King County

A VIEW OF THE PRE-SENTENCE COUNSELING PROGRAM
OF THE
SEATTLE-KING COUNTY PUBLIC DEFENDER ASSOCIATION

DEPARTMENT OF BUDGET AND PROGRAM PLANNING

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Reflections and Summary

King County Superior Court Rule 101.04(j) requires the Prosecuting Attorney, defense counsel and the Adult Probation and Parole Office to submit pre-sentence reports to each other (except that Probation and Parole need not be given a copy) and to the sentencing judge "in all cases where a person is to be sentenced for commission of a felony." These reports must be filed at least three days prior to the sentencing date. In practice, if all three parties are in agreement that a given sentence should be meted out only one report might be filed.

The intent of requiring the reports is to provide sentencing judges with as much information as possible about a client, his/her social background, his/her criminal history, the danger he/she poses to society, and rehabilitative programs, both within the community and in institutions, which might assist the client. Judge David Hunter of the Superior Court stated that "the more information I can get the better a position I am in to make an intelligent disposition of a case."

In 1972 the Public Defender Association, which handles about 1500 new felony cases each year, established a Correctional Counseling Program (later changed to the Pre-Sentence Counseling Program). This program was designed to elicit background information from clients and others and to develop alternative programs to commitment. The counselors, most of whom have been former

offenders, work with their clients and their clients' attorneys (nearly always members of the Public Defender Association's staff) to develop programs likely to be acceptable to sentencing judges.

After developing a program with and for a particular client (which often includes obtaining a promise of acceptance for the client into a community agency's program or a promise of employment) the counselor will draft a statement of the client's background (sometimes with the assistance of the report prepared by the Adult Probation and Parole Office) and an outline of the rehabilitative program which has been developed. This report is transmitted to the defense attorney who reviews it, makes whatever changes he/she deems necessary (often in conjunction with the counselor and the client) and drafts the report into proper form for presentation to the sentencing judge.

The Public Defender Association handles the largest number of felony cases. However, a goodly share of the total is also parcelled out to assigned counsel. Although they are permitted to use the services of the pre-sentence counselors, very few do so, perhaps because they are not aware of the existence of the counselors. (The Office of Public Defense does alert assigned counsel to the program in the letter of appointment to a case.) A survey of nearly 250 felony cases handled by assigned counsel between 1970 and 1974 indicated that for those cases in which pre-sentence reporting was done, the average amount of time spent determining alternatives and writing the report was 2.2 hours.

That figure differs little from the estimate given by Public Defender Association attorneys as to the amount of time they spend in similar activities. Most of the time spent by both groups in these activities appears to be spent in the actual drafting of the reports. They noted that the work of the counselors did not save them much, if any, time; however, they emphasized that the counselors were giving clients a level of service the attorneys themselves could not provide, mostly because they could not take the time under any conditions to build up the information about community programs and to spend considerable time with clients.

Judge Donald Horowitz, in a statement that lends credence to the contention that the pre-sentence counselors add a level of service which attorneys themselves could not provide, noted that the quality of the pre-sentence reports filed by Defender Association attorneys (who often used pre-sentence counselors) was usually higher than that of those filed by private counsel (who rarely used the counselors). This was particularly true, he said, in the area of developing programs for client rehabilitation. However, both Judge Horowitz and Judge Hunter agreed with Judge Janice Niemi that the pre-sentence report filed by the Adult Probation and Parole Office was the one most frequently used. The judges appeared to appreciate the balancing of the needs of the client with those of society. Judge Niemi also felt that the Defender Association proposed the best community programs. Judge Horowitz felt that both the Defender and Probation and Parole often developed good community programs for a client. Judge Niemi joined with Defender Association attorneys in lauding the counselors' success in finding jobs for clients.

Although the counselors do not appear to free up attorney time for other tasks they may provide a higher level of service to clients than would be available otherwise. The obvious question is what are the results of this increased service.

A sample of 1973 and 1974 cases handled by the pre-sentence counselors indicated that of those sentenced (including all probation and parole hearings regardless of disposition) 22 per cent were committed to prison in 1973 and 12.7 per cent were committed in 1974. The corresponding figures for a sample of cases handled by assigned counsel were 7.8 per cent and 8.3 per cent respectively.

These figures indicate either that the Defender Association and its pre-sentence counselors did not do as good a job as did assigned counsel in presenting reasonable alternatives to commitment to sentencing judges or that the counselors handled more of the difficult cases than the average. Based upon comments by Superior Court judges as to the quality of the Defender Association's pre-sentence reports in terms of presenting programs it would appear that the latter conclusion is more likely. This also tends to substantiate statements by Defender Association attorneys that they tend to assign the counselors those cases in which there is a real threat that the client may be sent to prison. It should be noted that the Office of Public Defense does not assign more difficult cases to the Defender Association than to assigned counsel. Therefore, it would appear that Defender Association

attorneys themselves normally handle pre-sentence matters only for "less difficult" cases.

An attempt was made to measure the relative effectiveness of the pre-sentence counselors and assigned counsel in terms of recidivism of their probationers. A measure of recidivism was not possible in itself so a proxy was used. In order to do this probation and parole revocation hearings and re opened cases were used. (Please see the body of the text for the rationale for including these.) Most of the cases involved probation revocation hearings. The reason for using such a measure is based upon the assumption that for a convicted felon's defense attorney probation is more of a success than is commitment. A hearing to revoke that probation or to make it more stringent is an indication that the probation and its conditions might not have been the best rehabilitative measure possible. What may be required are different conditions, more stringent conditions, more relaxed conditions, or even revocation.

There are many difficulties attendant to using probation revocation hearings (or the lack thereof) as a measure of the effectiveness of programs. Paramount among these difficulties is that minor technical violations can lead to revocation proceedings as readily as can commission of a new felony. However, there is presently no evidence to indicate that probation officers are more likely to call for revocation on minor grounds for persons served by the Defender Association than for those served by assigned counsel or vice versa simply on the basis of who their original attorney was or who he/she was associated with in a law firm. Therefore, if the same base and method of computation are applied to all groups

under consideration (assigned counsel, the Public Defender Association as a whole, and the Pre-Sentence Counseling Program) a consistent measure of comparison should result.

The base used was the number of cases closed by each group in 1973 and 1974, adjusted to compensate both for a marked increase in cases handled by assigned counsel in 1974 and for a low rate of case closure for the Pre-Sentence Counseling Program in 1974. In both cases, and due to the use of other methods described in the text, the net effect of these adjustments was to raise the rate for assigned counsel and to lower it for the pre-snetence counselors. It cannot be emphasized enough that the rate itself means nothing. What is important is the difference among the rates experienced by the three programs. In 1973, the Pre-Sentence Counseling Program experienced a rate of 15.7 per cent, assigned counsel chalked up a rate of 13 per cent, and the Public Defender Association as a whole registered 16.7 per cent. (The lower the rate the more successful the program if there are no mitigating influences.) The differences among the three are nearly inconsequential.

For 1974, the adjusted rate for the pre-sentence counselors stands at 27.7 per cent while that for assigned counsel is 21.2 per cent. The figure for the Public Defender Association as a whole is 23 per cent. However, the figure for the pre-sentence counselors may be somewhat inflated for a variety of reasons, principally that the counselors handle tougher cases than the "average," which the other two groups represent. Similarly, the rate for assigned counsel might be slightly inflated. It should be noted that, if all other factors were equal, the figure for

the pre-sentence counselors might be expected to be lower than that for the other two because this program has proportionately less probationers who might be called up for a revocation hearing because it began operations in 1972 while the other two had had people sentenced to probation beginning in 1970.

