. Nonetheless, the data suggest that many defendants spend time in pre-disposition custody beyond the point when PTR has interviewed them, due to significant differences in perceptions of risk of failure to appear for subsequent court appearances between PTR and its risk assessment mechanism and the judge making the actual release decision.

***Judges release fewer than 45% of defendants recommended for release by PTR.***

***One quarter of all PTR releases had not been recommended for release by the program.***

On the other side of the coin, a number of defendants are released by judges to the program—defendants whom PTR has not recommended for release. In the past 20 months, 65 defendants—one quarter of all defendants released to PTR during that period—have been released by judges despite non-release recommendations by the program.

No right or wrong/good or bad judgments should be implied by these data. Judges are under no obligation to follow PTR's recommendations, and both parties have different responsibilities in carrying out their functions which 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 PTR. And in many cases, they are heavily influenced by arguments from the District Attorney. Most observers indicated that DA recommendations are especially influential, compared to those of PTR, in many of the justice courts.

Nonetheless, with fewer than half of the PTR release recommendations followed, and 25% of those who are released to the program involving defendants whom the program did not recommend, the data suggest that more effective communications may be needed between judges and PTR, and that it may be time to revisit the criteria used in making the release recommendations. It may also be important in the future to consider having a representative from PTR appear in courts, to the extent possible, to defend and clarify the rationale behind the release recommendations—as happens in many other release programs around the country. The ability to do so would obviously have significant staffing implications, and is made especially difficult by the multiple courts and scheduling issues described earlier, but clearly the data suggest that *at least some serious consideration should be given to determining why there is currently a significant degree of disconnect between PTR and judges in determining who gets released, and in what ways, in the County's courts at this time.*

### *Impact of Changing PTR Screening Approach*

Perhaps of even greater significance is the marked difference reflected in Table 9 above in the 2004 and 2005 program activities and rates of agreement between PTR and judges. Early this year, the program changed its screening procedures and the process by which it determined eligibility for release. The revised procedures have had the effect of making more defendants eligible, and as a result, by the end of August, substantially more defendants had been determined to be eligible, and had been recommended for release, than in all of 2004. (The program each year makes release recommendations for a few defendants who do not meet technical eligibility standards, but who the program believes are good release

candidates based on other extenuating circumstances identified during the review process.)

***Numbers of PTR release recommendations are up this year, but proportions of actual releases by judges are down dramatically.***

More striking than the increases in recommendations, however, are the numbers and proportions of actual releases. As the number of recommendations has dramatically increased, the proportion of those recommendations to be accepted and defendants actually released by judges has plummeted from about 56% last year to about 36% through August this year. Thus judges are expressing more skepticism about the recommendations than was the case before.

These data reflect concerns expressed by several judges and attorneys with whom we met during the study. Several expressed concerns about the new form, and at least three judges indicated that, because of uneasiness about the information provided under the new format, they had refused to release defendants this year that they were virtually certain would have been released in previous years. Concerns about the form are discussed in more detail below.

***Wide Variation in Release Rates Across Courts***

Even before the change in the program's screening instrument, many judges were releasing relatively small proportions of the defendants recommended by the program. A few courts over the past two years have released 60% or more of the defendants recommended for release—e.g., Hornell City, Canisteo and Wayland villages, Erwin and Hornellsville towns. But in several other courts, fewer than 35% of the recommendations for release were followed—e.g., in County Court, and the towns of Addison, Bath and Wayland. In large courts such as the village of Bath and the Corning City Court, about 40% of all recommendations were followed. At the same time, judges in Hornell, Bath village and Steuben County courts all released to PTR supervision significant numbers of defendants who had not been recommended for release by the program.

***In many courts, 40% or fewer of the PTR release recommendations are followed by judges, and the proportion has declined even more this year.***

Furthermore, in almost every court with as many as five PTR recommendations thus far this year, the proportion of recommendations actually released to PTR has declined from last year's percentage, often significantly.

It is also interesting to note that in cases in which judges estimated in our interviews what percentage of PTR recommendations they followed in making their release decisions, the actual proportions reflected in program data were almost always considerably lower than the judges estimated.

### *High Percentage of Recommendations and Releases are Felonies*

It should be noted that the program and the courts have not shied away from releasing defendants with serious charges facing them. Some 52% of PTR's recommendations to release involved felonies. And among the 257 actual judicial decisions to release a defendant, 57% involved defendants facing felony arrest charges.

### *Program Success Rates*

Of those released to PTR, 86% remained successfully on release without any disqualifying incident throughout the pre-disposition process. Only 2.7% of the defendants were terminated from the program because of a failure to appear (FTA) in court. FTA rates should be the program's primary measure of success, given its goal of ensuring court appearances. Such an FTA rate is quite low compared to most other PTR programs nationally. Another 6.5% of the released defendants were terminated due to a rearrest while in PTR, and 4.9% were terminated because of failure to adhere to program requirements.

*The PTR program has experienced a low FTA rate, especially among those recommended for release.*

It is interesting to note that the success rate among those defendants actually recommended for release by PTR was 90%, compared to 83% among those released to the program despite a non-release PTR recommendation. In particular, the FTA rate was 8.3% for the non-recommended defendants, compared with 1.1% for those recommended and released. (Note that even the 8.3% rate among non-recommended defendants only represented a total of three defendants failing to appear in 2004 and 2005 to date.)

### **Impact on Jail**

Determining the impact of Pre-Trial Release on the jail population is difficult. It is reasonable to conclude that some of those released to the program would, in the program's absence, have ultimately made bail and been released prior to disposition of their cases. Thus the program probably 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 or prison 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 does not maintain data on subsequent dispositions and sentences imposed upon conviction, it is not possible to make accurate determinations of jail days reduced as a result of being released to PTR. In addition, the program does not always record whether termination from the program occurs when a defendant agrees to a plea, or continues in the program until the sentencing date.

***More than 17,000 days were spent on release by PTR defendants in 2004, an average of about 107 days per defendant.***

Such caveats notwithstanding, we know that for those released in 2004 and 2005 whose cases had been disposed of, the average length of time on release was about 107 days. The average was less than that, about 93 days for those released through County Court, around 115 days for the two City Courts, and about 105 days for the combined justice courts. Average days on release differed very little for those recommended versus not recommended for release. For those released to the program in 2004, a total of 17,075 days were spent between the release date and the closing of the case.

***As many as 38 fewer inmates were in jail each day as a result of PTR, though the actual number is probably smaller, given assumptions that many defendants would have made bail without the program.***

Our analysis of PSI data indicated that about 20% of those released pretrial subsequently received jail or prison sentences. Applying such a percentage to the 159 releases in 2004, that would suggest about 30 of those might have served sentenced incarceration time. If we assume that those 30 would each have been sentenced to more than the average of 107 days they spent on pretrial release, and that those 107 days would therefore have not been saved but would have been spent as part of the sentence, then their 3,210 days (30 defendants times the average of 107 days on release) would need to be subtracted from the 17,075 days on release for the 2004 released defendants, thereby leaving 13,865 days in jail potentially saved. This represents the equivalent of about 38 fewer inmates in jail every day of the year. Even assuming a further reduction of those totals, based on the assumption that they would not have all been spent in jail because the defendant would have obtained release at some point by making bail, it nonetheless seems reasonable to conclude that significant numbers of jail days have been saved as a result of PTR's existence.

## Impact of New Screening Approach

*Some judges have concerns about the new PTR screening instrument, and suggest that it has contributed to fewer releases, particularly because of the absence of criminal history information.*

It could not be determined definitively to what extent the reduction in proportion of PTR recommendations actually resulting in releases in 2005 has been a direct result of the introduction of the new screening instrument earlier this year, but it seems highly likely to have been a factor in the decline, based on comments made by judges and attorneys. Several judges specifically referenced cases in which they had made conscious decisions not to release a defendant based on the current form that they were virtually certain would have been released in previous years. In part such decisions were influenced by the fact that, with the current screening form, there is little information provided to judges about number and type of prior convictions. The absence of such information, which was previously summarized in the former screening summary report, may prevent or at least delay release in some cases, where lower court judges are reluctant to release a defendant on felony charges without knowing about prior convictions, given the law which limits what lower court judges can do in felony cases with two or more previous convictions.

Other complaints about the new form centered on the overall lack of detailed information it provides, compared with the perception that the previous form provided more specific information about community ties, sources of information, and other information judges indicated were helpful to them in making their release decisions. A few judges went so far as to say that the new approach undermined their trust in the PTR recommendations, when such trust had always been assumed before. On the other hand, some liked the new risk level scale, even as they expressed concerns about the way in which the scores underlying the scale were derived. Most judges and attorneys expressed the wish that some compromise or hybrid between the old and new forms might be developed in the future.

## COMMUNITY SERVICE SENTENCING

The County's Community Service Sentencing program (CS) 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. Defendants are assigned to specific work sites where they carry out assigned tasks, under supervision of a work site supervisor and, at least in broad terms, the overall supervision of the CS program coordinator. Program oversight is provided by a Senior Probation Officer, who spends about 20% of her time focusing on the CS program, and the other 80% on the Electronic Home Monitoring program discussed later in the chapter.

