

August 6, 2009

To: Public Safety, Human Services & Education Committee

From: Dan Eder and Peter Harris, Central Staff

Re: Jail Capacity Study

Executive Summary

In last fall's budget deliberations, the City Council's Budget Committee adopted a Statement of Legislative Intent (SLI, Attachment 1) calling for a jail capacity study. The goal was to "assess whether the City's use of jail beds can be reduced by adopting a more treatment-focused approach toward the enforcement of certain lower level drug offenses. . . . When combined with changes in King County's approach to felony prosecution of these and other unrelated crimes, it is possible that a shift in the City's arrest policy towards lower level drug offenders could significantly affect the county-wide demand for jail services." The SLI called for the creation of an Advisory Group, a Project Team, and this Central Staff report to the Public Safety, Human Services & Education Committee.

The main ideas the SLI wanted to test were: How much can Seattle policy changes reduce the use of jail for the County's drug felons? Would such a reduction in County jail use be enough (alone or in concert with other policy changes or planning assumptions) to eliminate or to defer significantly the need for a new jail for misdemeanants from Seattle and other North/East Cities (NEC)?²

As a point of reference, currently available data and projections by the County and NEC suggest that between 2018 and 2022 the average daily population (ADP) of NEC misdemeanants will outnumber available County jail space by between 300 and 500 inmates.

- We estimate that treating all drug offenders arrested in Seattle with the most effective programs available would reduce recidivism by enough to lower the average daily population in King County's jail by approximately 25 inmates.
- We estimate that eliminating all jail time for Seattle's lower-level drug offenders would reduce the average daily jail population by approximately 27 to 37 inmates. (Consistent with input from the Advisory Group, we define "lower-level drug offenders" throughout this report as the population of individuals with drug charges (1) as the most serious offense at the time of arrest and (2) up to but not including the level of offense eligible for King County's Drug Diversion Court.³)

² The North/East Cities is a jail planning group formed by Seattle and the other cities in northern and eastern King County. See www.necmunicipaljail.org.

³ King County Drug Diversion Court is widely viewed as a successful program for reducing recidivism through enhanced supervision, monitoring of compliance with programs such as addiction treatment counseling, job training,

- Thus, we conclude that even if all drug offenders arrested in Seattle (not just lower-level drug offenders) were provided drug treatment or other services designed to reduce their recidivism, and even if there were no jail penalties for Seattle’s lower-level drug offenders, the likely reduction in jail use would be an order of magnitude less than the amount of jail space needed by NEC misdemeanants.

These estimates are not precise, but they suggest that treating drug offenders and reducing jail penalties for lower-level drug offenses are not approaches that appear likely – by themselves absent other changes – to eliminate the need for additional jail capacity.

It is important to note that there are many uncertainties in the factors creating demand for jail space; and this report discusses some of the key planning assumptions, trends, and conclusions that form the baseline projections. The baseline projections are not immutable, and in fact the County recently refreshed its analysis and changed some conclusions about its anticipated near-term jail capacity even during the course of discussions with the Advisory Group and Project Team. One could question whether the King County Executive’s recent judgment that the County will have space for NEC misdemeanants only through 2015 is too conservative, but this decision and its associated risks are ultimately the County’s.

In the meantime Seattle and the other North/East Cities must make their own decisions about jail capacity planning. This report reflects only the latest available data and forecasts of anticipated jail use from King County and the NEC. As additional data becomes available about actual jail use and trends, it is possible that anticipated forecasts could change again. While such changes could affect long-term projections about overall jail use, they are not likely to affect the conclusions about the impacts of strategies focused on lower-level drug offenders. Their share of overall jail demand is low enough that significant impacts will not result from policies that focus on this group alone.

mental health counseling. Eligibility standards for King County Drug Diversion Court were increased in fall 2008 in conjunction with changes in King County Prosecuting Attorney’s Office filing and disposition standards that reduced jail use for individuals with drug offenses less serious than those eligible for Drug Diversion Court. New eligibility standards for Drug Diversion Court include (among other considerations) possession of at least 3 grams of cocaine, heroin or methamphetamine; or at least 100 grams of marijuana. See discussion in Section 5 and Attachment 9.

1. Report Highlights and Findings

1.1. Analytical Framework

Some argue that reducing jail use for lower-level drug offenders (through treatment or more direct changes) could have beneficial effects by freeing up scarce public safety resources for other higher priorities, reducing disruption to families of the jailed offenders, and other considerations. Others argue that there could be adverse effects on public safety by increasing the prevalence of such criminal behavior. We do not offer any opinion on the merits of these relatively charged questions. Instead, our analysis is limited to the more direct effects that such strategies would likely have on jail use and by implication on jail capacity planning.

Reducing the jail space occupied by any group of people requires reducing the number of offenses they commit or reducing the average amount of time they spend in jail per offense. Reducing the number of offenses they commit requires some form of crime prevention program, such as treatment for individual offenders. Reducing the average amount of jail time per offense requires a change in the law, a change in the sentences that courts give under the law, or a change in the way that prosecutors or police enforce the law.

Our first approach was to evaluate the likely reduction in jail beds that could be achieved by treating drug offenders (or providing them with other similar services designed to reduce future offenses). This approach leads to the estimated ADP reduction of 25 inmates. The size of jail bed reduction depends on the number of offenders treated, the baseline number of future offenses they would be expected to commit without the treatment, the amount of jail time they would spend for these baseline offenses, and the effectiveness of the treatment in changing expected behavior. We assume all drug offenders arrested in Seattle would be treated, without respect to cost; and we assume the treatment would be as effective as the most effective known evidence-based treatment programs for adult offenders.⁴

Our second approach was to evaluate the number of jail beds that would be saved by eliminating all jail time for Seattle's lower-level drug offenders, including misdemeanants and lower-level felons. This approach does not assume a model of treatment alone, but rather a policy approach that also changes enforcement and/or penalties for those who do offend. This approach produces the estimate of an ADP reduction of between 27 and 37 inmates.

We end up with a range here because developed two plausible scenarios under this approach. One scenario is tied to current average penalties, the other to the higher penalties that were imposed until recently. Based on a budget shortfall, the King County Prosecuting Attorney's Office (KCPAO)'s recently adopted new filing and disposition standards that reduce the average amount of jail time spent by eligible felony drug offenders. In recognition of the possibility that the KCPAO may reverse this decision if the County's budget situation improves, we also

⁴ See "Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates," Steve Aos, Marna Miller and Elizabeth Drake, October 2006; available at www.wsipp.wa.gov.

evaluated the number of beds that would be saved by eliminating the greater amount of average time such offenders used to spend in jail under prior to the change in KCPAO standards.⁵

1.2. Why Did We Include the Second Approach and Evaluate Reductions in Jail Penalties for Lower-Level Drug Offenders?

We began this study by assuming our main focus would be on the potential for reducing the jail population by treating drug offenders and thereby reducing their anticipated future rate of offending, rather than by reducing jail time for some offenses. We modeled our thinking on the Washington State Institute for Public Policy's review of policy options for reducing prison construction, which does not consider reducing the use of prison by reducing penalties.⁶ This is why we began with the first approach described above.

We expanded our scope to include the second approach and an analysis of jail time reductions for lower-level drug offenders for two reasons. First, some Advisory Group members suggested we analyze a pre-booking diversion program in which police officers would refer lower-level drug offenders to treatment services instead of booking them into jail. The proponents of this approach argued that the potential change in future jail use for lower-level drug offenders would not be limited to the effects of the treatment services. Instead, the pre-booking diversion referrals themselves would result in a reduction in jail use. Rather than just affecting jail use through reduced recidivism, these types of diversion programs also reduce jail use by directing those who have offended away from the standard judicial processes and its associated penalties (including jail time).

Second, we were urged by some Advisory Group members to consider a new approach to drug arrests in light of increasing demands for drug law reform nationally and locally. The core of drug law reform is reducing jail or prison penalties for at least some drug offenses, with or without related conditions. While changes in drug law cannot be made at the local level, changes in enforcement strategy could be used to mimic actual modification to the law. The Council did not ask us to evaluate drug law reform, and we offer no opinions here about whether reform would be a good thing.⁷ However, our second approach to modeling jail use impacts does allow us to illustrate the potential impacts of reform targeting lower-level offenders.

⁵ In practice, eliminating jail bookings for some offenders could be combined with some form of treatment or other services. One implication is that our estimates of potential jail bed savings from these two sources somewhat double-count. This does not materially affect the results.

⁶ 2006 WSIPP report, *supra*.

⁷ Those interested in a brief summary of the most compelling arguments for drug law reform could well start with the following quote from Herbert Packer which we encountered during our research:

For over fifty years the United States has been committed to a policy of suppressing the "abuse" of narcotic and other "dangerous" drugs. The primary instrument in carrying out this policy has been the criminal sanction. The results of this reliance on the criminal sanction have included the following:

- (1) Several hundred thousand people, the overwhelming majority of whom have been primarily users rather than traffickers, have been subjected to severe criminal punishment.
- (2) An immensely profitable illegal traffic in narcotic and other forbidden drugs has developed.
- (3) This illegal traffic has contributed significantly to the growth and prosperity of organized criminal groups.

1.3. Demand-Driven and Resource-Driven Approaches to Jail Planning

In deciding what directions to take our work, we were faced with one other fundamental analytic question. Should we consider only demand-driven models, or should we also consider resource-driven approaches as well?

At the outset, we identified two basic paradigms for planning for jails. One, which we could call demand-driven, is to base such planning on the best available forecasts of demand for jail space, including evidence of the potential effects on jail demand of any crime prevention efforts, alternatives to incarceration and changes in penalties. Our first two approaches (evaluating the effects that treatment and jail reduction for lower-level offenders will likely have on jail use) fit within this paradigm.