Whether the combination of all the mitigating influences on every side would significantly affect the difference between the rate for the Pre-Sentence Counseling Program and that prevailing for assigned counsel is impossible to determine. Therefore, no firm conclusions can be drawn from these data as to the relative effectiveness of the two approaches, at least by use of this method. It seems highly unlikely that the Pre-Sentence Counseling Program is more effective than is the method employed by assigned counsel when weighed on this measure in the relatively short term of 19 months. If fact, it might be speculated that the more rapid growth in the rate experienced in 1974 by the Pre-Sentence Counseling Program will continue for at least a time due to a greater number of probationers originally served by the program.

However, it is also not possible to say, based upon this measure, that the PSC program is less effective. There are too many mitigating influences to permit such a conclusion to be made. And it is entirely possible that the PSC program will have the ultimate long-term effect of cutting down the number of probation violations and additional crimes committed by clients. In other words, a violation may occur shortly (up to 3 years) after probation is granted but there may be fewer subsequent violations

than might have been expected. There is no way to determine this in the short run of 19 or 24 or 36 or even 48 months. It is further possible that persons who might statistically be expected to violate probation or commit a first new crime more than 3 years after the granting of probation will not do so because of the efforts of the Pre-Sentence Counseling Program. This, too, is impossible to tell in the short run.

It is the subjective opinion of the investigator that, on balance, there is at present very little difference in the relative performance of the Pre-Sentence Counseling Program counselors and assigned counsel in terms of an effectiveness measured by this method. It must be stressed again that this measure has no intrinsic value but merely provides one possible means of comparing programs. It permits this only because the same bases for measuring are used.

William Absher, himself a former offender, is director of the Pre-Sentence Counseling Program. In speaking about the workings of the program, he stressed the fact that "we do not counsel." Rather, "we go to the client to determine the physical, psychological, educational and vocational needs of the client and his or her family. Then we go out into the community to find the resource that best meets these needs and get a written commitment from the agency providing the resource to help our client or his or her family." Insofar as possible, the client chooses the program he/she wants from among the 4-5 options provided by the counselor, Mr. Absher noted. The client, therefore, makes a commitment to a program.

At the present rate about 550 persons charged with a felony or a probation violation will be served by the Pre-Sentence Counseling Program in 1974. A sizable number of persons charged with misdemeanors will also be given assistance. Interviews with counselors indicated that the average case takes about 3 weeks to complete. (of course, some take less time and some require more.) There have been at least four counselors in the adult program at all times during 1974. In addition, Program for Local Service volunteers and LEAA summer interns have helped with the load. The director and the office manager have also handled some cases. At an average of three weeks per felony case, assuming that no one but the four counselors worked on such cases, the average caseload per counselor would be about eight. (Naturally, at times it would be higher and at times lower.) If the average case were to take four weeks, the average caseload would be about 10.4 per counselor. All these figures assume that the director, the office manager and the interns have no felony and probation matter caseload. (It should also be noted that the office may handle an average of about 2-3 misdemeanor cases per week.)

These workload figures are merely averages and estimates. They are higher than comparable figures for the preceding year (1973) and for the juvenile office of the program (without adjusting juvenile figures upwards for the numbers of cases not recorded). However, they are somewhat lower than are estimated caseload figures for the probation officers who prepare traditional pre-sentence reports for the Adult Probation and Parole Office (approximately 11 per caseworker on a three week per case average and nearly 15

per caseworker on a four week average). However, a comparison between workload for the Pre-Sentence Counseling Program and the Adult Probation and Parole Office's new experimental program was not made because the newer program relies upon a team approach rather than upon individual caseworkers.

However, the roles of the two are somewhat different. The Probation Office handles all cases assigned to it by the Court, including some "easy" cases the Pre-Sentence Counseling unit may never see. The Probation Office is charged with looking at several sides of each case in order to balance the needs of the client with those of society. The counselors are advocates for the client since they are part of the defense team. While this means they need not consider many of the factors which the Probation Office must take into account it also may require them to go further in developing an alternative program to prison than that office need do. They do perform many of the same functions and may even do it in the same manner, making the same contacts and setting up (perhaps) the same program.

Mr. Absher pointed out a difference in attitude and orientation between the two. He said that the Probation Office developed its reports from the State's point of view (a contention not fully agreed with by members of the Prosecuting Attorney's Office) while the pre-sentence counselors prepared theirs from the defendant's viewpoint. "Their first concern," he said of the Probation Office's staff, " is protecting society. Second is helping the individual." He cited as an example the use made in Probation Office pre-sentence reports of alleged criminal activity by defendants. Mr. Joseph Lehman of the Probation Office confirmed

that such information was used, noting that such information could be useful to a judge in assessing a defendant's potential danger to society. He agreed with Mr. Absher that the roles of the two programs were different but did not feel that the Probation Office operated from the State's point of view. He supported the Pre-Sentence Counseling Program in concept (he said he was not familiar enough with it to comment about its effectiveness). Its role, he asserted, is one of advocacy. The counselors must develop programs that meet the needs of their clients and strongly encourage the court to deal with their clients in the community. Mr. Lehman felt that such a function is necessary.

It has been said that activities such as the Pre-Sentence Counseling Program save government money because they enhance the opportunity for plea bargaining to work, thereby reducing the number of costly trials. Throughout its history the Public Defender Association has been much more effective in limiting the percentage of its cases which have gone to trial than has assigned counsel. While assigned counsel have been going to trial 28.6 per cent of the time (1972) and 23 per cent of the time (1971), the Public Defender Association has attained figures such as 11.5 per cent (1971), 8.6 per cent (1972), 6.1 per cent (1973) and 7 per cent (sample of 1974 cases). The effect of the Pre-Sentence Counseling Program upon these levels is impossible to determine. It should be remembered that the Defender Association has other ancillary services, such as those performed by an investigations unit, which might affect these figures. So, too, might the fact that since the Defender Association's attorneys deal more often

with the Prosecuting Attorney's Office than do other lawyers they have had more opportunity to understand and develop a working relationship with deputy prosecutors than have most assigned counsel.

Because of an unavailability of data no attempt was made to judge the effectiveness of the juvenile office of the Pre-Sentence Counseling Program. Interviews with observers at the Juvenile Court produced mixed reactions, with a judge being highly supportive of the program and some deputy prosecutors feeling somewhat dubious about the program's effectiveness (but recognizing the desirability of providing sentencing judges with information from the defendant's point of view).

The essence of the Public Defender Association and of its Pre-Sentence Counseling unit is advocacy. It is their responsibility to develop the least restrictive rehabilitative alternative for those clients who are being sentenced. In this they differ from the Adult Probation and Parole Office which must balance the good of society with that of the client.

It is the responsibility of all three organizations which must submit pre-sentence reports (and the primary function of the pre-sentence counseling unit) to provide information to sentencing judges to permit them to intelligently dispose of a case. The fact that the judges interviewed all relied most heavily upon the Probation Office's report indicates they view their role as one of balancing the needs of the defendant with those of society.

It does not appear that the pre-sentence counselors directly save attorneys much, if any, time. They do provide a higher level of

of service to clients than would be available otherwise. The short-term effects of this higher level of service in terms of holding down the number of re-opened cases and probation revocation matters are questionable. However, attorneys who have used the program and judges who are familiar with it support it. No one knows what the long-term effects of such a program might be. Both glowing success and dismal failure could be posited.