The program is available to serve all courts throughout the county, and defendants charged with both felonies and misdemeanors are eligible. The program is labeled an ATI, and at least in theory each 100 hours of CS sentencing is the equivalent of 30 days in jail. In some cases the program is in reality an alternative to incarceration, but as will be seen below, it is probably more accurately described as an alternative sentencing option, and the alternatives are often fines or restitution or conditional discharge, and not necessarily incarceration.

### Declining Use of CS Program

Several of those with whom we met during the study expressed concerns about declines over the past several years in the use by the courts of the CS option. Two sets of Probation Department data reflect somewhat different numbers of convicted offenders sentenced to participate in the CS program in recent years, but both reflect similar downward trends since the peak program usage in 1998. Since then, as shown in Table 10, both the number of offenders in the program, and total community service hours worked by those offenders, have declined, until a recent reversal in 2004. But analysis of data from the first half of 2005 suggests that even the 2004 spurt may have been short-lived.

**Table 10: Use of Steuben County Community Service Sentencing Program, 1998 Through mid-2005**

	1998	1999	2000	2001	2002	2003	2004	2005*
<b>Defendants in Program</b>	97	62	58	52	63	46	85	31
<b>CS Hours Served</b>	9738	9655	8607	4740	NA	5192	6613	NA

Source: Steuben County Probation Department Annual Reports and undated graph; 2005 data based on CGR analysis of CS spreadsheet of program participants from 2002 through mid-2005.

\* Data for first half of 2005

Given the number of arrests and convictions in Steuben County each year, and the number of separate courts, the number of convicted offenders sentenced to doing community service through the County's program has been very small in recent years.

Some justices/judges indicated that they rarely think of using the CS program because it has not been very visible in recent years, with relatively little supervision, limited follow-through of program supervision with the offenders or employers at the work sites, and work sites which may not always be easily accessible to offenders, given their locations. Some town/village justices also noted that in some cases they are making use of community service sentencing, but are not asking the County program to monitor program compliance. Several local justices indicated that they assign CS to work sites set up within their jurisdictions, in some cases with local internal monitoring mechanisms set up. Some said that they prefer such arrangements to adding to the burdens of the Probation Department, and that they prefer local community service sites to what they perceive to be relatively limited monitoring currently available in the County program due to its limited staffing.

*Although the CS program appears to be declining in use, unknown numbers of community service sentences are imposed in courts which monitor offender progress directly, rather than through Probation staff.*

Thus it appears that although use of the County CS program has declined in recent years compared with its peak in the late 1990s, CS is actually being used more often as a sentencing option than program data would indicate, when reported local justice court efforts are factored in. Unfortunately, no comprehensive data were available from the local city and justice courts concerning the extent to which such sentences are currently being used and monitored at those levels.



## Users of CS Program

Analysis by CGR of data supplied by the Probation Department's CS program of participants (from part of 2002 through mid-2005) indicated the following about those sentenced to the County program:

- ❖ Offenders were almost evenly divided between those sentenced to misdemeanor and felony offenses: Of the 203 admitted to the CS program during that time, 105 were convicted of felony offenses and 98 of misdemeanors.
- ❖ Of those in the CS program, 52% were sentenced by County Court. The Corning and Hornell City Courts sentenced 28 individuals to the program during those years (15 and 13, respectively), and the town and village courts of Bath and the Erwin town court together sentenced an additional 27 offenders to be assigned to a work site and monitored by the County program. All the other 35 justice courts sentenced a total of only 42 convicted offenders to the CS program during the entire elapsed period of roughly three years—an average of just over one offender per court for the entire period of time. As noted, unknown numbers of additional offenders may have performed community service in other settings, supervised in other ways, in at least some of those courts, including some of those that also continue to use the County program.
- ❖ The CS option has most frequently been used with younger offenders. Since 2002, 57% of those in the program have been younger than 25 when they entered the program, including 45% ages 20 or younger. Only 8% have been 45 or older.
- ❖ The vast majority of program participants, like those in the overall criminal justice system, have been males (81%).

*Little use is currently being made of the County CS program by the justice courts.*

## Successful Completion of Program

Consistently over the years, and fairly consistently across different courts, about three-quarters of those sentenced to the CS program have met the terms of the CS agreement and successfully completed the terms of the sentence.

Including all those who had completed their sentence by the time of our analyses, some subgroups appear to have been more successful in completing their CS sentences than others. In particular, 85% of females in the program were successful, compared with 72% of the males (although only 19 females had

been in the program and completed their sentence terms during the study period). Those who were undertaking CS in conjunction with a formal probation sentence were more successful than those completing their CS as part of a conditional discharge sentence. Those convicted of misdemeanors and felonies were similarly successful: 76% and 73%, respectively.

## Hours Assigned and Completed

The offenders sentenced to CS under the overall supervision of the County's CS program during the 2002-2005 period of time were assigned a total of about 29,500 community service hours to complete (an average of about 145 hours per offender). Of those whose cases had been closed (either by successful or unsuccessful completion), 21,440 hours had been assigned, with more than 16,000 hours successfully completed. The proportion of hours successfully completed (75%) is consistent with the proportion of offenders successfully completing the program.

*About three-fourths of those sentenced to CS successfully complete their sentences. In the case of felony offenders, the more hours assigned, the lower the success rate.*

Two-thirds of those convicted of misdemeanor charges were sentenced to completion of 100 or fewer hours of community service. Few of those with felony convictions got away so lightly: 27% received 100 or fewer hours, compared with 53% who were sentenced to 200 hours or more.

The number of hours initially assigned clearly had a significant impact on the rate of successful terminations among those convicted of felonies. Of those assigned fewer than 200 hours of community service, 86% were successful in meeting the conditions of the sentence; among those assigned 200 or more hours, 62.5% were successful, and if 250 or more hours were assigned, only 47% were successfully completed. Of the 20 unsuccessful convicted felons sentenced to CS, 15 had been assigned 200 or more hours.

## Program Impact on Jail Days Avoided

In theory at least, it should be possible to have a relatively clear indication on the record of the CS impact on jail days saved as a result of community service sentences. Such a record could be possible if judges would state as part of any CS sentences whether or not the sentence is in lieu of jail (and how many days). In fact, there is no such information consistently developed and maintained by the program. So any estimate of jail days saved is left to the discretion of the program, based loosely on the application of the NYS Division of Probation and Correctional

Alternatives formula of 100 CS hours equivalent to 30 jail days saved.

However, based on comments received from a wide range of officials involved in various aspects of the criminal justice system, including those most directly involved in the process of providing information and making decisions about community service sentencing, it is clear that the “one size fits all” nature of the state formula is simply not appropriate for use across all situations, all courts, and all judges. Too many different assumptions, judicial philosophies and individual case factors shape the decisions about each case to be able to apply one formula consistently across the board.

Analysis of the CS data from 2002 through mid-2005 indicates a total of 16,094 community service hours served during that time. Using the 100:30 ratio to start the process of estimating any possible jail days saved by the program, reducing the derived days by a third for “good time,” and annualizing the remaining days to come up with an annual number of beds saved per day, yields an estimate of as many as 4.4 beds per day. However, few judges estimated that more than a third of their sentences to CS were true alternatives to incarceration, and some estimated even fewer than that. Thus for planning and resource allocation purposes we suggest that about one third of the formula-derived number be used as a more realistic estimate of the impact the CS program as currently constituted has on the jail population. *Using these assumptions, we estimate that the CS program currently reduces the County jail population by the equivalent of about 1.5 inmates per day.*

*The CS program reduces the County jail population by an estimated 1.5 persons per day.*

## **Issues to be Addressed**

Even if the CS program has relatively little impact at this point on the jail population, it should not be concluded that it has little or no value. Our analyses suggest that the program currently has some limited value as an alternative to incarceration, but by all accounts has a much more significant value in addressing needs of individual offenders within the criminal justice system, in providing courts with a mechanism for making offenders more accountable for their criminal actions, and in providing services to numerous agencies throughout the county.

There appear to be opportunities to make more extensive use of the CS option among a number of courts in the future. It would be helpful to develop a means of having judges specify when they actually use CS in lieu of jail time, so the estimates used in this evaluation can either be confirmed or refuted with more accurate data on a systemwide basis.

Our overall conclusion is that at the present time, the CS program is perceived to be an effective sentencing alternative which provides courts with “an accountability tool” which many of them value—but that it currently only rarely acts as a true alternative to *incarceration* per se. It has the potential at all court levels to become more of an alternative to incarceration in the future.

*Community Service has value as a sentencing option, but has the potential to become more of an alternative to jail.*

For that to happen, the program will need more attention than it has been able to receive in recent years due to staffing reductions within the Probation Department. As a result, there is currently little visibility for the program. The program coordinator is able to provide very little time on site to coordinate with and monitor progress of offenders sentenced to the program, and little time to coordinate with site supervisors. There has also been little time to develop additional job sites in different areas of the county.

The County should decide how serious it is about maintaining and strengthening this program. It has the potential to expand to reach more offenders, both as a sentencing option and as an alternative which could help keep perhaps another two to three offenders per day out of jail. It seems unrealistic to expect much more than that. But with a combined current plus future savings of perhaps three to four beds per day, along with the other values offered by the program, it may be worth focusing continued attention on the program. If so, expanded staffing would be needed for the program to become viewed as more relevant by those making decisions about sentences within the system. Further recommendations are made concerning the program’s future in the final chapter of the report.

