

DISTRICT/MUNICIPAL COURT LIAISON COMMITTEE NEWSLETTER

On November 17, 2016 the committee had its regularly scheduled bi-monthly meeting

Chuck Ramey, Administrator from the Pierce County District Court indicated that Judge Jasprica will be the Pierce County District Court Presiding Judge commencing in January 2017.

The Pierce County District Court has been awarded a \$50,000 planning grant for development of a leadership transition program. The planning grant is designated to assist in leadership transition on the bench as well as the aging workforce in administration. Pierce County District Court has the largest probation department in the State of Washington for Courts of Limited Jurisdiction. This grant will assist in the planning of a smooth transition for all departments within the Court.

Mr. Ramey gave the committee an update on the new program called DART (Drug Assistance Reduction Team). The Pierce County Criminal Defense Bar should be aware of this joint venture between the Superior Court and District Court for potential use by their clients. This program is designed to change the way certain felony drug cases are processed. This program is a carefully measured response to the growing heroin epidemic that has afflicted the entire country as well as Pierce County.

Historically, the Prosecuting Attorney would file a felony drug charge in Superior Court and, if appropriate, agree to amend the charge to a misdemeanor. If the case resolved in this fashion, the Superior Court would enter the guilty plea and retain jurisdiction. Under these circumstances, the Department of Corrections is relieved of any requirement for supervision and the individual is placed on bench probation. The Superior Court does not have a probation department and the case is set for periodic court review. Without formal supervision by a probation officer a defendant is often left on his own to accomplish conditions imposed by the court.

The DART program was created to provide first-time drug offenders the supervision needed to hold them accountable to imposed conditions (ex: obtaining an evaluation, treatment, etc.) and the ability to avoid a felony conviction. Under the program, the Prosecuting Attorney will ultimately dismiss the Superior Court case once a plea is entered to a misdemeanor in District Court. Pierce County Deputy Prosecutor Erika Nohavec shared some of the criteria that would make a defendant eligible for the DART program as well as the actual procedure involved. To be eligible the defendant cannot have any prior felony convictions and it must be a simple possession charge. The Department of Assigned Counsel has been responsible for

representation of all the defendants participating in the program thus far, however the program is available to defendants who have private counsel. This is a one-time offer. If the defendant does not enter a guilty plea in District Court at the scheduled hearing, the Superior court case continues as if the program did not exist. If the plea is entered as agreed, the Prosecuting Attorney will dismiss the Superior Court case.

Mr. Ramey shared with the committee his observations of the program and how it can effectively address the needs of a population often lost in the cracks of the judicial system. In the DART docket witnessed by Mr. Ramey there were 3 cases. In one of those cases there was a young woman approximately 20 years old. Throughout the proceedings she carried with her a stuffed animal. It was discovered that in addition to being addicted to heroin, she was also developmentally disabled. The behavioral health unit contained within District Court Probation will be able to work with her and her dual diagnosis. If this case had remained in Superior court she would not have the opportunity to get that much needed assistance. Both Mr. Ramey and Ms. Nohavec wanted to acknowledge Superior Court Judge Frank Cuthbertson and Pierce County Deputy Prosecutor John Sheeran for their assistance in making the DART program possible.

Another program that has been implemented is the Pre-Trial Release program. Andrea Kelly is the supervisor of this program. The program reviews the conditions set at arraignment and in certain cases makes recommendations to modify those conditions to less restrictive alternatives. The program has approximately 130 cases currently under review. There has been a financial impact on the budget from the standpoint of fewer people incarcerated means lower costs for the County. There has also been a financial impact on Bail Bond companies as their potential clientele has been reduced.

Fidelis Leasiolagi from 2Watch Electronic Home Monitoring gave the committee an update on the on-going battle to prevent the industry from having to pay taxes under the current Department of Revenue determination that the EHM industry's use of cell phone technology requires them to pay taxes as a cell phone provider. It has always been the position of Electronic Home Monitoring industry that the legislation that requires cell phone providers pay certain taxes doesn't apply to EHM providers. The EHM industry has won a small battle in that legislators have unanimously decided that the Department of Revenue's determination needed to be clarified and have instructed the Department of Revenue to do so. If it is ultimately determined that the EHM industry is required to pay these taxes the resulting increase in costs would have to be passed down to the users. That increase in cost could make the service unobtainable to those with limited financial resources.