Because of the mixed showing made by the program so far, its continuation or dissolution must depend upon a philosophy of corrections. Is the key to corrections punishment or rehabilitation? If it is punishment, then prison is the answer and programs such as this are not. If it is rehabilitation, several matters must be addressed. One is whether and when such rehabilitation should take place in the community or in correctional facilities. Here not only the relative values of varying programs to the clients but also the safety and well-being of the community must be considered. And the cost of incarceration ($13.80 per day in the King County Jail, according to Mr. Pullen of the County Auditor's Office, and $17.38 per day at the State Penitentiary and $39.35 per day at the Purdy Treatment Center for Women) must be weighed against the probability and likely dollar and social cost of a client's committing an additional offense.

Many of these decisions will be made, over time, by sentencing judges. But in voting on appropriations requests for programs legislative bodies will be making some of them, too. If the decision is made to emphasize community-based rehabilitation and correction then programs such as the Public Defender Association's

Pre-Sentence Counseling Program probably have a role to perform in providing vehicles to introduce clients into community-based corrections programs.

If such programs are shown to be successful, they probably will be continued (within funding constraints); if they are shown to be ineffective they should be scrapped. But until the longer term effects of perhaps five years of operation are known, to posit success or failure on the basis of information such as is available for this program now can be risky.

The decision on the Pre-Sentence Counseling Program is not clear-cut. It does not appear to be either a resounding success or a dismal failure when compared to assigned counsel in the short run.

If providing information to judges, without the orientation of advocacy, is desired then it can be said that Adult Probation and Parole fills the bill. Defense counsel will continue to file reports in the absence of a pre-sentence counseling project. The only apparent difference, at least on the surface, will be that Defender Association reports may not contain the level of detail about alternative programs that many of them now provide.

The King County Superior Court, reflecting the intent of the American Bar Association, has adopted a local rule (LR 101.04 (j)) concerning pre-sentence reports. It requires the submission of three reports to the sentencing judge prior to the time of sentencing. One report is to be prepared by the prosecuting attorney. This, according to Assistant Chief Criminal Deputy Michael DiJulio, notes the facts and nature of the case at hand and emphasizes the past criminal history of the defendant. The intent of the prosecutor's report is to protect society.

A second pre-sentence report is filed by the Washington State Department of Social and Health Services Adult Probation and Parole Office. Ideally, this report balances the needs and desires of the defendant with those of society.

Finally, defense counsel submits a pre-sentence report. This report is written from the perspective of the needs and wishes of the defendant and may suggest less restrictive alternatives than the other two.

All three reports make recommendations about sentencing. The recommendations can range from unsupervised and unconditional probation to commitment to state correctional facilities. Often the three parties will agree upon a single recommendation, obviating the need for three separate pre-sentence reports.

The purpose of the reports is to provide judges with well-reasoned and justified sentencing alternatives. Frequently, multi-faceted rehabilitation programs will be proposed. Judges can choose among the components and modify programs based upon the information provided. Since few judges could be expected to be well acquainted with all the resources in the community which could

be of assistance in rehabilitating an individual the provision of such information in pre-sentence reports can be a valuable tool in making sentencing decisions which optimize the interests of both the defendant and society.

The Seattle-King County Public Defender Association, a private non-profit corporation, handles about 1500 new felony cases per year in addition to a number of probation and parole revocation matters. The defendants in a large number of these felony cases either plead or are adjudged guilty of a felony (457 of 950 during the first seven months of 1974). In order to provide defense counsel with information about clients' needs and programs designed to meet these needs for inclusion in the pre-sentence report, the Defender Association has established a pre-sentence counseling program. The program was established in 1972 and will operate with funds from a Federal Law Enforcement Assistance Administration grant through May of 1975.

The Juvenile Court, a part of the Superior Court, has adopted a rule similar to that of the Superior Court regarding pre-sentence reporting. Effective September 15, 1974, written pre-sentence reports must be filed three days prior to a disposition hearing. The Defender Association's Pre-Sentence Counseling Program has been operating at the Juvenile Court for some time. It is anticipated that they will provide written information to attorneys in the same manner as do adult pre-sentence counselors.

I. PURPOSE, GOALS, OBJECTIVES

The Public Defender Association outlined its goals for the Pre-Sentence Counseling Program in a 1974 grant application. "The goal of the Project is to supply the court with meaningful sentencing

alternatives." The application noted that the project has other goals, as well. These include "supplying the parties to the action with facts and information developed adversarily from the defendant's side; supplying the defendant with a service previously unavailable; giving the defendant the opportunity to become meaningfully involved in his own rehabilitation program; creating a more equitable balance between the resources available to the defendant and those available to the state."

The stated objective of the project is to provide "more and better facts and information about the client to the courts prior to the time of sentencing, along with an individualized positive plan for rehabilitation within the community" so that "the courts would have more viable and workable alternatives to incarceration than in the past."

Based upon these stated goals and upon statements made by project staff, it appears that the purpose of the Pre-Sentence Counseling Program is to devise and develop the least restrictive sentencing alternative which meets the needs and addresses the problems of the defendant, as defined by the defendant in consultation with the counselors. In no case would such an alternative involve commitment to a state correctional facility.

II. PROGRAM DESCRIPTION

The Pre-Sentence Counseling Program is a separate division of the Public Defender Association. It is staffed by a director, an office manager, three paid adult counselors, two paid juvenile counselors, two volunteers, two persons funded by the Program for Local Service, and three summer interns. Five of the seven persons who make up the core staff and handle the bulk of the counseling

are themselves former offenders and clients of the criminal justice system. In 1972, the adult unit handled 304 cases. In 1973, over 400 clients were served. Through August 23, a total of 344 persons had received assistance from the counselors in 1974, with 153 cases already closed. During the grant year ended May 31, 1974, the juvenile unit handled 385 cases. The juvenile referral rate for 1974-75 is considerably higher than it was for 1973-74.

The typical case involves a referral to the counselors from a Public Defender Association attorney (although the counselors' services are available to assigned counsel, as well). The attorney provides some basic information about the client and the charge and often suggests the kind of program he/she feels will be most beneficial to the client and most likely to convince a judge not to commit the client to an institution.

The counselor may meet with the attorney at this point to clarify instructions. This appears to be common practice at the juvenile unit but occurs much less frequently in the adult section.

The counselor will then interview the client. Together the counselor and the client determine what problems, past and present, may have led the client to commit the offense for which he/she has admitted guilt or of which he/she has been convicted. In gathering this information, the counselor is able to obtain a life history of the client.

After identifying the factors which may have contributed to criminal or delinquent behavior, the counselor and the client determine which problems should be addressed in a rehabilitation program and, in general, how they should be addressed. The counselor, who has established relationships with a large number and variety

of resource agencies in the community, then attempts to design a program making use of these agencies. If a client has a drug or alcohol problem, contact is made with centers and agencies which treat or otherwise assist persons with such problems. If a client needs a job, contact is made with Job Therapy or the Employment Security Department or others.

If an agency indicates an initial willingness to assist a client, the counselor will often bring the client to the agency so that the client and the agency can "screen one another." The counselor attempts to get agencies to agree to accept a client and the client to commit to following the program that has been established.

The next step is for the counselor to write a report for the defense attorney outlining the client's life history, and his/her problems and delineating the program that has been designed to meet those problems in order to remove or mitigate the causes for criminal or delinquent behavior. Any commitments by resource agencies to assist a client are expressly noted.