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## INTENSIVE SUPERVISION PROGRAM

The Intensive Supervision Program (ISP) operated by the Probation Department provides more intensive, targeted supervision with a smaller caseload than with “regular” Probation supervision. The County obtains about \$50,000 from the State each year to help offset staff costs related to this program, which is clearly focused on keeping offenders out of jail and especially prison. As opposed to the Community Service program, in which it is clear that many offenders in the program would not have been incarcerated if not in CS, ISP is clearly a true alternative in lieu of incarceration. From the County’s perspective, the key question is to what extent the incarceration the program attempts to prevent is a jail or prison sentence. The State’s rationale for providing funds for ISP is the assumption that most of those accepted into the program would otherwise wind up sentenced to prison, at added costs to the State.

The program is staffed full-time by a Senior Probation Officer, working with a caseload of 25 to 30 high-risk offenders. Most receive 9 to 18 months of intensive supervision, sometimes supplemented by various types of support services and treatment. For those who are unsuccessfully terminated from the program, the next step is usually prison. Even those who are successfully terminated typically have additional “regular” probation to complete.

### Users of ISP

All of those in ISP have been convicted of felonies in County Court. This is the only ATI program that has no routine connections with any of the other courts throughout the county. All offenders admitted to the program since 2002 have been convicted of D or E felony offenses. About a third have been convicted of DWI charges, and four others of a charge of Aggravated Unlawful Use of a Motor Vehicle. Many have previously also had significant regular supervision by a Probation Officer. Such routine supervision has typically had minimal effect, and intensive supervision is viewed as a last opportunity to avoid an incarceration sentence, in many cases to prison. Although there is no clear documentation of how many of the ISP offenders would have gone to prison were it not for the sentence to the

alternative program, Probation officials have typically estimated about 75%, with the other 25% expected to have been sentenced to jail.

Most of those in the program were recommended for ISP as a result of a Pre-Sentence Investigation. However, program data suggest that of 61 new admissions to the program over the past three to four years, 28 were sentenced to the program by County judges even though ISP was not recommended in the PSI report.

### Size of Program Limited by Staffing

Several years ago, the ISP was staffed by two full-time officers, and the program maintained active caseloads of between 40 and 50 offenders. With Probation staff cutbacks, the ISP caseload was reduced, as positions within the Department were reallocated, and the ISP staffing was cut to one Senior officer, with a targeted caseload of 25 to 30. However, as shown below in Table 11, total numbers of offenders served by the program have stabilized in recent years at around 35 a year, with an average of about 15 new offenders admitted each year, although 17 new admissions had already occurred mid-way through 2005.

*Because of limited staffing, judges and ISP have been limited in the ability to admit new offenders into the program.*

**Table 11: Offenders Served by Steuben County Intensive Supervision Program, 2001 Through mid-2005**

caseloads	2001	2002	2003	2004	2005*
<b>Served During Year</b>	50	NA	35	33	NA
<b>Entered During Year</b>	NA	10	18	14	17

Source: Steuben County Probation Department Annual Reports; data on entrants during the year based on CGR analysis of ISP spreadsheet of program participants, 2002-2005.

\* Data for first half of 2005.

NOTE: "Served During Year" refers to anyone served by the program during the year, including carryovers from the previous year. "Entered During Year" are those offenders admitted during the year. They are also included in the "Served During Year" totals. NA: Data not available for that year.

When the program had two staff, each officer had a caseload of 20 to 25, and each covered about half of the county, so that travel time could be minimized. Now, with one staff, the Senior Probation Officer must cover the entire large county, and spends an average of about an hour a day just traveling from place to place. In order to make the schedule work, it becomes somewhat routinized, and the opportunity for surprise drop-in visits has largely given way to more predictable patterns that make it

relatively easy for an offender to avoid detection of suspicious activities, surprise drug tests, etc.

Although the Senior PO currently maintains a caseload of between 25 and 30 at any given time, the “active” caseload is often lower than that. That is, anyone awaiting disposition of a pending violation of probation charge may be jailed and require subsequent limited-to-no ISP services, but still be “taking up space” on the ISP caseload and preventing other offenders from being added to the program. With violations often taking several months to resolve, this means that the program has significant limits placed on whom it can serve, since there is now no flexibility to expand the caseload to, in effect, replace the violator until the violation is resolved. With few incentives for the criminal justice system to expedite the violation case compared to other more immediate priorities, Probation is hampered in its ability to offer additional ISP openings to judges who may be interested in sentencing someone else to the program.

Moreover, because of the time it often takes to access the support services and treatment frequently needed by offenders in the program, they often remain active participants in ISP for long periods of time, thereby further preventing or delaying new admissions. It is not unusual for ISP participants to span two or three calendar years while in the program.

*Judges have indicated an interest in using ISP more often if space in the program were known to be available.*

The net effect of all these factors is that judges have begun to view ISP as a sentencing option frequently not available to them (“out of sight, out of mind”). Indeed all of the County Court judges indicated that they would use ISP more often if they perceived that it was more available in the future—and would use it in lieu of local jail time more frequently.

### **Successful Completion of Program**

Based on CGR’s analysis of data supplied by the program for all offenders admitted to the program since 2002, 40 who have entered during that time have completed the program, with 21 still active at the time of the analyses. Of the 40, 16 (40%) were considered by the program to have successfully completed ISP, not having had any violations of probation, and most had been returned to regular probation, per terms of the ISP agreement. The other 60% had been unsuccessfully terminated, typically because of a violation of probation while in the program. For the

*40% of those who have completed ISP were successful, thereby avoiding incarceration.*

successful 16, incarceration was successfully avoided as a result of ISP intervention. For those who did not successfully complete the program, jail or prison either ensued, or was likely to occur as a result of the resolution of the pending violation of probation charge against them. In the meantime, most were detained in jail awaiting disposition of their violation charges.

One County judge has been particularly willing to sentence offenders to ISP even though the program was not recommended as part of the pre-sentence investigation. Most of those not recommended did not complete the program successfully, although the overall difference between recommended and not recommended through the PSI process was not substantial: *41% of those recommended were successful, compared with 33% of those not recommended.*

CGR suggests that Probation should do a very careful assessment of the types of offenders with whom it has the greatest likelihood of being successful with ISP, and 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 improving the program's track record with high-risk offenders in the future.

## **Program Impact on Jail**

Offenders sentenced to ISP would otherwise be receiving an incarceration sentence of some type, but it is not always clear whether that sentence would be to state prison or to the County jail. Such an indication should be clear from program and/or court records, but judges often do not identify what the ISP sentence is in lieu of. Thus the determination of the impact of the program on the local jail population becomes muddled.

In discussions with the County Court judges, they indicated that the alternatives to ISP would have been a mixture of prison and jail, but it was difficult to determine specific proportions without reviewing the individual case files. CGR's overall impression was that they did not necessarily see the program only being used in lieu of prison, and that it was not unusual to use it as an alternative to a jail sentence. On the other hand, Probation officials estimated, based on their experiences with the program, that about 75% of those sentenced to ISP would otherwise have received a prison sentence.



In our assessment of the program's impact on the jail population, we used the more conservative Probation estimates of 75% of any incarceration days saved accruing to prisons rather than the local jail. That would be fairly consistent with the State's financial support of the program. But the greater limiting factor on the extent to which the program impacts on the jail population is the successful completion rates of those in the program. For the 60% who are currently unsuccessfully terminating from the program, there is no positive impact on incarceration rates and days in custody, either prison or jail. *Unless and until the program is able to increase the successful termination rate, the impact on the jail population will be somewhat limited.*

That having been said, it is nonetheless true that the program, even at a 40% success rate, does have some impact in reducing the jail population, even if we assume 75% of the incarceration impact is on prisons. The assumption is that all 40% would have been incarcerated somewhere had they not been sentenced to ISP, so for the successful 40%, that success translates directly into reduced days in jail and prisons. Based on our analyses of the data and a series of helpful discussions with and assumptions offered by Probation supervisory staff knowledgeable about the program, after annualizing the data and making allowances for reductions for good time, CGR estimates that under current program operations, ISP reduces the jail population by an average of 1.7 inmates each day.

*Depending upon assumptions about sentencing options, ISP reduces the jail population by between 1.7 and 4.7 inmates per day, based on current program success rates.*

We also calculated less conservative estimates of jail days saved, based on the more general sense of the judges that they may be more likely to use ISP as an alternative to jail than was assumed by Probation. If the assumption as a result is made that, instead of the 25% jail rate suggested by Probation, half of all sentences to ISP would otherwise have resulted in a jail rather than prison, the number of reduced inmates would increase to 4.7, given current program success rates. With possible future improvements in the program selection and recommendation process, greater adherence by judges to the PSI recommendations concerning ISP, and hopeful future improvements in ultimate program success rates, these numbers could grow even higher.

