RUSH TO JUDGEMENT: UNDERSTANDING THE IMPACT OF
EARLY CASE RESOLUTION ON THE PACE OF
LITIGATION AND QUALITY OF JUSTICE

By
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To the Faculty of Washington State University:

The members of the Committee appointed to examine the dissertation of LAUREN M. BLOCK find it satisfactory and recommend that it be accepted.

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RUSH TO JUDGEMENT: UNDERSTANDING THE IMPACT OF

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ABSTRACT

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The court system in the United States has long suffered from a slow pace of litigation and its many consequences. Decades of research has concluded that the pace of litigation is by no means static and that certain case management methods targeted at reducing delay in the courts by utilizing court time and resources more efficiently can be successful. The Early Case Resolution program implemented in Spokane County Superior Court utilizes early case screening, strict deadlines, and a specialized workgroup in an attempt to create a faster pace of litigation for selected felonies and misdemeanors. However, in the pursuit of a faster pace of litigation the program also raises concerns about the potential compromise of the quality of justice due to an expedited case processing timeline, the exclusive use of guilty pleas as the mode of disposition, and limits on the adversarial process.

By comparing case processing and outcomes for cases processed through the Early Case Resolution program to similarly-situated cases disposed of through traditional court prior to the implementation of the program, the current study provides a preliminary examination of the Early Case Resolution program to determine whether it is impacting the pace of litigation and
whether the program is having unintended consequences on the quality of justice dispensed by the court. Propensity Score Matching was utilized to compensate for selection bias present in the treatment and comparison samples.

This study found that while the Early Case Resolution program does reduce the number of days from case filing to case disposition for selected cases, it appears to do so by engaging in frequent instances of plea bargaining that result in less severe sentences for defendants selected for the program. In addition, the study found that while the Early Case Resolution program does have a lower rate of pretrial misconduct, those defendants who still engage in pretrial misconduct may be problematic for the court’s attempt to save time and resources. Future studies on the impact of the Early Case Resolution program on recidivism rates and the use of the county jail for pretrial detention and punishment are suggested.
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DEDICATION

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CHAPTER ONE: Introduction

“The prompt disposition of criminal cases is to be commended and encouraged. But, in reaching that result, a defendant, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense. To do that is not to proceed promptly in the calm spirit of regulated justice, but to go forward with the haste of the mob.”

One of the foundations of our criminal justice system is the belief that the quick resolution of criminal cases is vital to carrying out justice. The Sixth Amendment to the U.S. Constitution references this right as it states: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial…” (U.S. Const. amend. VI). Therefore it is not surprising that the slow pace of litigation has been the target of court reform for decades. There are many reasons as to why there should be concern about the slow pace of litigation, including increased stress and uncertainty for the victims and defendants, increased workloads and uncertainty for the courtroom workgroup, the loss of witnesses and evidence, increased occurrences of failure to appear, increased length of stay for pretrial detention, jail overcrowding, and the loss of court time and resources. The concern about these harms resulting from court delay, also termed as a slow pace of litigation or slow case processing times for criminal cases, began growing at the turn of the twentieth century. As these concerns grew, so did the number of researchers investigating the causes and potential solutions for the slow pace of litigation.

The first wave of research on court delay relied on false assumptions about the influences on the pace of litigation, such as the size of the court, a lack of court resources, increasing caseloads, and high trial rates (Church, 1982). In addition, early studies often only examined civil cases in single jurisdictions and failed to accurately or consistently measure the pace of litigation. The solutions that predictably resulted from these studies involved dooming large,
urban courts to the plague of court delay, suggesting such failed reforms as increasing the number of judges, and suggesting controversial reforms such as reducing the number of trials.

However, as a second wave of research began to focus on studying criminal cases in multiple jurisdictions, utilizing multivariate analyses, and using more accurate measurements of the pace of litigation, the knowledge about the causes and potential solutions for court delay finally began to change. A study known as the Pretrial Delay Project conducted by the National Center for State Courts resulted in a dramatic shift in the understanding of court operations and court behavior (Steelman, 1997). The study found that the informal norms, values, and attitudes of the actors within the courtroom or what is sometimes referred to as the “local legal culture” was one of the most important factors associated with a court’s pace of litigation (Church, Carlson, Lee, & Tan, 1978). This finding and the resulting shift in knowledge would result in a third wave of research involving a series of large-scale studies that confirmed there were certain court characteristics and methods of case management that could successfully impact the pace of litigation. And as a result of these waves of research conducted primarily during the 1970s and 1980s, many courts implemented reforms that considered the influence of the local legal culture and used empirically-based case management characteristics and methods in order to allocate court resources more efficiently and decrease the pace of litigation (Steelman, 1997).