The other paradigm, which we could call resource-driven, is to decide first how much jail capacity to create and then restrict jail use accordingly. One version of a resource-driven policy would be simply not to create more jail space than exists now, and then figure out how to use the space in a way that fits the existing supply. Some argue that using resource-driven paradigm would produce pressure for criminal justice reform, including drug law reform, by forcing the legal system to reserve scarce resources for the most serious offenses. This model is appealing in that it could allow the region to avoid building new jail space, especially if actual jail use continues to trend downward rather than increasing as projected. One risk in applying this approach is that a decision to change the allocation of scarce public safety resources will not be made until after the jail is overcrowded.

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- (4) A substantial number of all acquisitive crimes – burglary, robbery, auto theft, other forms of larceny – have been committed by drug users in order to get the wherewithal to pay the artificially high prices charged for drugs on the illegal market.
 - (5) Billions of dollars and a significant proportion of total law enforcement resources have been expended in all stages of the criminal process.
 - (6) A disturbingly large number of undesirable police practices – unconstitutional searches and seizures, entrapment, electronic surveillance – have become habitual because of the great difficulty that attends the detection of narcotics offenses.
 - (7) The burden of enforcement has fallen primarily on the urban poor, especially Negroes and Mexican-Americans.
 - (8) Research on the causes, effects, and cures of drug use has been stultified.
 - (9) The medical profession has been intimidated into neglecting its accustomed role of relieving this form of human misery.
 - (10) A large and well-entrenched enforcement bureaucracy has developed a vested interest in the status quo, and has effectively thwarted all but the most marginal reforms.
 - (11) Legislative invocations of the criminal sanction have automatically and unthinkingly been extended from narcotics to marijuana to the flood of new mind-altering drugs that have appeared in recent years, thereby compounding the preexisting problem.
- A clearer case of misapplication of the criminal sanction would be difficult to imagine.
(Herbert L. Packer, *The Limits of the Criminal Sanction*, 1968)

Today, Packer might add the impact of the U. S. drug demand and prohibition on international justice and violence in the nations that produce and distribute illegal drugs.

Initially, we had settled on a demand-driven paradigm and developed the two scenarios detailed previously under this framework. However, the Advisory Group asked us to address a resource-driven approach as well. In particular, they asked us to estimate the effect on the jail population of holding constant the average daily jail population of drug offenders arrested in Seattle at the historically low 2008 level. The rationale is that King County's new projection of the overall jail population apparently assumes the number of jail beds occupied by drug offenders arrested in Seattle will grow at the same rate as the average daily jail population as a whole. The question is whether holding the jail population of Seattle drug offenders constant would significantly reduce the overall projected jail population. Because this cap is somewhat arbitrary, and not the result of a specific new policy for treating drug offenders or reducing their jail penalties, it is outside the analytical framework described above and, strictly speaking, outside the scope of the SLI. Nevertheless, we do provide the results of this analysis in Section 6.

1.4. Findings

- A. *Potential effects of treating drug offenders: Even if all drug offenders arrested in Seattle were enrolled in the most effective types of treatment and crime prevention programs now known, the average number of King County jail beds used by these offenders would decline by approximately 25 beds. This is well short of the 300 to 500 additional beds needed to accommodate NEC misdemeanants between 2018 and 2022.*

Treatment has a small potential effect on the County jail population for several reasons. The most effective treatment programs reduce future offenses by only 20 percent at best,⁸ the average stay in County jail for drug offenses is only a few weeks, and many drug offenders would not be expected to spend additional time in County jail even without any treatment.

We want to emphasize that treatment for drug offenders may have significant benefits for some offenders and their families, and it is quite possible that drug treatment could have more significant reductions on use of state prison. Again, in this report we limit our analysis to the effects on the use of County jail.

- B. *Potential effects of reducing jail time for lower-level drug offenses: If all lower-level drug offenders arrested in Seattle (all misdemeanor drug offenders; and all felony drug offenders in possession of less than 3 grams of cocaine, heroin or methamphetamine or less than 100 grams of marijuana) were to serve no jail time whatsoever, then the average number of King County jail beds used would decline by approximately 27 to 37 beds.*

The potential effect of changes in drug arrest policies on the amount of jail time spent by drug offenders depends on the kinds of offenses for which officers would not book the offender into jail and the number of jail beds these offenses account for today. The estimated effects are not large both because the number of offenders is relatively small and the number of days they serve is comparatively low. Note again that we defined lower-level drug offenses as the population of

⁸ 2006 WSIPP report, supra.

individuals with drug charges (1) as the most serious offense at the time of arrest and (2) up to but not including the level of offense eligible for King County's Drug Court.

Were the City to pursue both a change in enforcement for lower-level drug offenders and new treatment programs (see finding in Section 1.4.A. above), the estimated total reduction in jail beds from each approach would not be fully additive. That is, some of the jail bed reduction attributed to changes in enforcement for lower-level drug offenses likely overlaps some of the jail bed reduction from new treatment programs (leading to decreased recidivism for drug offenders).

C. *Effects of capping the number of drug offenders in jail: If the jail population of drug offenders arrested in Seattle were capped at 255,⁹ rather than growing in step with the County's expected overall growth in the County-responsible jail population, there could be approximately 60 fewer jail beds in use in 2016 and approximately 93 fewer in 2022.*

These reductions are significantly smaller than the number of jail beds required for NEC misdemeanants in both years. The resulting change in the County's projection is larger in both years than the estimated potential reductions from treating all Seattle drug offender inmates and also larger than the estimated potential reductions in jail time for lower-level offenders. Some additional – and as yet unspecified – policy actions would need to be taken in order for the City to achieve such an outcome.

Bottom line:

The SLI asked whether different arrest and treatment policies for lower-level drug offenders could significantly affect the county-wide demand for jail services. All other things being equal, it appears that the City could expect some reductions in jail use for lower-level drug offenders by providing additional treatment services and through changes in jail booking policies. What reduction in jail use by lower-level drug offenders would be “significant” and for whom?

Any reduction in jail use by lower-level drug offenders could be significant for those individuals who might otherwise be jailed and for their families and communities. This is important, but from the perspective of this report, a significant reduction would be one that is large enough to affect the County's decision to offer jail space to the cities and in turn affect a City decision on the NEC municipal jail project. A policy change could also lead to a significant reduction in jail use if the change is a necessary component element of a package of other known and quantifiable changes that achieve these objectives.

The upcoming City decision is whether to fund the NEC project in 2010. Because of the time required to plan and build a jail, not funding the project would require faith that the County will provide jail space for the NEC until at least 2022. Currently the County is offering jail space to

⁹ In 2008, individuals arrested by the Seattle Police Department for a drug charge as the most serious offense at time of booking used 255 County jail beds each day on average. Note that the KCPAO's new filing and disposition standards did not take effect until November 2008. All other things being equal, we would expect jail use to decline in 2009 and beyond based on the new KCPAO standards.

the NEC only through 2015. It is hard to see why a proposal to treat drug offenders arrested in Seattle or to reduce Seattle arrests of low level drug offenders would be so significant as to give the County reason to extend its offer of jail space beyond 2015. As we have demonstrated here, such proposals are likely to have relatively small impacts on jail use.

The County's offer of jail space through 2015 is based largely on an assumption that the inmate population for which the County is responsible – namely, felons arrested county-wide and misdemeanants arrested in unincorporated areas – will increase by 6% in 2010 and 4% annually between 2011 and 2015. The County appears to be taking a conservative approach in an attempt to protect against forecasting uncertainties, thereby ensuring that space will be available for County-responsible inmates. However, the County's growth projection seems high on its face. The County's new offer resulted partly from a City request that the County revisit its projections based on recent trends. It would certainly be useful to have a better understanding than we have of the assumptions behind the County's forecast, including those pertaining to jail bookings by the Seattle Police Department, and it will be important to monitor the actual jail population in comparison to the projection. This is further evidence of why the City needs to continue to work with the County as both entities continue their jail planning efforts.

1.5. Organization of This Report

Section 2 briefly reviews the context for this study.

Section 3 reviews King County's recently updated projection of the jail population for which it is responsible, the North/East Cities' projection of the jail space needed for their misdemeanants and the currently available jail capacity. It extrapolates and adjusts these trends in order to estimate the shortfall in jail space after 2015.

Section 4 estimates the potential for reducing the jail population by treating drug offenders arrested in Seattle, based on the number of such offenders in the jail, their average recidivism, and the typical effectiveness of treatment programs in reducing recidivism.

Section 5 estimates the potential for reducing the jail population by refraining from booking lower-level drug offenders in Seattle. It describes two proposals for pre-booking diversion programs, the King County Prosecutor's new filing and disposition standards for some drug offenses, and the new eligibility requirements for King County Drug Diversion Court.

Section 6 estimates the potential for reducing the jail population by holding constant the jail population of drug offenders arrested in Seattle.

Section 7 describes trends in drug offense bookings in Seattle.

Section 8 describes the Advisory Group and Project Team for the study.

Section 9 describes other information reviewed by the Advisory Group, including existing and potential treatment and services for offenders.

2. Context for the study

Cities are responsible under state law for the cost of jailing individuals arrested for misdemeanors within their jurisdiction. King County is responsible under state law for the cost of jailing individuals arrested for felonies within the county (even when they are arrested by city police officers) prior to adjudication and for sentences of less than one year. King County is also responsible for the cost of jailing individuals arrested for misdemeanors by King County Sheriff's officers. The State is responsible for the cost of jailing individuals convicted of felons with sentences of one year or more.