Mr. Leasiolagi was kind enough to bring with him some of the monitoring equipment actually used by his company to the meeting. He described the monitoring equipment and discussed what equipment options best fit the needs of both the defendant and the court. He displayed

monitoring systems that could be worn as a wrist watch. There were ankle bracelet models, and other units about the size of a small paperback book. The technology has advanced to the point that units can report movements in real time with analytics and software filters that can be set to support any reporting requirements required by the courts. Most units are tamper proof and waterproof. These can be worn continuously and can be recharge without removal. There are units that will record audio and other units can emit a 98 decibel siren if need be. For high security risks there are ankle bracelets that have steel cables and fiber optics. There is no longer a necessity for a land line. Virtually all of the equipment can be utilized through cell technology or WIFI. There are alcohol units that can take a transdermal reading through the skin throughout the day.

The committee would like to thank Mr. Leasiolagi and the 2Watch Monitoring company for the very informative presentation.

Deputy Prosecutor Erika Nohavec reported that filings in District Court are down as a result of a decrease in the number of case referrals from law enforcement. The charging backlog is caught up through September of this year. Be aware, the Prosecuting Attorney's Office is in the process of transitioning to new software utilized in generating criminal complaints so they will change slightly in appearance. It was brought to the attention of the Deputy Prosecutor Nohavec that private attorneys were not sure of the email addresses of the prosecutors involved in their case. Email is often the best way to communicate with Deputy Prosecutors in the Misdemeanor Division. Ms. Nohavec gave a simple formula for the email addresses for prosecutors. The first letter of the first name; the first six letters of the last name; @co.pierce.wa.us. You can also look up the email address at the WSBA website.

Deputy Prosecutor Nohavec also reported on an issue of first impression in the Pierce County District Court. The issue is whether a defendant is entitled to 10.77 protections in post disposition proceedings.

RCW 10.77.050- is entitled: Mental incapacity as bar to proceedings

RCW 10.77.050 states as follows: No incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.

Pierce County District Court Judge Sussman recently ruled (and the parties agreed) that RCW 10.77 does apply to post disposition violation hearings as they do involve sentencing (imposition of a suspended sanction) for the commission of an offense. The next question raised: *What happens when a defendant is incompetent and the case is post-disposition?* RCW 10.77 does not contemplate competency restoration for cases in this posture. The defense argued for these cases to be closed since the court ordered conditions could not be enforced as long as the individual is determined to be incompetent. In this particular case, Judge Sussman

denied that request. The defendant had a previous conviction for Physical Control as well as a DUI conviction from a revoked Deferred Prosecution. Judge Sussman stated that although there can be no enforcement of the court order, the court still has jurisdiction and competency could be reviewed at a future date if a triggering event occurred (for example, if the defendant picks up a new charge).

Tacoma Municipal Court Commissioner Randall Hansen encouraged all members of the committee to support the implementation of the 1/10 of one percent tax for mental health services by the County Council. He reported on the positive benefits that the Tacoma Municipal court has enjoyed since the enactment of the tax in the City of Tacoma. It allowed for the implementation of the mental health docket which has had a profound effect on the way the court can address the unique problems of the mentally challenged individuals who come in contact with the justice system in Tacoma. It allowed for mental health specialist who are available to the Tacoma Police Department at the point of first contact with potential mentally challenged individuals.

The Fife jail will be closing soon. The once thriving facility was dealt a fatal blow when the City of Tacoma decided to terminate their agreement and go back to using the services of the Pierce County Jail.

The District/Municipal Court Liaison Committee's next meeting is tentatively scheduled for January 19, 2017, 7:30 AM at the Harvester Restaurant located at 29 N Tacoma Avenue. All are welcome.