Court characteristics and methods that have been found to be associated with a faster pace of litigation include strong judicial leadership, goal-setting, early and continuous monitoring of case progress, strict trial dates, and effective information gathering and communication (Goerdt, Lomvardias, & Gallas, 1991). And one of the most commonly implemented methods of case management, known as Differentiated Case Management, incorporates many of these characteristics and methods in order to impact the pace of litigation.
Specifically, Differentiated Case Management (DCM) focuses on targeting and tracking cases based on the estimated amount of court resources and attention needed for timely disposition (Cooper, Solomon, & Bakke, 1993). The ultimate goal of DCM is the more efficient use of court time and resources. For example, if courts provide only the needed resources and attention for less serious criminal cases, then it will free up court time for the most serious and complex cases. Studies conducted on the effectiveness of DCM have found that it is successful in achieving a shorter length of pretrial detention, faster case disposition times, reducing court backlogs, and reducing jail overcrowding (Steelman, 2000).

However, while we may view increasing the speed with which victims and defendants receive closure and saving court resources by emptying court dockets as noble goals, the pursuit of justice is rarely this simple. In reality, we often face an inherent conflict within the criminal justice system between providing timely justice to the community and ensuring fairness in the process. So while speedy case dispositions are important to our courts, perhaps one of the most important unanswered question about the pace of litigation is the tenuous relationship it shares with the quality of justice (Goerdt, et al., 1991; Mahoney, 1988; Ostrom & Hanson, 1999). Many researchers have hypothesized that a possible unintended consequence of speeding up the pace of litigation is the compromise of the quality of justice in the process. Even though the recognition of this potential issue has long been a part of these studies, very few have actually investigated the question. While the lack of evaluation is unfortunately quite common within the court system, this question becomes especially concerning surrounding the implementation of one program gaining popularity in the western United States known as Early Case Resolution.

Similar to differentiated case management programs, Early Case Resolution (ECR) programs attempt to save court time and resources by targeting and tracking certain types of
cases for an expedited resolution (David Bennett Consulting & Donna Lattin Consulting, 2008, February 14). Each jurisdiction currently using ECR utilizes different criteria for case selection and tracking, however ECR typically attempts to target less serious or less complex cases that can be processed without much time and attention from the courtroom workgroup similar to how DCM programs work. The eligibility and selection of cases to be processed through ECR is established by a unique and experienced courtroom workgroup, who then also works together to dispose of the chosen cases expeditiously. In addition, the program often incorporates the court characteristics and methods associated with a faster pace of litigation, including strong judicial leadership and the early and continuous control over case processing.

The expected outcomes of this process are that defendants will not have to appear in court as often, rates of failure to appear will decrease, the jail population will decrease, low-level offenders will receive a swift sanction for their behavior and be less likely to recidivate, court caseloads will decrease, resources can be directed towards more serious and complex cases, and case disposition times will decrease (David Bennett Consulting & Donna Lattin Consulting, 2008, February, 14). Preliminary evaluations of an ECR program implemented in Salt Lake County, Utah show that it can reduce case disposition time, the amount of time pretrial detainees spend in jail, and the amount of time defendants spend on pretrial release, which could also assist with reducing jail overcrowding and the issuance of warrants for pretrial misconduct (Butters, Hickert, Worwood, Bradley, & Prince, 2014; Hickert, Worwood, Sarver, & Butters, 2011).