Currently Seattle and most other cities in the county meet this responsibility by contracting for jail space from King County.¹⁰ The context for the study is the combination of the City of Seattle's need for jail space for its misdemeanants and King County's position that it will soon need all its available jail space for felons and County misdemeanants.

This resulted in the County's previous decision not to extend its current jail contracts with the cities beyond 2012, and the cities' subsequent decisions to begin planning their own jails. To this end, seven cities in south King County formed the South Correctional Entity; and northern and eastern King County cities (including Seattle) formed the NEC.¹¹ The South Correctional Entity has selected a preferred site for its jail in Des Moines, and construction of either a 660-bed or 860-bed municipal jail is expected to start in October 2009. The NEC is currently evaluating six potential sites for a 640-bed municipal jail. Also part of the context are the public controversy surrounding the NEC's plans, changes in County policy referred to in the SLI, some recent trends in actual jail demand, the County Council's July 2008 statement that the County should continue to be the primary regional jail provider,¹² and the belief by many that the current approach to drug law enforcement is misguided nationally and locally.

In June, after this study began, the County Executive announced his intention to offer cities jail contract extensions through 2015. This new offer was based primarily on the Executive's review of recent trends in the jail population. The schedule for the NEC jail planning project already assumed the County would extend the contracts through 2014. Because planning and building a new jail typically requires at least seven years, an extension through 2015 will not be long enough to give the NEC reason to halt or postpone its jail planning project. For this reason the City Council had asked the County Executive to extend the contract through 2022 if possible. The City Council's April 24, 2009 letter and the County Executive's June 17, 2009 response are in Attachment 2.

¹⁰ Seattle also contracts with Yakima County for a much smaller number of jail beds.

¹¹ The South Correction Entity includes Auburn, Burien, Des Moines, Federal Way, Renton, SeaTac, and Tukwila. Bellevue, Kirkland, Redmond, Seattle and Shoreline are the five "principal cities" driving the NEC's municipal jail planning. The NEC is studying construction of a 640-bed jail that it estimates to be sufficient to meet its anticipated needs and the needs of several other cities in northeast King County, including Beaux Arts, Bothell, Carnation, Clyde Hill, Duvall, Hunts Point, Issaquah, Kenmore, Lake Forest Park, Medina, Mercer Island, Newcastle, North Bend, Sammamish, Skykomish, Snoqualmie, Woodinville, and Yarrow Point.

¹² See Ordinance 16200, available at <http://mkcclegisearch.kingcounty.gov/detailreport/?key=8724>.

3. Jail population trends and projections

Section 3.1 describes the average daily inmate population in King County jail between 1996 and 2008, including the portion accounted for by drug offenders. Section 3.2 describes the County’s new projection of jail demand, which is the basis for its new offer to extend the jail contract through 2015. Section 3.3 describes the North/East Cities misdemeanor inmate projection. Section 3.4 combines and discusses these trends and projections.

3.1. King County Jail Inmate Population

Table 1 below shows the total average daily population (ADP) in King County jails, including both the Downtown jail and the Maleng Regional Justice Center (MRJC), from 1996 through 2008, and the shares of the ADP comprised of inmates for whom a drug charge is the most serious charge, whether felony or misdemeanor. The source of these data is the County Department of Adult & Juvenile Detention (DAJD).

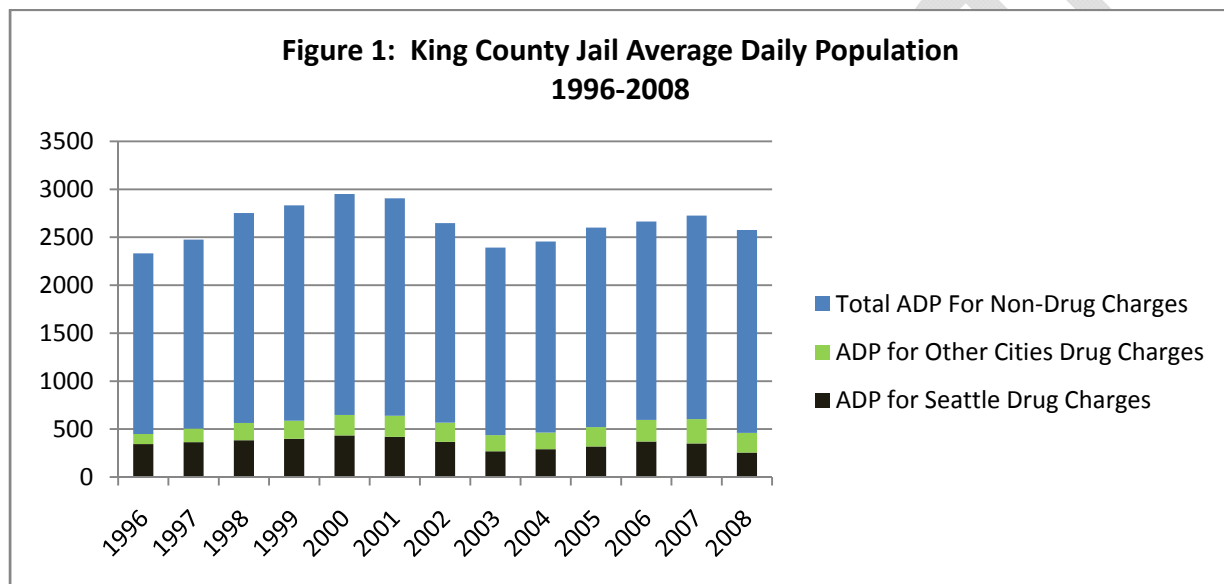
Table 1: King County Jail Average Daily Population, 1996-2008								
Year	Average Daily Jail Population (ADP)							
	Total ADP		Seattle Drug		Other Drug		Total Drug ADP	
	#	% Change	#	% of Total ADP	#	% of Total ADP	#	% of Total ADP
1996	2,332		343	15%	105	5%	448	19%
1997	2,476	6.2%	363	15%	143	6%	506	20%
1998	2,753	11.2%	383	14%	181	7%	565	21%
1999	2,832	2.9%	399	14%	188	7%	587	21%
2000	2,951	4.2%	434	15%	213	7%	647	22%
2001	2,906	-1.5%	418	14%	221	8%	639	22%
2002	2,648	-8.9%	367	14%	201	8%	568	21%
2003	2,393	-9.7%	269	11%	168	7%	437	18%
2004	2,454	2.6%	291	12%	172	7%	462	19%
2005	2,600	6.0%	319	12%	202	8%	521	20%
2006	2,665	2.5%	371	14%	225	8%	596	22%
2007	2,726	2.3%	351	13%	253	9%	604	22%
2008	2,575	-5.5%	255	10%	205	8%	459	18%

The table reads as follows:

- The second and third columns, under “Total ADP,” show the total ADP in each year and the percentage change from the previous year.

- The fourth and fifth columns, labeled “Seattle Drug,” show the ADP of inmates arrested in Seattle for whom a drug charge is the most serious charge, and the percentage this is of the total ADP in that year.
- The sixth and seventh columns, labeled “Other Drug,” show the ADP of inmates arrested in King County outside Seattle for whom a drug charge is the most serious charge, and the percentage of the total ADP in that year.
- The eighth and ninth columns, labeled “Total Drug,” show the ADP of inmates arrested anywhere in King County for whom a drug charge is the most serious charge – that is, the sum of “Seattle Drug” and “Other Drug” – and the percentage these comprise of the total ADP in that year.

Figure 1 is a graphical representation of the information included in Table 1 above.



Note the following:

- Total ADP fluctuated during this period. Total ADP rose from 1996 to 2000, then declined through 2003, rose again through 2007, and declined in 2008. The decline between 2001 and 2003 was due in part to cities contracting for jail beds in other facilities, including the Yakima County jail, largely to reduce jail costs.
- The ADP comprised of drug offenders from Seattle generally followed the same pattern, although it declined as a percentage of the total ADP from an average of 14% in the earlier years (1996 to 2002) to average of 12% in later years (2003 to 2008). The Seattle Drug ADP was lower in 2008 than in any of the other years, but not substantially lower than in 2003.

- The ADP comprised of drug offenders from outside Seattle also generally followed the same pattern, but increased from an average of 7% in the early years to an average of 8% in later years.
- The ADP comprised of drug offenders from the entire county ranged between 18% and 22% of the total ADP over the whole period.

3.2. King County Jail Population Projection

Prior to the County Executive’s recent offer to extend the cities’ jail contracts through 2015, the County intended to let the current contracts expire at the end of 2012. The rationale for the previous position was explained in an August 2008 report on the County’s Integrated Regional Jail Initiative. That report and a related press release by the previous County Executive are included in Attachment 3 for background.

Table 2 below shows the County’s latest projections of the jail population through 2015. The source is the DAJD. The table reads as follows:

- The second column, labeled “Max. Available,” shows the total number of beds in the Downtown jail and the MRJC combined.¹³
- The third column, labeled “Less Reserve for Peak,” shows the maximum capacity for ADP after deducting 250 beds as a reserve for periodic peaks in the actual daily population.
- The fourth column, labeled “County responsible ADP,” shows the County’s projection of the ADP comprised by inmates for which it is responsible, namely, felons arrested county-wide and misdemeanants arrested in unincorporated areas.
- The fifth column, labeled “Cities Contract,” shows the number of beds the County is willing to promise to cities.
- The sixth column, labeled “Dept. of Corrections,” shows the number of beds the County plans to commit to the state Department of Corrections.
- The seventh column, labeled “Total,” shows the total of the three previous columns.
- The eighth column, labeled “Beds Remaining,” shows the difference between total population shown in the seventh column and the maximum capacity less the reserve for peaks shown in the third column.

