

**NEEDS ASSESSMENT  
OF THE  
DC MISDEMEANOR AND TRAFFIC COURT  
OF THE  
SUPERIOR COURT  
OF THE  
DISTRICT OF COLUMBIA**



**COUNCIL FOR COURT EXCELLENCE**

*Prepared for the  
District of Columbia Criminal Justice Coordinating Council  
by the  
Council for Court Excellence*

*October 2005  
Washington, DC*

Points of view in this document are those of the authors and do not necessarily represent the official position or policies of the Criminal Justice Coordinating Council or the District of Columbia Government.



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## Introduction

In September 2004, the Council for Court Excellence (“CCE” or “Council”) received a contract from the DC Criminal Justice Coordinating Council to perform a needs assessment of the DC Superior Court DC Misdemeanor and Traffic Court. This Court is one of two community courts created as a result of a recommendation by the Council for Court Excellence and the Justice Management Institute publication *Final Report and Recommendations on Management of District of Columbia Criminal Justice Resources* (March 2001).<sup>1</sup>

This report will address three broad themes: (1) describe the process of how cases move through the DC Misdemeanor and Traffic Court from the time of arrest to the time a case is disposed of by the court, (2) provide analysis of extant data regarding case flow, and (3) offer recommendations to improve the performance of the Court. Specifically, the Council was asked to perform the six following **Contract Tasks**:

1. conduct interviews of relevant DC Superior Court personnel, including Misdemeanor and Traffic Court Presiding Judge and Criminal Division Director, along with other criminal justice system participants, such as personnel in the Office of the Attorney General and the criminal defense bar, among others.
2. describe the process for the entry of cases into the Misdemeanor and Traffic Court.
3. identify diversion options currently available to the Misdemeanor and Traffic Court.
4. analyze processing time and recidivism data for criminal cases heard before the Misdemeanor and Traffic Court (if such data is timely provided to CCE).
5. compile demographic profile of clients who need services, who succeed (to the extent such information can be determined within the contract period), and who fail to meet the requirements of the Misdemeanor and Traffic Court.
6. provide a final report, based on the above data collection and analysis, with recommendations to the Criminal Justice Coordinating Council.

An advisory committee was appointed by the Council for Court Excellence Board of Directors for the Needs Assessment project. The advisory committee met four times between December 2004 and May 2005. Its members are:

Chair: Cary M. Feldman, Esquire  
Feldesman Tucker Leifer Fidell LLP

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<sup>1</sup> Recommendations 26 and 27. Pages 94-97. See also: Council for Court Excellence, Roadmap to a Better DC Criminal Justice System, page 16, April 2001.

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From October 2004 through September 2005, the Council for Court Excellence studied the DC Misdemeanor and Traffic Court. The Council attended twelve monthly meetings of the DC Misdemeanor and Traffic Court Working Group, comprised of representatives from stakeholder agencies, service providers, and community organizations, and organized under the auspices of the Superior Court of the District of Columbia.

In the report which follows, **Contract Tasks 1 through 3** (see page 4) are addressed in the chapter entitled “Process Description.” The study found few documents that described the process flow of cases from the time of arrest to the disposition of the case in court. Therefore, the process description is largely based on the twenty-nine interviews of system participants.

**Contract Tasks 4 and 5** (see page 4) are addressed in the chapter entitled “Analysis of Case Processing Statistics.” Original data sets were provided by the DC Metropolitan Police Department, DC Pretrial Services Agency, and the DC Office of the Attorney General. We were also provided with reports prepared by the DC Superior Court and the DC Office of the Attorney General. Recidivism data is not kept by any of the stakeholder agencies and is therefore excluded from this report. Stakeholder agencies also do not track the demographics of defendants who participate in the therapeutic and restorative programs of the Court. A demographic profile of a

certain population appearing in the DC Misdemeanor and Traffic Court was developed using Pretrial Services Data, which is described in this section of the report.

While the scope of the contract affirmatively excluded comparative study, the report will refer to “best practices” for the Court to aspire to in the “Findings and Recommendations” section, and includes an informal bibliography for stakeholder agencies to use as a resource.



## Executive Summary

In January 2002, the Superior Court of the District of Columbia opened the doors to a newly reconfigured DC Misdemeanor and Traffic Court, which adjudicates traffic matters and low-level DC criminal code violations. While continuing to adjudicate some matters in the manner of a traditional criminal court – determination of guilt and imposition of an appropriate punishment - the DC Misdemeanor and Traffic Court also began to adjudicate certain matters with a problem-solving approach.

The problem-solving approach by the Court attempts to identify and treat the underlying causes of criminal behavior, such as substance abuse, mental illness, unemployment, etc., and/or to apply alternative punishments instead of incarceration to directly “pay back” the community for the harm caused by the defendant’s criminal behavior, typically through community service. This synthesis of function and its city-wide scope gives the DC Misdemeanor and Traffic Court a degree of uniqueness in relation to other specialty and community courts.

Currently, eight diversion programs are offered in the DC Misdemeanor and Traffic Court, ranging from remediation and community service to alcohol counseling and referrals to social service programs. Combined, these diversion programs represent the “community court” aspect of the DC Misdemeanor and Traffic Court. However, the community service component of the Court is limited in its rehabilitative capacity, since the most frequently used programs are remediation and community service. The former is defined as a continuance granted by the court whereby the defendant can secure documents or pay fines to avoid a guilty verdict. Community service, such as street cleaning and trash removal, is performed in either the Downtown DC Business Improvement District or on a city-wide basis through a list generated by the DC Department of Public Works. Since community service is performed in areas that are not necessarily connected to the neighborhood where the crime was committed, it is at odds with the concept of restoring the community where the crime occurred.

The DC Misdemeanor and Traffic Court appears to be disposing of cases relatively quickly. In 2003, the latest year for which time data is available, traffic cases were disposed in about an average of 35 days and DC Misdemeanor cases were disposed in under 20 days.<sup>2</sup> From the years 2001 to 2003, the processing time for traffic cases dropped by 18%, while the number of traffic case filings dropped by 38%. For the same time period for DC Misdemeanors, the processing time dropped by 26%, with a 28% decrease in DC Misdemeanor case filings. This study did not examine the causes of or the influence of a diminishing caseload on the reduction in time to disposition.

It is not possible to compile a complete demographic profile of defendants appearing in the DC Misdemeanor and Traffic Court due to limited data collected by the system. Data provided from the DC Pretrial Services Agency (“PSA”), which selectively interviews only about 20% of DC Misdemeanor and Traffic Court defendants and appears to be the only agency tracking comprehensive demographic information, shows that of the PSA-interviewed defendants, over

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<sup>2</sup> These figures exclude “no papered” cases.

80% are male and black, and approximately 60% are single, report a DC zip code as a home address, and are between the ages of 19 – 38.

The DC Misdemeanor and Traffic Court Working Group, a monthly interagency meeting of stakeholder government and service provider agencies, is effective at identifying and addressing short-term problems and issues that arise within the DC Misdemeanor and Traffic Court. However, with regard to long-term effectiveness, this Court is at a critical juncture. Based on the experience with other community court models, the DC Misdemeanor and Traffic Court needs a long-term plan, including a plan to address the ongoing lack of data relating to recidivism, diversion program workload statistics, demographics, and other case processing statistics. Several stakeholders suggest the need for a stronger social services referral program – increasing court involvement with offenders and increasing offender accountability mechanisms – if the DC Misdemeanor and Traffic Court is to begin to address the social service needs of offenders.

### **Summary of Findings and Recommendations**

1. Finding: The DC Misdemeanor and Traffic Court lacks sufficient resources to identify the social service needs of most defendants and to provide any with meaningful social service referrals.
  - a. Recommendation: The DC Superior Court should add one or more social workers or persons with social service skills, either through direct hire or through the detail of a full time equivalent through the DC Pretrial Service Agency, dedicated to the DC Misdemeanor and Traffic Court.
  - b. Recommendation: The DC Misdemeanor and Traffic Court should expand the number of cases for which a social service assessment is performed.
  - c. Recommendation: The DC Misdemeanor and Traffic Court Working Group should develop a comprehensive long-term plan for the DC Misdemeanor and Traffic Court.
2. Finding: The DC criminal justice system is collecting insufficient data with respect to DC Misdemeanor and Traffic offenses, and the lack of data hinders program development, analysis, management, and evaluation.
  - a. Recommendation: The Office of the Attorney General or the DC Misdemeanor and Traffic Court Working Group should develop and implement protocols to track defendants and outcomes for each diversion program it administers.
  - b. Recommendation: The Metropolitan Police Department and the Pretrial Services Agency should evaluate the benefits and costs of assigning Police Department Identification (PDID) numbers to all criminal defendants to permit tracking recidivism.

3(a). Finding: Some penalties for DC Misdemeanor and Traffic offenses are not logical or proportionate. For example, the maximum sentence for Driving While Intoxicated is 90 days, while the maximum sentence for Operating After Suspension is one year.

3(b). Finding: Mandatory fines for any criminal guilty verdict are unrealistic when applied to crimes of destitution. For example, defendants found guilty of panhandling are required to pay \$50 to the DC Crime Victims Fund.

Recommendation: The DC Council should consider reviewing and proportionalizing statutory penalties for DC Misdemeanor and Traffic offenses and consider amending the DC Code to eliminate or propose alternative sanctions to a mandatory fine for crimes of destitution.

4. Finding: The District of Columbia Code does not provide for the expungement of convictions of low level offenses.

Recommendation: The DC Council should enact an expungement statute for incorporation into the DC Code.

5. Finding: All trials in the DC Misdemeanor and Traffic Court are scheduled for 9:00 am, which wastes much time of non-court personnel.

Recommendation 5: The DC Superior Court Criminal Division should re-examine its trial scheduling system for DC Misdemeanor and Traffic cases and should also asking the Chief Judge to designate a judicial officer to handle trial overflow that would always be available.



## Process Description

This section addresses **Contract Task 2**: describe the process for the entry of cases into the Misdemeanor and Traffic Court. This section will describe the flow of cases sequentially from the time of arrest to disposition of the case by the DC Misdemeanor and Traffic Court. Sub-sections include: Arrest, Booking, Papering, Arraignment, Description of Diversion Programs, and Disposition by trial, plea or nolle prosequi. A chart of the DC Misdemeanor and Traffic Court case flow process is provided at Appendix 1.

### **I. Arrest**

When an individual is stopped, the officer first attempts to identify him or her via license or other personal identification. A weapons search is conducted.

If the individual has identification, the officer radios the Metropolitan Police Department (“MPD”) dispatcher to perform a check of the Washington Area Law Enforcement System (“WALES”) for outstanding DC area bench warrants, which then feeds into the National Crime Information Center (“NCIC”) for an outstanding warrant check nationwide. At this time, the officer at his or her discretion may request the dispatcher to check if the suspect has a Police Department Identification (“PDID”) number, which would indicate if the individual has been arrested previously.

The officer then must determine whether to issue the defendant a field citation (Form 61D), which releases the defendant on personal recognizance until a date specified on the citation form to appear at the Police Station for booking, or to place the defendant under arrest. This determination is based on the “Bond and Collateral List,” the guidelines which inform an officer of the DC Misdemeanor or Traffic charges which allow the defendant to post bond or dispose of the case by post and forfeit.<sup>3</sup> Regardless of the charge, defendants without personal identification are not eligible to receive a field citation and must be taken to the MPD District Station for booking. Anecdotal statements about inconsistent application of the field citation and post and forfeit option suggest the Bond and Collateral List plays an important role in what happens at the “front end” of a case.<sup>4</sup> This report does not present any statistical evidence to test this claim, however.

For civil traffic matters, officers issue a Notice of Infraction (“NOI”) form. A new form, developed in late 2004 by the DC Department of Motor Vehicles, does not contain DC Superior

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<sup>3</sup> Bond and Collateral List: bond is a form of pre-trial release where defendants put up a cash bond which they get back upon their return to court. Collateral is a shorthand term for post and forfeit. Generally speaking, collateral offenses are less serious and the Court and the prosecutor agree that a fine is sufficient punishment. Posting and forfeiting is not an admission of guilt, but the underlying charge is reflected as an arrest on the individual’s criminal record.

<sup>4</sup> A new Bond and Collateral list was developed by the DC Office of the Attorney General, in consultation with the DC Superior Court, the Metropolitan Police Department and several federal police agencies. The new list was approved by the DC Superior Court Board of Judges in July 2005.

Court criminal traffic charges, such as no permit and unregistered automobile.<sup>5</sup> Certain traffic matters are eligible for “post and forfeit” in the same manner as certain DC Misdemeanor matters. Since the new NOI and Form 61D combined do not contain space for MPD officers to cite criminal traffic charges, the result has been inconsistent MPD practice – old forms are still being used and possibly new forms will be triaged in the field to log traffic charges. The new form, without space for criminal traffic charges, may mean that the DC Department of Motor Vehicles will not be notified of criminal traffic matters, as with the old form.

### **Field Arrest process**

When a suspect is taken into custody, the officer completes the Quick Booking Form (PD-256) on the scene of the arrest. This form, which includes the arrestee’s name, charge, and other identifying information, stays with the arrestee through the process. Defendants are then taken to the District Station for booking.

### **Field Citation process**

Defendants given a field citation are not taken to the District Station for immediate booking. Instead, the field citation requires the defendant to appear at the District Station within 15 days to either post and forfeit or contest the charge in court. When issuing a field citation, the officer checks a box on the front of the citation form indicating to which District Station the defendant must appear. The defendant is given the front copy of the field citation, the yellow copy goes to the District Station file at the end of the officer’s shift, the gold copy stays with the officer, and the pink copy’s destination or purpose is unknown. Should the defendant choose to contest the charge in court, the officer presents the gold copy to the prosecutor, who makes a determination whether the case is prosecutable. The yellow copy of the field citation is kept in the District Station’s files, or “suspense file,” as a record of which defendants are expected to appear during the 15-day period.