The attorney uses this information in drafting his/her pre-sentence report and in making his/her sentencing recommendations. The attorney may have worked closely with the counselor and the client in developing the program and recommendations. The attorney might also overrule the suggestions of the counselor. This latter happens only infrequently. Many of the attorneys merely draft the counselors' reports into the proper form for pre-sentence reports and make no changes. The attorney then presents the arguments to the judge who makes the sentencing decision.

III. PROJECT EVALUATION

Information for this section was gleaned from the records of

the King County Office of Public Defense and from those of the Seattle-King County Public Defender Association. Unfortunately, complete and adequate records do not exist in either place. Insofar as data are incomplete or record keeping has been haphazard, any conclusions drawn are suspect. Comparisons will be made between the Public Defender Association and private counsel assigned to felony cases by the Office of Public Defense in terms of time spent and the cost involved in pre-sentence counseling and reporting and in terms of probation revocation hearings.

A. PRE-SENTENCE REPORTING

Both private assigned counsel and Public Defender Association attorneys prepare pre-sentence reports for sentencing judges. Some Defender Association attorneys indicated that the reports took from one to two hours to write while at least another hour was spent on each case working with the counselors. The attorneys noted that the counselors did not necessarily save them time but did provide a level of service to clients which would not be possible if they were not available.

A sample of 247 felony cases handled by assigned counsel between 1970 and 1974 produced the following results:

	Report Filed	%	No Report Filed	%	Dismissed or Not Guilty	%	No Work	%	Other	%	No Info *
1970-1973	56	36.6	56	36.6	28	18.3	2	1.3	11	7.2	19
1974	29	38.7	29	38.7	15	20.0	2	2.7	0	0.0	0
	85	37.3	85	37.3	43	18.9	4	1.8	11	4.8	19 *

* Not included in base for computing percentages.

In 1974, the reduction of charges to misdemeanors was the most common reason for no report being filed. Other reasons included failure of the defendant to appear, deferred prosecution and agreement on sentencing among those normally required to report. In prior years, there were many cases for which the lack of a report could not be so easily explained. Perhaps one reason might be that judges did not really require them or that the prosecution and the defense agreed on sentencing more often. Incomplete records for 1970 and 1971 led to a relatively large number of cases being relegated to the "other" and "no information" columns. Fourteen parole or probation revocation hearings were included in the 1974 statistics (no reports filed) while twenty-five such cases may be found in the data for 1970-1973 (five reports filed).

The information presented above was gleaned from the time records of assigned counsel. It was also possible to determine the average amount of time spent by counsel in preparing pre-sentence reports. In arriving at this figure, not only the actual time spent in writing the reports but also time spent seeking resources and background information and developing programs was included. The average for both time periods was the same - 2.2 hours per case in which a report was filed. This figure is not appreciably different from the amount of time Public Defender Association attorneys indicate they spend working with pre-sentence counselors and writing pre-sentence reports (the average seems to be about 2.5 hours. However, this might be somewhat inaccurate in that only a few Defender Association attorneys were asked the question). Both groups appear to devote the bulk of their pre-sentence reporting time to actually drafting the report.

This information is not necessarily comparable since the figure for private counsel is derived from affidavits attesting for payment

purposes how time was spent while that for Defender Association attorneys is estimated based upon conversations with the attorneys. However, this information tends to substantiate the statements of Defender Association attorneys that the pre-sentence counselors do not save them time (although if the attorneys were to provide the same level of service as the counselors it would take them longer). This statement means that, on the average, attorneys are spending as much time on pre-sentence reporting with the counselors as they would be able to without them). Therefore, it cannot be asserted that the counselors are saving funding agencies money by freeing up attorney time for a greater caseload. Neither can it be said that the presence of the counselors is requiring attorneys to spend more time on cases. It will be necessary to address the matter of the pre-sentence counselors separately from that of attorneys and to view their effectiveness and investigate their cost separately as well. The time spent by the pre-sentence counselors seems to be additional to the time spent by the attorneys.

B. PROGRAM EFFECTIVENESS

There are many ways, none of them infallible or complete, of measuring the effectiveness of a program such as this. One way would be to look at the number of pre-sentence reports filed. If more reports are being filed or reports are being filed in a greater percentage of the cases, the program is working. However, this approach ignores the responsibility of the attorney to file a report in any event. If more reports are being filed in 1974 than were filed in 1972, this could reflect a change in the defender's attitude toward reaching agreement on sentencing with the prosecutor and DSHS.

Another method would be to measure the satisfaction of clients. The thinking behind this would be that if clients were not satisfied with the work of the counselors they would be less likely to follow a program devised by the counselors. However, because of time constraints, the opinions of clients were not sampled.

A third approach would be to view the reception of the program by others involved in the adjudications process - the Defender Association's felony attorneys, assigned counsel, the prosecutor's attorneys and judges. Interviews with four of the Public Defender Association's attorneys pointed to a reservoir of support for the Pre-Sentence Counseling Program. Although these attorneys admitted that the counselors saved them little or no time, they all emphasized that the counselors improved the level of service which the Defender Association could make available to clients. This is because their workload would not permit them to provide the same level of service in the absence of the counselors. Two of them noted that the work of the counselors in developing programs and lining up commitments from resource agencies to accept clients if they were to be referred made their job of convincing judges of the utility of less restrictive sentencing alternatives much easier. All four attorneys insisted that they would usually be unable to provide these same services even if they were able to construct programs for clients because they did not have time to take clients to resource agencies and gain the mutual acceptance of clients and agencies. These mutual commitments, they said, very often swayed sentencing judges to favor the defender's recommendations. Some of the attorneys also specified the assistance the counselors give them as attorneys. The counselors can act as

messengers between client and attorney, can provide the "hand-holding" some clients need to get through a difficult time, and can explore alternative rehabilitative programs the attorneys might suggest. One attorney expressed reservations about the counselors, noting that sometimes the programs they suggest might not really be best for a particular client because of certain age, physical or emotional characteristics of the client. Another noted that sometimes he did not receive reports from the counselors in a timely manner. Although he was not certain of the reason for this, he indicated that it might be due to a heavy workload for the counselors. He joined a chorus of two of the other attorneys calling for more pre-sentence counselors.

Attorneys from the Prosecuting Attorney's Office did not shower praise on the counselors. One senior deputy contended that judges often relied upon the pre-sentence report of the Department of Social and Health Services more heavily than they did upon the reports prepared by either the prosecutor or defense counsel. Another deputy disagreed with the counselors' philosophy that commitment was never the proper course of action. Still another scored the pre-sentence counselors at the Juvenile Court for always seeking and recommending the least restrictive alternative even when such an alternative involves programs that are not "appropriate" for an individual. This, he contended, is leading to more probation revocations than in the past. However, the deputy prosecutors did stress that judges want as much information about the defendant and programs to help him/her as possible before they make their sentencing decisions. Therefore, they maintained an ambivalent attitude toward the counselors, opposing what they see to be shortcomings but recognizing the need for defense counsel to present to the court the kinds

of information provided by the pre-sentence counselors.

Several members of the private bar who serve as assigned counsel in felony cases have used or are using the pre-sentence counselors. There were 22 of these attorneys, including about a half-dozen formerly with the Defender Association, who used the services of the counselors through August 23, 1974. Some make frequent use of the counselors, some use them very rarely.

A few of these attorneys were interviewed to determine their reaction to the Pre-Sentence Counseling Program. All the attorneys were generally supportive of the program, although one complained that sometimes reports were not received as quickly as they were needed. Another indicated that she rarely referred clients to the counselors, rather, she used them as a source of information about programs.