*Offenders terminated from ISP for violations of probation spent an average of 95.5 days in jail awaiting resolution of their violation charges.*

It should also be noted that 21 offenders terminated from ISP for violations of probation spent a total of 2,006 days in jail awaiting resolution of their violation charges—an average of 95.5 days per case. Those in the criminal justice system acknowledge that there is little incentive to expedite these cases, as most are assumed likely to wind up in prison on the charges. Defendants (and their lawyers) are often just as happy if they sit in the local jail accumulating time served while delaying the anticipated transfer to prison. However, these defendants represent a significant additional drain on the jail. If the 2,006 days are apportioned across the three-year period covered by the analyses, *these days would equate to about 1.8 inmates each day of the year waiting for something to happen.*

In light of more than 2,000 jail days spent awaiting resolution of probation violations, for just this one program, it is worth an examination of whether the program, judges and others in the criminal justice system could do anything differently to minimize such violations and their impact on the jail.

Bottom line: The questions for the future of the ISP are not about whether the program is an alternative to incarceration, but about its future success rate, how the program and judiciary can do a better job of making appropriate selections of offenders in the first place, and what types of sentences—and ultimate levels of incarceration—it helps avoid.

## ELECTRONIC HOME MONITORING

Electronic Home Monitoring (EHM) uses technology that can be used to monitor the whereabouts of pretrial defendants as well as convicted offenders. The County currently leases 35 electronic devices that can 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, even with the costs per unit and the staff cost of monitoring the program, is perceived to be a cost effective, safe alternative to housing the defendants/offenders in jail.

EHM is the only County ATI program that helps avoid jail days at both the unsentenced and sentenced/convicted levels. It is available as a pretrial or sentencing option to all criminal courts throughout the county, as well as occasionally to persons involved in Family Court proceedings. The program is designed 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. The average person on EHM spends more than 100 days being monitored.

Program oversight is provided by a Senior Probation Officer, who spends about 80% of her time monitoring the activities of those in the program, placing and removing the units when defenders/offenders enter or leave the program, updating schedules, and interacting with Behavioral Interventions, which is responsible for the technological monitoring activities. (As noted earlier, the remaining 20% of her time is spent overseeing the Community Service program.) Users of the EHM devices are charged a fee to help offset the costs of operating the program, and are charged on a sliding-scale basis, depending on income levels. No one is denied access to the EHM option because of inability to pay. Over the past three years, program data indicate that about 20% of those using the monitoring devices paid no fees, with about \$17,000 in fees collected from other users of the program.

### **Fluctuating Use of the Program**

Use of EHM has fluctuated from year to year, both in terms of total users and the proportion of potential days the devices were in operation, as shown below in Table 12. The highest usage of EHM in the past 10 years occurred in 2001, when there were 81 in the program. Usage between 2001 and 2004 steadily declined, dropping 37% to 51 users in 2004. The number of users through July of this year suggests that this year’s total may return close to the 2003 level.

**Table 12: Users and Amount of Use of Steuben County Electronic Home Monitoring Program, 2001 - 2005**

Indicators of ehm use	2001	2002	2003	2004	2005*
# Using Services	81	76	63	51	37
EHM Active Days	NA	NA	9,203	6,721	4,288
% of Potential Use	NA	NA	72.0	52.6	66.3
Average Users per Month	NA	NA	30.8	23.3	28.4

Source: Steuben County Probation Department undated graphs; Active Days based on billing data supplied by Probation; 2005 data and % of use based on CGR analysis of data supplied by Probation.

\* Data through July 2005.

*The use of EHM has declined in recent years, and there is considerable unused capacity within the EHM system.*

If all 35 of the County's units were in use and accessible by criminal courts every day of the year, an annual potential of 12,775 EHM days would theoretically be possible, if none ever had to be serviced, if there were no down days between end of one case and opening of another, etc. That theoretical possibility will never be attainable, but it does suggest the maximum potential usage of the existing system. Data for the past three years indicate that actual use of the monitoring devices falls far short of potential. During the first six months of 2003, the program was used heavily, with an average of 36 different users for at least a portion of each month and overall usage reaching 82% of capacity, before falling back to 62% in the second half of the year. Usage continued to decline throughout 2004, when just over half of the combined units' potential capacity was utilized by the courts throughout the county, and the average number of users per month dropped to 23. Some increases occurred in the first half of this year, with proportion of capacity in use rebounding to about two-thirds of potential and an increase in the numbers of users per month.

### Primary Users of EHM

In 2003 and 2004, new users of EHM were almost equally divided between unsentenced and sentenced cases: 54 new unsentenced and 57 new convicted offenders were monitored during those two years. During the first half of 2005, the proportions shifted dramatically, with 28 of 37 new EHM cases involving sentenced offenders. Reasons for this shift were unclear, but there was no indication in our interviews of any permanent shift in the use of EHM devices.

Consistently during that same 2003 – 2005 period (for which CGR had the most complete access to detailed program data), three courts were primary users of EHM units: the two City Courts and

*Most EHM cases have involved only three courts, with varying uses in sentenced vs. unsentenced cases. EHM is rarely used in justice courts.*

especially Steuben County Court. Almost 45% of all EHM cases during that time originated in County Court, with 79% of the 66 County Court cases involving sentenced offenders. In sharp contrast, 18 of 19 cases in which Hornell City Court used EHM were with unsentenced defendants. Corning City's 13 cases were split, with seven unsentenced cases.

Two-thirds of all EHM cases since 2003 have originated in those three courts. Beyond those, only 49 cases have involved the use of EHM across all 38 justice courts. Only 20 of the 38 town/village courts ever used EHM during that time, with most using it one or two times during the entire two-and-a-half years. To the extent the justice courts have used EHM, the use has been split fairly evenly between sentenced and unsentenced cases: 23 and 26, respectively.

*There is considerable potential to expand the use of EHM, and a number of judges requested that it be recommended more frequently.*

Several of the judges we interviewed indicated that they would be open to making more frequent use of EHM, for both pretrial cases and as a sentencing option instead of jail for relatively less serious charges. Several said they assumed the units were generally all in operation, and that there were few additional opportunities to use EHM. Several specifically stated that they would like to make more frequent use of this option, and would do so if it were recommended more frequently as part of formal pre-sentence recommendations.

Clearly, given the significant extent of untapped use of existing EHM units, and the infrequent to nonexistent use by most courts of the EHM option, there is considerable potential to expand the use of this ATI option in the future.

## **Program Impact on Jail**

Defendants released pretrial to the community on EHM are clear examples of cases in which jail days are saved as a direct result, consistent with assumptions discussed in the Pre-Trial Release section. For convictions in which EHM is a part of the sentence, the relationship to jail days saved is less certain. The court record rarely states whether EHM is explicitly in lieu of jail, or if it is, how long the jail sentence would have been. In some cases, an EHM sentence of 60 days, for example, is likely to be in lieu of a comparable 60-day jail sentence, but it could be in lieu of what would otherwise have been a longer jail term. For our purposes, based on discussions with Probation officials, we have

conservatively assumed that sentenced EHM days are equivalent to that same number of jail days saved. Beyond that, we are being even more conservative in assuming that the jail days saved should be further discounted by the normal one-third reduction for good time. Thus, we believe our estimates of jail savings as a result of the EHM program are strongly on the conservative side.

***EHM currently reduces the jail population by an average of 14.8 inmates per day.***

Based on our analysis of program data from the two most recent full years, we estimate that EHM reduces the jail population by an average of 14.9 inmates every day of the year. Our analyses suggest that savings of 7.8 days are attributable to pretrial defendants, and 7.1 to sentenced, after applying the two-thirds good time discount.

In looking to the future, given comments received from judges and other criminal justice officials, we believe it is reasonable to conclude that there is considerable potential for expanding the use of EHM both as a mechanism to make possible some additional releases of pretrial defendants and, to an even greater extent, as a sentencing alternative to incarceration. *Few courts in the county have made more than token use of EHM as sentencing options, and the capacity exists within the system to make it feasible to use it much more often in lieu of short jail sentences than it has been in the past.*

***Using EHM at even 90% of current equipment capacity would enable a further reduction of 7 additional inmates from the jail each day—at no added equipment costs to the County. Purchase of additional units would lead to even greater cost savings.***

Averaged over 2003 and 2004, EHM units were in use only 62% of the possible days. Even building in a 10% cushion for needed downtime, units were only in operation in the past two full years 69% of the remaining available days. If the units were used up to the 90%-of-capacity level—and all indications are that there would be sufficient demand for their use to make that a realistic assumption—the jail population could be reduced by at least 7 additional inmates each day of the year, with no expansion of the current number of EHM units.

If additional units were to be purchased, to enable continuation of the use of EHM units for Family Court plus additional units for criminal courts, we anticipate that even more savings in jail days would result—at savings that would far exceed the costs of the additional units, or any needed staffing adjustments, as discussed further in the recommendations in the next chapter.

## 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 late 2002 and has enrolled more than 60 offenders since then, with about 30 active clients at the time this study was underway. The two City Courts began in the past two years and cumulatively have enrolled about 20 mostly younger offenders to date. Family Court also has a separate Family Treatment Drug Court, which meets in conjunction with the County Court program. (A detailed analysis of the Family Court program was beyond the scope of this project.)

### County Court

The County Drug Court is overseen by a County Judge, who conducts Drug Court once a week. A treatment team of some 20 to 25 professionals from the criminal justice system and service/treatment agencies meets each week to review potential new admissions and discuss progress of existing cases. All three County judges are typically involved in these meetings, although primary responsibility for the meeting and the follow-up court appearances resides with the County's senior judge. The same treatment team also reviews Family Drug Court cases at the weekly meeting.