A defendant who appears at the District Station within the 15-day period is informed that he or she is eligible to dispose of the case by posting and forfeiting cash at the District Station or may contest the charge in court. If the defendant chooses to post and forfeit, he or she is given a receipt to read and sign, stating that he or she understands that the implication of “paying out” is that an arrest record will result. If the defendant opts to contest the charge in court, the defendant is assigned a court date (by the Pretrial Services Agency) and is booked (described below). If the defendant does not appear within the 15-day period, either the police officer swears an arrest warrant and the District Station retains the District copy on file, or the government can apply for an arrest warrant or judicial summons.

## **II. Booking**

Booking is the processing of defendants taken into custody, including confiscating the defendant’s property, confirming their identity via fingerprint analysis and background checks, and logging arrest information into the Criminal Justice Information System (“CJIS”) database.

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<sup>5</sup> Distinguished from civil traffic charges, such as parking violations, speeding not in excess of 30 mph over the speed limit, etc. These civil matters are adjudicated at the Department of Motor Vehicles Adjudication Services, formerly known as the Bureau of Traffic Adjudication.

Both defendants who are arrested and those who choose to contest a field citation in court go through the booking process.

At the District Station, the defendant's property and money are confiscated. The property and money are both handled and stored separately. District Station clerks enter information from the Quick Booking Form into the CJIS, which then automatically generates an arrest number for the suspect.

Defendants given a field citation who request court dates (i.e., those who do not post and forfeit) are then booked into the Criminal Justice Information System in the same manner as defendants arrested in the field. At this point, the field citation turns into an arrest and gets assigned an arrest number.

Staff of the Pretrial Services Agency regularly check CJIS (on the "Citation Release Processing" screen) for information on newly booked arrestees. When a new arrestee appears on CJIS, PSA staff begin to perform a background check on the defendant, including an FBI check, warrant check, pending felony check, and a probation/parole check. At roughly the same time, MPD will check WALES for outstanding warrants in the metropolitan Washington, DC area. When PSA has completed its background checks, staff enters the word "background" into CJIS, indicating the series of background checks have been completed. Defendants who previously elected to post and forfeit at a District Station will not appear on the criminal history check, but defendants who post and forfeit in the courtroom will appear on the criminal history check.

All defendants, except those who post and forfeit at the District Station, are fingerprinted and have mug shots taken via LiveScan.<sup>6</sup> Four copies of the Prosecution Report (Form PD-163) are distributed, one to the officer and three to the LiveScan technician who fingerprints the defendant. The LiveScan technician puts an original, ink-rolled thumbprint of the defendant on the back of each of the three copies of Form PD-163. These copies are then forwarded to the Central Cell Block – 2 copies to the DC Superior Court, 1 copy for the MPD archives.

The defendant's fingerprints are taken by rolling all ten digits on the LiveScan machine, which electronically scans the prints. Ink-rolled fingerprints are used only for the thumbprint on Form PD-163 or in the event that the LiveScan machine is not functioning, which is a rare occurrence. A mug shot is also taken via LiveScan. The fingerprints and mug shots are then transmitted electronically to the MPD Automated Fingerprint Identification System ("AFIS") unit, a unit of over 15 MPD personnel.

Two fingerprint searches result: one of the local DC fingerprint database and one of the national fingerprint database. The search of the DC database takes approximately 3-5 minutes. Simultaneously, the fingerprints are sent to the FBI for a national search, which can take up to 24 hours. As a result of the fingerprinting process, the AFIS unit may confirm the name of the

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<sup>6</sup> The LiveScan machine allows fingerprints to be scanned electronically and mug shots to be taken digitally. The LiveScan machines are linked electronically to the MPD Fingerprint Identification Unit. LiveScan machines are located in each of the seven District Stations and in the Central Cell Block.

defendant, reveal the defendant is using an alias for the current arrest and confirm whether the defendant has a Police Department Identification (“PDID”) number. If the defendant is a first time offender, he or she is classified as “non ident,” meaning the name given at the time of arrest cannot be confirmed by AFIS, and assigned a PDID number. There are several charges not assigned a PDID number by MPD (e.g., POCA).<sup>7</sup> These charges are all assigned a false PDID number of “999999” and entered into the CJIS database. Another WALES check may be performed once the defendant’s name is confirmed.

After both PDID and arrest numbers are generated, the officer completes Form PD-163. MPD By internal regulations mandate that officers process an arrest in no more than four hours. For twenty DC Misdemeanor and US Misdemeanor charges, officers can complete arrest paperwork on-line using the Automated Report Writing System (ARWS). ARWS reduces the time spent on paperwork by about half.

Once a PDID number is assigned to the defendant, PSA interviews each defendant to recommend to MPD whether the defendant is eligible for pre-trial release.<sup>8</sup> The interview is designed to confirm the defendant’s identity and to begin to identify social service needs. Interviews are conducted over-the-phone or in-person. PSA does not conduct an interview when: the defendant is assigned a false PDID number, or because certain charges are not eligible for diversion, or for the following Traffic matters:

- Driving While Intoxicated
- Driving Under the Influence
- Leaving After Colliding-Property Damage
- Leaving After Colliding-Personal Injury
- Operating While Impaired
- Reckless Driving
- Speeding in Excess of 30 Over the Speed Limit

Based on the interview and/or background check, PSA recommends to MPD whether the arrestee is eligible for pre-trial release. (When both a background check and interview are performed, it takes approximately 2-3 hours for PSA to recommend whether the defendant is eligible for pre-trial release.)

MPD has the discretion to accept or reject the PSA recommendation – MPD puts the word “accept” into CJIS when a PSA pre-trial release recommendation is accepted. If an arrestee is charged with an offense that is frequently post and forfeited at the District Station, PSA may delay the defendant’s interview in case he or she elects to post and forfeit. Drug testing is performed only when the defendant is charged with a US Misdemeanor or Felony, not for solely a DC Misdemeanor or Traffic charge.

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<sup>7</sup> CCE anticipates receiving from MPD in early September 2005 the charges that are not assigned PDID numbers.

<sup>8</sup> PSA does not interview non-MPD arrestees, for example, from the US Park Police, the Capitol Police, etc.

Based on the above, PSA prepares a bail report (also known as a “pre-trial report”) for defendants assigned a PDID number. The bail report is comprised of the defendant’s prior contact with the criminal justice system (i.e., the various background checks performed by PSA and MPD) and either the personal interview or the over-the-phone interview. Except for citation release cases, pre-trial reports are provided to the DC Misdemeanor and Traffic Court Judge.

Station house bond is available for certain charges, based on the Bond and Collateral List. This form of pretrial release is infrequently used.<sup>9</sup> Officers turn over all bond money collected to the Superior Court the next morning.

### **III. Papering**

The process of the officer preparing the arrest paperwork for the prosecutor and the prosecutor making the determination whether to prosecute is called papering. Police officers present all of the relevant information about an arrest to OAG attorneys whose function is to determine which arrests are prosecutable in court and which are not. Cases the OAG determines are not prosecutable are classified as “no papered.”

The papering process begins with the officer checking in at the MPD’s Court Liaison Unit, located in 300 Indiana Avenue, NW, DC, adjacent to the DC Superior Courthouse. The Court Liaison Unit begins checking-in officers at 7:30 am each day. The officer picks up arrest paperwork from the Court Liaison Unit and proceeds to the papering unit of the Office of the Attorney General, located on the fourth floor of 441 4<sup>th</sup> Street, NW, DC.<sup>10</sup> There, the officer puts the case jacket together, makes copies of arrest paperwork for the prosecutor, and swears an oath before the prosecutor that the circumstances of the arrest as written in the arrest documentation are true.<sup>11</sup> The jacket includes the NCIC check, the PD-163, the WALES check, and other arrest paperwork.

If there is a traffic charge, the officer goes to the Department of Motor Vehicles, located at 65 K Street, NE, DC, to get a certified traffic record.<sup>12</sup> The office at 65 K Street opens at 9:00 am. As of this report, it is an open question whether the officer will still have to do this now that OAG can certify DMV records, based on the “Department of Motor Vehicles Reform Amendment Act of 2004” (B15-1011), passed on April 12, 2005.

As of this report, there appears to be no immediate impact as of yet on OAG from the April 12 law. In July 2005, a number of computer stations within OAG were equipped to access directly to the DMV database, “Destiny,” but administrative steps must still be completed before OAG has direct access.

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<sup>9</sup> See Table 10 on page 42 for an analysis of arrest dispositions. In 2004, bond was used in about 1% of all MPD DC Misdemeanor and Traffic arrests.

<sup>10</sup> By late 2005, it is expected that the papering office of the Office of the Attorney General will be moved and co-located with the US Attorney’s Office papering office in the DC Superior Courthouse, room C-195.

<sup>11</sup> The officer’s affirmation of the facts of an arrest before the prosecutor is known as swearing to the *Gerstein*, named for the DC case which required such an affirmation.

<sup>12</sup> The 65 K Street building is expected to close in late 2005.

OAG anticipates being able to obtain and provide uncertified information by the end of the summer. Until that stage begins, however, they do not believe it is appropriate to begin producing certified records. As of October 1, 2005, DMV will no longer be located at 65 K Street, NE Also, OAG has been informed that DMV anticipates providing driving records to officers from 301 C Street.

#### **IV. Arraignment**

Three relatively new positions were developed specifically for the Misdemeanor and Traffic Court: Duty Attorney, Community Court Prosecutor, and Case Manager. In January 2002, twelve duty attorneys were appointed from applicants of the Criminal Justice Act bar by a committee of judges following a competitive application process.<sup>13</sup> The duty attorney system was started to reduce the costs of CJA attorneys. Previously a CJA attorney was appointed in each case. Those appointed as a duty attorney were given an orientation by the DC Superior Court Criminal Division Director, including a verbal description of the DC Misdemeanor and Traffic Court's goals and expectations. The duty attorneys formed their own schedule: rotations of three attorneys per week in the DC Misdemeanor and Traffic Court. Duty attorneys work 40 hours per week and are paid \$65 per hour by the Court.<sup>14</sup> One duty attorney works on Saturdays and holidays in courtroom C-10, the US arraignment court.

The Case Manager is a new position established by the DC Superior Court in February 2005. The Case Manager position, which requires social service skills, assists defendants, develops a social history via a Social Services Interview / Assessment form ("assessment"), develops social service provider resources, and makes social service referrals. The Case Manager works primarily with defendants locked up for DC Misdemeanor charges, but may, at the Misdemeanor and Traffic Court Judge's request, assess other defendants as well.

For Fiscal Year 2004, OAG hired a Community Court Prosecutor through a Byrne Formula Grant.<sup>15</sup> The Community Court Prosecutor appears in the DC Misdemeanor and Traffic Court on Monday and Wednesday. Additionally, the Community Court Prosecutor develops diversion program guidelines, establishes new diversion options, and meets with diversion program providers, among other duties.

Defendants who receive a pre-trial citation release are informed to arrive at the court at 8:30 am on the day of their first court date. The Court gives the three duty attorneys a list of individuals appearing before the Court on citation release. The duty attorneys divide the citation list among

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<sup>13</sup> CJA refers to the Criminal Justice Act. In 1974, the District of Columbia enacted the Criminal Justice Act, which guaranteed legal representation to defendants accused of any criminal act. Indigent defendants may be represented by institutional legal counsel (through the DC Public Defender Service), through various law school clinical programs, or through appointed counsel. Appointed counsel are referred to as the "CJA Bar," who apply to be part of a court-approved and screened panel.

<sup>14</sup> CJA attorneys are paid by a voucher system, approved by the DC Misdemeanor and Traffic Court judge. CJA attorneys can opt to be paid at an hourly rate of \$65 (with a cap set on the number of hours per case) or by a flat fee for a guideline offense, based on the Table of Guideline Fee Cases. DC Misdemeanor and Traffic guideline offenses range from \$260 (such as disorderly cases) to \$585 (for DWI or DUI cases).

<sup>15</sup> The Byrne Formula Grant Program was created by the Anti-Drug Abuse Act of 1998 (Public Law 100-690).

themselves. At this time, the duty attorneys orient defendants to the DC Misdemeanor and Traffic Court and explain the charges against them, available diversion program options, availability of appointed counsel, and the plea process. Few defendants appear with their own attorney. Duty attorneys speak to arrestees individually, except in rare circumstances when too many arrestees are present. In this instance, the group is sorted and oriented by charge. Citation cases are handled on Tuesdays and Thursdays, and duty attorneys screen an estimated 40-50 defendants appearing on those days. Duty attorneys try to resolve citation cases via post and forfeit at the courthouse, similar to the option available at the District Station to defendants given a field citation.

At 8:30 am, the Case Manager picks up that day's lock-up list (a list of those arrested and detained from the previous evening) from the Marshal's Office located in the DC Superior Court. The Case Manager identifies, and later conducts an assessment of, persons on the lock-up list charged with DC Misdemeanor violations. There are an average of 7-15 DC Misdemeanor lock-ups on Mondays, 3-6 DC Misdemeanor lock-ups on Tuesdays, Wednesdays and Fridays, and 7-8 DC Misdemeanor lock-ups on Thursdays. Assessments of DC Misdemeanor lock-ups range from 23-41 per week.

The Case Manager provides a copy of the lock-up list with DC Misdemeanor defendants flagged to the DC Misdemeanor and Traffic Court Judge and to the Community Court Coordinator, a DC Superior Court employee who coordinates the activities of both the DC Misdemeanor and Traffic Court and the East of the River Community Court and to whom the Case Manager reports. The Case Manager conducts assessments in the Central Cell Block in the DC Superior Courthouse. The Case Manager has been assisted by two social work interns who, prior to the creation of the Case Manager position, conducted all of the assessments and referred defendants to social service providers. The Court continues to offer two social work internship positions, typically filled for the school year, September through April, two days per week.