The reaction of judges who are involved in sentencing was mixed. Four judges were asked to comment about the program. One expressed very strong support for the work the counselors were doing, particularly in juvenile cases. Another favored the program but indicated that of the three pre-sentence reports filed on a case, that prepared by Adult Probation and Parole was normally the most useful. A third judge had no knowledge of the program even though he sentences several persons each month. However, he stressed the importance of judges having as much information about defendants and options available to judges in sentencing them as possible. He, too, relied heavily upon the reports prepared by Adult Probation and Parole. The fourth judge was not available for comment. All three commenting judges supported the concept of good pre-sentence reports from the prosecutor, defense counsel and Adult Probation and Parole. This system is providing

them both with the views of the advocates (prosecution and defense) and of an agency charged with balancing the interests of society with those of the defendant. One judge discounted the contention of Defender Association attorneys that the counselor's gaining of a commitment from an agency to accept a defendant swayed judges' sentencing decisions. However, the same judge pointed to this same facet of the Pre-Sentence Counseling Program as being helpful to the bench. Another judge said the program's credibility had been increased by the realism of the counselors' recommendations. Sometimes, he noted, the counselors will recommend an even stricter program than will the probation office. He also noted that sometimes the counselors did not provide reports in a timely manner but that they were improving in this regard.

Yet another way of viewing program effectiveness is to measure the impact the program is having upon the behavior of those of its clients who continue in the community in comparison with that of assigned counsel's clients who also remain in the community. Unfortunately, the best measure presently available to do this is to look at probation revocation proceedings. This is an unfortunate and inelegant measure for several reasons, chief amont them the fact that revocation hearings can be held for every reason from apprehension for a new felony to the whim of a probation officer. Since there is no reason to suspect that the probation officers are more likely to assess technical violations of probations against persons represented by the Defender Association than against those represented by assigned counsel (or vice versa) simply because of who had represented them, it would appear that a comparison between the two would be possible. The figures for both would be inflated by technical violations. Therefore, effectiveness will be viewed in comparative, not in absolute terms.

Another potential difficulty lies in the comparability of felony cases assigned to the Defender Association and to private assigned counsel. P. Bruce Wilson, Administrator of the King County Office of Public Defense, declares that the mix between "hard" and "easy" cases is virtually the same between assigned counsel and the Defender Association. This means that neither group is more likely to serve persons who are greater probation risks than the other serves.

Another difficulty which was encountered, but one not necessarily attendant to the method, was the problem of collecting data. In some instances, not every case was checked but samples were taken. This is because little summary information about cases handled or revocation hearings existed and because of the large number of cases. Because of the way some summary information was kept, parole violation hearings were included with probation revocation hearings. There were comparatively few parole matters. Insofar as a disproportionate number of these were handled by assigned counsel the figures for probation hearings for assigned counsel might be inflated slightly.

Mr. Wilson indicated that it is his office's normal practice to assign to the Defender Association only probation cases where the client had previously been served by the Association. There are, of course, some exceptions. Assigned counsel receive four kinds of probation cases:

(a) Those for clients previously served by assigned counsel;

(b) Some of those for clients previously handled by privately retained counsel;

(c) Some of those for clients previously handled by Defender Association attorneys who have left the Association (usually the assigned counsel in such a case is the same attorney who handled it previously);

(d) Those for clients previously served by the Defender Association but who do not want to be represented again by the Defender Association. (In those cases where a client does not want to be served by the same assigned counsel he/she usually is referred to a new assigned counsel rather than to the Public Defender Association.)

It would not be proper to charge assigned counsel with all the revocation actions for which they provide defense since some of the clients had previously been handled by retained counsel and by the Public Defender Association. However, it is proper to charge assigned counsel as a class with those actions for clients handled originally by assigned counsel regardless of whether the same attorney handled both the original offense and the revocation section. In order to correct for distortions, the identity of the prior attorney for each defendant sent to assigned counsel for probation action from January 1, 1973 through July 31, 1974 was sought. Those originally handled by assigned counsel were charged to assigned counsel while those originally handled by the Public Defender Association were charged to the Public Defender Association. Those originally handled by retained counsel and those whose probation stemmed from court action taken outside King County were not considered further. Those for whom no information about prior attorney was scanty (e.g., no name or no designation as to whether the attorney named was assigned or retained) were usually attributed to assigned counsel. The criterion used was the subjective judgment of the investigator based upon the name of the attorney and his/her participation as assigned counsel in other cases or upon the statement of financial status of the client.

Sometime such cases were attributed to retained counsel but never were they attributed to the Public Defender Association. Also dropped from consideration were cases involving violation of a probation or parole the original offense leading to which was adjudicated prior to 1970. This was done because prior to that year the system of court appointed counsel, rather than the present one involving the the Public Defender Association and assigned counsel, was in use. Because of the policy of the Office of the Public Defense to assign to the Public Defender Association only those probation matters involving previous clients of the Association, PDA summary figures for probation matters were not adjusted to take into account prior attorney. It is likely that the Defender Association handled only a few probation matters between January 1973 and July 1974 which had not had Defender Association involvement on a previous charge.

Included in the statistics for the Pre-Sentence Counseling Program and for assigned counsel are re-opened cases. Most of the re-opened cases for the Defender Association involve probation matters, most of the much smaller number of re-opens for assigned counsel do not. The reason for the difference is one of definition. The Defender Association includes probation matters which arise within one year from the closing of a case as re-opened cases while the Office of Public Defense appears to differentiate between cases re-opened for sentence modification or other matters and probation revocation actions. However, in order to insure that those Defender Association probation matters included under re-opened cases were not excluded from a consideration of probation matters generally while taking care that comparable cases for assigned counsel are also considered, all re-opened cases have been included in probation statistics. This inflates the number of probation matters somewhat but provides for consistency of data.

As has already been noted cases adjudicated prior to 1970 were not considered. However, for both assigned counsel and the Defender Association as a whole cases subsequent to 1970 whose defendants were accused of probation violations in 1973 and 1974 were included. However, the Pre-Sentence Counseling Program did not begin until 1972. This means that up to two more years worth of clients of assigned counsel and the Defender Association as a whole than of the Pre-Sentence Counseling Program's clients were eligible to be accused of violations. Since the base is the same in all cases, the number of cases closed by each group in 1973 and in part of 1974 (including probation matters) this would lead one to expect a somewhat higher rate of revocation matters occuring for assigned counsel and for the Defender Association as a whole, than for the Pre-Sentence Counseling Program, all else being equal.

The years 1973 and 1974 were the only two used for three reasons:

(a) Records for 1972, particularly for the then new Pre-Sentence Counseling Program, appear to be incomplete;

(b) Disproportionately few revocation matters would be likely to occur for the Pre-Sentence Counseling Program in 1972 since it was new and did not have large numbers of former clients already on probation as did the Defender Association as a whole and assigned counsel;

(c) The Pre-Sentence Counseling Program (PSC) did not exist prior to 1972.

The rates were derived by dividing the total number of probation/parole/re-opened matters attributable to each group in a given year by the estimated number of closed cases handled by that group in that year that resulted in sentencing for a felony or resolution or a probation matter. These rates are merely intended to provide comparisons and mean little in and of themselves. A correction factor has been applied to 1974 rates to compensate for assigned counsel's

closing a larger number of cases in proportion to the Defender Association in that year than in 1973. This might inflate a bit the relative standing of assigned counsel with regard to probation matters but it is necessary in view of assigned counsel's considerably higher base in 1974 which, if left uncorrected, would deflate assigned counsel's rate with respect to alleged violations filed against persons placed on probation prior to 1974. A better measure would have been to compare the number of probation revocation matters with the number of persons served by each group who had been placed on probation. However, such information is often difficult to glean from assigned counsel's records. Therefore, the less elegant measure described above was used.