The Drug Court program is administered on a day-to-day basis by the Drug Court Coordinator under the State's Unified Court System as part of the Chief Clerk's staff of the Steuben Supreme and County Courts. As such, her position is entirely State-funded. Supervision of offenders in the program is provided by a full-time Senior Probation Officer, who is funded both by the County and primarily with State Alcohol and Substance Abuse Intervention Program (ASAIP) funds.

Drug Court is designed as an intensive 14-month program in three gradually de-escalating phases of intensity. Components of the program include, among others, reporting to Drug Court on a regular basis as required, participation in recommended

alcohol/drug treatment programs, frequent reporting to the Senior Probation Officer assigned to the program, random unannounced home visits and 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 agree to 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.

### *Target Population*

The County Drug Court is targeted primarily at non-violent repeat felony offenders who have been in and out of alcohol and substance abuse treatment unsuccessfully over the years, and for whom Drug Court is viewed as a last chance. Those who fail to meet the program's requirements and are officially terminated from the program are sentenced to prison. Even those successfully discharged from Drug Court still face additional time on probation.

At the time of the study, there were 31 active cases (25 male and 6 female), with seven more about to enter. Two-thirds were over the age of 30, and six were 21 or younger. Over the life of the program, between 20 and 40 offenders have been active at any one time. Program proponents would like it to grow to 60 to 75 active cases.

The total number of cases opened during the life of Drug Court to date is 61, including the 31 active cases. Since the Court opened, 60 offenders have been determined ineligible for the program, and another four declined when given the opportunity to participate.

Although the program is designed to address alcohol and substance abuse problems, those admitted to Drug Court need not be facing drug/alcohol-related charges. Of the 31 currently active at the time of the study, 17 were facing DWI charges, and the others had been arrested on a variety of other offenses; 14 were also facing violation of probation charges.

### *Program Impact*

In addition to the 31 active case, another 30 have completed Drug Court to date. Of those, 20 have successfully graduated and 10 failed to meet program requirements and were sentenced to prison.



***Of those who have completed Drug Court to date, 20 have successfully graduated and 10 failed and were sent to prison. The program is an alternative to prison, not the local jail.***

***The equivalent of 3.75 jail beds per day was used by inmates waiting for evaluations and admission to treatment programs before entering Drug court.***

***It takes an average of 32 days from request for a substance abuse assessment to its completion for potential Drug Court applicants.***

Because the alternative sentence for Drug Court participants is viewed as prison, since most are second felons, 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 those in the program to receive sanctions while in the program, some of which involve short jail time “to get their attention.”

The most significant impact the program could have in the future 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 31 active program participants, 17 had been in the local jail at the time of referral to Drug Court. From the time of initial referral to actual admission into a treatment program, the 17 offenders waited in jail a total of 1,373 days before being released to Drug Court and treatment—an average of more than 80 days each, and the equivalent of 3.75 beds every day of the year.

The first 20 of those 80 waiting days, on average, were spent from the time of referral until the program was ready to make a formal request for an evaluation/assessment. The longest component part of the delay, an average of 32 days, occurred from the time an evaluation was requested and its completion. It took an additional 13 days after completion of the evaluation for Drug Court to review the findings and agree to admit the person into the program, and 16 more days for the offender to be officially admitted to the appropriate treatment program. Some were admitted within a matter of days, but six of the 17 took longer than two weeks to be admitted, including three who had to wait more than a month.

Most of the delays are a function of inadequate staffing within the County’s Alcoholism and Substance Abuse Services office under the Office of Community Services. Most of the referrals, and many of the treatment services, are provided by that office, and staffing shortages have limited the ability of the office to expedite requests for evaluations and direct services. Gaps in CASAC staff (Certified Alcohol/Substance Abuse Counselors) lead to lengthy waits in jail for potential Drug Court candidates.

***Expanded CASAC staff should shorten waiting times for evaluations and service access, and reduce jail inmates by an average of 1.6 persons per day.***

***A CASAC is currently working with the Family Drug Court and the treatment teams of both Drug Courts, but is not allowed to conduct evaluations for the Criminal Court.***

Most estimates from people knowledgeable about the criminal justice and treatment systems were: (1) the 32-day wait for evaluations to be completed should, with proper staffing, be able to be shortened to one week, and (2) access to services should also be able to be shortened, from just over two weeks to no more than a week in most cases. Those reductions would have the combined effect of cutting the equivalent of 578 jail days over a year's time—about 1.6 beds per day. In addition, expansion of CASAC staff should make it possible to accept expanded numbers of referrals to Drug Court. We understand that such referrals are not now being made, in part because of the backlog in accessing evaluations and treatment.

One other alternative to adding CASACs within the County Substance Abuse office would be to be able to make use of the CASAC who is the Coordinator of the Family Drug Court program. He is certified to do the same types of evaluations required by County Drug Court, and in fact is a member of the treatment team that meets weekly to review cases in both courts, but he cannot do any evaluations connected with the Criminal Court. Apparently officials are concerned that by serving both courts, terms of the Family Court grant could be jeopardized. Meanwhile, defendants spend time in the jail that could be avoided.

As noted, proponents of Drug Court advocate for active caseloads of up to 60 or even 75, which would mean virtually doubling the current number of active cases. This could only become a realistic possibility if CASAC staff were expanded and service access could be expedited to the shorter timelines suggested above, and if Probation staff were expanded to enable a larger caseload to be supervised. *Only if this combination of events were to occur would it be feasible for Drug Court to expand, and for the program to have a greater impact than the modest impact it now has on the jail population.*

## City Courts

Hornell and Corning City Courts both have recently started new Drug Courts. Each is overseen by the judge in each Court. Supervision, rather than being provided by Probation staff as in County Drug Court, is provided by local police officers. Both Courts are administered by a full-time Coordinator in the Unified

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Court System's Chief Clerk's office; thus the position is State-funded.

### *Target Population*

The primary population of the two City Drug Courts is younger defendants with shorter crime histories or treatment experiences than is true for County Drug Court. Defendants facing non-violent misdemeanor charges are eligible for consideration for admission. Many participants to date are in the 16-25 age range, and often this is their first offense. The focus of the programs is primarily on early intervention. If the intervention can prevent subsequent criminal behavior and substance abuse problems, that is obviously in the public interest. On the other hand, some expressed concern that it may be difficult to motivate younger offenders who have not yet had sufficient experience with the system and its consequences for a program of this type to have much impact.

To date, the two programs together have enrolled about 20 offenders. Thus far the programs are limited to residents of their respective cities. The hope is to expand each program to surrounding towns and villages, with each court becoming a "hub court" for their surrounding communities, thereby making more defendants potentially eligible.

### *Program Impact*

It is too soon in the life of both City Court programs to be able to assess their respective impacts. To date there have been a handful of both successful graduates and unsuccessful terminations. To the extent the programs are able to expand, they may ultimately have more impact on the County jail than does the County Drug Court, since alternative sentences for the City Court programs are likely, in many cases, to involve local jail rather than prison sentences. On the other hand, there may be limits on both programs due to staff restriction on the degree of case supervision, as limited Probation resources have thus far prevented any Probation supervision role for either City Court program.

## 8. CONCLUSIONS AND RECOMMENDATIONS

Steuben County has many strong distinguishing components that characterize its criminal justice system. It has a strong array of Alternatives to Incarceration programs that compare favorably with similar counties around the state. A number of innovative criminal justice practices are in place or under consideration. The County is blessed with dedicated strong and committed leadership throughout the various components of the system. And—perhaps most important for the future of the County—the leadership of the County, its criminal justice system and its alternative programs have expressed a willingness to consider 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 in this chapter have been at least suggested or alluded to in the earlier discussions. 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 over the past several months 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. Thus CGR's job in pulling together these recommendations has been less to create new ideas than to listen, reflect and attempt to organize and give voice to what we have heard from community, criminal justice system and program leadership.

The overall conclusion is that what follows builds on significant existing strengths. The challenge is how to take programs and practices that are generally already working at a reasonable level and determine how to modify them where necessary, and add new practices and approaches where appropriate, to create an even stronger, more cost-effective system for the future. Our recommendations follow:

## Jail Inmate Reduction Strategies

- ❖ *The County should hire a Jail Inmate Reduction Coordinator who is held accountable for working with various aspects of the system to ensure that all appropriate strategies are in place to limit jail inmates only to those who should legitimately be incarcerated to ensure court appearances and consistent with community safety concerns.*

This Coordinator should be created as a new County position which should in a very short period of time yield a multiple return on the investment in the position's costs by reducing jail costs and/or increasing jail revenues in amounts that far exceed costs of salary and benefits of the position. Even though the Coordinator would spend considerable time in the jail, the position should not be on the jail staff. Given the nature of the proposed tasks, we suggest that for day-to-day supervision, the position report directly to the Probation Director, and also make regular reports to the County Administrator and Legislative Public Safety and Corrections Committee. The Coordinator would interface regularly with all components of the criminal justice system.