¹³ The County is considering a potential 460-bed expansion of the MRJC facility. King County indicates that expansion could be built by 2016. However, we did not include the potential MRJC expansion in our analysis because the County does not currently have the project funded in its Capital Improvement Plan.

Year	Capacity		Population				Beds Remaining
	Max. Available	Less Reserve for Peak	County responsible ADP	Cities Contract	Dept. of Corrections	Total	
2007	3,039	2,789	2,083	330	220	2,633	156
2008	3,039	2,789	1,986	330	220	2,536	253
2009	3,039	2,789	1,828	330	445	2,603	186
2010	3,039	2,789	1,939	330	445	2,714	75
2011	3,039	2,789	2,018	330	330	2,678	111
2012	3,039	2,789	2,098	330	220	2,648	141
2013	3,039	2,789	2,178	330	100	2,608	181
2014	3,039	2,789	2,261	330	100	2,691	98
2015	3,039	2,789	2,363	250	100	2,713	76

Note the following:

- The County projects that the County-responsible ADP will increase substantially each year after 2009. As discussed in the next section, the County projects an increase of about 6% in 2010 and about 4% annually thereafter.
- The increases in the projected beds remaining in 2011 through 2013 results from declines in the County’s commitment to the state Department of Corrections (DOC).

The County’s published projection stops in 2015. The beds remaining would be below zero starting in 2016 if all of the following happen: (a) the County-responsible ADP continues to increase at the same annual rate; (b) the County maintains its 100-bed commitment to the DOC; and (c) the County offers the NEC cities 250 beds (same number of beds as County’s current offer for 2015). The DAJD Director confirmed that this is the reason the County Executive offered a contract extension only through 2015 and not for 2016 or beyond.

We will extrapolate and further discuss this projection in Section 3.4.

3.3. Projection of jail demand from North/East Cities

In 2006, the NEC hired a consultant to estimate the number of jail beds these cities would need for their misdemeanor inmates through 2026. Attachment 4 includes a table drawn from the consultant report that shows the estimated number of beds needed each year. As shown in the table, the consultant estimated that by 2022 the ADP of misdemeanants from Seattle will be 375; the ADP of misdemeanants from other NEC cities will be 159; and the combined total NEC ADP

will be 534. Attachment 4 also includes a narrative description of the projection based on the description in the project website, which is www.necmunicipaljail.org. For the full consultant report, see the link under “Background / Projected Number of Jail Beds” on the website.

The NEC consultant attempted to forecast how much jail space would be needed to house all NEC misdemeanants in a new separate municipal jail. If instead the NEC were to contract for jail services with the County (i.e., NEC does not build a new municipal jail for misdemeanants), then the NEC consultant’s ADP projections need to be adjusted downward. The reason is that some current inmates with city misdemeanor charges are also being held on felony charges. Because the felony charges are the more serious, these inmates are currently regarded as part of the County responsible population. With the County providing jail services for individuals in jail for both felony and misdemeanor charges, the Municipal Court can adjudicate the misdemeanor charges while inmates are being held in County jail during the same period that King County Superior Court adjudicates the felony charges. The NEC consultant assumed that with a new NEC jail, the Municipal Court would not do so until after the felony charges are resolved and the inmates are transferred to the NEC jail. The consultant’s assumption increased the 2006 baseline to account for the beds these transferred misdemeanor inmates would need. For a projection of the NEC misdemeanor ADP population to be housed in the King County jail, we amended the original NEC consultant’s ADP projection by backing out the 12 percent additive multiplier included in the NEC consultant’s new jail capacity analysis.

Table 3 makes this reduction. The second column shows the consultant’s total NEC ADP projection (assuming a new jail) from Attachment 4, and the third column shows an adjusted projection (assuming a long-term contract with King County) that is 88% of the consultant’s projection in each year. The 88% adjusted ADP will be used in the next section.

Table 3: Adjusted NEC jail population projection		
Year	NEC Average Daily Population	
	Consultant Projection Assuming New Jail	88% Adjusted Projection Assuming King County Contract
2006	463	407
2007	467	411
2008	472	415
2009	476	419
2010	480	422
2011	484	426
2012	489	430
2013	493	434
2014	497	437
2015	502	442
2016	506	445
2017	511	450
2018	515	453
2019	520	458
2020	525	462
2021	529	466
2022	534	470
2023	539	474
2024	544	479
2025	549	483
2026	554	488

3.4. Implications of the King County and North/East Cities projections

Table 4 shows Central Staff’s extrapolation of the recent County projection of the County responsible portion of the jail population and joins the extrapolated projection with the adjusted NEC misdemeanor ADP from Table 3 in order to estimate the future shortfall in jail space.

The table reads as follows:

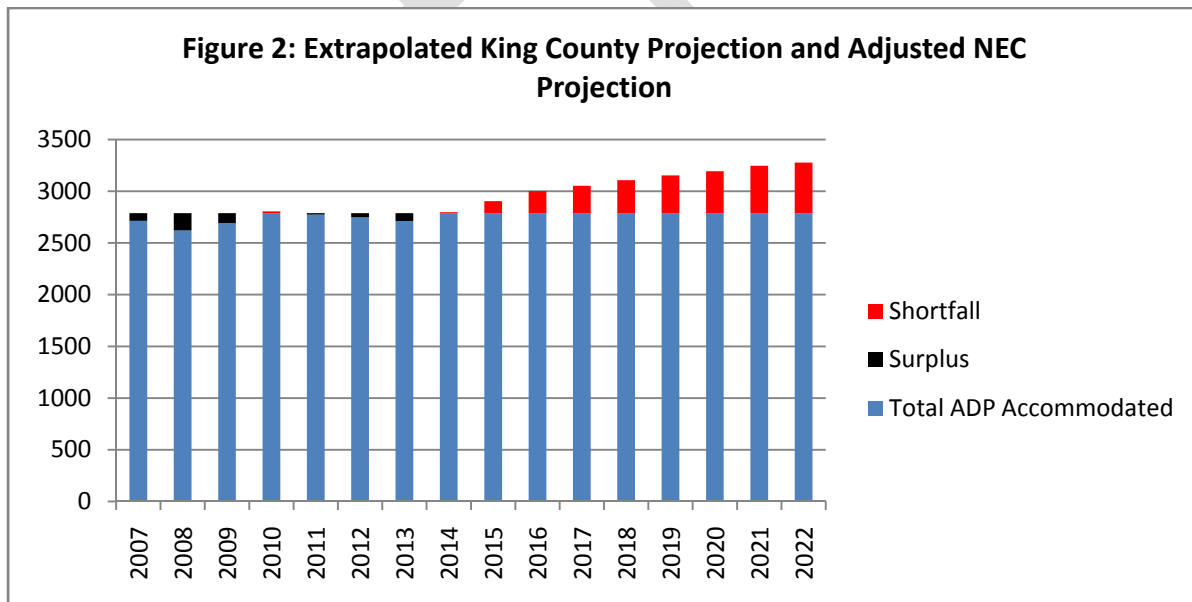
- The second column (“County Capacity”) shows the maximum ADP capacity after deducting 250 beds as a reserve for periodic peaks in the actual daily population, as in Table 2.
- The third column repeats the County’s projection of the County-responsible ADP from Table 2 for 2007 through 2015 and then extrapolates 2016 through 2022. The shaded portion of the

table highlights the extrapolation. The extrapolation is based on the annual rates of growth shown in the shaded portion of the fourth column.

- The fourth column shows the year-by-year percentage change in the projected County responsible ADP. For 2007 through 2015, the percentage changes reflect the County's recent projection of County-responsible ADP shown in Table 2. For 2016 through 2022, the annual percentage changes are the same as the annual percentage changes from the County's previous projection of the County-responsible ADP for each of these years. The previous projection is contained in a 2008 report on the County's Integrated Regional Jail Initiative; see Attachment 3.
- The fifth column shows the number of beds allocated to the state Department of Corrections (DOC). The extrapolation assumes this allocation will remain at 100 beds.
- The sixth column shows the adjusted projection of the NEC ADP from Table 3.
- The seventh column shows the total projected demand for space, which is the sum of the County responsible ADP, the beds allocated to the DOC and the adjusted NEC ADP. Demand is expressed as ADP rather than the beds needed for peak demand because the listed capacity already accounts for peaks.
- The eighth column, labeled "Surplus / (Shortfall)," shows the difference between the total projected ADP and the County's existing jail capacity.

Year	County Capacity	Demand					Surplus / (Shortfall)
		County Responsible ADP		Dept. of Corrections	Adjusted NEC ADP	Total Demand	
		#	% change				
2007	2,789	2,083		220	411	2,714	75
2008	2,789	1,986	-4.7%	220	415	2,621	168
2009	2,789	1,828	-8.0%	445	419	2,692	97
2010	2,789	1,939	6.1%	445	422	2,806	(17)
2011	2,789	2,018	4.1%	330	426	2,774	15
2012	2,789	2,098	4.0%	220	430	2,748	41
2013	2,789	2,178	3.8%	100	434	2,712	77
2014	2,789	2,261	3.8%	100	437	2,798	(9)
2015	2,789	2,363	4.5%	100	442	2,905	(116)
2016	2,789	2,455	3.9%	100	445	3,001	(212)
2017	2,789	2,503	2.0%	100	450	3,053	(264)
2018	2,789	2,554	2.0%	100	453	3,107	(318)
2019	2,789	2,597	1.7%	100	458	3,154	(365)
2020	2,789	2,632	1.4%	100	462	3,194	(405)
2021	2,789	2,680	1.9%	100	466	3,246	(457)
2022	2,789	2,707	1.0%	100	470	3,277	(488)

Figure 2 is a graphical representation of the information included in Table 4 above.