A degree of distortion is built into the figures by the fact that so many 1974 cases remain open. Because probation matters usually take considerably less time to handle than do new felonies, it might be expected that a higher percentage of them have been closed than of felony cases. This would tend to push up rates somewhat. However, this would occur for all three groups and should have a negligible effect upon comparisons. The Pre-Sentence Counseling Program has been closing cases at a lower rate than have the others. Therefore, a separate footnote provides information about the PSC program as if it were closing cases at the same rate as the Defender Association as a whole.

The following table breaks down the status of probation matters handled by assigned counsel in 1973 and 1974 in terms of the affiliation of the attorney assigned to the original case before its re-opening or prior to the start of revocation proceedings:

Year	Number of Cases	Originally Handled By A/C	Retained Counsel	PDA	No Information	Not Originally a King County Case	Prior to 1970
1973	131	60	17	11	12	7	24
1974	109	64	19	12	9	2	3

A/C = Assigned Counsel

PDA = Public Defender Associaiton

The next table presents comparative information for assigned counsel, the Public Defender Association as a whole, and the Pre-Sentence Counseling Program for 1973 and 1974 probation matters and re-opened cases.

Group	Cases Closed	Est. % Sentenced [a]	Est. # Sentenced [a]	Reopens and Probation Revocation Hearings Originally Assigned [b]	%
1974					
Assigned Counsel [c]	668	70.0	468[d]	64	13.7[d]
Pre-Sentence Counselors [e]	153	70.3	108[e]	57	52.8[e]
Public Defender Assn. [c]	808	83.4 [f]	674[f]	155	23.0
1973					
Assigned Counsel	610	75.5	461	60	13.0
Pre-Sentence Counselors	416	81.2	338	53	15.7
Public Defender Association	1732	59.5[f]	1030[f]	172	16.7

a - For the Pre-Sentence Counseling Program these figures were estimated by sampling 101 dispositions of closed cases for each year (1973 and 1974). For Assigned Counsel a sample of 50 was used for 1974 and 53 for 1973. Included are guilty pleas, trial findings of guilt, closure of probation matters, and cases for which sentences of commitment to prison or probation were meted out when records did not indicate plea or trial result.

b - Includes for PSC and PDA cases originally handled by them but handled on revocation by assigned counsel. This amounted to 11 cases for the PDA in 1973 and 12 in 1974. For the Pre-Sentence Counselors these figures were at 1 and 3 respectively.

c - Through July 1974. Pre-Sentence Counseling Program cases are current through mid-August. Because many of the probation cases are still active the totals do not reflect reported closed probation matters.

d - Because of a marked increase in felony filings in 1974 over 1973 and because the number of cases which can be assigned to the Public Defender Association is limited by contract, assigned counsel were permitted to take considerably more cases in the first seven months of 1974 than during the comparable period in 1973. In fact, more cases represented by assigned counsel were closed in the first seven months of 1974 than in all of 1973. This permits an expansion of the base (number sentenced), thereby permitting a decrease in the

rate of reopens and revocation hearings for assigned counsel as opposed to the Public Defender Association whose caseload is held relatively constant. In order to correct for this it was decided to establish a new base of number sentenced for assigned counsel in 1974. This was computed by maintaining in 1974 the relationship of number of clients represented by assigned counsel who were sentenced to the number of clients represented by the Public Defender Association who were sentenced, which prevailed in 1973 (.448:1). This resulted in an adjusted estimate of 302 sentences for clients represented by assigned counsel in 1974. The percentage of re-opens and revocation hearings jumps, by means of the new base, from 13.7 to an adjusted rate of 21.2. (If cases closed had been the constant, the new base would have been 285 and the rate 22.5 percent.)

e - Because such a low percentage of the 1974 cases handled by Pre-Sentence counselors had been closed when this investigation was undertaken (44.5 percent) an estimate of the rate of re-opens and revocation hearings has been made assuming the PSC 1974 sentencing rate and the PDA 1974 case closure rate of 85.1 percent. This yields an estimated number of cases closed of 293, an estimated number of sentencings of 206 and a percentage of re-opens and revocation hearings of 27.7 percent.

f - Includes commitments to Division of Corrections, persons given suspended sentences and probation, persons found or pleading guilty for whom disposition is not known and a figure derived by using the same probation case closure rate as prevailed for assigned counsel particularly in 1974. This overestimates the PDA base (thereby

keeping down its rate) by not taking into account reduction of charges to misdemeanors. It also reflects the 1973 higher rate of dismissals and acquittals for the Defender Association than for assigned counsel and the larger number of cancelled cases for the PDA. These are reasons for the sentencing rate of the PDA to be lower than that for Assigned Counsel in 1973.

NOTE: Those revocation and re-opened cases not assigned to the Pre-Sentence Counseling Unit which had been served by the PSC on the previous charge but for whom the revocation and/or re-opening occurred during the same calendar year as the original counseling were not included in the column for re-opens and revocation hearings for the PSC. This was done because some of these may have been continuances of the same case as originally handled by the PSC. No similar corrections were made for assigned counsel or Public Defender Association figures. From data on clients originally served by the counselors and who were re-assigned to the counselors on revocation matters, it can be estimated that the use of the preceding method could result in an undercounting of 8 cases in 1973 and 4-5 in 1974. (A sample of 39 reopens and revocations taken from PSC closed records for 1973 indicates that 46.2 percent were originally closed in 1973 and re-opened later that year (but not on a continuance). The figure for 1974 stands at 30 percent (3 of 10 cases).)

The breakdown of re-opens and revocation hearings for clients counselled by the PSC should be noted. Of the 53 such cases recorded for 1973, 43 were extracted from PSC records, one was found in records for assigned counsel and the other nine were discovered in a search of the docket files of the Public Defender Association. Of the 57

cases recorded thus far in 1974, 12 came from closed PSC records, 20 from active PSC files, three from records of assigned counsel and 22 from PDA docket files. Care was taken to insure that no client appeared in the PSC statistics more than once for the same re-open or revocation hearing. (1974 PSC cases (active) were not cross-checked with records for assigned counsel. Therefore, PSC figures for 1974 may be slightly undercounted.)

It must not be forgotten that the rate included for each program is not a recidivism rate. Such a rate would be very difficult to compute in the short run even with the best of data and be readily defensible. The rates in this document are comparative measures only and must be used only in comparing other rates in this document. They may constitute a proxy for a short-term estimate of comparative recidivism. However, their use in that manner would be questionable.

The following table was derived using all the adjustments described in footnotes to the preceding table.

