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**CLARK COUNTY**  
WASHINGTON

**AUDITOR**  
**GREG KIMSEY**

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## MEMORANDUM

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**Date:** November 19, 2009

**To:** Art Curtis, Clark County Prosecuting Attorney  
Ted H. Gathe, City Attorney, Vancouver

**Cc:** County Administrator Bill Barron  
Clark County Audit Oversight Committee  
Greg Kimsey, Chair  
Mark Boldt, BOCC  
Vernon Peterson, CPA

**From:** Laurence L. Feltz, Senior Management Analyst

**Subject:** Performance Audit of the Domestic Violence Prosecution Center

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On December 11, 2000 Clark County and the City of Vancouver entered into an interlocal agreement establishing the Domestic Violence Prosecution Center (DVPC). The Center is staffed by prosecutors and support staff from both the county and city. The Center reviews domestic violence cases referred by county and city law enforcement and decides whether to prosecute, and if so, at what level (e.g., felony or misdemeanor).

The Clark County Prosecuting Attorney's Office (PA) requested that the Auditor's Office conduct a performance audit of DVPC, including assessing

- the adequacy of the case management system in providing information relevant to processing efficiency and compliance with policy;
- whether the number of cases per attorney is correct, and
- the efficiency of the DVPC's workflow.

### **Audit Services**

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### AUDIT SCOPE

The audit's scope is limited to evaluating the adequacy of the case management system (Tiburon) in providing processing efficiency and policy compliance information. Insufficient criteria are available to draw supportable conclusions pertaining to the optimal number of cases per attorney. Insufficient criteria and court system/prosecutorial system expertise are available within the audit team to evaluate the DVPC's workflow on a performance audit basis.

### AUDIT METHODOLOGY

Case-specific information in the Tiburon case management system, and associated police reports, were reviewed for 200 cases selected from the total of 2,284 cases that were closed during the 7/1/2008 through 6/30/2009 period. The cases reviewed comprised the following major case dispositions:

- "Dismissed" (arrest made, charge subsequently dismissed)
- "No Action" (no arrest made, no charge levied)
- "Sentenced" (charge made, defendant sentenced as a result of a plea or trial)
- "Not Guilty" (charged, tried, defendant found not guilty)

Case review results, as pertaining to the Tiburon case management system, are described in the following sections.

### TIBURON HAS THE CAPACITY TO PROVIDE ADDITIONAL INFORMATION USEFUL FOR CASE MANAGEMENT AND SUPERVISORY OVERSIGHT

Case review showed that DVPC staff entered much detailed data in Tiburon. For example, staff enter trial dates into the Tiburon Hearings Field and also on the affected attorney's calendar.<sup>1</sup> Additional entries to the Hearings Field include data related to mandatory pretrials, readiness hearings, and no contact order rescissions.

Detailed information, such as subpoenas issued, discovery requested, discovery picked up, and defense attorney interview scheduled is entered in the Events Field.

The following describes additional information which, if readily retrievable from Tiburon, would be useful for case management and supervisory oversight.

Sentencing "Enhancement" data. Case review and discussion with Prosecuting Attorney staff indicated that it is not always possible to tell from Tiburon whether or not a sentence "Enhancement" was applied. The Enhancement fields in Tiburon are

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<sup>1</sup> According to Prosecuting Attorney Office staff, this procedure (entering continuance dates both in Tiburon and on affected attorneys' calendars) is not followed by all office divisions. This DVPC procedure is a "best practice" example that should be considered for expansion within the office.

generally left blank. (An enhancement, such as the use of a weapon, gives the court the option of applying different sentencing standards than would otherwise be the case.)

Reasons for case dismissal. For cases which were charged and subsequently dismissed, case review showed that Tiburon often does not specifically document reasons for dismissal. Case review, and discussion with prosecutors, indicated that the most common reasons were:

- Dismissed at arraignment. The first time a prosecuting attorney reviews a case is in preparation for arraignment. If the attorney concludes, contrary to the conclusion reached by the arresting and charging law enforcement officer, that there is insufficient evidence to prosecute, a motion to dismiss is filed.
- Dismissed as a misdemeanor in District Court and filed as a felony in Superior Court.
- Dismissed because the victim is uncooperative and evidence to proceed is insufficient.
- Dismissed because a written statement at the time of the incident was not obtained from the victim (Smith Act Affidavit) and evidence to proceed is insufficient.

Case continuance data. Case review showed that some trial dates (including dates of trials that were rescheduled) were entered into the Tiburon Hearings Field.<sup>2</sup> Tiburon is not set up to calculate the case processing time delay associated with court continuances. Extensive manual calculation would be required to obtain this information.