Note the following:

- As also seen in Table 2, the County projects that the County-responsible ADP will continue to decline in 2009, increase by 6% in 2010, and then increase 4% per year from 2011 through 2015. One plausible interpretation is that the County believes the decline in 2008 and 2009 is a short-term fluctuation rather than the beginning of a new lower plateau. Taken as a whole, the average annual projected rate of increase between 2007 and 2015 is about 1.6%.
- The total projected demand for jail space (the County-responsible ADP plus the DOC ADP plus the adjusted NEC ADP) significantly exceeds County jail supply beginning in 2015. This assumes the NEC ADP will be 442 in that year. As seen in Table 2, the County Executive has offered 250 beds to the cities in that year. Whether 250 beds will be enough remains to be seen. Recall that under the current NEC jail project schedule, the NEC would open a new municipal jail at the end of 2014.
- The shortfall in jail space begins in 2015 and grows larger annually thereafter. Under this set of projections, starting in 2021 the County will have space only for the County-responsible population and the DOC allocation; no beds will be available for NEC misdemeanants.

Table 4 ends in 2022 because the City Council asked the County Executive for at least a ten-year contract extension from the expiration of the current contract in 2012, if that were possible, on the grounds that this would be the minimum extension that would allow the NEC to halt or postpone its jail planning project. Ten years (or something close) appears to be the practical minimum extension because it generally requires at least seven years to build a jail after the decision to do so. This at least was the advice from the National Institute of Corrections four years ago, and indeed Seattle's experience is bearing it out.¹⁴ A five-year extension through 2017, for example, would require the NEC to start another jail planning process next year. A six- or seven-year extension would allow one or two years' hiatus, which probably would not merit abandoning the costs incurred so far. This implies that accommodating NEC misdemeanants in the existing County jails would require addressing the shortfall at least through 2019 and perhaps through 2022, which means that the relevant size of the shortfall is somewhere between 300 and 500 ADP.

This projection, of course, depends heavily on the rate of growth in the County-responsible population in the next several years. The annual growth rate would have to be about 1% between 2010 and 2015 to eliminate the shortfall in the later years, rather than the County's 4% to 6% projection; but it nevertheless bears watching.

¹⁴ The City began discussing the potential need for a jail in 2005. The Council approved the first budget for the jail project in the fall of 2007. The current schedule, which has little or no slack, has the jail opening at the end of 2014.

4. Reducing the jail population by treating lower-level drug offenders

Section 4.1 outlines the logic of preventing crime and reducing incarceration by treating offenders, and provides a simple example for illustration. Section 4.2 applies this logic to available data in order to estimate the potential impact on the County jail population of treating drug offenders arrested in Seattle.

4.1. The Logic of Treating Offenders for Preventing Crime and Reducing Incarceration

In 2005 the Legislature directed the Washington State Institute for Public Policy (WSIPP) to identify evidence-based programs that could reduce the need for additional prison beds, save money for taxpayers and help lower crime rates. WSIPP issued a report in response in 2006.¹⁵ Attachment 5 contains a table from this report, labeled “Exhibit 4,” that conveys the core findings.

The table suggests the range of effects we might reasonably expect from a treatment-focused approach to reducing jail use, whether applied to drug offenders or others. The second column in the table, labeled “Effect on Crime Outcomes,” shows the reduction in crime attributable to a wide variety of crime prevention programs about which there is good evidence. The evidence is that successful programs for adult offenders reduce their future offenses by somewhere between 4% and 20% (the negative numbers indicate the average decreases in crime resulting from each program). Note these in particular:

Programs for Persons in the Adult Offender System	Effect on Crime Outcomes
Intensive supervision: treatment-oriented programs	-16.7%
Cognitive-behavioral therapy in prison or community	-6.3%
Drug treatment in community	-9.3%
Adult drug courts	-8.0%
Employment and job training in the community	-4.3%

The effect of any treatment program on jail use depends on three things: the number of people in the group receiving the treatment; the baseline estimate of jail resources we would expect these individuals to use without treatment, which in turn is a function of the likelihood of future offenses and the amount of jail time per offense; and the effectiveness of the program in reducing or eliminating future jail use by these individuals.

For illustrative purposes only, imagine a group of 500 jail inmates whose average likelihood of recidivating one or more times in a given year is 50%, and who, if they recidivated once or more during this period, would serve an average of 60 days in jail for all the new offenses combined.

¹⁵ “Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates,” Steve Aos, Marna Miller and Elizabeth Drake, 2006; available at www.wsipp.wa.gov.

The recidivism of these offenders would lead them to serve a total of 15,000 jail days this one year period, which would be an ADP of $(15,000)/(365) = 41$. Imagine further a theoretical new treatment program that reduces recidivism by 10% (which would be more effective, for example, than drug courts or drug treatment in the community). The effect of the treatment program on jail use would be to reduce the ADP by 4 inmates (10% of 41 ADP). This means that jail capacity planners can expect to need four fewer beds with the 500-offender treatment program than without it.

As demonstrated by the example above, it is difficult to reduce the jail population by treating individual offenders. Even the best treatment programs reduce jail use by a relatively small amount because some individuals would not have returned to jail even without the program, the effect on future recidivism is small, and the average County jail stay for each offense is short, around 20 days.

Note that the calculus is quite different for jail inmates than for State prisoners. A jail inmate serving a sentence of 20 days accounts for 5.5% of one ADP. A state prisoner serving a sentence of several years accounts for a full one ADP over each of those years. This means that a treatment approach that is effective in reducing the prison population may make very little difference for the jail population.

4.2. Potential impact on the County jail population of treatment for lower-level drug offenders

Following the logic described above, the first step in estimating the impact on the jail population of a treatment-focused approach to drug offenses is to determine the share of inmate offenders to which it would apply. Here we make the simplifying assumption that all drug offenders (misdemeanants, felons who would serve all sentenced time in King County jail, and felons who would serve one or more years in state prison, and Drug Court participants) arrested in Seattle and booked in King County jail would be provided treatment services in a new program. Because our objective is to reduce the future jail population in order to reduce the shortfall in jail space up to 2022, the relevant ADP of Seattle drug offenders is not the current ADP of 255 (see Table 1), but the ADP in 2022. Table 5 in Section 6 projects the total County-responsible ADP through 2022 based on the County's recent projection through 2015 and its prior projection of the rate of growth between 2016 and 2022. If the Seattle drug offender ADP increases at the same rate as the total County-responsible ADP, then in 2022 it would be approximately 348 ADP.

The second step is to estimate the effect of this hypothetical new treatment program on the recidivism of Seattle drug offenders. Here we assume our new program would reduce recidivism in the subsequent year by 20%, which is greater than the effectiveness most crime prevention programs evaluated by WSIPP.

The third step is to estimate the current rate of recidivism among these offenders (without the new treatment program). The King County DAJD analyzed the 5-year recidivism of Seattle drug offenders booked in 2003. Attachment 6 contains this analysis. It shows that 36% of the drug

offenders booked in 2003 were again booked for at least one drug offense in 2004. If we assume this will otherwise continue to be the rate of recidivism in 2022, then the effect of our treatment program on the ADP would be this:

$$(348 \text{ ADP}) * (36\% \text{ of ADP due to recidivism}) * (20\% \text{ treatment effectiveness}) \\ = 25 \text{ ADP}$$

Thus, the effect of our treatment program on the total 2022 jail population would be to reduce it by about 25 ADP. Note again that this assumes we treat every single Seattle drug offender, and the treatment program is as effective as any known evidence-based program and more effective than most. Given these assumptions, this estimate almost certainly overstates the impact of any near-term policy shift toward treatment programs.

It is worth noting that many treatment programs offer opportunities to make profound differences in the lives of participants and their families. Our analysis is not intended to minimize the benefits that can flow from such programs. Rather, our analysis is intended to address the questions posed in the SLI about the effects on jail use and jail capacity planning.

5. Eliminating Jail Time for Lower-Level Drug Offenders

As noted in the introduction, some Advisory Group members suggested that the potential effect on the jail population of a pre-booking diversion program, in which police officers would refer offenders to treatment services instead of booking them into jail, would not be limited by the effects of the treatment services on the offenders' recidivism. Instead the referrals themselves would be a means of reducing jail bookings.

To test the potential impact of such an approach, we take a somewhat extreme analytic tack and estimate the potential effect on the King County jail ADP of *entirely* eliminating jail bookings of lower-level drug offenders. Section 5.1 briefly describes the main pre-booking diversion programs discussed by the Advisory Group. Section 5.2 describes the King County Prosecuting Attorney's Office (KCPAO)'s new standards for expedited prosecution of some drug offenders, which we use to define lower-level felony offenders. Section 5.3 estimates the effect on the ADP of eliminating all jail time for lower-level drug offenders arrested in Seattle, including lower-level felony offenders and all misdemeanor offenders.

5.1. Pre-Booking Diversion Proposals

Last April, The Defender Association, on behalf of a partnership including Evergreen Treatment Services, People of Color Against AIDS Network and the ACLU of Washington, submitted two New Strategy Proposals to King County for funding by the Mental Illness & Drug Dependency (MIDD) levy. One is for a community-based intervention targeting low level drug offenders in the Belltown neighborhood of Seattle. The other is for a pre-booking diversion demonstration project targeting low level drug offenders in the Skyway neighborhood in unincorporated King County. Both reflect the evolution of a concept developed last year on pre-booking diversion of drug cases in Seattle and King County, as described in an October 2008 concept paper by The Defender Association. The Council's interest in the concept paper was one of the main reasons for the SLI and this Central Staff report.