Specific responsibilities of the Coordinator would include such functions as:

- ◆ Serve as the dedicated person to conduct all PSIs requested for any unsentenced inmate of the jail, with the goal of *ensuring that PSI reports are completed and returned to the courts within no more than 20 calendar days for every unsentenced inmate*. By expediting PSIs for every jail inmate, the jail population will begin to be reduced by several inmates a day, within two months after the position is created (see below).
- ◆ Create, circulate and follow-up on a weekly list of all unsentenced jail inmates, detailing their circumstances, including criminal charge, prior record, bail amount, detainers, status of court proceedings, etc. This list, updated weekly, should be used by the Coordinator as a flag to identify inmates where there may be conditions conducive to developing a release strategy, which the Coordinator would help to facilitate where appropriate through initiating discussions with key people to determine if agreement can be reached that would be acceptable to all relevant parties.

- ◆ Follow-up with town/village justices in between court appearances to ensure that they have the information they need, and urge them when appropriate to make release decisions in between scheduled court appearances.
- ◆ Supplement the efforts of the Pre-Trial Release Probation Assistant by making selected strategic appearances in courts to present PTR release recommendations in person, including timely criminal history information. As needed, the Coordinator might also help with follow-up verification of PTR information when defendants are not released within the first few days.
- ◆ Monitor the progress of jail reduction strategies, and document the impact various approaches are having in reducing the number of unsentenced inmates in jail, including documentation of the cost and revenue implications of the implemented changes.
- ❖ ***The County should implement changes (detailed later in this chapter) in ATI programs and system practices that should lead, once fully implemented, to the following reductions in the jail inmate population. The new Coordinator would be responsible for overseeing the process and monitoring the responsible programs and relevant data to ensure that the following goals are met:***
  - ◆ Pre-Trial Release: 1 to 2 fewer inmates per day.
  - ◆ Release of low-bail, low-risk unsentenced inmates with no detainers: 5 to 8 fewer inmates per day. (Based on reducing the number of 7 to 10 such inmates currently in jail, on average, per day. Target would be to have no more than two such inmates per day.)
  - ◆ Expanded use of Electronic Home Monitoring: 7+ fewer inmates per day, without adding any new EHM units. Additional reductions would be possible if new units are added by the County in the future.
  - ◆ Targeting of unsentenced jail inmates needing PSIs, with goal of no more than 20 days for PSI completion: 11+ fewer inmates per day.
  - ◆ Intensive Supervision Program targeted expansion: 3 fewer inmates per day.

- ◆ Community Service Sentencing: 1 to 2 fewer inmates per day.
- ◆ Drug Court expansion and expedited assessments and entry to treatment: 2 to 3 fewer inmates per day.

The cumulative effect of the recommended changes should become fully apparent within a year of implementation of new and modified practices, with partial effects beginning to be apparent within months. *The overall impact of the recommended changes would be between 30 and 36 fewer inmates in jail every day, compared with pre-change totals, once fully implemented.* CGR believes even this range may be conservative, as some further increases also appear feasible. But it is also possible that there could be some overlap in the categories outlined above, though we believe our analyses have factored out most if not all of such potential overlaps. But to be cautious, we will go with the lower end of our range, and estimate that on average, there would be at least 30 fewer inmates (in the jail and boarded out) every night of the year.

***Recommended changes should reduce the average daily County jail census by at least 30 inmates per day, or 10,950 jail days a year, for reduced cost to taxpayers of about \$876,000 per year.***

*The cumulative effect of such reductions would be about 10,950 fewer inmate days over the course of a year than currently exist.* Converted to reductions in boarding-out costs and/or increases in potential boarding-in revenues, when fully in place *this would translate to about \$876,000 in reduced jail-related costs to County taxpayers* (based on assumptions of \$80 a day of costs or revenues per inmate day, whether paid out to other counties or paid to Steuben by other counties or the federal government). Even these financial implications may be conservative, as they do not factor in medical and transportation costs and potential revenues, and they are based on assumptions of \$80 per diem costs and revenues. Those per diems may be conservative.

- ❖ ***The jail reduction strategies should reduce the inmate population in both the current and expanded jails. They will also have the additional effect of making it possible to do one of two things with the expanded facility:***
  - ◆ ***(1) eliminate the need to open the second wing of the jail, with operational cost avoidance of more than \$200,000 a year, or***
  - ◆ ***(2) enable the potential to turn the second wing into a purely income generator. If, in addition to savings or revenue enhancements noted above, 20 additional inmates***

*were boarded-in each night in the second wing, at \$80 per night, this would generate about \$584,000 annually, against anticipated staffing and related costs of an estimated \$200,000 to \$250,000 per year. This would therefore generate estimated additional surplus revenues for the County of between about \$334,000 and \$384,000 a year. Those numbers could increase if the decision were to board in more than 20 per night, with no expected increases in staffing costs, according to jail officials.*

- ❖ *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.*

Judges and justices at all court levels indicated that they were often not aware of options available to them, and the extent to which there were openings in various ATI programs. The findings from this report should be the basis for forums involving key people from all components of the criminal justice 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 should be provided on an ongoing basis of the status of programs and practices.

- ❖ *Each agency, program practitioner and judge/justice affected by this report should carefully review it for insights about current practices and how those practices might be changed to expedite court processing and jail reduction strategies, where appropriate.*

For example, there are wide variations across courts and judges/justices in such matters as pretrial release strategies, setting bail, sentencing patterns, use of ATI programs, case processing, etc. These differences are not necessarily indicative of “right or wrong” approaches, but simply indicate in many cases reasonable individual differences among officers of the court who by definition have considerable discretion in how they make decisions. Nonetheless, the data and observations included in the report may offer insights that individual judges, program practitioners, attorneys and agency heads might find helpful in



considering possible changes in the future that could be of benefit to the entire criminal justice system.

**District Attorney and Public Defender Recommendations** ❖ *The District Attorney and Public Defender 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 through the system at all levels.*

With staffing and leadership beginning to stabilize within the Public Defender's office for the first time perhaps in the County's history, the timing is right for such "summit" discussions that could help shape how business is conducted by attorneys in both offices at all court levels in the future. Court proceedings and jail population makeup could be significantly affected by such discussions.

❖ *Both the DA and PD should develop, and make more extensive use of, expanded internal training/orientation manuals and techniques, as well as internal evaluation procedures, as means of ensuring consistent approaches that meet high standards of performance.*

With the overloads faced by attorneys in both offices, it is understandably difficult to make time to provide training/orientation updates for veteran staff, or even for new attorneys, but several observers, including some in the DA and PD offices, acknowledged the need for and value of insisting on such approaches being more routinely in place and implemented. Also, both agencies should put in place more comprehensive personnel performance evaluation systems, including a "customer satisfaction" scale regarding responsiveness, that enables the agency heads to monitor and assess the performance of each attorney, as viewed by those with whom they come in contact throughout the system (excluding defendants).

❖ *Both offices should place particular emphasis on attempting to move cases as expeditiously as possible from lower courts to County Court, and to build in procedures, along with the proposed Jail Reduction Coordinator, to monitor cases routinely to make sure that they are not lagging, with defendants sitting in jail, for lack of attention.*

Many cases take months to move from the lower court to County Court levels, and others languish for long periods of time as misdemeanor charges in the lower courts. Early discussions between ADAs and APDs assigned to particular cases are likely to be helpful in ensuring that cases are receiving appropriate attention initially, as well as on an ongoing basis.

- ❖ ***Both offices should consider establishment of better internal management systems such as computerized procedures for tracking status and progress of cases through the system.***

Both agencies appear to have rather antiquated systems in place for tracking progress of cases and where they are in the system at any given time. There is 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, that might prove helpful to know for taking corrective actions in the future.

- ❖ ***The County should at least consider for both offices whether a higher ratio of full-time to part-time attorneys would result in better communications and more effective processing of cases throughout the criminal justice system.***

With part-time attorneys already receiving full benefits in both offices, the additional costs to hire more full-time attorneys may not be that substantial. This is not an issue we studied closely, but it was raised by a number of knowledgeable people during our interviews. Some believe that it would be cost effective in providing more consistent prosecution and defense representation across the county, while others feel the current system enables the County to receive high quality work, at reasonable cost, and that the system should not be changed. It is worth at least a discussion by the County Administrator, the DA and PD, and the Public Safety and Corrections Committee.

- ❖ ***The County should continue to support and build on its decision to transfer as many cases as possible from Assigned Counsel representation to paid Public Defender staff.***

Initial data from the PD's office, and observations obtained during our interviews, suggest that the transition is working well in terms of helping make possible some of the better working relationships between DA and PD noted above, while at the same time saving

the County money, compared to what it would be spending had no changes been implemented. The County should continue to move in the direction of transferring as many cases as possible away from the more costly Assigned Counsel system, not only for cost-saving reasons, but also to make consistent defense representation more possible, and to hold defense attorneys more accountable for their performance.

- ❖ *To that end, CGR recommends that the County give serious consideration to the establishment of a Conflicts Office as a parallel to the Public Defender's office. Such an office would take over more of the cases that Assigned Counsel continue to be assigned because of conflicts with the PD office. Preliminary discussions with the PD, and a very preliminary outline of a proposal to create such an office, suggest that it can be cost effective and further reduce over time the costs of providing indigent representation, while at the same time improving the quality of the representation provided.*

More work is needed to flesh out the preliminary proposal, but the concept is promising, and deserves further attention. Key issues to be addressed include: determination of realistic estimates of the proportion of remaining Assigned Counsel cases that a Conflicts Office would be able to assume, with what levels of staffing and costs; how much savings can realistically be expected; and whether the County is likely to be able to recruit sufficient high quality attorneys at reasonable costs. Initial cost estimates look promising, but more background information and underlying assumptions are needed before the idea should be endorsed. Discussions with the head of a recently-created similar office in Chemung County should prove helpful in sorting out the issues.