Group	1973 Rate	1974 Rate	% Change
Assigned Counsel	13.0	21.2	63.1
Pre-Sentence Couns	15.7	27.7	76.4
Public Defender	16.7	23.0	37.7

The 1974 figure for the Pre-Sentence Counseling Program may be unduly high in relation to the others for several reasons. The first may be due to inflation in the estimated number of persons represented by the Public Defender Association who were sentenced. This figure was used to adjust that for assigned counsel. It is not readily possible to determine the magnitude or even the existence of this inflation. However, it should be noted that to bring

the rate for assigned up to 27.7 per cent (the same as for the Pre-Sentence Counseling Program) while maintaining the 70 per cent sentencing rate would reduce the estimated number of clients sentenced to 231 and the number of cases closed to 330. This would require a lower per month closure rate of cases for assigned counsel in 1974 than occured in 1973. This indicates that to assume the rates for assigned counsel were actually as high in 1974 as those for the Pre-Sentence Counseling Program may not be justified since to do so would require overcompensating for even a one-third inflation factor in the estimated number of persons represented by the Public Defender Association in 1974 who were sentenced. Although there is no way to prove or disprove a contention that the figures are inflated by that much, it seems highly unlikely that they would be.

A second reason the figures for the Pre-Sentence Counseling Program might be higher than those for the other two groups in 1974 is that almost three more weeks worth of cases are included in PSC figures than are included in the others. Because of the means by which records are kept in the PSC program it would have been quite time-consuming to have excluded cases received in August. However, unless re-opens and probation matters made up a disproportionate share of the PSC's August referrals the practical effect of the additional three-week period should be negligible. The reason for this is that PSC case closure figures have already been adjusted upward to the same percentage level as prevailed in the Defender Association as a whole through July. If anything, therefore, the base upon which the PSC rate of 27.7 per cent was computed is inflated (which causes a lower rate).

A third reason might be that there has been no effort to close out cases as might occur at year's end. However, it is unlikely that such an effort would be any more likely for a Pre-Sentence Counseling Program whose grant year ends May 31 than for assigned counsel who may want to close out cases at the end of quarters for tax purposes or for the Public Defender Association as a whole whose funding year ends December 31 (at least as far as its two major local funding sources are concerned).

A final reason could be that the pre-sentence counselors handle a disproportionate share of the difficult cases and, therefore, might be expected to have a somewhat higher rate than assigned counsel or the Public Defender as a whole. No effort was made to formally investigate this possibility because it would have required a thorough search of nearly 4000 case records and the construction of a scale showing difficulty of case. Such a scale would have been desirable but would have required formulas weighting various kinds of offenses, prior criminal records, personal background of clients and other factors. However, a scan of the records of the programs leads one to intuit that the counselors might, indeed, have handled more of the difficult cases than might have been expected if the Public Defender Association attorneys, who are their primary source of clients, had assigned cases to the counselors randomly. Persons accused of offenses such as rape and robbery appear to have been sent to counselors more often than might have been expected with random assignment. The same may be true for persons accused of drug-related crimes (especially VUCSA--Violation of the Uniform Controlled Substances

Act). Insofar as such persons are more likely to be called up for probation revocation hearings than the average, the Pre-Sentence Counseling Program might be expected to have a somewhat higher rate than the other groups. The Public Defender indicated that persons placed on probation who had been served by the pre-sentence counselors were often "harder" cases and more likely to be involved in revocation proceedings than were the "average" probationers. Therefore, he concluded, the percentage of revocation hearings for persons served by the pre-sentence counselors should be expected to be higher than the average. This argument is really the same as that of the counselors handling more difficult cases. Mr. Ginsberg, the Public Defender, went one step further. For a variety of reasons, perhaps notably because of the much greater day-to-day experience of Public Defender Association attorneys than of the private bar in dealing with felony cases, a disproportionately low number persons setnenced for felonies who were represented by the Defender Association were sentenced to State correctional facilities, according to Mr. Ginsberg. He continued that this meant that a disproportionately large number of the "tough cases" served by the pre-sentence counselors received probation. There is no way to verify this.

Mr. Ginsberg stated that just 9 percent of the persons sentenced who had been represented by the Defender Association were sentenced to prison. The average for King County in 1973 for felony convictions was 15.2 percent (up from about 10 percent in 1971 and 1972). A sample of 112 felony cases represented by assigned counsel in 1973 was taken. Of the 76 found or pleading guilty to felonies 5 (6.6 percent) were sent to State correctional facilities; another 5 (6.6 percent) were

sent to the King County jail or placed on work release while another one died prior to sentencing. A sample of 101 felony cases in which the defendant was served by the pre-sentence counselors in 1973 was taken. Of the 73 found or pleading guilty to felonies, 18 (24.7 percent) were sent to State correctional facilities while 2 others (2.7 percent) were sentenced to the King County Jail or to work release. Of a similar sample of the same size (101) taken for 1974, 63 were found or pleaded guilty. Of these, 9 (14.3 percent) were sentenced to State correctional facilities while 7 others (11.1 percent) were sentenced to the King County Jail or were placed on work release. In both cases, the percentage sentenced to State correctional institutions dropped significantly between 1973 and 1974.

These figures tend to substantiate the claim that the pre-sentence counselors handle more difficult cases than the average. However, the figures for average percentage of persons sentenced who went to prison for assigned counsel is not so different from the stated average of the Public Defender Association to permit the expectation that rate for the Pre-Sentence Counseling Program should be appreciably higher than that for assigned counsel. Further, there are no figures to indicate directly that less people are being committed as a result of the Pre-Sentence Counseling Program alone. It would seem, therefore, that this entire argument is merely part of that concerning difficulty of cases.

It should be remembered, however, that in determining the re-opens and revocation matters attributable to assigned counsel many were so attributed on the basis of scanty evidence. While this had no effect upon the figures for the Pre-Sentence Counseling Program it may have had the effect of inflating the rate for assigned counsel. It is possible that this factor might mitigate somewhat the effects upon the differences in rate between the Pre-Sentence Counseling Program and assigned counsel which may have been caused by the assignment of more difficult cases to the counselors than might have been expected had there been random assignment.

The same arguments concerning difficulty of cases and possible over-attribution of probation cases to assigned counsel hold for 1973 as well as for 1974.

The two tables provide some interesting information. In 1973, the differences among the rates for the three groups were very nearly inconsequential (although that for the Public Defender Association as a whole was slightly higher than that for the other two). The unadjusted figures for 1974 show more pronounced differences. However, after adjustments have been made the difference between assigned counsel and the Public Defender Association as a whole becomes barely noticeable. But the figure for the Pre-Sentence Counseling Program remains considerably higher than those registered by the others. As has already been noted, circumstances, particularly an assignment of more difficult cases to the PSC unit,

might mitigate this condition somewhat.

Another possibile explanation does not leave the PSC program in as good a light. Assigned counsel and the Public Defender Association were handling cases in 1970 and 1971, before the Pre-Sentence Counseling unit was established. This means that the number of persons on probation (and, therefore, the number of potential violators) is higher for these two than it would have been if they had begun their work in 1972. The marked increase in the percentage relationship borne by probation matters to closed cases for the Pre-Sentence Counseling Program in 1974 when compared with 1973 (using the adjusted figures) may be at least partially the result of a much expanded number of persons who have been served by the program. And this might be a portent of future occurrences.

It must be noted that the rate for all three groups is up considerably over 1973 levels thus far in 1974. Part of the reason might be a large number of as yet unclosed cases, which deflates the base. Another factor might be that better records are being kept in 1974 than were maintained in 1973 (although the effect of this is probably negligible except, perhaps, in the case of the Pre-Sentence Counseling unit). Another reason could be the growth in the number of persons served by the three groups in the past who are on probation. Part of the increase may simply reflect the current upsurge in reported crime. Part I reported offenses in unincorporated King County were up 17.7 per cent in an eight month period from August 1973 to March 1974 in comparison with levels a year earlier. Although the figures for the Public Defender Association as a whole went up the least in 1974, those for the Pre-Sentence

Counseling Program shot up the most. However, it is not possible to separate the two cleanly because some of the cases handled by the counselors were handled for assigned counsel (although most were handled for Defender Association attorneys).