Rather than attempting to describe the proposals in more detail, we will let them speak for themselves. Attachment 7 contains all three papers.

It is difficult to estimate the potential effect of these proposals on the demand for jail space. One reason is that the target populations are not clearly defined or estimated. Neither of the proposals for MIDD funding defines low level drug offenses. The October concept paper defines low level drug offenses as those involving marijuana or less than 10 grams of any other drug. If "involving" includes drug sales, this would include more serious offenses than are covered by the KCPAO's new standards for filing drug offenses as expedited felonies. Also, the October concept paper includes limits of eligibility that exceed those currently in place for King County Drug Diversion Court (generally, possession cases involving between 3 and 5 grams of heroin, cocaine, or methamphetamine; see Section 5.3). The potential effects on jail population are also difficult to estimate because the criteria for referring offenders to treatment or other services are not defined, beyond the statements in the MIDD proposals that the programs "are not intended to

work with drug-involved offenders who are working for profit as part of a criminal organization.”

It is important to note that these proposals do not explicitly state an objective of reducing jail time per offense. In its current form, the Belltown proposal appears to be a treatment program aimed at reducing recidivism or avoiding first offenses. In particular, it would not directly reduce jail time for actual offenses because police officers would make referrals only in the course of “social contacts” and not when faced with probable cause for an arrest.

Whether the Skyway proposal is intended to reduce arrests somewhat independently of the success of treatment is not yet clear. We infer that the core concept seeks to reduce the jail population in part by reducing jail time per offense (and just reducing recidivism) from the argument made by proponents that the proposals would reduce the jail population by more than the effect of the proposed treatment and other services on the recidivism of the offenders who are referred to them. Because the total amount of jail time spent by low level drug offenders is the product of the number of offenses they commit and the average jail time per offense, any reduction in jail time that is not due to a reduction in the number of offenses must be due to a reduction in the jail time per offense.

5.2. King County Prosecuting Attorney’s Filing & Disposition Standards

In September 2008, the KCPAO revised the filing and disposition standards for some property crimes and some drug crimes. As noted above, we use the new standards for filing drug crimes to define lower-level drug felonies. The new standards were a response to King County’s budget shortfall, which resulted in an 11% cut in the KCPAO’s annual budget. The purpose of the new standards was to reduce the work required to prosecute some less serious offenses so that the remaining KCPAO staff could focus on the prosecution of more serious offenses. Attachment 8 contains the KCPAO’s summary of the new standards.

Under the new standards, some drug offenses are now filed as so-called “expedited felonies.” These include possession of less than three grams of cocaine, heroin or methamphetamine and less than ten grams of marijuana. If the defendant pleads guilty, the case is processed as a gross misdemeanor rather than as a felony. The defendant avoids a felony conviction on his or her criminal history and a potentially longer jail stay (compared to being found guilty and sentenced according to state-mandated sentencing guidelines), and likely is released immediately upon pleading guilty with a sentence of time served – often only a few days in jail. If a defendant rejects the reduced charge from an expedited felony, the KCPAO will prosecute the case as a felony in Superior Court.¹⁶

In 2008 when the KCPAO was considering its options for how to restructure in face of budget cuts, the KCPAO had predicted there would be approximately 2,500 annual filings for expedited drug felony cases in 2009. However, there were only about 400 actual expedited felony filings in the six-month period between October 2008 and April 2009. Based on 2009 year-to-date

¹⁶ Either way, the jail time served by the individual is the responsibility of King County since the charge at time of arrest and jail booking was a felony.

information, the KCPAO now predicts there will be approximately 1,200 expedited drug felony filings in 2009. Approximately 600 of these are projected to originate from Seattle Police Department arrests.¹⁷

Note the statement in the KCPAO's summary that the new standards "are not advanced as good policy, rather they represent a realistic approach to focus our remaining personnel on the cases that are our highest priorities." This suggests that the standards may revert in the event that the County's budget situation improves.

5.3. Effect on the Jail Population of Eliminating Jail Time for Lower-Level Drug Offenders

As shown in Table 1, in 2008 all drug offenders arrested in Seattle accounted for 255 ADP in King County jail. The amount that reducing jail time for lower-level offenders can influence jail ADP depends in part on the definition of "lower-level." The Advisory Group discussed the KCPAO's new filing and disposition standards and agreed that the offenses eligible for expedited prosecution should serve as a working definition of lower-level drug offenses.¹⁸ Our analysis includes jail time served by all such offenders plus jail time served by all misdemeanor drug offenders.

Between October 2008 and April 2009, there were a total of 72 bookings (approximately twelve per month) at King County jail for felony offenses qualifying as expedited felonies under the new standards. These bookings led to a total of approximately 450 total jail days served for an average length of stay of six days. This is a significant reduction compared to an average length of stay of 20 days for each booking for the same offense types in years prior to the new standards.¹⁹

Based on data available through March 2009, the KCPAO now estimates there will be a total of 600 expedited drug felony filings in 2009 resulting from arrests made in Seattle. If the average length of stay per filing is 6 days, then these filings will generate an ADP of 10 ADP:

$$(600 \text{ filings per year}) * (6 \text{ days per filing}) / (365 \text{ days}) = 10 \text{ ADP}$$

In addition, some drug offenses are filed as misdemeanors in Seattle Municipal Court. In 2008, these accounted for 17 ADP out of the total 255 ADP. If we include these in our definition of lower-level drug offenses, the combined total ADP that could be saved by completely eliminating jail time for low level offenses would be 27 ADP (10 ADP for Seattle expedited drug felony cases plus 17 ADP for Seattle drug misdemeanant cases).²⁰

¹⁷ See Attachment 11, 4/24/09 Advisory Group meeting notes at p. 2.

¹⁸ See Attachment 11, 3/27/09 Advisory Group meeting notes at p. 2.

¹⁹ See Attachment 11, 4/24/09 Advisory Group meeting notes at p. 2.

²⁰ Note that there may be other reasonable definitions of lower-level drug offenses (we used expedited felony drug cases together with misdemeanor drug cases). We chose this definition in part because it includes all drug offenses that are below the threshold for Drug Diversion Court eligibility, a program that is already widely viewed as a proven and effective alternative to mainstream prosecution.

One likely reason the number of drug offenses filed as expedited felonies in the first six months was lower than the KCPAO anticipated is that the total number of felony drug bookings in Seattle declined in 2008. We will discuss further the implications of this development and trend in Section 7. In the event that the number of felony drug bookings in Seattle increases in future years, as assumed in the County's projection of the County-responsible jail population, then one likely effect would be to increase the number of expedited felonies. If the resulting number of expedited drug felony cases doubled, and the average length of stay remained at six days, these offenses would account for approximately 20 ADP. We conclude therefore that eliminating jail time for these cases along with Seattle drug misdemeanor cases could reduce the future ADP by up to 37 ADP (20 ADP for Seattle expedited drug felony cases plus 17 ADP for Seattle drug misdemeanant cases).

We also tested the possible effects should budget cuts in the KCPAO be reversed and the filing and disposition standards revert to what they were before the 2008 change (i.e., more jail time on average for lower-level drug cases). In this scenario, if there were 1,200 filings for lower-level drug offenses in Seattle, and the average length of stay reverted to 20 days, these offenders would account for an ADP of:

$$(1,200 \text{ filings per year}) * (20 \text{ days per filing}) / (365 \text{ days}) = 66 \text{ ADP}$$

Before this full 66 ADP is counted as a share of the total County ADP that could be reduced by reducing jail time for these offenses, it would be good to know whether the County assumed the KCPAO's new standards would revert to the old. If the DAJD's recent projections assumed the new standards will remain in place, then the 66 ADP are not "there" to be reduced through eliminating jail time for these cases. If the DAJD assumed the standards will revert, this accounts for some of the sharp projected growth in the County responsible population, and we have less reason to hope the projection is too high. If the standards do revert, of course, eliminating jail time for these offenses would be exactly contrary to the King County Prosecutor's intent in returning to the prior standards.

Subsequent to the Advisory Group discussions of this topic, two members of the Advisory Group argued that lower-level drug offenses could be defined to include more serious drug charges. One such definition might be the one contained in The Defender Association's October 2008 concept paper, namely, those involving marijuana or less than 10 grams of any other drug. This definition would exceed the current eligibility requirements for expedited felony prosecution and exceed the current eligibility requirements for the County's Drug Diversion Court.

The eligibility criteria for Drug Diversion Court are in Attachment 9. As they apply to cocaine, heroin, methamphetamine, and marijuana the basic criteria are these: (a) possession of between 3 and 5 grams of cocaine, heroin or methamphetamine (if less the 3 grams, the offender is now eligible for expedited felony prosecution); (b) possession of between 100 and 125 grams of marijuana; (c) delivery (that is, sales) of no more than 3 grams or \$350 worth of cocaine, heroin or methamphetamine; or (d) delivery of no more than 25 grams or \$350 worth of marijuana.

Unfortunately, we do not have data that allow us to estimate the effect on the jail population of eliminating jail time for offenses meeting Drug Diversion Court eligibility criteria or for those

within the yet higher limit of the October concept paper. Again, we have estimated the potential impact of reducing jail time for one definition of lower-level drug offenders by estimating the impact of entirely eliminating jail time for all drug offenders below the Drug Diversion Court level. If the target population were expanded to include some more serious offenses, the impacts would be larger. On the other hand, it is highly unlikely that all these drug offenders would be spared all jail time, so we expect the current estimates already reflect the range of impacts that would result from a somewhat broader definition of “lower-level.”