These outcomes of the ECR program would be greatly beneficial to the court system, however a program that speeds up criminal case processing for the sake of court efficiency could also potentially endanger the ability of the court to dispense fair and equal treatment to defendants. Therefore, it is vital that such programs be exposed to evaluation to determine their
impact. There is no better example of the need to evaluate the Early Case Resolution program than the results of the implementation of the program in Washoe County (Reno), Nevada. Serious concerns about the constitutionality of this ECR program were raised by the Washoe County Public Defender Office, the Nevada branch of the American Civil Liberties Union, and the Nevada Attorneys for Criminal Justice in 2012 (ACLU of Nevada, 2012, August 1; Nevada Attorneys for Criminal Justice, 2012, July 5; Washoe County Public Defender Office, 2012, June 28). These groups argued that the ECR program was denying defendants’ due process rights under the Sixth Amendment and forced defense attorneys to violate legal and ethical duties. In addition to these concerns of constitutionality, the ECR program also raises concerns about the ability of the program to provide fair and equal treatment to defendants due to limiting the ability to participate in an adversarial process, the often exclusive use of plea negotiations and guilty pleas, the potential for unequal treatment for similarly-situated defendants, and the expansion of prosecutorial discretion.

In order to better understand the impact of the ECR program and to increase our understanding of the broader relationship between the pace of litigation and the quality of justice, the current study will conduct a preliminary evaluation of an ECR program implemented in Spokane County, Washington. Specifically, the study will investigate the degree to which the program is achieving a faster pace of litigation and potentially impacting the equity and fairness of the court process. The research questions for the current study are as follows:

**Research Questions**

1. Do ECR cases differ from the traditional court cases in case disposition time?
2. Do ECR cases differ from the traditional court cases in pretrial misconduct?
3. Do ECR cases differ from the traditional court cases in their mode of disposition?
4. Do ECR cases differ from the traditional court cases in the plea negotiation process?

5. Do ECR cases differ from the traditional court cases in sentencing outcomes?

Summary

Research on the problem of court delay and solutions to impact the pace of litigation has been underway for decades. This extensive research has resulted in specific characteristics and methods of case management that courts can implement in order to ensure the timely disposition of cases. Programs that have implemented such policies and programs have shown success in impacting the pace of litigation and increasing the overall efficiency of the court system. However, such programs do not come without their concerns and unintended consequences. The Early Case Resolution program specifically raises concerns about the impact of speeding up the pace of litigation. Since it is vital to our pursuit of justice that we have a criminal justice system that strikes a balance between speediness and maintaining a fair and equal process, the current study will provide the first evaluation of the ECR program implemented in Spokane County Superior Court in order to better understand the impact of such reforms on the pace of litigation and quality of justice dispensed by the court.
CHAPTER TWO: Understanding Court Delay and the Development of Case Management

Introduction

Concerns about the slow pace of the legal system and its repercussions are not a new problem, as references to the delays of law exist throughout history. The Roman poet Juvenal living during the late first century A.D. wrote in Satire XVI, “…wealth and patience worn away, by the slow drag-chain of the law’s delay” (Juvenal, lines 55-68). A clause of Magna Carta of 1215 read “To no one will we deny justice, to no one will we delay it” (as cited in Vanderbilt, 1957). As Hamlet laments the seven burdens of man, he includes the law’s delay as number five (Shakespeare, trans. 2003, 1.5). The infamous quote “justice delayed is justice denied” is often attributed to a speech made by a Prime Minister of Britain during the nineteenth century, William E. Gladstone. Martin Luther King Jr. would later quote this in his “Letter from Birmingham Jail” (King, 1963).

In 1839, David Dudley Field, an attorney in New York State, wrote that “Speedy justice is a thing unknown; and any justice, without delays almost ruinous, is most rare” (as cited in Vanderbilt, 1957). One of the earliest advocates of court reform and then dean of Harvard Law School, Roscoe Pound, identified “a widespread feeling that the courts are inefficient,” in a speech to the American Bar Association in 1906 (Pound, 1906). In 1958, Chief Justice of the U.S. Supreme Court, Earl Warren, a jurist known for expanding the due process rights for criminal defendants stated that “interminable and unjustifiable delay in our courts are today compromising the basic legal rights of countless thousands of Americans and, imperceptibly, corroding the very foundations of constitutional government in the United States” (Rosenberg, 1965).
Just as there is a long history of criticism about the pace of our courts, there is a long history of courts searching for the causes of court delay. However, the search for causes is never an easy one. There were many issues with the earliest studies of court delay, including the reliance on false assumptions about the inner-workings of the court system, a lack of the methodological rigor that was needed to successfully identify the underlying causes of court delay, and a failure to properly define measures for the pace of litigation. And as long as our court system suffered from a misunderstanding of the causes of court delay, the solutions implemented to alleviate the problem would fail as well. This chapter will review the consequences of a slow pace of litigation, the history of a right to speedy trial, the three waves of research on the causes of and solutions for court delay, and chronicle the beginning of the case management movement. Furthermore, an understanding of the growth in knowledge about local legal cultures and the courtroom workgroup will also be reviewed as it greatly influenced the direction of research and reform on court delay.