Reasons for not charging "No Action" cases. Cases are classified as "No Action" if the law enforcement personnel responding to the incident conclude that no domestic violence crime has occurred. Contrary to what case review found for dismissed cases, reasons for not filing charges on No Action cases were usually documented in Tiburon. Common reasons were:

- insufficient evidence.
- no probable cause.
- no Smith Act Affidavit.

Often, all three of these reasons were stated. Occasionally, more detail specific to the case was provided regarding the reason not to charge--e.g., the "Smith Affidavit was not signed."

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<sup>2</sup>Case review did not determine whether this information was complete--i.e., whether all rescheduled trial dates had been entered.

### ADDITIONAL TIBURON DATA COULD PROVIDE INFORMATION PERTINENT TO COMPLIANCE WITH PROSECUTING ATTORNEY'S OFFICE POLICIES

Prosecuting Attorney's Office policy is articulated in its manual entitled "Criminal Division Guidelines for Deputy Prosecuting Attorneys and Legal Interns." Overall prosecutorial guidance is stated in the manual's introduction, as follows:

"The primary objectives of the following Guidelines are to protect against arbitrariness in the decision making process and to ensure uniformity in the handling of criminal cases within the office. There is no justification for a victim or accused to receive substantially different treatment because a case was assigned to one individual in the office and not another."

The manual also contains specific guidance for prosecutorial actions such as when and how to add sentencing "enhancements" (e.g., using a deadly weapon in the commission of a crime). The effect of the enhancement is to provide the court with greater flexibility in sentencing than would otherwise be the case.

Evidence of compliance with manual policies could be supplemented by bolstering the information available in Tiburon. This additional information would better enable supervisory prosecuting attorneys to assure consistency in charging and subsequent prosecutorial decisions. For example:

- assuring uniformity among attorneys in the use of enhancements, and
- assuring case dismissal consistency by inputting and analyzing reasons for dismissal.

### CONCLUSIONS AND RECOMMENDATIONS

Tiburon has built-in capacity (i.e., unused fields) to capture the additional information described in the preceding paragraphs. In some instances (e.g., for sentencing enhancements) specific fields are already established. Otherwise, general information fields (e.g., "Notes" and "Comments") could be used.

We offer the following recommendations for consideration by the Prosecuting Attorney's Office. In doing so, we recognize that the benefits of the additional information need to be balanced against any increased administrative work that would be required.

**We recommend** that prosecuting attorney staff:

- Indicate in Tiburon whether or not sentencing enhancements were applied. If used, the details pertaining to those enhancements should be entered in the specific fields in Tiburon provided for that purpose.
- Enter reasons for case dismissal in Tiburon. One option for accomplishing this would be a "drop down box" added to a pre-existing field in Tiburon. The common reasons for case dismissal would be selection options in the drop down box.

In addition, we suggest that the Prosecuting Attorney's Office investigate the possibility of modifying Tiburon so that the time associated with court continuances can be automatically calculated.

The Prosecuting Attorney's Office agreed with the report's findings and recommendations. A copy of the Office's response is attached to this memorandum.

#### AUDIT STANDARD COMPLIANCE

We conducted this performance audit in accordance with generally accepted government auditing standards, except for the standard requiring an external peer review performed by independent reviewers at least once every three years. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. A peer review is required to determine if our quality control system is suitably designed to ensure that applicable professional standards have been followed; our first peer review is being scheduled for 2010. Based on the quality control system in place to ensure professional standards are followed, we do not believe our audit, or the assurance we are providing is negatively impacted.



ARTHUR D. CURTIS  
PROSECUTING ATTORNEY

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CURT WYRICK  
CHIEF DEPUTY

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SHARI JENSEN  
ADMINISTRATOR

November 19, 2009

Clark County Auditor Greg Kimsey  
PO Box 5000  
Vancouver, WA. 98666

RE: DVPC response to Audit report

Dear Mr. Kimsey,

Vancouver City Attorney Ted Gathe and I, along with our respective offices, appreciate the recommendations made by the Auditor's office in this report. We will be implementing these recommendations at the Domestic Violence Prosecution Center as soon as is feasible.

We sincerely appreciate the long hours and dedication the Auditor's staff put into the performance audit. We were very impressed with their diligent attempt to learn and understand a very complicated subject matter. Thank you for your assistance.

Sincerely,



Arthur D. Curtis

CC: Ted Gathe, Vancouver City Attorney  
Denny Hunter, Chief Criminal Attorney  
Shari Jensen, Administrator