Court staff developed an assessment form to identify the social service needs of criminal defendants, such as physical health, mental health, substance abuse treatment, employment counseling, etc. Each assessment takes approximately 20-30 minutes if the defendant is an English-speaker and is without obvious mental illness. Waiting for an interpreter can take 15-20 minutes. An interview with a Spanish-speaking defendant averages about 40 minutes. If the defendant appears to have mental health problems, the Case Manager may seek the assistance of the Department of Mental Health worker located on the "C" level of the DC Superior Court.

Depending on the needs identified by the assessment, the Case Manager will begin to identify possible social service referrals for the defendant. The Case Manager's primary resource for social service programs is the DC Public Defenders Service 2005 Directory of Resources. Depending on the defendant's attitude – is he or she willing to undertake a lifestyle change? – the Case Manager will tailor certain referrals to the defendant's perceived commitment and the likelihood of his or her staying with a more or less intensive program. The assessment interview form is copied, with copies going to the judge, prosecutor, and defense attorney. Prior referrals are noted if the defendant has been interviewed previously.

The Judge takes the bench at 9:45 am in Courtroom 115 for arraignment on citation matters. Duty attorneys, who represent defendants at arraignment (except those few who arrive with retained counsel), discuss possible plea offers and possible diversion with OAG prosecutors. But they do this in the absence of pretrial reports which are not developed by PSA for citation matters and for locked-up defendants not assigned a PDID number. If the case is not resolved, the duty attorney asks the judge to appoint a CJA attorney to represent the defendant. Most defendants, if eligible, receive court-appointed counsel. Typically, there are approximately ten CJA attorneys available in court each day to receive court appointments.

Defendants who have been locked-up following their arrest appear the next day for arraignment typically at 2:00 pm, although it is possible that some lock-up cases are heard as early as 11:00 am. Pretrial reports developed by PSA are provided to the Judge for locked-up defendants. Duty attorneys orient locked-up defendants appearing for arraignment in the same manner they would with those who appear on citation release. There are two types of lock-up cases: (1) the defendant is locked-up for a DC or Traffic charge; (2) the defendant has a companion US Misdemeanor or Felony charge.

The Case Manager appears in court to provide a summary of each assessment of selected defendants locked-up for DC Misdemeanor matters and those arrested for bench warrants on DC Misdemeanor charges, review the defendant's needs and goals, and suggest a social service program or programs. The Case Manager provides the defendants with information about each program and its location. The Case Manager stays in Court to summarize the outcome of each case on the cover of the assessment form.

If both the judge and the OAG agree with the referral or referrals, the defendant is given an approximate 30-day continuance. The defendant is expected to return on the continuance date with proof of his or her entrance into the various social services referred programs. Upon reviewing proof of participation in the social service referral programs, typically in the form a letter from the service provider, the OAG may enter into a deferred sentence agreement ("DSA") with the defendant for a period of typically a few months to give the defendant time to complete the referral programs or may outright dismiss the case. Typically, however, the defendant does not return to court with the requisite referral program proof. There is no case management or follow-up by the court regarding referred defendants. Consequently, DSA usage is quite rare.

Unless the matter is placed on a diversion track (see page 18 for a description of diversion programs), the case is placed on the trial calendar and is handled by the trial judge in Courtroom 120. Once the case is scheduled for trial, it is unlikely to revert back to Courtroom 115. Based on interviews, an estimated 20% - 25% of all cases are placed on a trial track.

OAG provides the discovery packet at arraignment, typically when the court appoints counsel. The duty attorneys handle discovery only in the instances where a plea is taken that day or more information is needed.

If OAG decides to charge the defendant, he or she is arraigned and either released on personal recognizance, given a bond or a five-day hold based on prior criminal history. Of the three

release options, personal recognizance is far more frequently used. If held, a hearing is set within five days of arraignment. Defendants who are allowed to post and forfeit may choose to go to the finance office in the courthouse, pay the fine, and return to court with proof of payment to have the case disposed of that day. If the defendant wishes to post and forfeit but does not have the money to do so that day, he or she is often given time to return to court with the money at a later agreed upon date.

As of this report, DC Misdemeanor cases and other diversion matters are arraigned on Monday and Wednesday (sometimes on Friday) to coincide with the Monday and Wednesday schedule of OAG's Community Court Prosecutor. The arraignment court for the DC Misdemeanor and Traffic Court typically does not end until 7:00 or 7:30 pm. Citation matters are arraigned on Tuesday and Thursday.

#### **V. Diversion Programs Description**

As of this report, the Office of the Attorney General administers eight major diversion programs, which are described in detail later in this section, through four private and public agencies.<sup>16</sup> Three agencies have Memoranda of Understanding with OAG: Court Services and Offender Supervision Agency, DC Department of Public Works, and the Downtown Business Improvement District.<sup>17</sup> OAG has a contract with a fourth agency, the Family and Medical Counseling Service, Inc.

The Office of the Attorney General establishes diversion program guidelines and consents to social service referrals. To enter a diversion program, the defendant must meet guideline criteria, with the consent of the OAG, and agree to abide by the conditions of the specific diversion program (except for the remedying program, below). Defendants are not required to plead guilty to enter the diversion program. The case is dismissed when the diversion program is successfully completed. Defendants are usually represented by appointed or retained counsel through the diversion program process. Typically, however, defendants in community service diversion are not represented by appointed counsel.

Each program requires that defendants meet several eligibility factors. For example, entrance into the DWI diversion program requires that the offender consent to take a blood alcohol content ("BAC") test, and register less than .16 for a breath, blood or urine measure of BAC.<sup>18</sup> For many of the programs, a prior arrest for the same charge within one year (six months for "quality of life" crimes) automatically disqualifies the offender from the diversion program.

Defendants who are eligible for community service diversion are required to sign a "Pretrial Diversion Intake and Service Agreement." There is a similar form for the "speed over 30" and indecent exposure diversions. Defendants who are referred to a social service program are required to sign an agreement if the prosecutor agrees to a deferred sentence agreement.

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<sup>16</sup> Source: internal OAG documents, May 12, 2005.

<sup>17</sup> These MOU's were not provided for review purposes. The DC Department of Parks and Recreation is no longer used as a community service provider. This relationship ceased because OAG could not assure that at least five offenders would be available at the moment DPR would need them.

<sup>18</sup> The BAC measure of .16 came into effect on July 5, 2005. The prior BAC threshold was .20.

For certain types of diversion – alcohol counseling/education and community service (excepting indecent exposure) – defendants are not required to appear in court as long as the defendant is in compliance with the diversion program requirements. For indecent exposure diversion, the defendant is required to make a final appearance in court regardless of the defendant’s compliance. This final appearance date is referred to OAG as the “final control date.” The court records the case as a “nolle diversion” for defendants who successfully complete a diversion program.

The eight diversion programs are described below, in accordance with **Contract Task 3**: identify diversion options currently available to the Misdemeanor and Traffic Court. The description identifies the program, the charges addressed by the program, the agency directing the program, and the type of diversion offered.

1. DWI / DUI / OWI Diversion

**Eligible charges:** Driving While Intoxicated, Driving Under the Influence, and Operating While Impaired.

**Program:** Qualifying offenders are extended an offer to enter an alcohol counseling and treatment program administered by Family and Medical Counseling Service, Inc. The details of this program are explained later in this report on page 29.

2. Possession of Open Container of Alcohol (“POCA”) or Drinking in Public (“DIP”) While Operating an Automobile Diversion

**Eligible charges:** possession of open container of alcohol while operating an automobile and drinking in public while operating an automobile.

**Program:** Qualifying offenders are extended an offer to enter a shortened alcohol education program administered by Family & Medical Counseling Services, Inc. This program consists of three 1.5 – 2 hour classes at a cost to the offender of \$25 per class. (See page 29 for a description of the alcohol education program.)

3. Community Service Diversion

**Eligible charges:** Some DC Misdemeanor crimes are collectively and technically referred to as “quality of life” crimes in the Misdemeanor and Traffic Court context. They include disorderly offenses (except Loud & Boisterous), Metro misconduct, panhandling, urinating in public (“UIP”), offenses related to the underage purchase of an alcoholic beverage or the misrepresentation of age to enter an Alcohol Beverage Control establishment, sale of alcohol to minors, providing alcohol to minors, selling alcohol without a license, operating a business without a license, protest-related cases, cross-sexual massage, indecent sexual proposal, noise violations, and vending violations.

As described in items 2 (above) and 5 (below) there are two other categories of charges eligible for community service diversion, but with different criteria and requirements: (1) possession of open container of alcohol while operating an automobile and drinking in public while operating an automobile, and (2) speed over 30 miles per hour in excess of the speed limit (soon to be joined with reckless driving to form an “aggressive driver” diversion program).

**Programs:**

Downtown Business Improvement District (“BID”): Defendants charged with the other community service diversion program offenses perform one to two *weekdays* of community service. The compliance rate for this program is 45%.<sup>19</sup> The lower compliance rate is thought to be due to the many homeless defendants who qualify for this program. OAG, in its discretion, may allow defendants to reenter the program if they appear to be making a bona fide effort to complete the program but were unable to do so on the first date scheduled. See page 31 for a description of this process.

Downtown BID will not accept drug offenders into their program. DPW does accept drug offenders into their program, based upon a newly renegotiated Memorandum of Understanding between DPW and OAG. BID accepts individuals on probation into their program. DPW accepts individuals on probation for certain offenses only.

Department of Public Works (“DPW”): Defendants charged with offenses related to the underage purchase or consumption of an alcoholic beverage, misrepresentation of age for the purposes of entering an ABC establishment, speeding, cross-sexual massage or protest-related offenses perform one to two *weekends* of community service. The compliance rate for this program is almost 75%.<sup>20</sup> See page 31 for a description of this process.

4. Indecent Exposure Diversion

**Eligible charges:** indecent exposure.

**Program:** The Community Court Prosecutor first interviews defendants to determine program eligibility. If the defendant is eligible, they enter a program administered by the Court Services and Offender Supervision Agency, which entails completing 40 hours of community service within 90 days and making a final appearance at court upon successful completion of diversion.

5. Speed-Over-30 Diversion

**Eligible charges:** speed over 30 miles per hour in excess of the speed limit (soon to be joined with reckless driving to form an “aggressive driver” diversion program).

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<sup>19</sup> Ibid. Compliance rates include only those individuals who have completed the program.

<sup>20</sup> See Table 7, page 38. Compliance rates include only those individuals who have completed the program.

**Program:** See “Community service diversion,” above. In addition, a mandatory donation to the Victims of Violent Crime Fund is required.

6. Remedying

**Eligible charges:** operating after suspension, no permit, operating a business without a license, vending without a license.

**Program:** The defendant is given time (typically 2-4 weeks) to acquire the license or permit and, upon proof to the court, will have the case dismissed.

7. Post and Forfeit

**Eligible charges:** Certain Traffic and DC Misdemeanor charges as identified in the “Superior Court Bond and Collateral List,” approved by the DC Superior Court Board of Judges in July 2005.

**Program:** The defendant is permitted to pay a certain amount in court, ranging from \$25 to \$100 for Traffic charges and from \$25 to \$1,000 for non-Traffic charges, and the charge is dismissed without the defendant admitting guilt.

8. Social Service Referrals

**Eligible charges:** Most DC Misdemeanor charges are eligible. However, the OAG would not agree to a continuance for social service referrals for the most serious offenses, such as unregistered firearm or indecent exposure to a child.

**Program:** Based on the recommendations of the Misdemeanor and Traffic Court Case Manager, OAG may allow a 30-day continuance for the offender to take advantage of the referral(s). So Others May Eat (“SOME”) is currently one of the most frequently used service providers. SOME is an interfaith, community-based organization that helps the homeless, elderly and mentally-ill people in the nation’s capital by offering various social services like affordable housing, job training, addiction treatment and counseling. Project Empowerment Plus, which provides four week “classes” of life skills training, is a newly available program offered by the DC Misdemeanor and Traffic Court. There are a number of alternatives for disposition, depending on whether the defendant takes advantage of the referrals.

In early May 2005, the Court implemented a computer database which captures key information from the interview assessment form and will generate summary reports. To date, 255 interview assessments have been entered. Defendant needs are categorized across a number of different social service categories: alcohol, citizenship, drug abuse, education, employment, mental health, gay/lesbian, vocational training, etc. Its fields include “need,” “referral made,” “agency.” Data from this database are described in Tables 1 and 2 below.

**Table 1: Social Service Interviews Conducted of DC Misdemeanor and Traffic Court Defendants, by Charge<sup>21</sup>**

Charge	Interviewed	Declined	Total
<b>POCA</b>	89	27	116
<b>Bench Warrant</b>	42	8	50
<b>Disorderly Conduct</b>	33	15	45
<b>Panhandling</b>	32	6	38
<b>Urinating in Public</b>	19	5	24
<b>Drinking in Public</b>	15	2	17
<b>Other</b>	10	8	18
<b>Indecent Exposure</b>	8	0	8
<b>Failure to Obey Officer</b>	2	3	5
<b>Traffic Offenses*</b>	3	0	3
<b>Vending</b>	2	0	0
<b>Total</b>	255	74	329

\* Only upon request from the Magistrate Judge.

According to Table 1, from September 2004 through June 28, 2005, a total of 329 interviews were attempted and 255 defendants agreed to be interviewed, or almost 80%. POCA charges account for almost 35% of all charges.