**Defining the Problem**

As the quotes above demonstrate, the general consensus for many decades has been that a slow pace of litigation has harmful consequences for victims, defendants, the courtroom workgroup, the operations of the criminal justice system, and the public’s opinion of the court system. In reviewing these consequences, we begin to understand the motivation for the courtroom workgroup, court administrators, and researchers to find the causes of and solutions for court delay.

The victim’s rights movement and victim’s advocates have often accused the criminal justice system of causing secondary victimization among crime victims (Erez & Belknap, 1998). Crime victims report feeling ignored and confused by the criminal justice process and they can
suffer additional psychological trauma from being forced to confront the offender during testimony and answering harsh questions during cross-examination. The timely disposition of cases has previously been identified as a factor related to the psychological well-being of crime victims (Orth & Maercker, 2004). For example, research has shown that long delays between the arrest of the offender and the start of the court proceedings to be a point of stress and anxiety for victims (Bennett, Goodman, & Dutton, 1999; Gutheil, Bursztajn, Brodsky, & Strasburger, 2000). Furthermore, long delays in criminal processing may also increase the likelihood of victims classifying their experience in the court process as “traumatizing” (McFarlane, 1996). It is possible that reducing the time victims have to wait for closure in the case could reduce some of their stress and anxiety surrounding the proceedings and increase their satisfaction with the criminal justice process.

In addition to problems of delayed justice for victims, issues also arise for the defendants. The American Bar Association argues that the timely resolution of cases is important to ensuring the appropriate prosecution of the charges against the defendant. For example, in the landmark U.S. Supreme Court decision in *Barker v. Wingo* (1972), Justice Powell raises the issue of the fading memories and availability of witnesses resulting from delayed case processing times. The current *Standards for Speedy Trials* also references the role of swift punishment as vital to deterring offenders from future criminal behavior (American Bar Association, 2006). Since the deterrence of offenders from criminal behavior has consistently been one of the dominant goals of U.S. crime control policy, there has been a lot of theorizing about the relationship between the swiftness of punishment and a potential deterrent effect.

In traditional deterrence theory, the celerity of punishment, or the elapsed time from the offense to the experience of consequences, is considered to play an important role in deterrence
Deterrence theory hypothesizes that the stronger the connection between the offender’s actions and their punishment for those actions, the more likely they will be deterred from committing similar behavior in the future. Research has previously investigated whether the quick resolution of dispositions results in an increased deterrent effect, but the results are often inconclusive (Bouffard & Bouffard, 2001; Howe & Loftus, 1996; Legge & Park, 1994; Nagin & Pogarsky, 2001; Wagenaar & Maldonado-Molina, 2007; Yu, 1994). However, it is possible that a faster pace of litigation could help maximize the deterrent effects of prosecution and conviction and result in lower levels of recidivism.

Research has consistently found a relationship between the amount of time defendants are released to the community during pretrial release and instances of pretrial misconduct (Cohen & Reaves, 2007). For example, the shorter the time of pretrial release, the less likely it is that defendants will fail to appear for court proceedings or commit an additional crime (Cohen & Reaves, 2007). A higher number of bench warrants issued and higher rates of failure to appear have also been associated with slow case processing times (Church, et al., 1978). Therefore, courts can benefit greatly by reducing the elapsed time for pretrial procedures and by proxy, the length of pretrial release.