Not Final

6. Effect on the Jail Population of Holding the Seattle Drug ADP Constant

Some Advisory Group members have suggested that the County's projections assume jail use will grow unreasonably high, particularly for jail use by drug offenders. While ultimately these projections amount to a judgment call that the County (not the City) will have to make, we analyzed the impact that potential changes in these assumptions could make on jail use.

King County's latest projections indicate that the County-responsible jail population (including but not limited to felony drug offenders arrested in Seattle) will increase by 6% in 2010 and by another 4% annually thereafter through 2015. The Council stated in a recent letter to the King County Executive that "the minimum extension that would allow the [North/East Cities] to stop or postpone planning for a new jail would be ten years. With a shorter extension we would be compelled to continue planning for our own jail facility."²¹ Unless extended on terms mutually agreeable to both the City and the County, the current jail services contract is set to expire in 2012.

It is possible that the County's current growth projection is too high generally, and it is possible that the County's current growth projection is too high in particular for County-responsible drug offender jail use. However, even assuming no growth whatsoever in jail use for all Seattle drug offenses above 2008 levels does not create enough jail space for NEC misdemeanants.

Table 5 shows the effect of holding the Seattle Drug ADP constant at 2008 levels rather than increasing at the rate of King County's general ADP projections.

²¹ See Attachment 2 (April 24, 2009 letter from City Council to Interim King County Executive).

Year	County responsible ADP		Seattle Drug ADP		
	#	% change	Vary with County responsible	Hold constant	Difference
2007	2,083				
2008	1,986	-4.7%	255	255	0
2009	1,828	-8.0%	235	255	20
2010	1,939	6.1%	249	255	6
2011	2,018	4.1%	259	255	(4)
2012	2,098	4.0%	269	255	(14)
2013	2,178	3.8%	280	255	(25)
2014	2,261	3.8%	290	255	(35)
2015	2,363	4.5%	303	255	(48)
2016	2,455	3.9%	315	255	(60)
2017	2,503	2.0%	321	255	(66)
2018	2,554	2.0%	328	255	(73)
2019	2,597	1.7%	333	255	(78)
2020	2,632	1.4%	338	255	(83)
2021	2,680	1.9%	344	255	(89)
2022	2,707	1.0%	348	255	(93)

Table 5 reads as follows:

- The second and third columns are drawn from Table 4. They show the County’s projection of growth in the County responsible ADP through 2015 and our extrapolation of these from 2016 through 2022.
- The fourth column projects the Seattle drug offender ADP as a constant share of the projected County-responsible ADP.
- The fifth column projects the Seattle drug offender ADP at a constant 255, and the sixth column shows the difference between the fourth and fifth columns.

This analysis assumes that the County’s projection of the County-responsible jail population includes a constant share of drug offenders arrested in Seattle. If this assumption is valid, and the Seattle drug offender ADP were instead capped at the current 255, the jail population would be 60 ADP less in 2016 and 93 ADP less in 2022. These reductions are less than the number of jail beds required for NEC misdemeanants in both years. In 2022 the reduction would be greater than the potential reductions from treating all Seattle drug offender inmates or reducing jail penalties for lower-lever offenders.

7. Trends in Drug Offense Bookings in Seattle

This section summarizes some of the key trends and data that we rely on elsewhere in the report. The main reason the ADP of drug offenders arrested in Seattle declined in 2008 is that the number of jail bookings of such offenders declined. Table 6 shows the number of bookings of drug offenders arrested in Seattle between 1990 and 2008.

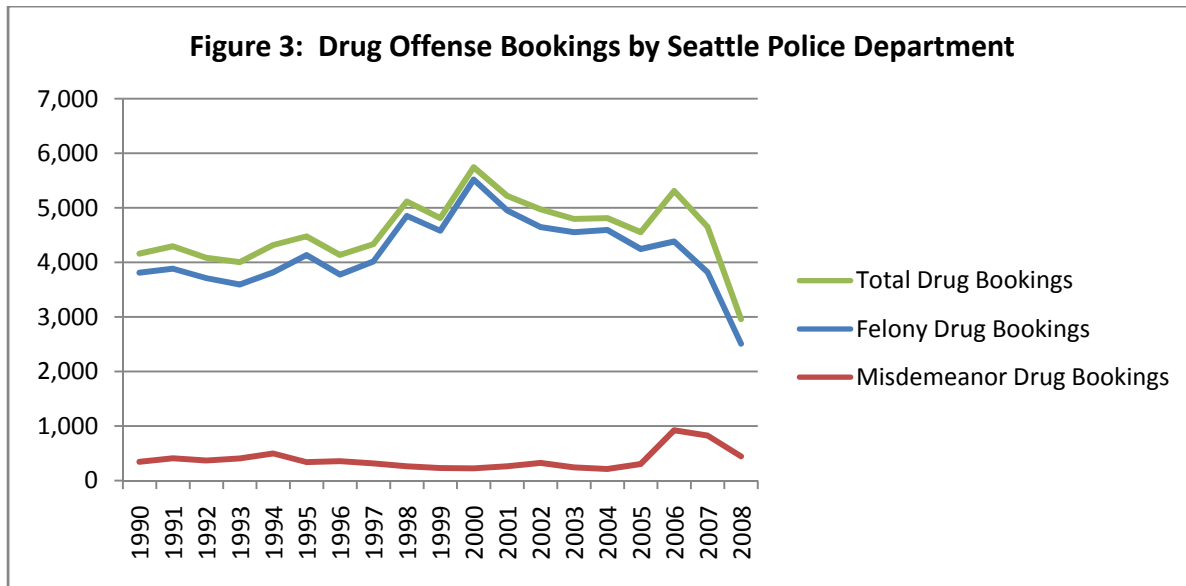
Year	Felony		Misdemeanor		Total	
	#	% of Total	#	% of Total	#	% Change from Previous Year
1990	3,813	92%	345	8%	4,158	
1991	3,884	90%	410	10%	4,294	3%
1992	3,713	91%	370	9%	4,083	-5%
1993	3,596	90%	408	10%	4,004	-2%
1994	3,819	88%	500	12%	4,319	8%
1995	4,135	92%	341	8%	4,476	4%
1996	3,778	91%	359	9%	4,137	-8%
1997	4,017	93%	316	7%	4,333	5%
1998	4,851	95%	263	5%	5,114	18%
1999	4,578	95%	233	5%	4,811	-6%
2000	5,517	96%	226	4%	5,743	19%
2001	4,953	95%	264	5%	5,217	-9%
2002	4,647	93%	325	7%	4,972	-5%
2003	4,554	95%	243	5%	4,797	-4%
2004	4,595	96%	214	4%	4,809	0%
2005	4,245	93%	306	7%	4,551	-5%
2006	4,384	83%	924	17%	5,308	17%
2007	3,821	82%	828	18%	4,649	-12%
2008	2,511	85%	446	15%	2,957	-36%

The table reads as follows:

- The second column shows the number of felony drug offense bookings, and the third column shows the percentage these are of all drug offense bookings.
- The fourth column shows the number of misdemeanor drug offense bookings, and the fifth column shows the percentage these are of all drug offense bookings.

- The fifth column shows total drug offense bookings, and the sixth column shows the year-to-year change in the total.

Figure 3 is a graphical representation of the information included in Table 6 above.



Note the following:

- The large majority of drug offense bookings in Seattle are felony bookings. Between 1990 and 2005 the percentage of felony bookings was over 90% in every year but one. The number and percentage of misdemeanor drug bookings rose sharply in 2006 when the County Prosecutor ceased filing Attempted Violation of Uniform Controlled Substances Act (VUCSA) cases as felony cases in Superior Court, as a cost saving measure, and the City Attorney began filing these cases as misdemeanors in Municipal Court.
- The total number of drug offense bookings in Seattle has fluctuated substantially over the last two decades. For most of the 1990's the fluctuations were plus or minus 8%. In 1998 the total increased 18%, then declined the next year by 6%, and then rose again by 19% in 2000. The total declined between 2001 and 2005, rose by 17% in 2006, and declined sharply again in both 2007 and 2008. These fluctuations are roughly paralleled by the fluctuations in the Seattle drug offense ADP shown in Table 1.

We asked the Police Department representatives to the Advisory Group whether they could explain the decline in drug offense bookings in 2008, and in particular whether this decline resulted from a deliberate shift in drug arrest policies that might be maintained and thereby keep

the Seattle drug offense ADP at the current low level. Their response is included in Attachment 12, as part of their comments on the draft of this report:

“[There] have been no changes to SPD policy that could have affected felony drug arrests to the degree we have seen over the last few years. Nor can we point to any one factor, or specifically quantify many possible factors, to fully explain the reduction in drug arrests.”

The response goes on to discuss several possible explanations for the decrease, including evolving tactics of both offenders and police, changes in law, the Prosecutor’s new filing and disposition standards, the shift in venue for drug paraphernalia cases, and crime trends generally. In continued work with the County, this is another issue that needs to be better understood and discussed further.

Not Final

8. Advisory Group and Project Team

Attachment 10 lists the original members of the Advisory Group and Project Team. As the study continued, some members of the Advisory Group designated others to attend on their behalf.

The Advisory Group met each month from February through June. Attachment 11 contains notes from the Advisory Group meetings. Those attending the meetings are listed in the notes.

The Project Team met slightly more frequently than once a month, depending on need. Project Team members were very helpful to us throughout the project. They are not responsible for the findings and conclusions in this report.