**Table 2: Social Service Referrals of DC Misdemeanor and Traffic Court Defendants, by Social Service Area<sup>22</sup>**

Social Service Area	Number of Referrals	Percentage
<b>Medical Care</b>	117	18.2
<b>Alcohol</b>	109	17.0
<b>Employment</b>	99	15.4
<b>Material Assistance</b>	77	12.0
<b>Housing</b>	62	9.7
<b>Drug Abuse</b>	58	9.0
<b>Mental Health</b>	40	6.2
<b>Education</b>	33	5.1
<b>Identification</b>	24	3.8
<b>Vocational Training</b>	18	2.8
<b>Sex Workers</b>	3	0.5
<b>Citizenship</b>	2	0.3
<b>Total</b>	642	100.0

Table 2 shows the number and percentage of the referrals made from September 2004 through June 28, 2005. During this approximate 10-month period, a total of 642 referrals were made, or about 64 referrals per month. “Medical Care” and “Alcohol” account for about 35% of the total

<sup>21</sup> DC Superior Court Criminal Division reports. “Social Service Needs of Defendants in DC Cases,” Draft, June 29, 2005.

<sup>22</sup> Ibid.

referrals during that time. This could be explained because of the high rate of people being interviewed charged with “POCA” and “Bench Warrants” stemming from “POCA” charges. There are an average of 2.5 social service area referrals made for each defendant interviewed.

There are a wide variety of social service options available to the DC Misdemeanor and Traffic Court through the Criminal Practice Institute Directory of Resources produced by the Offender Rehabilitation Division of the Public Defender Service for the District of Columbia (see Table 3). This directory is comprised of legal and social service resources available to low-income residents of the District of Columbia. The services rendered are free of charge unless otherwise noted. As mentioned previously, an offender may be referred to two or three different agencies for treatment depending on their needs.

**Table 3: Social Service Agencies Utilized by the Community Court Case Manager<sup>23</sup>**

Service Need	Major Resources
<b>Alcohol</b>	SOME, Addiction Prevention Recovery Administration (APRA), Alcoholics Anonymous, La Casa, Central Intake Division (CID) of the DC General Hospital
<b>Drugs</b>	SOME, APRA, CID of DC General Hospital
<b>Education</b>	SOME, External Diploma Program, various GED programs across DC
<b>Employment</b>	Department of Employment Services (DOES), CVS/Pharmacy South Capitol One-Stop Center, Business Resource Center, Business Improvement District (BID), Veterans Assistance Center, Naylor Road One-Stop Career Center, Franklin Street One-Stop Center, Euclid Street One-Stop Center, A. Phillip Randolph One-Stop Center
<b>Housing</b>	Various Emergency Overnight Centers
<b>Identification</b>	SOME, DC Department of Motor Vehicles
<b>Material Assistance</b>	SOME, applications from various DC programs among others
<b>Medical Care</b>	DC Alliance Health Plan, Neighborhood Health Clinics, DC General Hospital, Greater Southeast Hospital, Children’s National Medical Center, George Washington Hospital
<b>Mental Health</b>	Department of Mental Health, Multicultural Services Agency, Comprehensive Psychiatric Emergency, among others
<b>Vocational Training</b>	Excel Institute, External Diploma Programs, SOME, ARCH Program, Project Empowerment Plus

An additional new program used by the DC Misdemeanor and Traffic Court for social service referrals is Project Empowerment Plus. This initiative is offered through the Department of Employment Services (DOES), the Executive Office of the Mayor, the Office of the Deputy Mayor for Children, Youth, Families and Elders, and the Pretrial Services Agency to eligible District residents. Some of the services offered through Project Empowerment Plus include a) Supportive services such as child-care, transportation assistance, housing subsidies, etc; b) Skills enhancement such as vocational training and adult education; c) Salary while person gains

<sup>23</sup> Source: DC Superior Court Criminal Division reports. “Social Service Needs of Defendants in DC Cases,” Draft, June 29, 2005. Also from selected social service agencies from [The Deborah T. Creek Criminal Practice Institute: Directory of Resources \(Adult\)](#). Public Defender Service for the District of Columbia. Offender Rehabilitation Division. V.2004.2.

professional work experience; d) Permanent employment assistance; and finally e) Support and counseling after they have begun working permanently on a new job.

To be eligible for the program, a person must be unemployed for at least 30 days and obtain a written referral form from their parole officer, probation officer, Pretrial Services Representative, or the Judge before whom the case is pending.

## **VI. Diversion Programs Service Providers**

Described below is the case flow process for cases in diversion, organized service provider. Descriptions rely on interviews, since MOU's and contracts between the OAG and the service providers were unavailable to the Council for Court Excellence.

### **1. Family and Medical Counseling Service, Inc.**

Family and Medical Counseling Service, Inc. ("FMCS") is a 501(c)(3) organization formed in 1976. Its mission is to provide substance abuse treatment, individual, group and family therapy, and comprehensive HIV/AIDS services to persons, regardless of income, in a community-based setting. It is funded through state and federal grants and contracts. Some of its DC government clients include the Department of Youth Rehabilitation Services and the Office of the Attorney General. FMCS provides substance abuse counseling to the Court Services and Offender Supervision Agency.

Persons arrested for a DWI, OWI, DUI, POCA-auto and DIP-auto who also meet diversion criteria are offered the opportunity to enter FMCS's alcohol counseling program. The OAG determination is based upon the offender's arrest history (if an offender has a prior DWI arrest, he or she is ineligible for diversion) and circumstances of the charge (no personal injuries, consented to a breathalyzer, and registered less than a .16 BAC on the breathalyzer).

If the offender is eligible and consents to enter DWI diversion, he or she is given two documents: (1) Notice to return to court and (2) Notice of eligibility. OAG reviews the driving record of District residents to determine whether there was a prior DWI arrest, but out-of-state residents must obtain their driving record for the past 10 years, which is reviewed when they return to court for determination of diversion eligibility. Offenders have 5 working days to register in-person at FMCS. At registration, offenders complete registration paperwork, complete a self-administered alcohol screening instrument, and sign an "Authorization for Release" form which authorizes FMCS to release their private information to OAG. They are also given a list of frequently asked questions. Upon completing these forms, offenders are then given an intake appointment date, typically within two weeks of registration.

At intake, offenders are interviewed using an "Integrated Chemical Dependency Assessment," a 7-page, 45-minute interview conducted by FMCS staff. The interview also assesses the offender's income level. The interview is scored on the self-administered screening instrument, and BAC determines the offender's alcohol dependency level. Also at intake, the offender signs a consent-for-treatment form, a treatment contract, and is given a "Client's Rights and

Responsibilities” sheet, a “Treatment Contract,” which indicates their assigned level of alcohol dependency, and lastly is grouped accordingly with other offenders of the same level.

Offenders are then given their start date and time for their first alcohol education class and, if necessary, group therapy session. Fees for intake and each class are paid by the offender as part of their own recovery and prior to joining a group session. FMCS waives part of or the entire fee when the offender’s income is below a certain threshold. The fee is waived if the offender is unemployed or on public assistance. If the offender is on a limited income, the fee is reduced.

The first level of the FMCS alcohol dependency scale is usually reserved for social drinkers and includes 12 weeks of alcohol education. Level two groups the high risk drinkers and includes 12 weeks of education plus another 8 weeks of group therapy. Level three is for the severe drinkers and involves 12 weeks of education and another 18 weeks of group therapy.

Alcohol education is conducted by a certified addiction counselor (“CAC”) using a proprietary alcohol education curriculum. The curriculum uncovers various myths and misconceptions regarding alcohol and highlights important issues about alcohol’s addictive and destructive properties. One two-hour education class is held per week. The group therapy session is conducted by a licensed addiction specialist or a social worker. One two-hour therapy class is held per week. For each class, the structure is the same: 1 hour and a half of the overall session and half an hour of individual question time.

Most offenders who show up to FMCS for their alcohol diversion program are level 1 offenders. Level 2 or level 3 are the most difficult programs to complete because of their length and intensity.

FMCS estimates that approximately 80% of offenders in both 2003 and 2004 successfully completed the alcohol diversion program. Success is defined as completing all of the required classes and paying all requisite fees. Every week, FMCS sends OAG a completion list – the list of offenders who have successfully completed the program. Upon successful completion, FMCS provides to OAG the offenders’ personal information, information about the program completed and a certification of completion for each individual on the completion list.

When an offender completes his program and FMCS notifies OAG of the completion, he or she is not required to go back to court; the offender must return to court only if he or she did not complete the program. Though not required as part of the diversion program, traffic offenders who successfully complete the program must also contact DMV and show proof of completion of the program. Since many offenders do not know that they have to “clean their record” at DMV, FMCS provides them with written instructions for contacting DMV and clearing their record.

Offenders sometimes miss sessions for a variety of acceptable reasons (illness, job commitments) and do not complete the program in the prescribed time. In these cases, FMCS submits a continuance to the court on the offender’s behalf. If three consecutive sessions are missed or the offender establishes a pattern of absences, a reminder letter is sent from FMCS to

the offender. Up to three reminders are sent over the course of a month. If there is no response, FMCS notifies OAG that the offender is non-compliant. FMCS asks OAG for a “Continuance Request,” which extends the date of completion and extends the time for the offender to complete the assigned diversion program, if the offender does not complete the program by the “control date” for acceptable reasons. “Continuance Requests” are sent to OAG on a weekly basis.

## 2. Downtown Business Improvement District (BID)

BID receives a list of “community service workers” (CSWs) from two places: 1) the Pretrial Services Agency (the majority of names) and 2) the Office of Attorney General. The CSWs are offenders from either the DC Misdemeanor and Traffic Court (AG roster) or the East of the River Community Court (PSA roster).

CSWs arrive at the BID’s F Street work site where they are given their community service tasks, which include street cleaning, trash pick-up, or any other city cleaning work. Work is performed in the Downtown Business District, which is bounded by the National Mall on the south, Massachusetts Avenue on the north, the U.S. Capitol to the east and the White House to the west.<sup>24</sup>

The CSWs work in unison with BID’s own maintenance service workers to perform these different tasks. Once the CSWs complete their work, they report back to the F Street work site and BID supervisors sign-off their hours and send the paperwork to the Director of Environmental Services for his review. Once the Director checks that the CSWs have indeed completed their community service, he then signs off on the hours and faxes the paperwork back to PSA and/or AG.

BID does not keep statistics on the number of CSWs that perform services monthly, nor does BID distinguish between PSA and OAG referrals. The only statistic that BID tracks is the number of hours CSWs have worked since 2002. CSWs have worked nearly 34,000 hours since the partnership with the community courts began in 2002. This is roughly 900 hours a month, which equals nearly 6 full-time (40 hrs) workers a week.

## 3. Department of Public Works (DPW)

Besides BID, the Department of Public Works administers the other major community service program. A very general description of this program follows.

On Thursday, the DPW diversion program coordinator receives from the Office of the Attorney General the number of offenders who will be reporting to the DPW program for the coming weekend. Offenders report to the Frank D. Reeves Center, 2000 14<sup>th</sup> Street, NW DC, at 6:30 am. Offenders work from 6:30 am – 2:30 pm, with a 15-20 minute break.

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<sup>24</sup> Retrieved from the Downtown Business District website on August 24, 2005.  
[http://www.downtowndc.org/gc\\_site.asp?id=What\\_is\\_a\\_BID](http://www.downtowndc.org/gc_site.asp?id=What_is_a_BID).

The program has offenders perform trash and debris removal, according to DPW's "complaint sheet." This sheet represents a list of requests from citizens city-wide to remove accumulated trash and debris. If there are no such citizen requests, DPW has offenders go out on a set DPW route for trash removal city-wide.

#### 4. Pretrial Services Agency

PSA offers five "slots" to DC Misdemeanor and Traffic Court defendants. Although PSA is not mandated to work with the Misdemeanor and Traffic Court, PSA offered in November 2003 to handle up to five cases from the DC Misdemeanor and Traffic Court at any given time. PSA notifies the DC Superior Court Community Court Coordinator as the slots become vacant. Defendants recommended by the Court to fill one of these five slots are screened by PSA according to two broad needs: addiction and mental health. Defendants with apparent addiction problems are referred to PSA's Social Services and Assessment Center. There, defendants are screened using an Addiction Severity Index (ASI), a national, standard tool for assessing substance addiction. Defendants who appear to need mental health screening are sent to PSA's Specialized Supervision Center.

PSA accepts a case by appearing before the DC Misdemeanor and Traffic Court Judge. Upon acceptance, PSA appoints a case manager to the defendant. The case manager will place the defendant into an in-patient program, monitor the defendant's progress, and review compliance reports from vendors administering the in-patient program.

The next day, defendants voluntarily attend a PSA orientation program. If the defendant is a flight risk, the Judge may have the defendant held in jail and picked up directly by the vendor administering the in-patient program. Defendants are assigned to either short term (30 days) or long term (60 or 90 days), depending on the need. Typically, defendants are in the program for 60 days. Based on this, PSA may supervise only about 30 DC Misdemeanor and Traffic Court defendants, out of over 8,000 papered cases in 2004.

### **VII. Disposition by trial, plea or nolle prosequi**

If a defendant pleads "Not Guilty" in Courtroom 115 and is not eligible for diversion, then the case is moved to Courtroom 120, which is the trial courtroom, and given a "status date." Pleas occur in this courtroom. There is a 30-day interval from the arraignment date to the status hearing date, during which time the OAG sends a written plea letter to defense counsel. During that interval, defense counsel and the prosecutor may discuss and possibly agree upon an acceptable plea, resulting in a plea offer at the status hearing, when the plea would then be accepted by the Court.

In the event the defendant does not plead guilty or is unable to come to a satisfactory plea agreement with the prosecutor, at the status hearing the case will be set for trial on a date that is mutually acceptable to both counsel and available for the Court. The trial may go forward in

Courtroom 120, or may ultimately be certified to another courtroom for trial, depending on the Court's schedule.

The magistrate judge in Courtroom 120 hears all cases in which the defendant pleads “not guilty,” or who do not get referred to any diversion program, or who do not post and forfeit in court. The most common cases referred from Courtroom 115 to 120 include traffic charges, like DWI, where the offender is not eligible for diversion or fails to obtain his/her driver’s license.