Additional issues arise from having a large population of defendants who are detained prior to trial for extended periods of time, which can contribute to the problem of jail overcrowding (American Bar Association, 2006; Davis, Applegate, Otto, Surette, & McCarthy, 2004; Taxman & Elis, 1999). Jails have been suffering from issues with overcrowding for decades (Gilliard & Beck, 1997; Harrison & Karberg, 2003) and this results in problems not just for the correctional system, but for the entire criminal justice system (Davis, et al. 2004). For example, research has shown that jail overcrowding can result in increased violence and
diminished access to medical and mental health care services (Kinkade, Leone, & Semund, 1995).

The Bureau of Justice Assistance (2000) identifies judges as the most important actor in the system when it comes to the “control over the ebb and flow of jail populations.” In regards to the pretrial detention population within jails, judges exercise broad discretion when it comes to determining whether to detain a defendant prior to trial (Demuth, 2003; Freiburger & Hilinski, 2010). Many actors in the criminal justice system argue that slow case processing times contribute to jail overcrowding through extending the stay of pretrial detainees and research has shown that programs that aim to speed up the pace of litigation can have a positive impact on jail overcrowding (Cooper, Solomon, & Bakke, 1993; Jacoby, 1994; Taxman & Elis, 1999). In fact, jail overcrowding is one of the main reasons many courts choose to experiment with speeding up the pace of litigation and one of the factors in the decision of Spokane County to implement the Early Case Resolution program (David Bennett Consulting & Donna Lattin Consulting, 2008, February 14).

Finally, the pace of litigation has long been considered an important measure of an efficient court system by the courtroom workgroup, court administrators, and the general public. Both the Bureau of Justice Assistance and the National Center for State Courts identify the timeliness of case disposition as an important performance standard for trial courts (Bureau of Justice Assistance, 1997; Warren, 2000). However, the general public has consistently expressed dissatisfaction with the pace of litigation, believing that the court system moves too slowly. One study found over 50% of respondents rated the efficiency of the court system as a “serious” or “very serious” social problem (Yankelovich, Skelly, & White Inc., 1979). Another study found
similar findings twenty years later, with 75% of respondents reporting concerns that cases were not resolved in a timely manner (Benesh, 1999).

A survey conducted for the National Conference on Public Trust and Confidence in the Justice System found 80% of respondents agreeing with the statement “cases are not resolved in a timely manner” (Warren, 2000). The survey also showed that approximately half of all respondents believed that the courts did not adequately monitor the progress of cases. This dissatisfaction could also lead to decreased levels of public confidence in the overall court system, as research has shown that a belief that the court process is too slow was related to lower levels of satisfaction with the court system in general (Benesh & Howell, 2001). Perhaps most concerning is that studies have found that the slow pace of the court system may actually deter people from participating in the court process to seek justice (Howell, 1998). Our court system needs to be viewed as a legitimate institution by the general public in order to properly function and it appears that a slow pace of litigation could erode this legitimacy.

Although the public expresses consistent dissatisfaction with the pace of litigation, research has actually shown that the public considers the fairness of the court process a more important factor in determining whether to trust the court system (Warren, 2000). According to the theory of procedural justice, it is the perceived fairness of the court process, and not the outcomes, that are the most important factor for people when they are determining whether a process was fair (Casper, Tyler, & Fisher 1988; Tyler, 1990). Furthermore, research has consistently confirmed the link between perceptions of fair treatment during court processing and overall satisfaction (Casper, et al., 1988; Tyler, 1990).
Since it is possible that in an attempt to speed up the pace of litigation there is also the potential to compromise the adversarial process and limit the exercise of due process, there should be concerns about the impact it could have on the public’s perception of fairness and satisfaction. For example, Thibaut & Walker (1975) argued that an adversarial trial was more likely to result in a sense of procedural justice compared to a more inquisitorial process. Similarly, Casper, et al., (1988) established fair treatment as the degree to which a person feels that their perspective or point of view was listened to and considered for an individual case. If these processes are limited by shorter case disposition times it could damage the public’s perception that the court system treats people fairly and their overall satisfaction with the court system. So while there are many serious problems that can arise from the slow pace of litigation, a singular focus on the desire for efficiency can also create unintended consequences for the fairness of the process and the public’s perception of the court system.