Some Advisory Group members have made written comments on this report. These comments are in Attachment 12.

Not Final

9. Other Information Reviewed by the Advisory Group

The Advisory Group discussed other existing and potential programs for actual and potential offenders in order to identify any available opportunities for reducing the jail population other than those discussed above. Section 9.1 summarizes services for offenders provided by Seattle and King County today. Section 9.2 describes two Seattle pilot projects on law enforcement and human services.

9.1. Existing Services Provided by Seattle and King County for Offenders

Attachment 13 summarizes existing services for offenders provided by Seattle and King County. In addition to Drug Diversion Court, they include City and County Mental Health Courts, the City's Community Court, a variety of services provided in King County Jail, and a collection of services provided as part of the County's Criminal Justice Initiative, and City efforts to reduce homelessness.

The first thing to note is that Seattle and King County already invest a substantial amount in services for people in the criminal justice system or at high risk of offending. Seattle and King County combined spend \$300 million per year on these services.

The other is that there is no immediately apparent opportunity to significantly reduce the use of jail by expanding these services. One reason is that although these services may produce good results for many of their clients, there is little evidence that they significantly reduce jail use, either because no evidence is available on this effect or because the available evidence shows little impact.

Drug Diversion Court, for example, has not reduced the use of jail. Although defendants who successfully complete drug court spend less time in jail than if they were normally prosecuted, those who fail to complete Drug Diversion Court spend more time in jail, and the majority of defendants who go to drug court fail to complete the program. This by itself implies that expansion of Drug Diversion Court, if it were feasible, would not reduce the use of jail. The point is not that Drug Diversion Court is a bad idea. Defendants who succeed in Drug Diversion Court often turn their lives around. Evaluations of drug courts nationally show that, on average, drug courts reduce the recidivism of adult offenders by 8%, which is enough to generate combined public and private savings greater than the cost of drug court, largely in the prison system (see Section 4.1 and Attachment 5). The point is that the Drug Diversion Court does not present an opportunity to significantly reduce the demands on King County jail any time soon.

Housing may be an exception. There is good evidence that the "housing first" approach can reduce the use of public services by chronically homeless persons with severe alcohol problems, including the use of jail.²² In a recent survey of King County Jail inmates at booking, more than a quarter reported having been homeless at least once in the prior year, and about a fifth of the

²² Larimer et al., "Health Care and Public Service Use and Costs Before and After Provision of Housing for Chronically Homeless Persons With Severe Alcohol Problems," *Journal of the American Medical Association*, Vol. 301 No. 13, April 2009

inmates arrested in Seattle were sleeping on the street immediately before jail.²³ These results should be interpreted cautiously, because homeless offenders may be more likely to be minor offenders and thus constitute a larger share of bookings than ADP.

9.2. Seattle Pilot Projects on Law Enforcement and Human Services

In 2006, the City of Seattle launched three public safety pilot projects: Clean Dreams (replaced in early 2008 by Communities Uniting Rainier Beach, or CURB), Get Off the Streets (GOTS), and Court Specialized Treatment and Access to Recovery Services (Co-STAR). CURB is a peer outreach, service intervention, and case management program for young adults in Rainier Beach who are involved in low-level criminal activity. GOTS offers similar services to adults in the Central Area who are continually involved in the criminal justice system. Co-STAR was designed as a longer-term strategy to reduce recidivism by providing housing, treatment, and other services to individuals who create public safety concerns in Downtown. In 2009, CURB was budgeted to serve approximately 75 young adults; GOTS to serve approximately 50 adults; and Co-STAR to provide treatment for 50 persons per month and to maintain 45 persons in housing.

All three programs were designed to improve public safety, reduce recidivism among people that are frequently involved in the criminal justice system, and link law enforcement with human services by providing participants with access to housing, treatment, and employment services. The initial plan for evaluating these programs focused mostly on implementation, including whether participants were referred to services and completed case management plans. Some information was developed on the subsequent criminal histories of participants, but the City Council concluded that this information did not provide an adequate basis for deciding whether to continue the programs, so in 2009 the Council commissioned an evaluation of their effects on criminal justice system costs, including the use of jail. The results from this evaluation should be available at the end of the summer.

²³ “Jail Health Services’ Profile of Homelessness in the King County Jail,” January 9, 2009; prepared by Public Health – Seattle & King County for City of Seattle’s Office of Housing and City of Seattle’s Human Services Department.

Conclusion

Our conclusions are based on analysis of the best available data and the most current jail capacity projections. We acknowledge that the data is incomplete or imperfect, and the projections necessarily reflect multiple uncertainties. It is possible that our analysis and conclusions could change somewhat with additional data; and clearly it is in both the City's and the County's mutual interests to redouble coordination efforts to further refine projections of future jail demand and capacity.

This report addressed a number of the key questions posed by the Council's SLI. We found that the County-wide use of jail beds can be reduced by adopting a more treatment-focused approach toward the enforcement of certain lower-level drug offenses. We do not question the potential benefits of such programs for individuals who participate, their families, or broader societal interests. Our analysis is more narrowly focused on the likely impact such policy approaches could be expected to have on the immediate jail capacity planning questions facing our region. Our findings in Section 1.4 conclude that the effect on County jail use of expanded treatment programs for drug offenders is unlikely to change significantly the projections of jail capacity shortfalls. We also conclude that even outright elimination of jail time for lower-level drug offenders is unlikely to significantly change such projections.

Our estimates of the effects on the County jail population of treatment and reduced penalties for drug offenders are an attempt to estimate the upward bound and may be substantially greater than what would be achievable if such programs were implemented. For example, if we were able to treat only half the two thousand or so Seattle drug offenders passing through King County jail each year, and if our treatment were only as effective as drug court, then the effect of treatment on ADP would be about a quarter of that estimated here. Likewise, if we did not completely eliminate jail time for lower-level drug offenders, but instead only reduced it for some individuals or only for a limited number of times for each individual, then the effects of reducing jail penalties on ADP would also be much lower.

Council's initiative in seeking a collaborative effort has already paid dividends. The Council's SLI resulted in a collaborative effort between City staff and elected officials, County staff and elected officials, the King County Prosecuting Attorney's Office and public defender organizations, the ACLU of Washington, Municipal Court and Superior Court judges, a Washington State Representative, Seattle Police Department representatives, and other criminal justice experts. The conversations and engagement likely contributed to a refresh of the County's forecast, which in turn set the stage for the County's recent offer to extend the existing jail services contract from 2012 to 2015.

There is much that we did not have time to fully investigate or to address in this report. In coming months, the jail capacity planning efforts may benefit from additional work in all of the following areas:

1. Continue to test the County's average daily jail population (ADP) projections and work in cooperation with County staff on monitoring the actual ADP trends;
2. Additional work is also needed to update the NEC's ADP projections and actual trends;

3. Review the potential for more alternatives to incarceration of inmates at the County jail such as Electronic Home Monitoring;
4. The Council engaged a consultant to evaluate the CURB, Co-Stars, and GOTS programs. The consultant's report is expected in August of September, and it is may provide additional information about these existing crime prevention strategies;
5. Review the Seattle Police Department's progress and findings as the new Drug Market Initiative is implemented;
6. Evaluate the potential for Seattle and the other NEC cities to meet some jail capacity needs extend (and possibly expand) its jail services contract with Yakima County;
7. Evaluate the potential for Seattle and the other NEC cities to meet some or all jail capacity needs at the new SCORE facility (scheduled to start construction later this year);
8. Consider whether Seattle wishes to advocate in Olympia and/or Washington, D.C. for legislative reform, including drug law reform, sentencing reform, new/additional resources for community supervision, and consolidation of jurisdictional jail responsibility for both felons and misdemeanants.

The discussions in the Advisory Group and Project Team raised some issues that do not bear directly on the question posed by the SLI but which are likely to emerge again as the City continues to search for ways to reduce the use of jail and to address illegal drug markets. One of these topics is the effect of jail itself on crime. Another is the proper use of discretion by police officers. A third is the potential role of pre-booking diversion in achieving the most effective balance between enforcement and treatment for drug offenses.

We want to conclude by thanking the members of the Advisory Group and Project Team for their hard work and their willingness to engage in a vigorous discussion of the many issues presented here. They reviewed multiple technical reports and draft materials; attended many meetings; and engaged in sometimes spirited but always respectful dialogue during a 6-month process from February through July 2009. We know some of them do not agree with what we say here, but we are sure this report would have been poorer without all of their contributions.

Attachments to Central Staff Jail Capacity Study Memo

1. Statement of Legislative Intent on Jail Capacity Study
2. Seattle City Council's 4/24/09 letter to King County Executive; and King County Executive's 6/17/09 letter to Seattle City Council
3. "Integrated Regional Jail Initiative Phase I Preliminary Report and Proviso Response," King County Department of Adult & Juvenile Detention (DAJD); and King County Executive's press release on "Jail planning discussions to move forward"
4. North/East Cities projection of misdemeanor jail space requirements
5. Exhibit 4 from "Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates," Washington State Institute for Public Policy, 2006
6. Drug Offender Recidivism Data Request from King County DAJD
7. The Defender Association's Concept Paper (October 2008); Belltown MIDD Funding Proposal; and Skyway MIDD Funding Proposal
8. King County Prosecuting Attorney's Office's filing and disposition standards (Executive Summary)
9. King County Drug Diversion Court – Eligibility Criteria
10. Advisory Group and Project Team members
11. Advisory Group Meeting Notes
12. Advisory Group comments
13. Summary of King County and Seattle services for offenders