The magistrate judge usually takes the bench at around 9:30 to give time to the attorneys to talk to their clients and decide whether to continue with the process or plead guilty. In general, the earlier that the government can make a plea offer to the defendant, the faster the case will be disposed of. Every morning the magistrate judge asks each offender and their attorneys whether they intend to plead guilty or not guilty. If they choose to plead guilty, they notify the courtroom clerks in Courtroom 120 to schedule a “sentencing hearing.”

At the status hearing the offender may choose to plead guilty, which then turns the status hearing into a disposition. The bulk of “status hearings” in Courtroom 120 turn into “guilty pleas.” The pleas are taken by the magistrate judge in panels consisting of 6-8 defendants and their attorneys. After the magistrate judge hears from the government and the defense, he imposes a sentence.

If, on the other hand, the defendant is ready to go to trial, the magistrate judge makes sure all next steps to be followed are understood and asks the defendant to talk with the law clerk to schedule a date and time to hear the case.

Both parties, defense and prosecution, must give consent to have the case heard by the magistrate judge before a trial.<sup>25</sup> If one of the parties does not give this consent, the case is put on a “Cert List” to have the case heard by an associate judge. If an associate judge cannot hear a particular case, it comes back to Courtroom 120’s calendar. If consent is granted, the magistrate judge ensures that the defendant understands the court’s procedures and the appeal process.<sup>26</sup>

Sometimes, at the request of the defense or prosecution, a pre-sentencing report is prepared by the Court Services & Offender Supervision Agency (CSOSA) which lists the defendant’s record, employment history, health, social issues, substance abuse issues, evaluation and a recommendation for the sentence. The magistrate judge relies upon the pre-sentencing report when imposing a sentence.

While the conditions of a Deferred Sentencing Agreement (DSA) differ from case to case, the conditions commonly include performing community service and/or completing a social service

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<sup>25</sup> “Subject to the rules of the Superior Court and with the consent of the parties involved, make findings and enter final orders or judgments in other uncontested or contested proceedings, in the Civil, Criminal, and Family Decisions of the Superior Court, excluding jury trials and trials of felony cases.” D.C. Code § 11-1732(j)(5)

<sup>26</sup> DC Superior Court rules state that prior to the start of any trial the magistrate judge “shall advise the defendant that the defendant may not appeal to the District of Columbia Court of Appeals without first bringing the appeal to an Associate Judge of the Superior Court within 10 days after a final order of judgment has been entered.” Superior Court Rules of Criminal Procedure. D.C. SCR-Crim. Rule 117(c)(2).

program, and refraining from committing any crimes. If the defendant successfully completes the stipulated requirements in the DSA then the case can be “nolle prossed” and the guilty plea withdrawn which removes the “guilty adjudication.”

## Analysis of Case Processing Statistics

This section first will address two specific contract elements: (1) the analysis of processing time and recidivism data (**Contract Task 4**), and (2) the demographic profile of clients who need services, including who succeeds and who fails to meet the requirements of the Misdemeanor and Traffic Court (**Contract Task 5**). It will then address analyses of other criminal justice system statistics, including arrest figures, papering rates, case types, and methods of case disposition.

This study reviewed data and reports from the Metropolitan Police Department, the DC Pretrial Services Agency, the DC Office of the Attorney General, and the DC Superior Court from the years 2001 – 2004.

### **Case Processing Time and Recidivism Data**

Analysis in this section relies on DC Superior Court Criminal Division internal reports on the DC Misdemeanor and Traffic Court. The DC Superior Court Criminal Division analyzes and produces internal reports on DC Misdemeanor and Traffic case processing statistics at least once a year. These comprehensive internal analyses report on a variety of measures, including volume of case filings, case age (i.e., time from filing through disposition), categorical breakdowns of case types, volume of case dispositions, case age by disposition, etc. The internal reports are the source for case age and detailed case volume information.

The following Tables 4 and 5 reflect the case volume and case age of DC Misdemeanor and Traffic filings, excluding cases that were no-papered. For purposes of this analysis, no-papered cases are excluded because: (1) no-papered cases almost invariably are resolved quickly, in under a day; and (2) the number of no-papered cases represent a significant percentage of total case filings.<sup>27</sup> For these reasons, inclusion of no-papered cases would have skewed the overall case age significantly downward. For example, in Table 4 below the mean case age for DC Misdemeanors in 2001 is 24.2 days for 2,181 cases. For that same year, including no-papered cases, the mean case age is 18.7 days for 3,441 total cases. Including no-paper cases increases the case volume by over 50%, but the case age decreases by almost 30%. In terms of actual court case processing time, therefore, this analysis will rely on “papered case filings” as a better reflection of the Court’s “true” workload.

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<sup>27</sup> The mean age of no-papered cases ranged from a low .00 days in 2002 to a high of .07 days in 2001. DC Superior Court Criminal Division reports. “Three Years of DC Misdemeanor Cases, Draft, February 20, 2004.” Table 3: Case Age by Outcome of the Cases by the Year in Which the Case was Filed.

**Table 4: DC Misdemeanor Case Filings, excluding no papered cases<sup>28</sup>**

Year	# of cases	Mean case age, in days	Median case age, in days
2001	2,181	24.2	12.0
2002	1,889	16.1	5.0
2003	1,562	18.0	7.0
2004	2,912	n/a	n/a

**Table 5: Traffic Case Filings, excluding no papered cases<sup>29</sup>**

Year	# of cases	Mean case age, in days	Median case age, in days
2001	5,148	42.7	35.0
2002	5,101	35.9	24.0
2003	3,186	35.2	24.0
2004	5,927	n/a	n/a

Time to disposition data for DC Misdemeanor and Traffic cases reflected in the above Tables 4 and 5 shows that cases, either on average or on median, are being processed quickly. From 2001 to 2003, average time to disposition appears to have declined considerably for both types of cases: by 33% for DC Misdemeanor cases and by 18% for Traffic cases. The decline is apparent in 2002 and holds roughly even in 2003.

However, some caution should be observed when interpreting these results. It may be tempting to view the establishment of the DC Misdemeanor and Traffic Court in 2002 as the reason for the reduction in case processing time. Since case age data is only available for the three years listed in Tables 4 and 5, above, it is unknown how efficiently cases were being processed in years prior to 2001.

The DC Superior Court internal reports suggest another caution when interpreting case age. The reports state “[c]ase age is the number of days from the time the case was filed until either the case was resolved or, if it is not resolved, until the date the file was run (January 2, 2004 for the 2003 file and January 23 for the 2001 and 2002 files) *excluding Sundays, holidays, time on bench warrants or in diversion.*” Not knowing the number of open cases at the time of the January 2, 2004 data run or the length of time it took to dispose these cases suggests that particular caution should be used in interpreting 2003 case age.

At this time, no agency with the DC criminal justice system is tracking recidivism data, and therefore that issue cannot be addressed in this report. Although the complexity of developing a recidivism tracking methodology, gathering the data, and performing an analysis are outside the scope of this contract, we encourage the DC Superior Court or other agencies to begin such tracking as soon as practicable. Without this data, it is impossible to test the theory that problem-solving courts like the DC Misdemeanor and Traffic Court are able to reduce repeat criminal

<sup>28</sup> Sources: DC Superior Court Criminal Division reports. For 2001 – 2003 data: “Three Years of DC Misdemeanor Cases,” Draft, February 20, 2004. For 2004 data: “DC Misdemeanors: Cases Filed in 2003 Compared with Cases Filed in 2004,” April 29, 2005.

<sup>29</sup> Sources: DC Superior Court Criminal Division reports. For 2001 – 2003 data: “Three Years of Traffic Court: 2001, 2002 and 2003,” Draft, February 18, 2004. For 2004 data: “A Comparison of Traffic Cases Filed in 2003 and 2004,” April 29, 2005.

behavior by treating the root causes of crime. Recidivism data is discussed in more detail in Recommendation 2 under the section entitled Findings and Recommendations.

### Client Demographics and Success Rates

In the course of this study, the DC Pretrial Services Agency was found to be the predominant source of aggregate demographic information on DC Misdemeanor and Traffic Court defendants.<sup>30</sup> Demographics of DC Misdemeanor and Traffic Court defendants were derived from data provided by the Pretrial Services Agency on March 9, 2005, of PSA interviews with arrestees charged with DC Misdemeanor or Traffic offenses.<sup>31</sup> This data is provided in Table 6 below.

**Table 6: Comparison of PSA interviews to MPD arrests for DC Misdemeanor and Traffic matters.**

Year	Estimated DC Misdemeanor & Traffic Arrests	PSA Interviews
<b>2002</b>	21,798	5,271 (24%)
<b>2003</b>	21,120	6,675 (32%)
<b>2004</b>	25,495	7,413 (29%)
<b>Total</b>	68,413	19,359 (28%)

Between the years 2002 through 2004, PSA interviewed approximately 28% of DC Misdemeanor and Traffic arrestees. As shown in Table 6, the yearly percentages varied with the trend generally increasing: 24% in 2002, 32% in 2003 and 29% in 2004.

Before discussing the result of the analysis of PSA data, it is important to note that conclusions about the demographic drawn from PSA data are not representative of all DC Misdemeanor and Traffic arrestees. The demographic information is self-reported, not all demographic questions were answered and, most importantly, the sub-population is not randomly selected. This latter point is discussed in the paragraph below.

PSA interviews only those defendants with a PDID number, and does **not** interview defendants charged with: (1) certain low-level DC Misdemeanor offenses; or (2) the most serious traffic offenses: Driving While Intoxicated, Driving Under the Influence, Operating While Impaired, Reckless Driving, Speeding in excess of 30 Over the Speed Limit, Leaving After Colliding-Property Damage, and Leaving After Colliding-Personal Injury. Because of this, the population subjected to the PSA interviews likely represents a combination of first time or repeat offenders

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<sup>30</sup> The Metropolitan Police Department data contains limited demographic information for defendants, including date of birth, gender, home address, and address of where the crime was committed. This data was not used because of its limited scope.

<sup>31</sup> DC Pretrial Services Agency data from January 1, 2002 through December 31, 2004.

and offenders who have committed a more serious crime in connection with either their DC or Traffic charge.

Of PSA-interviewed DC Misdemeanor and Traffic defendants in 2004, 85.7% were male, 83.9% were black, 62.2% were single, 60.9% were between the ages of 19 to 38, and 60.0% reported a DC zip code as a home address.<sup>32</sup> The percentages reported for four of the five categories – gender, race, marital status and community ties – dropped slightly and steadily from 2002 through 2004. The PSA demographic categories that produced the most meaningful results are presented in detail in Appendix 2. Excluded are the categories related to alien status (under 5% of DC Misdemeanor and Traffic Court defendants affirmed their alien status) and health problems (almost 80% of defendants did not answer this question).

Currently, only the defendants enrolled in community service, of the eight OAG diversion programs, are tracked. The status and eventual success or failure of defendants in community service programs is tracked in the OAG Community Court Diversion database, developed and implemented in early 2003.<sup>33</sup> The database contains 772 records from March 21, 2003, through May, 13 2005 (approximately 26 months). Seven records are not included in the following analysis, either because the record does not include a case number or the case was filed in either 2001 or 2002. An analysis of this database is presented in Table 7, below.

**Table 7: Compliance Statistics Regarding the DC Office of Attorney General Community Service Diversion, March 21, 2003 – May 13, 2005.**

	Business Improvement District (BID)	Department of Public Works (DPW)	“BID/DPW”	“PTD”	Quality of Life (QOL)	Totals
<b>No info/pending*</b>	18	2	1	6	25	52
<b>Completed</b>	89	33			458	580
<b>Non compliant</b>	89	11			31	131
<b>Other</b>	1				1	2
<b>Totals</b>	197	46	1	6	515	765

\*This category refers to pending cases.

The most frequently used community service program is Quality of Life (“QOL”), representing over 65% of total community service program use. The Downtown Business Improvement District (“BID”) is the next most frequently used, at 26% of the total. There was no activity for the Department of Public Works (“DPW”) program in 2005.

Across all programs, over 75% of participants successfully completed a community service program. About 20% did not comply with the program and presumably had their cases proceed to trial or guilty plea. Compliance rates vary considerably among the programs, from a high of

<sup>32</sup> The percentage of males arrested by MPD in 2004 for DC Misdemeanor and Traffic charges is 84.7%; comparable to the estimates from the PSA figures.

<sup>33</sup> The OAG Community Court Diversion database was received on May 13, 2005.

89% compliance with QOL community service to a low of 45% compliance with the BID community service program.

An analysis of community service programs by year is provided in Tables 8a through 8c, below. It is interesting to note that the average monthly rate of community service usage varies considerably from year to year. In 2003, there was an average of 25 referrals per month, for 9.75 months. In 2004, the average number of referrals increased to almost 37 referrals per month, for 12 months. For early 2005, the average number of referrals has dropped to 17 referrals per month, for 4.5 months.

**Tables 8a-8c: Compliance Statistics of the DC Office of Attorney General Community Service Diversion, by Year, March 21, 2003 – May 13, 2005.**

**Table 8a: March 21 – December 31, 2003**

	BID	BID/DPW	DPW	PTD	QOL	Totals
<b>No info/pending</b>	10	1	2		8	21
<b>Completed</b>	3		18		179	200
<b>Non compliant</b>	12		5		8	25
<b>Other</b>	1					1
<b>Totals</b>	26	1	25		195	247

**Table 8b: Full Year 2004**

	BID	BID/DPW	DPW	PTD	QOL	Totals
<b>No info/pending</b>	5			5	8	18
<b>Completed</b>	77		15		240	332
<b>Non compliant</b>	66		6		18	90
<b>Other</b>					1	2
<b>Totals</b>	148		21	5	267	441

**Table 8c: January 1 – May 13, 2005**

	BID	BID/DPW	DPW	PTD	QOL	Totals
<b>No info/pending</b>	3			1	9	13
<b>Completed</b>	9				39	48
<b>Non compliant</b>	11				5	16
<b>Other</b>						
<b>Totals</b>	23			1	53	77



## Other Case Processing Analyses

This section covers analyses outside, but related to, the scope of contractual work, including estimates for total DC Misdemeanor and Traffic arrests, past filing trends, and analyses of DC Misdemeanor cases and Traffic cases. The detailed analyses report on most frequent types of outcomes, time to disposition by most frequent type of outcome, and most frequent types of case filings.