## **Court Improvement Recommendations**

- ❖ *County Court judges should consider how they can develop, and commit to implementing, a unified court schedule and calendar that would reduce conflicts, expedite cases, and reduce the wasted time of judges and attorneys that characterizes the current system.*

Every year a comprehensive multi-court schedule (County, Surrogate and Family) has been developed, but it has never been followed by all judges. Hardly anyone seems happy with the current system, yet no serious efforts are underway to put a

permanent, more efficient system in place. Perhaps the County Judges can agree to appoint one of them to work with the Chief Court Clerk's office to design a schedule for their consideration, which also builds in a centralized system or point of entry for scheduling court appearances and SCI conferences, so that each judge's office does not have the responsibility for focusing only on their slice of the schedule, in many cases to the detriment of the overall system.

With leadership from the judges, and delegation of the details for making it work to the Chief Court Clerk's office—and building in accountability for ensuring that it works—it should prove feasible to develop a more workable system. Other counties have done so. Such an improved system should go a long ways toward expediting the timely resolution of cases, reducing the proportion of cases over State Standards and Goals, rationalizing the SCI conference process and scheduling, and reducing inefficient use of time of judges, attorneys and jail officials trying under the current system to balance everyone's needs against multiple courts operating simultaneously.

- ❖ *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 cases when they are arraigned and/or come to the DA's attention, followed up by assignment of cases to specific County judges who would call together the attorneys for each case after a specified period (e.g., one or two months), if no previous Grand Jury or SCI actions had occurred by then, to get a sense of the status of the case and what is needed to move it forward.*

Now cases languish in the lower courts with no central oversight of their status, leading to the long delays discussed in the report. Having an ability to bring these cases before the upper court level for a review at a specified time should bring added 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 rarely meets, 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 them and discussing actions that may help resolve any problems.

- ❖ *It is recommended that a pilot project be established under one judge in County Court to test whether total time for SCI conferences and Pre-Sentence Investigations can be reduced. The pilot would call for Probation staff on a trial basis to provide input at SCI plea discussions.*

At this point, there are both strong proponents and opponents of the idea of having Probation staff in conference with judge and attorneys as pleas get hammered out. Probation officials tend to be reluctant to be present, because of the resources involved and the concern that they will not have sufficient information at the time without detailed review of the records, as would be part of a more routine PSI process. Some judges, on the other hand, believe that any information a Probation official could make available from the files in early plea discussions, as well as any information about availability of various ATI options, could help ensure that there would be better agreement between plea deals and what might ultimately be recommended by the PSI. Furthermore, it is possible that in some cases, these early discussions might preclude the need for a more thorough written PSI.

We suggest a test and evaluation of this approach, assessing the strengths and limitations of the process, with no final commitments made to the idea until a fair test has been implemented. *We suggest a pilot test period of three to six months.* To ensure that the best information and broadest perspective be presented by Probation staff, it may make sense to have a Supervisor be the lead Probation person at such sessions.

## Pre-Sentence Investigation Process

- ❖ *As noted earlier, the proposed Jail Inmate Reduction Coordinator should be charged, among other things, with completing within 20 calendar days PSIs requested by a judge for anyone in jail awaiting sentencing. The Coordinator in doing the targeted PSIs should carefully consider recommending, where appropriate, possible sentencing ATIs for judicial consideration. Based on the analyses presented earlier in the report, we conservatively estimate that simply expediting these PSIs for the unsentenced inmate population should result in at least 11 fewer inmates per day in the jail.*

With the Coordinator focusing attention on the detained cases, and not just having them as part of a larger PSI caseload, cases should be processed more rapidly. Furthermore, we anticipate that a focused attention on these cases will also help ensure that deliberate attention gets paid to ATI options that might be realistic alternatives to a jail or prison sentence. With the expedited PSI process and added attention to ATI options, it is possible that even more than the estimated reduction of 11 jail inmates per day could result.

- ❖ *Judges should be encouraged to use PSIs only when absolutely required, and only when they have legitimate needs for more information before pronouncing sentences. Some judges have indicated they are already trying to scale back their requests for PSIs, and some have suggested requesting use of a more-limited Conditions of Probation form where less information is needed for a case.*

Some have suggested that it should be possible to cut back on the number of full-scale completed PSIs by as many as a third over the next year or so. That may be ambitious, but it may be that reductions could be implemented of sufficient scale so that within a year or so, it may be possible to reallocate the time of one of the two current Probation Officers devoted exclusively to doing PSIs, based on anticipated reductions in requested full PSIs, and the dedicated jail-related PSI work of the Coordinator.

- ❖ *At the same time as there is a desire to reduce the number of PSIs requested, there is an equal desire expressed by many judges to have more PSI recommendations encouraging the use of ATI options. The two 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. This may mean retaining a greater openness to reshaping the plea deal if ATI recommendations are made that were not contemplated in the original plea discussions. However, a more aggressive request for appropriate ATI options may be worth the wait.*

If earlier plea conferences occur, as suggested above, the careful processing of ATI options, even after the initial plea discussions, need not result in longer overall court time to close cases than is

currently true. The pilot test recommended above could also shed valuable light on how some of these issues may need to be resolved.

## District Court Recommendations

- ❖ *Data on PSIs should be tracked and analyzed more carefully in the future to determine their outcomes, the extent to which they are or are not used by specific judges, the extent to which PSI recommendations are or are not consistent with ultimate sentencing decisions, etc.*
- ❖ *Town supervisors, village mayor and town/village justices in nearby jurisdictions should 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 courts.*

Short of being able to establish a full-fledged district or regional court, which is politically unlikely, the idea of pooling resources seems worth testing, potentially enabling justices to be on call to cover for more than one court, to enable rotating justices to deal with issues that arise between regular court appearances, and other similar ways of pooling resources. This may be an idea worth discussing in more detail at a Magistrates Association meeting to see which courts might be interested.

## Recommended ATI Staffing Changes

- ❖ *In order to achieve the jail-inmate-reduction targets outlined at the beginning of this chapter, we suggest the following new positions and reallocation of existing positions:*
  - ◆ *Creation of new Jail Inmate Reduction Coordinator (as previously noted).*
  - ◆ *Shifting the current Senior Probation Officer position now responsible for both Electronic Home Monitoring and Community Service to full-time EHM supervision. We recommend expanded use of this program, and it will need full-time attention.*
  - ◆ *As a potential way of helping to expand Drug Court, an optional EHM staffing model could split the full-time oversight position into a half-time Senior Probation Officer and half-time Probation Assistant to handle the clerical aspects of the position. The remaining half of the*

*Senior PO's position could then be freed up for use in expanding Drug Court supervision, as discussed further later in the chapter.*

- ◆ *Creation of one new Senior Probation Officer position split between Intensive Supervision and Community Service. This would mean that, including the current Senior PO in charge of ISP, there would be 1.5 positions devoted to that program in the future, and 0.5 Full-Time Equivalent person assigned to Community Service. Community Service needs more attention than it has been receiving as a 0.2 FTE position, and we believe the equivalent of a half-time position, combined with expansion of the ISP program, will enable more field time for supervision for both programs. Neither program will be a major contributor to reduction of the jail population, but we believe, as noted above, that together they can add a combined 4 to 5 fewer inmates per day to current totals, with these staffing shifts in place.*
- ◆ *Shifting of ATI oversight responsibilities: We recommend that a full-time ATI Coordinator be designated, and that all ATI programs report to that position. Currently, ATI programs and the Drug Court supervisor report to three different Probation Supervisors. There have been sound reasons in the past for such a structure. However, we believe that opportunities for efficiencies and program enhancement are missed as a result. Strong oversight is now provided by the Supervisors, but we believe that a single person responsible for overall leadership and strengthening of these programs makes more sense for the future. This could be accomplished by shifting responsibilities across the three affected Supervisor positions, with no increase in number of positions.*
- ◆ *Having a single ATI Coordinator should help link information between programs, enable better monitoring of all ATIs regarding various outcomes, staffing efficiencies, analysis of what works for different types of offenders, needed changes, etc.*



## Other Recommendations Specific to ATI Programs

To accomplish inmate-reduction strategies and other systems improvements, made possible in part by staffing changes just suggested, other changes are also recommended for each of the current ATI programs:

### *Pre-Trial Release*

- ❖ *Probation officials, the District Attorney, Public Defender and representative judges from all court levels should sit down and determine what changes are needed in the current Pre-Trial Release screening form. Clearly a number of concerns have been raised about it, and it appears to be causing some judges not to release defendants who they indicate would have been released in the past. Thus a careful review, which respects the needs of all components of the system, should be implemented as quickly as possible. Any change should incorporate a way to get more information communicated to judges in a timely fashion concerning the prior conviction history of the defendant.*

Such a review is needed to help reverse the recent downward trend in the numbers of PTR recommendations leading to release decisions by judges. Some aspects of the new form seem to have met with favor, but others have generated considerable concerns. The issues do not seem unresolvable, however, and should be able to be corrected, with the development of a hybrid form, if interested parties can come together to share their ideas.