It must be remembered that the rate presented in these tables means little in itself. Its value lies in its use as a measure of comparison between and among groups engaged in similar activities. It can do this because each of the groups is compared upon the same base defined in the same manner with the rate computed in the same way. The rate might also be said to give a very rough indication of the relative effect of each group's efforts upon a short run view of recidivism to the extent that probation revocation and the other matters included with it can be said to represent a proxy for recidivism. However, this last point should not be emphasized. The worth of this method lies in comparison, not in any absolute.

III. ADULT PROBATION AND PAROLE

As noted before, three pre-sentence reports are filed with the judge in any case where the prosecution, the defense and the State Adult Probation and Parole Office do not agree on a sentencing course The Adult Probation and Parole Office is charged with developing a report which takes into account both the interests of the defendant and the interests of the client. Their credibility for doing so may be illustrated by the fact that all three judges interviewed indicated that they relied heavily upon Probation's report.

The Probation OFfice submits pre-sentence reports in all cases in which the Court asks it to do so. About 100-125 cases are assigned each month. (This does not include re-opens which are handled by another unit.) Of these cases, 56 percent are handled by the traditional pre-sentence unit. The other 44 percent are dealt with by special multi-disciplinary teams funded under a grant.

The reports include an outline of the defendant's social history and past criminal behavior and, for those performed by personnel under the LEAA grant, may include psychiatric and medical evaluations. The probation officer preparing a report will contact law enforcement officers, the client and others knowledgable about the client. He/she will also often design a program for rehabilitation of the client, assessing both needs of the individuals and the potential danger the individual poses to society. The probation officer looks to the community to meet the client's needs and will often refer a client to a community agency or at least discuss the client's needs with an agency to determine whether or not a referral is appropriate and likely to result in the client's acceptance by the agency. Occasionally, the probation officer will accompany a client to

agencies. This last service is more likely under the grant-funded program since the two 3-5 member teams handle about 50 cases per month between them while each probation officer under the traditional program serves about 16 clients per month.

Perhaps the most salient features of the grant-funded unit are the team approach and the availability of more sophisticated diagnostic services. The teams also have community resource specialists who are charged with understanding and contacting community agencies which can assist clients.

One significant difference between the approaches of the two programs is that the Probation Office makes clear to all that nothing said will be confidential while the Pre-Sentence Counseling unit can and will maintain confidentiality with regard to client statements if that be the wish of the client. Another difference might arise from the fact that most of the paid pre-sentence counselors are former offenders themselves. They may be able to build up better rapport with clients and thereby extract more information and get further cooperation from them. However, the actual functions of the two operations are very similar. Their respective roles, one as advocate for the client, and the other as balancer between the interests of the client and those of society, are different.

IV. PRE-SENTENCE COUNSELING IN THE JUVENILE ARENA

Almost half the staff of the Public Defender Association's Pre-Sentence Counseling Program deals exclusively with the problems of juveniles. Since the counselors exist to assist attorneys this is not unreasonable since the Defender Association has almost as many attorneys assigned to Juvenile Court as to its felony division (a full-time equivalent of about seven at Juvenile Court and ten in the felony division).

Despite the importance of the juvenile section of the Pre-Sentence Counseling unit no attempt was made to measure its effectiveness. There are several reasons for this. First, there is virtually no comparison group against which the performance of the juvenile section can be measured since relatively few juveniles are represented by assigned counsel. Second, because of informal adjustments and other mechanisms, a large number of juveniles never reach the formal sentencing/disposition stage - including some who are served by Pre-Sentence Counselors. Third, even if a youth is placed on probation the intervention of his/her majority may make checking recidivism difficult since records might be both at the Juvenile Court and at Superior Court. Fourth, the Prosecuting Attorney began maintaining probation revocation data only in May, 1974 and such information is hard to obtain from Juvenile Court records. This means that no baseline information about performance prior to the inception of the juvenile part of the Pre-Sentence Counseling Program in late 1971 is readily obtainable. Finally, the Pre-Sentence Counseling unit at the Juvenile Court itself admits that its own records may be incomplete primarily because of the more

informal nature of the Youth Service Center/Juvenile Court. (Written pre-sentence reports were required only as of September 15, 1974.)

It should be remembered that the Prosecuting Attorney and the caseworkers at the Youth Service Center also can and do make disposition recommendations to Juvenile Court judges. The reactions of deputy prosecutors to the work of the Public Defender's pre-sentence counselors at the Juvenile Court has already been noted. Although they were highly impressed with the work of Public Defender attorneys and were cognizant of the help which information prepared by persons such as the pre-sentence counselors could be to judges, they were critical of the appropriateness of some of the counselors' recommendations.

One judge, who has had experience with the counselors in both adult and juvenile settings, terms the work of the juvenile section of the Pre-Sentence Counseling Program "very helpful." He noted that the counselors "will come up with something everyone else has missed" and that the programs they have developed can sometimes change his opinion.

A Public Defender Association attorney stated that the counselors were used normally only on cases where institutionalization of a youth is a real threat. He estimated that of the 50-150 cases active at any one time, 10-25 would be referred to the counselors. He noted that the biggest reason for institutionalization of a juvenile was the lack of an alternertive living situation. He felt the counselors had been exceptionally successful in lining up such alternatives for youths. The attorneys, he claimed, do not have sufficient time or the right contacts to do this. He also felt

that since most of the counselors had been clients of the juvenile justice system themselves, they could communicate better with juveniles at the Youth Service Center than could the social work - trained caseworkers. The Defender Association attorney joined with the deputy prosecutors in noting that the services provided by the Youth Service Center's caseworkers were uneven. Some caseworkers are extremely conscientious, and even innovative, they said, while others are not. They disagreed on the orientation of the caseworkers, with the Defender stating that the caseworkers work normally in the interest of the State and the prosecutor noting that many caseworkers are very much oriented toward the client.

As with adults, juveniles work with the counselors to develop their own programs. The counselors in the juvenile section maintain that working with juveniles is more important than working with adults because if a juvenile is not treated in the proper way he/she may show up in adult count in a few years. The counselors in the adult section claim that prison does not help in rehabilitation. Those in the juvenile section are emphatic that commitment never helps a youth.

In 1973, the juvenile section handled 229 cases, an average of 19 per month. During the first four months of 1974 a total of 116 clients were served, an average of 29 per month. The juvenile section seems to have a staff of five, one of whom works primarily on special projects such as organizing a project to send youths to camp. It appears that this person does handle some cases as well. However, even if he did not, the average number of new cases per month per counselor would be about seven. This figure is deceptively low for two reasons. First, a repeat client is normally not

counted a second time even if he/she reappears because of a new offense. Second, it seems unlikely that records are maintained on all clients served.

The counselors exstimate that a client is served in a span of 2-3 weeks and that 50-100 clients are being served at any one time. These figures seem extremely high in view of the project's published statistics. However, it is possible that re-opened and informally-serviced cases do raise caseloads to that amount. If three weeks were the average time spent on a case and cases were received at an average rate the average counselors would have slightly more than five cases active at any one time, according to published statistics. However, the unit was not fully staffed during all of 1974. Even if a staffing level of three counselors is assumed, the average number of reported new cases per counselor per month would total about 9.7 and the average caseload would be about seven per counselor at any one time. It would appear desirable, in order to clear up confusion about clients served, that the juvenile office maintain more complete records.

END