### **Arrest data**

From 2001 – 2004, the Metropolitan Police Department made an average of 61,865 arrests per year.<sup>34</sup> For the same time period, there was an estimated average of 23,290 arrests per year for DC Misdemeanor and Traffic cases, or 38% of the average number of total arrests.<sup>35</sup> From 2003 to 2004, estimated DC Misdemeanor and Traffic arrests increased by 21%, while overall arrests increased by 15%.

**Table 9: Comparison of Estimated DC Misdemeanor and Traffic Arrests to All DC Arrests, 2001 – 2004.**

Year	Estimated DC Misdemeanor & Traffic Arrests (DCMTA)	Total MPD Arrests	Percentage of DCMTA arrests
<b>2001</b>	24,744	62,151	39.8%
<b>2002</b>	21,798	58,075	37.5%
<b>2003</b>	21,120	59,112	35.7%
<b>2004</b>	25,495	68,121	37.4%
<b>Totals</b>	93,157	247,459	37.7%

The Metropolitan Police Department provided arrest data on May 11, 2005. Arrests in the arrest data are identified by “charge description” and were compared to a list of DC Superior Court charges. The DC Superior Court list also identifies the charge’s class, e.g., Felony, US Misdemeanor, DC Misdemeanor, or Traffic. In this way, DC Misdemeanor and Traffic arrests were extracted from the aggregate arrest list. Because the MPD data did not distinguish between certain charges, such as bench warrant, where there may be overlap between classes – e.g., is the bench warrant for a Felony or a DC Misdemeanor? – the data presented above are estimates only.

Table 10 below breaks down the DC Misdemeanor and Traffic arrests into 5 different categories: 1) Forfeit, 2) Lock-Up, 3) Citations, 4) Bond, and 5) Other. “Other” includes “collateral,” “61-D release,” and other categories which were not clear to us from the MPD data set. As can be seen

<sup>34</sup> Source: Metropolitan Police Department of the District of Columbia Criminal Justice Information System (CJIS) data queried on April 15, 2005.

<sup>35</sup> DC Code and Traffic offenses were extracted based upon the field entitled “Charge Description.” These charges were checked against the DC Superior Court Criminal Division “Criminal Charge Code Listing (By Desc),” dated November 12, 2004, to determine whether the MPD charge description was a felony, US Misdemeanor, DC Code, or Traffic charge. Since some charge descriptions could encompass any charge type, such “bench warrant,” these figures are estimates only.

in Table 10, “Forfeit” and “Lock-Up” account for over three-quarters of the arrest outcomes for DC Misdemeanor and Traffic arrests since 2001.

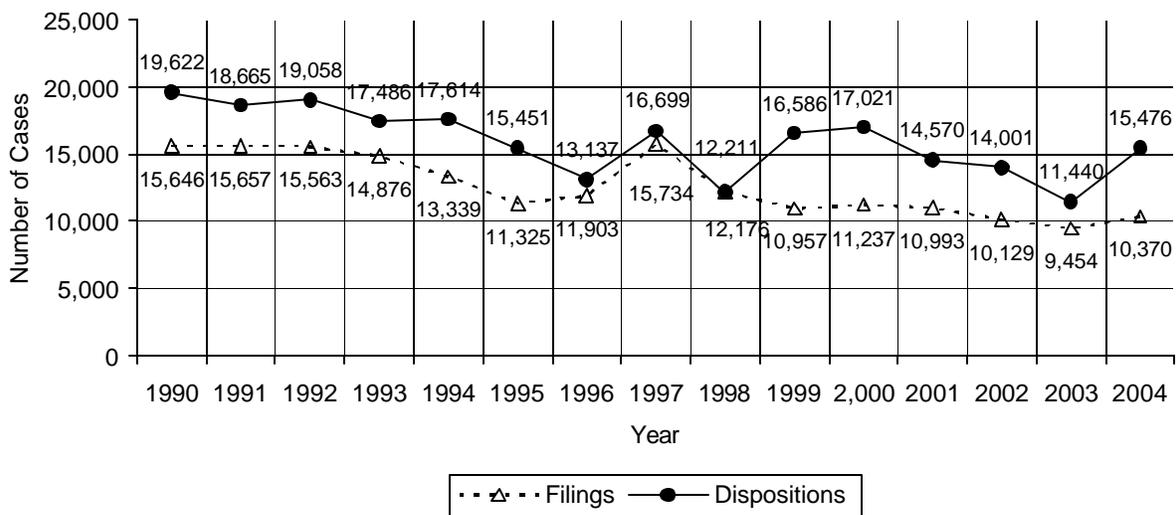
**Table 10: Analysis of Estimated DC Misdemeanor and Traffic Arrest Dispositions, 2001 – 2004.**

Year	Forfeit	Lock-Up	Citations	Other	Bond	DC Misdemeanor & Traffic Arrests
2001	9,983	8,854	5,149	461	297	24,744
2002	8,116	8,670	4,012	637	363	21,798
2003	7,786	8,302	4,279	414	339	21,120
2004	10,466	9,966	4,201	500	362	25,495
<b>Totals</b>	<b>36,351</b>	<b>35,792</b>	<b>17,641</b>	<b>2,012</b>	<b>1,361</b>	<b>93,157</b>

**DC Misdemeanor and Traffic Court case filing trends**

Since 1989 (fifteen years of published statistics), total DC Misdemeanor and Traffic case filings have fluctuated from a low of 9,454 in 2003 to a high of 15,734 in 1997, as shown in Graph 1, below.<sup>36</sup> From 1989 to 2004, DC Misdemeanor and Traffic case filings have dropped from 15,248 in 1989 to 10,370 in 2004, slightly over a 30% decrease, and roughly consistent with the decrease in all criminal filings in the DC Superior Court in the same time period.<sup>37</sup> From 2003 to 2004, case filings increased by 10%, from 9,454 to 10,370. Again, this spike is roughly consistent with an increase in total criminal case filings in the DC Superior Court.

**Graph 1: DC Misdemeanor and Traffic Case Filings and Dispositions, 1990 – 2004.**



<sup>36</sup> DC Courts Annual Reports. 1990 through 2004. Superior Court Case Activity. Criminal Division. DC Misdemeanor and Traffic Cases Filed.

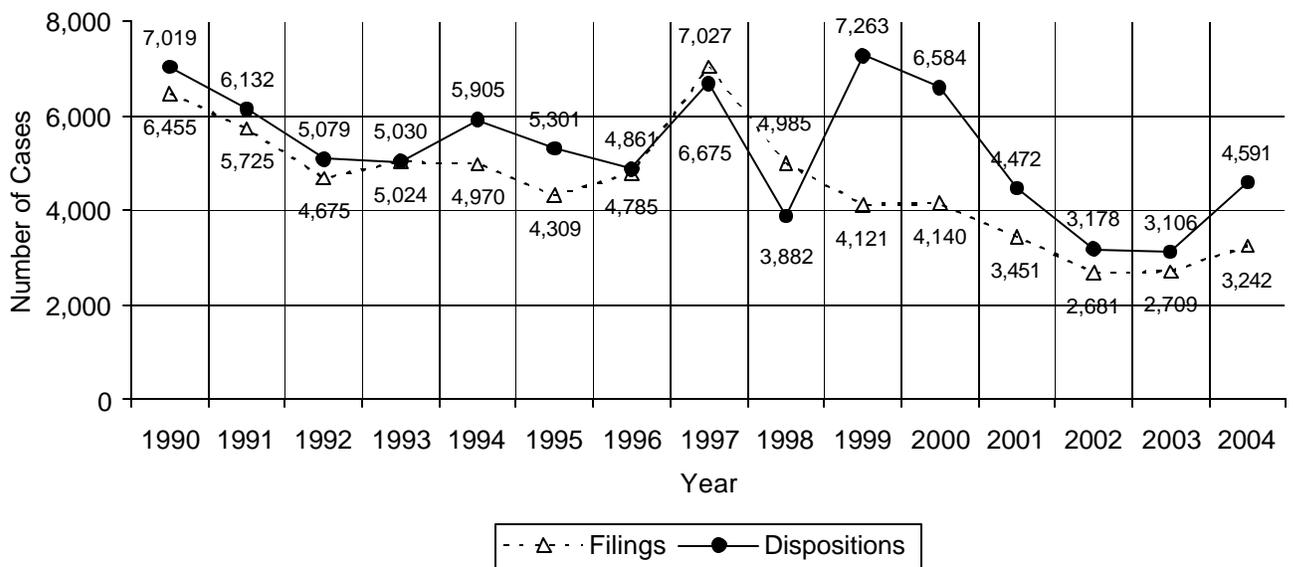
<sup>37</sup> Ibid.

### DC Misdemeanor case trends, 1990 – 2004

Over the past fifteen years, DC Misdemeanor case filings have dropped by approximately 50%. With the exception of an increase in 1997, when the 7,027 DC Misdemeanor cases filed was the highest in the fifteen year period, there has been a general decline in filings.<sup>38</sup> The number of cases filed increased by 20% from 2003 to 2004.

It is interesting to compare the case filings for the years 2001 to 2004 presented in Graph 2, below, to Table 4 (page 31). The difference is very likely explained by the inclusion of no-papered cases in the DC Superior Court’s published statistics.

**Graph 2: DC Misdemeanor Case Filings and Dispositions, 1990 – 2004.**



Source: District of Columbia Courts Annual Reports. 1990 – 2004.

DC Superior Court Criminal Division internal reports provide interesting outcome information. The most frequent type of disposition for DC Misdemeanor cases opened and closed in 2003 (the latest such statistic available) is no-paper, almost 30% of case dispositions. These cases took very little time to resolve.<sup>39</sup> The next most frequent types of disposition are security forfeit (also known as in-court post and forfeit), at 28% of case dispositions, and nolle, at 26% of case dispositions. The time to dispose of security forfeit outcomes was an average of 7.6 days. The time to dispose of nolle prosequi matters was 21.9 days. There were 134 guilty pleas (6% of all case dispositions), which took an average of 32.9 days to resolve. There were 50 trial dispositions (with a disposition of either not guilty or guilty), or 2% of total dispositions. The

<sup>38</sup> DC Superior Court Annual Reports. 1990 – 2004. Superior Court Case Activity. Criminal Division. DC Misdemeanors and Traffic Cases Filed.

<sup>39</sup> On average, these cases took less than one day to resolve. DC Superior Court Criminal Division report. “Three Years of DC Misdemeanor Cases.” Table 3: Case Age by Outcome of the Cases by the Year in Which the Case was Filed.

average time to disposition for not guilty trial verdicts was 45 days, and 38 days for guilty trial verdicts.

Since 2001, approximately 75% of all DC Misdemeanor cases have been alcohol and public order-related charges, as shown in Table 11, below. Alcohol cases represent a mixture of charges, in descending order by number: possession of open container of alcohol, underage drinking, possession of false ID to obtain alcohol, drinking in public, selling alcohol to a minor, and Alcohol Beverage Control charges.<sup>40</sup>

**Table 11: Five Most Frequent DC Misdemeanor Cases, 2001 – 2003.<sup>41</sup>**

Year	Alcohol	Public Order	Begging	Licensing/Vending	Weapons	Other <sup>42</sup>	Total
<b>2001</b>	1835 53.3%	802 23.3%	135 3.9%	125 3.6%	102 3.0%	442 12.9%	3441 100%
<b>2002</b>	1320 49.3%	703 26.3%	166 6.2%	105 3.9%	98 3.7%	284 10.6%	2676 100%
<b>2003</b>	1419 51.5%	666 24.2%	225 8.2%	89 3.2%	118 4.3%	239 8.6%	2756 100%
<b>Total</b>	4574 51.6%	2171 24.5%	526 5.9%	319 3.6%	318 3.6%	965 10.8%	8873 100%

**Traffic case trends, 1990 – 2004<sup>43</sup>**

Over the past fifteen years, Traffic case filings have dropped by just over 20%. Traffic case filings were highest in 1992, with 10,888 cases. Unlike DC Misdemeanor case filings, the downward trend of Traffic filings has been more gradual. The increase in Traffic case filings from 2003 to 2004, at about 6%, is more modest than the increase in filings of DC Misdemeanor cases for the same period.