- ❖ *Once a new form is agreed to, an evaluation process should be put in place to track the outcomes and decisions made with the form, perhaps contrasting it with the current form, to validate its accuracy in predicting outcomes. To this point, neither the new nor the older form has ever been formally validated in Steuben County to determine what factors and scores actually are directly correlated with successful appearance throughout court proceedings. PTR releases should also be compared with releases through other mechanisms to determine comparative outcomes for each.*
- ❖ *More direct PTR follow-up should occur with judges in the future. This should include follow-up contact in between scheduled court appearances, especially with justice courts, to ensure that information on screening information has*

*been received, and to suggest that actions be taken on that information. It should also include direct PTR appearances in selected court settings to “put a face on PTR” and to provide opportunities to explain the underlying rationale behind PTR recommendations. Given the not-infrequent differences in judges’ decisions and initial PTR recommendations, it would be helpful to have opportunities to discuss reasons behind those differences.*

How much such interactions and follow-up activities can take place is obviously in part a resource question. As indicated in our first recommendation, we assume that the Jail Reduction Coordinator would play a key role in supplementing the efforts of the current single PTR staff member in making court appearances where appropriate.

- ❖ *Such follow-up efforts should, we believe, lead to the equivalent of PTR efforts being able to get at least one to two additional defendants released to the program each day throughout the year, as well as additional releases of low bail/no-detainer defendants. PTR efforts will help supplement those reduction efforts, working with the Jail Reduction Coordinator.*

- Community Service* ❖ *As recommended above, 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, and convincing judges that it is a viable sentencing option and an effective alternative to incarceration, as long as it is effectively monitored.*

Such expansion and monitoring have not been possible with the limited staff time devoted to Community Service (about 20% of one Senior PO’s time). We believe by separating CS from EHM and creating a new position split between CS and ISP, with a higher proportion of time devoted to CS than in the past, that both programs will be strengthened, resulting in 1 to 2 beds saved each day through Community Service, and three through ISP in the future..

- Intensive Supervision* ❖ *With the recommended addition of the half-time position, combined with the Community Service half-time position,*

*ISP would have 1.5 positions devoted to it. We suggest that this would enable an expansion of the overall program caseload to between 40 and 45 active cases at a time. We make this recommendation only on the assumption that the majority of new offenders admitted to the program would be likely to be sentenced to jail if they were not in ISP, rather than the primary prison alternative that has been the program focus up to this point.*

The alternative to prison can and should continue, in part because the State will require such a focus to continue to justify its funding for the program. However, since the recommended expansion would be primarily County funded, the benefits should accrue most directly to the County as well. Thus we anticipate reduction of an additional 3 inmates every day as a result.

- ❖ *The County should undertake a study of the types of offenders who are most likely to be successful in ISP, and make that information available to judges and the DA. The track record of success has not been high for this program geared to high-risk offenders with long histories of failing within the system, and it will be important as the program expands to provide guidance as much as possible for judges, and for those completing PSIs, on what types of offenders are most likely to be responsive to the program's intense requirements.*
- ❖ *The County may wish to consider adding a component to the ISP, based on a model that seems to work well in Ontario County: a Commitment to Change component of a larger sentencing program that is designed as a behavioral therapy group focused on identifying and addressing thought processes and behaviors underlying and contributing to the offenders' criminal actions. Further information on that program could be obtained from the Ontario County ATI Coordinator.*
- ❖ *This is the ATI program that seems to have the biggest upside potential in terms of building on an already-significant impact on the jail population, and the ability to expand that impact on both pretrial and sentenced offenders. The key to this recommendation is to operate the program to much fuller capacity than has been the case in the past. In*

*Electronic Home Monitoring*

*effect, we believe the goal should be to operate year-round at 90% capacity, rather than closer to two-thirds of capacity in recent years, and as low as 52% last year.*

- ❖ *To make this work, the program coordinator position needs to become full-time. We have suggested above two possible ways to make that happen: (1) shift the current shared EHM/CS position to a full-time Senior PO position devoted full-time to EHM, or (2) making the current coordinator a half-time position, balanced by half time with other responsibilities (such as Drug Court supervision, as discussed below), supplemented with a half-time Probation Assistant position to handle the heavily clerical support activities of the program.*

Only some of the tasks of this program require a high-level Probation staff person. Thus the possibility of splitting the position has some appeal, enabling the Senior PO to do the tasks that require a peace officer to perform, and/or that need a high level person to make house visits, while leaving the other more clerical tasks to a Probation Assistant. Either staffing model could work.

- ❖ *The County should consider expanding the program further by leasing additional EHM equipment. We estimate that just making fuller utilization of existing units would reduce the jail population by at least 7 additional inmates per day. But judges suggest that they would be willing to make even greater use of the option if it were recommended more often by the PSI process, and if more hardware were available. Even with the added costs associated with leasing additional equipment, we believe the County would quickly recoup the added costs in additional jail reduction savings.*

Different potential options for program expansion (shared with CGR on a preliminary basis by Probation officials) suggest added annual costs to the County of from more than \$22,000 a year for 10 units of a Global Positioning System to more than \$31,000 for 22 units of more traditional units. Either way, even if the most expensive leasing arrangement were to result in as few as two additional beds saved every day—and those are very conservative estimates for even just the 10-unit option—those two fewer inmates per day would result in direct boarding-out savings (or

boarding-in revenues) to the County of at least \$58,400—well above the added equipment costs. More to the point, it is far more realistic that the savings in reduced inmates would be several times that figure, as we would anticipate much higher saved jail day totals. If seven additional beds were saved per day, the annual savings would represent more than \$200,000. Thus even if the expansion resulted in the need for an additional monitoring staff position (e.g., an additional half-time Probation Assistant), the increased jail savings would more than cover the added costs.

### *Drug Court*

- ❖ *The County should hire at least one additional Certified Alcohol and Substance Abuse Counselor (CASAC) who could be used, either directly or by freeing up existing staff, to conduct drug/alcohol assessments for Drug Court applicants. Expedited assessments should make possible earlier release of more defendants from jail once admitted to the program.*
- ❖ *We would not recommend hiring an additional full-time Probation officer to enable expansion of the Drug Court program, since most of the direct benefits in terms of dollar savings from the program accrue to the State, through prison inmate reduction. However, some jail savings would be likely if the Probation supervision staff were to increase by a half-time person, which would make it possible, along with more rapid assessment and treatment access, to expand the program's caseload to perhaps 50 or 55 at one time. Such a staffing option might present itself if the EHM split staff option suggested above were to prove feasible. The Senior officer position could lend itself to a split between Drug Court and EHM supervision.*

Such an expansion of supervision capacity, in conjunction with expedited assessment and access to treatment, could, we believe, result in 2 or 3 fewer jail inmates per day as a result of additional Drug Court participants.

- ❖ *A third staffing option would be to find a way, rather than hiring a new CASAC by the County, to use the existing CASAC assigned to Family Court Drug Court to do the assessments for Criminal Drug Court as well. This might be the most efficient option, given his familiarity with the*

*system already, but it is not clear that any of his time can be shared with the Criminal Court program.*

*Other Potential  
Alternatives to  
Consider*

- ❖ *Although there are sound reasons for having all three County judges involved in Drug Court (both Criminal and Family Court), it may not be essential to have all three routinely in attendance at each weekly treatment team meeting. Consideration should at least be given to whether freeing up that half day a week in two judges' schedules might make other court efficiencies possible, given that the judge in charge of Drug Court seems to have it well under control.*
- ❖ *The County may wish to consider establishing a pretrial diversion program for young offenders in their teens and early 20s. This would represent a targeted intervention with young offenders developing an early record of criminal behavior, for whom a relatively early intervention could turn lives around and help prevent future criminal activity. Such a program would focus on issues underlying the young offender's criminal behavior patterns. Wayne County has successfully implemented a similar program, as have Monroe and other jurisdictions around the country.*
- ❖ *Several of those we interviewed suggested the need for special alternatives programming for those involved with domestic violence and the need for increased anger management programs—in many cases, the two may overlap. CGR cannot independently verify the need for either of these programs, but we suggest that consideration be given to either or both, based on the frequency with which they were suggested during the study.*

**Overall  
Coordination of  
Strategic  
Implementation  
Plan**

- ❖ *A number of recommendations have been made that cut across all components of the Steuben County criminal justice system. Some individual or group is likely to be needed to oversee the process of reviewing the recommendations, determining the County's highest priorities, and establishing and monitoring implementation of a resulting strategic action plan. We recommend that the County consider hiring a full-time Criminal Justice Coordinator to oversee the recommendations, and to work with the components of the system to ensure that they follow through and commit to the strategic changes designed to strengthen the system. We*

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*recommend that the Coordinator report directly to the County Administrator.*

It is likely that such a position need not be a long-term appointment, and indeed probably should not be. But we believe the implementation of the changes suggested in this report, and the establishment of strategic directions and implementation plans, will need full-time leadership and direction that cannot be provided by anyone with existing responsibilities within the existing system. In addition, we recommend that the current ATI Board be strengthened and take on a stronger leadership role to help ensure that changes occur where appropriate.