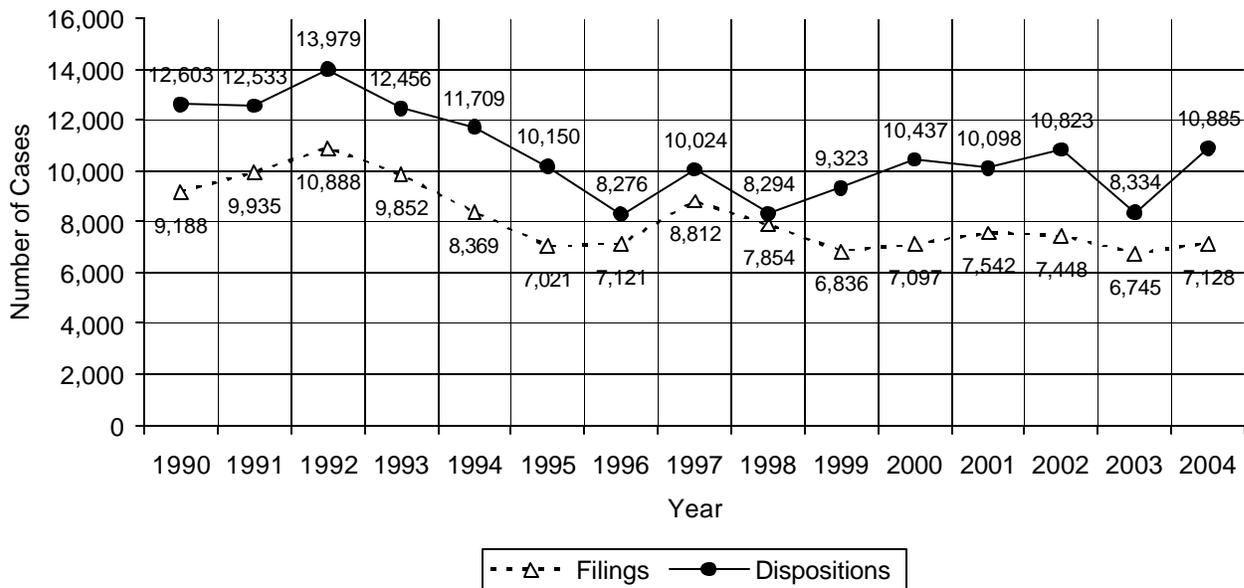
<sup>40</sup> DC Superior Court Criminal Division report. “Three Years of DC Misdemeanor Cases, Draft February 20, 2004.” Page 6, footnote 4.

<sup>41</sup> DC Superior Court Criminal Division report. “Three Years of DC Misdemeanor Cases, Draft, February 20, 2004.”

<sup>42</sup> Includes “theft,” “transportation,” “Youth Rehabilitation Act,” “other,” and “expunged.”

<sup>43</sup> DC Superior Court Annual Reports. 1990 – 2004. Superior Court Case Activity. Criminal Division. DC Misdemeanors and Traffic Cases Filed.

**Graph 3: Traffic Case Filings and Dispositions, 1990 – 2004.**



Source: District of Columbia Courts Annual Reports. 1990 – 2004.

The most frequent type of disposition for Traffic cases opened and closed in 2003 was no-paper, slightly over 30% of case dispositions. These cases took very little time to resolve.<sup>44</sup> The next most frequent types of disposition were nolle pros at 29% of case dispositions, and guilty plea, at 25% of case dispositions. The average time to dispose of nolle prossed matters was 21.9 days. The average time to dispose of guilty pleas was 43 days. There were five trial dispositions (with a disposition of either not guilty or guilty), or 1% of total dispositions. The average time to disposition for not guilty trial verdicts is 48 days, and 56 days for guilty trial verdicts.

Since 2001, approximately 75% of all Traffic cases have been permit or driving while impaired-related charges. Of the permit cases, 67% are no-permit charges, 25% are driving after suspension, 5% are driving after revocation, and 3% are failure to exhibit permit. Of the DWI, OWI, and DUI cases, 52% are DWI, 27% are OUI, and 21% are DUI.<sup>45</sup> These figures are shown in Table 12, below.

<sup>44</sup> On average, these cases took less than one day to resolve. DC Superior Court Criminal Division report. “Three Years of Traffic Court: 2001, 2002 and 2003.” Table 3: Mean and Median Days by Case Outcome.

<sup>45</sup> DC Superior Court Criminal Division report. “Three Years of Traffic Court: 2001, 2002, 2003, Draft February 18, 2004.” Page 3, footnotes 8 and 6.

**Table 12: Five Most Frequent Traffic Cases, 2001 – 2003.<sup>46</sup>**

Year	Permit	DWI, OWI, DUI	Tags, Reg., Inspect.	Traffic <sup>47</sup>	Speeding	Other <sup>48</sup>	Total
<b>2001</b>	4089 55.0%	1819 24.5%	750 10.1%	396 5.3%	122 1.6%	260 3.5%	7436 100%
<b>2002</b>	3855 52.6%	1448 19.7%	648 8.8%	695 9.5%	406 5.5%	283 3.9%	7335 100%
<b>2003</b>	3577 53.2%	1506 22.4%	590 8.8%	370 5.5%	436 6.5%	247 3.6%	6726 100%
<b>Total</b>	11521 53.6%	4773 22.2%	1988 9.3%	1461 6.8%	964 4.5%	790 3.6%	21497 100%

<sup>46</sup> DC Superior Court Criminal Division report. “Three Years of Traffic Court, Draft, February 18, 2004.”

<sup>47</sup> These are miscellaneous traffic charges, 48% of which are failure to obey a traffic officer and 44% are reckless driving. “Three Years of Traffic Court: 2001, 2002, 2003, Draft February 18, 2004.” Page 3, footnote 9.

<sup>48</sup> Includes “accident,” “cabs,” “Youth Rehabilitation Act,” and “expunged.”

## Findings and Recommendations

Based on this study, CCE has made several major findings and recommendations which it believes will improve the functioning of the DC Misdemeanor and Traffic Court. The findings and recommendations are discussed below.

- 1. Finding:** The DC Misdemeanor and Traffic Court lacks sufficient resources to identify the social service needs of most defendants and to provide any with meaningful social service referrals.
- a. Recommendation: The DC Superior Court should add one or more social workers or persons with social service skills, either through direct hire or through the detail of a full time equivalent through the DC Pretrial Service Agency, dedicated to the DC Misdemeanor and Traffic Court.
  - b. Recommendation: The DC Misdemeanor and Traffic Court should plan to expand the number of cases for which a social service assessment is performed.
  - c. Recommendation: The DC Misdemeanor and Traffic Court Working Group should develop a comprehensive long-term plan for the DC Misdemeanor and Traffic Court.

### Discussion

**Recommendation 1.a.: The DC Superior Court should add one or more social workers or persons with social service skills, either through direct hire or through the detail of a full time equivalent through the DC Pretrial Service Agency, dedicated to the DC Misdemeanor and Traffic Court.**

The function of the current DC Misdemeanor and Traffic Court Case Manager can be distilled to three basic elements: assessing defendants, contacting service providers, and reporting in court the findings of the assessment and social service recommendations. The DC Misdemeanor and Traffic Court lacks sufficient staff to establish firm connections to other social service provider agencies or to follow-up with social service provider agencies regarding referred defendants. The social service programs offered by the court to locked-up DC Misdemeanor offenders are very limited, according to interviews with stakeholders, due to a lack of staff resources to establish connections to service providers.

The experience of other community courts suggests that additional personnel are necessary to develop sufficient diversion resources for the community court and provide case management. Such personnel provide needed coordination by meeting with representatives of social service provider agencies and establishing connections to the community court. The DC Misdemeanor and Traffic Court should have a direct link to the Department of Motor Vehicles and the Department of Mental Health so that they are present in the courtroom or by computer. Transportation should be readily available for defendants that warrant mental health services.

**Recommendation 1.b.: The DC Misdemeanor and Traffic Court should plan to expand the number of cases for which a social service assessment is performed.**

Anecdotal estimates suggest that 20 – 25 locked-up DC Misdemeanor offenders are assessed per week by social workers at the DC Misdemeanor and Traffic Court, or an estimated 30 – 40% of all DC Misdemeanor cases filed in 2004. Of these, the offenders with the most serious needs, representing less than one percent of all DC Misdemeanor case filings, may be placed under the case management supervision of the DC Pretrial Services Agency.

Most assessed offenders are eligible for social service referrals even if they do not qualify for other diversion programs. Regardless of diversion eligibility, the social service referrals offered currently are limited due to lack of firm relationships with social service providers. This lack of firm relationships suggests the need for the DC Misdemeanor and Traffic Court to ensure that its ad hoc list of social service provider agencies is updated before expanding the number of social service referrals and is routinely updated and systematically maintained in the future.

Moreover, those social service referrals which are available have little Court involvement in terms of case management and offender accountability mechanisms. Perhaps due to this, there is little incentive to the offender to participate in social service programs. The anecdotal impression reported during this research by various stakeholder agencies is that social service referrals are largely ineffective. Without a more structured social service referral component to the DC Misdemeanor and Traffic Court, it will be unable to address or evaluate remediation of the core offender problems, such as substance abuse, mental illness, or unemployment, which contribute to the “revolving door” offender so often spoken of by criminal justice agencies.

**Recommendation 1.c.: The DC Misdemeanor and Traffic Court Working Group should develop a comprehensive long-term plan for the DC Misdemeanor and Traffic Court.**

The DC Misdemeanor and Traffic Court was affirmatively established after only a short planning period in 2001. This is reinforced by the fact that no planning documents were found during the course of this study. However, the time has come to plan to institutionalize the court and to integrate the court into the community.

Research and literature on community courts note that a common practice and key element of a community court is an “extensive (often two or three years) planning process.”<sup>49</sup> The reason for this is because the different agencies involved in the creation of a community court need to come together to successfully develop a “collaborative

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<sup>49</sup> Casey, Pamela M. and David B. Rottman. “Problem-Solving Courts: Models and Trends.” The Justice System Journal. Vol. 26, Number 1 (2005), p. 37.

problem-solving approach to quality-of-life offenses” and also to “forge close links to the community.”<sup>50</sup> The Red Hook Community Justice Center, for example, went through a lengthy six-year planning process that included a formal public review where local residents participated in focus groups and town hall meetings, and a “democratic approval” by the local community board, the Brooklyn Borough president, and the New York City Planning Commission.<sup>51</sup>

The DC Misdemeanor and Traffic Court Working Group, a monthly interagency meeting of stakeholder government and service provider agencies, was formed in early 2002. The Working Group is effective at identifying and responding to short-term issues, but stakeholder participants do not appear to be operating under a unified and shared vision of the future direction and goals of the DC Misdemeanor and Traffic Court – almost four years after its creation.

A long-term plan for the DC Misdemeanor and Traffic Court is overdue. The Working Group is the logical place to develop a long-term plan. Such a plan should consider creating a mission statement, developing and implementing measures to assess the performance of diversion programs, expanding the scope of social service assessments and referrals offered to offenders, developing procedures to provide for case management of offenders, establishing offender accountability mechanisms for social service referrals, and addressing whether a stand-alone Court should be established to handle all diversion-eligible matters. This plan should also consider training programs for defense and prosecution counsel on the rehabilitative aspects of “social lawyering” in the DC Misdemeanor and Traffic Court.

- 2. Finding:** The DC criminal justice system is collecting insufficient data with respect to DC Misdemeanor and Traffic offenses, and the lack of data hinders program development, analysis, management, and evaluation.
  - a. Recommendation: The Office of the Attorney General or the DC Misdemeanor and Traffic Court Working Group should develop and implement protocols to track defendants and outcomes for each diversion program it administers.
  - b. Recommendation: The Metropolitan Police Department and the Pretrial Services Agency should evaluate the benefits and costs of assigning Police Department Identification (PDID) numbers to all criminal defendants to permit tracking recidivism.

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<sup>50</sup> Ibid., p.36.

<sup>51</sup> Berman, Greg and Aubrey Fox. “From the Benches and Trenches: Justice in Red Hook.” The Justice System Journal. Vol.26, No.1 (2005), p.78.

## Discussion

**Recommendation 2.a.: The Office of the Attorney General or the DC Misdemeanor and Traffic Court Working Group should develop and implement protocols to track defendants and outcomes for each diversion program it administers.**

With the exception of certain types of community service diversion, this study found no data on the numbers of offenders in the various diversion programs and whether offenders completed the diversion program requirements. Such baseline information is critical to determine the effectiveness of the various diversion programs. The OAG should begin tracking such information immediately or seek assistance from the Working Group to track this critical information.

The Office of the Attorney General does track offenders who are referred to some form of community service program. There appears to be no tracking of offenders referred to the other diversion programs. Basic workload measures - such as number of offenders referred by diversion program, number of offenders who complete a diversion program, length of time in diversion, etc. - should be established and regularly reported. Such workload measures are critical. Without them it is impossible to describe the magnitude of the diversion programs collectively or individually, or to assess the performance of the community court aspect of the DC Misdemeanor and Traffic Court. For example, being able to demonstrate high numbers of offenders for a long period of time in the remediation program may suggest the need for Department of Motor Vehicles personnel in the courtroom to facilitate faster resolution of outstanding matters.

However, getting the resources to establish measures and monitor workload will be difficult, as was pointed out in interviews with the OAG and with other stakeholder agencies. The OAG Criminal Section, which has 15 attorneys and seven support staff (two of the seven are dedicated to specific criminal matters), is unlikely to be able to provide staff dedicated to this function.

**Recommendation 2.b.: The Metropolitan Police Department and the Pretrial Services Agency should evaluate the benefits and costs of assigning Police Department Identification (PDID) numbers to all criminal defendants to permit tracking recidivism.**

As discussed in the report section, “Analysis of Case Processing Statistics,” the DC criminal justice system does not collect or analyze recidivism data. However, the criminal histories of most offenders could be developed through an analysis of PDID numbers. The parameters of such a study would have to be defined in advance – specifically defining recidivism, establishing an appropriate time period to frame the data, and other questions – and would have to account for PDID numbers not being assigned to first time or repeat offenders for several specific DC Misdemeanor matters.

It is an open question at this point whether MPD should undertake to assign all defendants a PDID number solely for the purpose of tracking recidivism.<sup>52</sup> But if recidivism were tracked, it would permit the DC criminal justice system, and the DC Superior Court in particular, to test and report on whether the DC Misdemeanor and Traffic Court and other DC Superior Court problem-solving courts reduce repeat criminal behavior.

A fundamental reason for the establishment of a community court is to change offender behavior. One commentator has noted that problem-solving courts address the “root causes of criminal behavior” by promoting programs of treatment for juvenile delinquency, drug abuse, domestic violence and mental health.<sup>53</sup> He also argues that in each of these contexts, treatment “presents an attractive alternative to the standard criminal justice system.”<sup>54</sup>

Determining how to measure changes in offender behavior as a result of their experience with DC Misdemeanor and Traffic Court would be a complex undertaking. Simply measuring the effectiveness of the various diversion programs would take an effort perhaps beyond the capacity of the system at this point. And even with the necessary data tracking systems and personnel in place, any community court could not reasonably address such questions for a number of years. Nonetheless, specifically defining recidivism and establishing methods to track such information should be among the top research questions to be addressed by the DC criminal justice system agencies as soon as possible.

**3(a). Finding:** Some penalties for DC Misdemeanor and Traffic offenses are not logical or proportionate. For example, the maximum sentence for Driving While Intoxicated is 90 days, while the maximum sentence for Operating After Suspension is one year.

**3(b). Finding:** Mandatory fines for any criminal guilty verdict are unrealistic when applied to crimes of destitution. For example, defendants found guilty of panhandling are required to pay \$50 to the DC Crime Victims Fund.

#### Discussion

**Recommendation 3: The DC Council should consider reviewing and proportionalizing statutory penalties for DC Misdemeanor and Traffic offenses and consider amending the DC Code to eliminate or propose alternative sanctions to a mandatory fine for crimes of destitution.**

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<sup>52</sup> Measuring the workload implications of this recommendation for MPD would first require the MPD AFIS unit to provide a list of the DC Misdemeanor and Traffic charges not assigned a PDID number.

<sup>53</sup> Casey, Timothy. “When Good Intentions Are Not Enough: Problem-Solving Courts and the Impending Crisis of Legitimacy.” *Southern Methodist University Law Review*. Fall, 2004. Retrieved on March 25, 2005 from LexisNexis® Academic.

<sup>54</sup> *Ibid.*

According to the findings of the proposed Criminal Code Reform Commission Establishment Act of 2005, “many of the criminal statutes’ penalties are disproportional to the crime and disparate from penalties of similar crimes.”<sup>55</sup> The DC Council should promptly enact the proposed legislation and help ensure prompt appointment of the proposed Commission’s members.

- 4. Finding:** The District of Columbia Code does not provide for the expungement of convictions of low level offenses.

Discussion

**Recommendation 4: The DC Council should enact an expungement statute for incorporation into the DC Code.**

The District of Columbia is one of the few jurisdictions in the country without an expungement statute. Expungement of a conviction means the ex-offender legally does not have to report the conviction when seeking employment, public housing, bank loans and the like.

In many other jurisdictions, first time offenders charged with minor offenses are permitted by law to petition to have the conviction expunged, or removed, from the record. No comparable expungement statute exists in the District of Columbia. Offenders with low-level criminal convictions may seek to seal their criminal case history under DCSC Rule 118, but the standard for sealing is such that very few offenders can successfully avail themselves of this relief.

- 5. Finding:** All trials in the DC Misdemeanor and Traffic Court are scheduled for 9:00 am, which wastes much time of non-court personnel.

Discussion

**Recommendation 5: The DC Superior Court Criminal Division should re-examine its trial scheduling system for DC Misdemeanor and Traffic cases and should also asking the Chief Judge to designate a judicial officer to handle trial overflow that would always be available.**

DC Misdemeanor and Traffic cases placed on a trial track are heard in courtroom 120. While measuring the trial caseload of courtroom 120 was outside the scope of this contract, interviews with stakeholder agencies strongly suggest an overburdened trial calendar. All matters in courtroom 120 are scheduled for 9:00 am, and some cases can take hours to be heard. This “cattle call” system of scheduling trials is inefficient and wastes the time of courtroom participants, including the prosecutor, defense counsel, police officers, defendants and witnesses.

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<sup>55</sup> Bill 16-172, the Criminal Code Reform Commission Establishment Act of 2005, Section 2 (2).

## Other Findings

### *Metropolitan Police Department*

1. Inefficiencies arise when defendants appear at a different MPD District Station from the one which issued the citation, to post and forfeit or set a court date, either because he or she lost the citation, or because another station is more convenient. If the “issuing” District Station is the one that retains the copy of the Form 61D, other District Stations appear to have no way of knowing about the citation.

### *Office of the Attorney General*

2. Community service is performed either in the Downtown DC Business Improvement District or on a city-wide basis through a list generated by the DC Department of Public Works, and is likely not to be performed in the neighborhood where the offense occurred. This practice differs from the some city-wide community courts.

### *Superior Court of the District of Columbia*

3. The DC Superior Court Criminal Division’s internal reports on DC Misdemeanor and Traffic Court cases no longer provide time-to-disposition data in 30-day increments. Such time series data is particularly useful when comparing disposition time to a standard, such as the ABA Case Processing Time Standards, offers more descriptive information than a single statistic such as average or median, and possibly could be used as a predictive tool.<sup>56</sup>

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<sup>56</sup> American Bar Association. *Standards Relating to Trial Courts*. Standard 2.52 – Standards of Timely Disposition.



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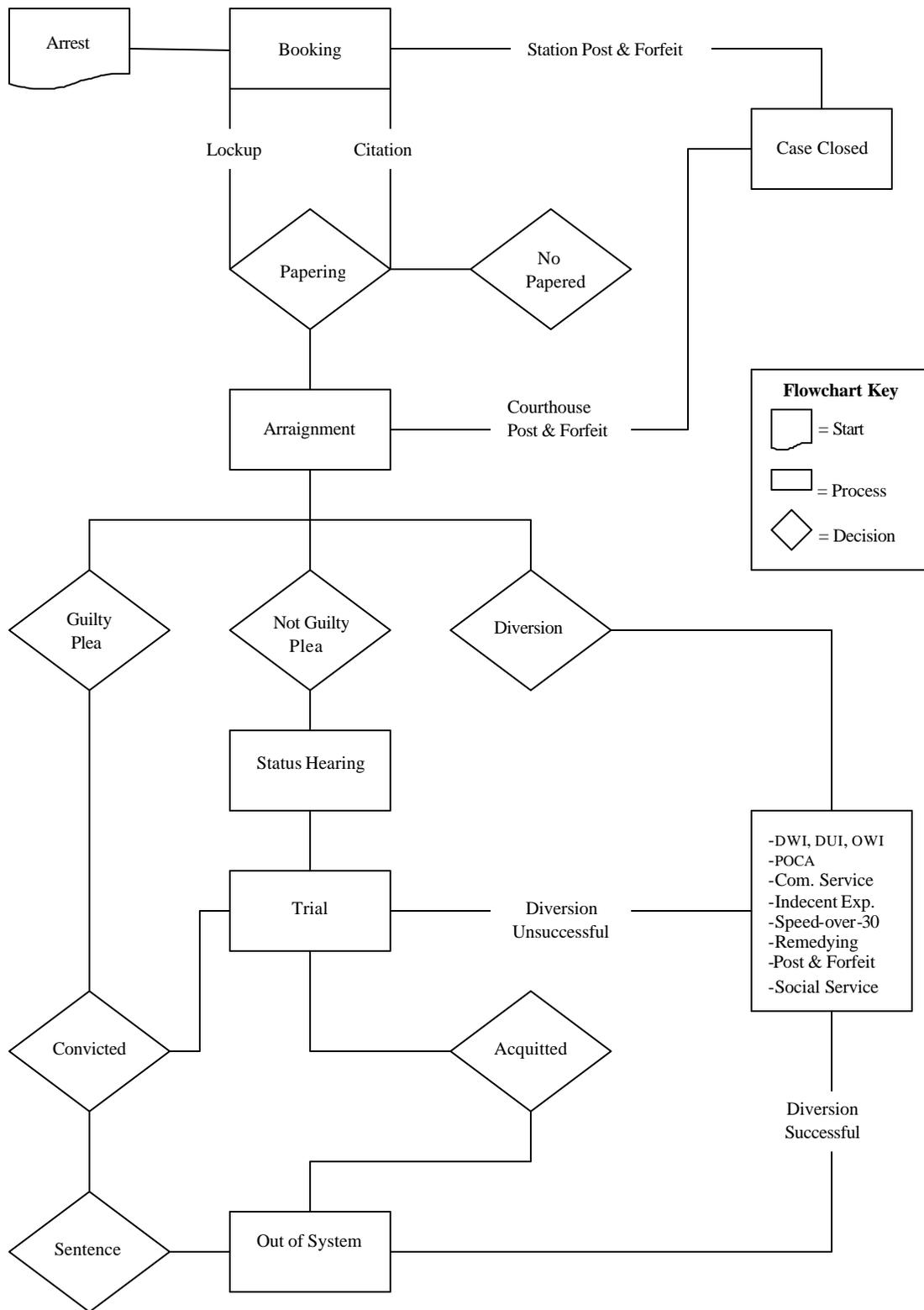
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# Appendix 1: DC Misdemeanor and Traffic Court Case Flow Chart





**Appendix 2: Demographics of DC Misdemeanor and Traffic Defendants Interviewed by the DC Pretrial Services Agency, 2002 – 2004.**

<b>Characteristic</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>Gender</b>			
Male:	4,777 ( 90.6%)	5,798 ( 86.9%)	6,351 ( 85.7%)
Female:	492 ( 9.4%)	877 ( 13.1%)	1,060 ( 14.3%)
Unknown:	2 ( 0.0%)	0 ( 0.0%)	2 ( 0.0%)
Total:	5,271 (100.0%)	6,675 (100.0%)	7,413 (100.0%)
<b>Race</b>			
Black:	4,841 ( 91.9%)	5,686 ( 85.2%)	6,219 ( 83.9%)
White: <sup>57</sup>	412 ( 7.8%)	953 ( 14.3%)	1,159 ( 15.6%)
Other: <sup>58</sup>	18 ( 0.3%)	36 ( 0.5%)	35 ( 0.5%)
Total:	5,271 (100.0%)	6,675 (100.0%)	7,413 (100.0%)
<b>Marital Status</b>			
Single:	3,787 ( 71.8%)	4,256 ( 63.8%)	4,608 ( 62.2%)
Unknown:	580 ( 11.0%)	1,301 ( 19.5%)	1,496 ( 20.2%)
Married:	428 ( 8.1%)	528 ( 7.9%)	616 ( 8.3%)
Divorced:	178 ( 3.4%)	252 ( 3.8%)	301 ( 4.1%)
Other: <sup>59</sup>	298 ( 5.7%)	338 ( 5.0%)	392 ( 5.2%)
Total:	5,271 (100.0%)	6,675 (100.0%)	7,413 (100.0%)
<b>Community ties</b>			
DC zip code:	3,847 ( 73.0%)	4,389 ( 66.0%)	4,441 ( 60.0%)
Other: <sup>60</sup>	1,434 ( 27.0%)	2,286 ( 34.0%)	2,972 ( 40.0%)
Total:	5,271 (100.0%)	6,675 (100.0%)	7,413 (100.0%)
<b>Age</b>			
18 & under:	114 ( 2.1%)	200 ( 3.0%)	284 ( 3.8%)
19 – 28:	2,000 ( 37.9%)	2,522 ( 37.8%)	2,648 ( 35.7%)
29 – 38:	1,459 ( 27.8%)	1,811 ( 27.1%)	1,867 ( 25.2%)
39 – 48:	1,238 ( 23.5%)	1,435 ( 21.5%)	1,716 ( 23.2%)
49 – 58:	380 ( 7.2%)	572 ( 8.6%)	702 ( 9.5%)
59 – 68:	56 ( 1.0%)	108 ( 1.6%)	139 ( 1.9%)
69 & over:	10 ( 0.2%)	8 ( 0.1%)	17 ( 0.2%)
Other: <sup>61</sup>	14 ( 0.3%)	19 ( 0.3%)	40 ( 0.5%)
Total:	5,271 (100.0%)	6,675 (100.0%)	7,413 (100.0%)

<sup>57</sup> This category includes both “white and “Caucasian” race codes. The number of “Caucasian” entries never exceeded 26 for a calendar year, and therefore do not have a significant affect on the percentages above.

<sup>58</sup> The “Other” category includes “Asian American,” “American Indian,” “Spanish Surname,” “Other” and “N.”

<sup>59</sup> The “Other” category includes “Separated,” “Common Law,” “Widowed.”

<sup>60</sup> The “Other” category includes non-DC zip codes, non-zip codes and no response.

<sup>61</sup> These 40 cases represent both data entry errors in date of birth, e.g., born in 2000 and arrested in 2004, and arrests occurring in the prior year.

**Appendix 2: Demographics of DC Misdemeanor and Traffic Defendants Interviewed by the DC Pretrial Services Agency, 2002 – 2004, continued.**

<b>Characteristic</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>Employment</b>			
Unemployed:	2,040 ( 38.7%)	2,483 ( 37.2%)	2,879 ( 38.8%)
Employed:	1,890 ( 35.9%)	2,275 ( 34.1%)	2,728 ( 36.8%)
No response:	1,159 ( 22.0%)	1,613 ( 24.2%)	1,486 ( 20.1%)
Student:	147 ( 2.7%)	270 ( 4.0%)	296 ( 4.1%)
Other: <sup>62</sup>	33 ( 0.7%)	34 ( 0.5%)	24 ( 0.3%)
Total:	5,271 (100.0%)	6,675 (100.0%)	7,413 (100.0%)
<b>Drug Use</b>			
No response:	2,151 ( 40.8%)	2,800 ( 41.9%)	2,925 ( 39.4%)
No:	1,732 ( 32.9%)	2,195 ( 32.9%)	2,481 ( 33.5%)
Yes:	1,388 ( 26.3%)	1,680 ( 25.2%)	2,007 ( 27.1%)
Total:	5,271 (100.0%)	6,675 (100.0%)	7,413 (100.0%)

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<sup>62</sup> The “Other” category includes “Incarcerated” and “Retired.”

## **About the Council for Court Excellence**

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- Identifying and promoting court reform,
- Improving public access to justice, and
- Increasing public understanding and support of our justice system.

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- Efficiencies and technology in courts and related agencies
- Children within the justice system
- Publicly funded legal representation
- Criminal justice and sentencing