As with many issues within our criminal justice system, the problem of court delay is much more complex than practitioners and researchers realized during the early years of research and reform. The reality is that the court system is a vast and complicated system that involves many different parties with conflicting goals, attitudes, and motivations (Church, et al., 1978; Sarat, 1978). As Packer’s discussion of the Crime Control Model and Due Process Model of the criminal justice system demonstrates, the goals of the efficient allocation of court resources and the speedy disposition of cases are often viewed as being at odds with the desire for the full exercise of due process (Packer, 1968). However, as Ostrom & Hanson (1999) pose, the goals of the timely disposition of cases and providing fair and equal proceedings should not be mutually exclusive. The most recent ABA Standards for Criminal Justice reflect this more nuanced
approach, instructing that “achieving speedy trials and timely disposition of cases should be accomplished in a context that emphasizes the importance of fairness and accuracy in the criminal justice process” (American Bar Association, 2006). Therefore, programs implemented to address the slow pace of litigation should focus on balancing the pursuit of timely dispositions with fairness and equality in order to achieve optimal court performance. An important step in this process is to closely evaluate those court programs that are implemented, like the Early Case Resolution program.

**History of the Right to a Speedy Trial**

The right of a speedy trial was of such importance to the nation’s founders for it to warrant inclusion along with other important rights for those accused of criminal offenses in the Sixth Amendment to the U.S. Constitution. However, the right to a speedy trial was mostly ignored by courts and legislatures until the twentieth century. In one of the earliest cases to address the right, the U.S. Supreme Court ruled that the application of the right to a speedy trial was subject to the context of the individual case and therefore, there was no hard and fast rule to establishing when the right had been violated (*Beavers v. Haubert*, 1905). It was not until 1967 that the speedy trial rule joined many other rights of the accused to be applied to state courts through the Due Process Clause of the Fourteenth Amendment by the Warren Court in *Klopf v. North Carolina* (1967).

*Klopf v. North Carolina* (1967) represented a grave injustice that was occurring throughout the U.S. during this time. Standing accused of criminal trespass, Klopf’s trial was the victim of multiple postponements, delays, and uncertainty. During Klopf’s second trial, the state prosecutor motioned for a “*nolle prosequi* with leave” that would allow Klopf to be
released from custody but still subject to prosecution in the future at the discretion of the state prosecutor. The state prosecutor offered no justification for their decision and consequently Klopfer appealed, arguing that allowing the motion for nolle prosequi violated his right to a speedy trial under the Sixth Amendment. The North Carolina State Supreme Court affirmed the decision of the trial court, arguing that the right to a speedy trial did not require the state prosecutor to prosecute the case if they made the discretionary decision to file a nolle prosequi and received the court’s approval (Klopfer v. North Carolina, 1967).

Seeing the danger in allowing state prosecutors to use their power to hold the accused in a state of limbo at their discretion, the U.S. Supreme Court ruled that postponing an individual’s prosecution indefinitely, without justification and over the petitioner’s objection, denied the right to a speedy trial guaranteed by the Sixth and Fourteenth Amendment. Using their previous decisions in Gideon v. Wainwright (1963) and Pointer v. Texas (1965), the Court ruled that “the right to a speedy trial is a fundamental as any of the rights secured by the Sixth Amendment” (Klopfer v. North Carolina, 1967). In the majority opinion, Chief Justice Warren supported the decision by arguing that delaying the case would result in further stress and anxiety for the defendant and would subject him to further “public scorn” and curtail the exercise of his rights. This decision helped acknowledge the potential repercussions of broad discretionary power for prosecutors, excessive use of postponements, and unnecessarily long case processing times, however it did little to set a standard for what “speedy trials” should look like.

In Barker v. Wingo (1972), the U.S. Supreme Court went a step further and provided a four-part balancing test to be used in a case-by-case analysis of whether a defendant’s right to a speedy trial had been violated. Barker was accused of a double homicide along with a co-
defendant in 1958. Before the conclusion of Barker’s case, the State would obtain sixteen continuances before Barker’s trial would finally commence in 1963, five years after the original charges were filed. At trial, Barker filed a motion to dismiss the indictment, arguing that his right a speedy trial had been violated, but was denied. Barker appealed his conviction to the Kentucky Court of Appeals, who affirmed the conviction. Barker then petitioned for habeas corpus in the U.S. District Court for the Western District of Kentucky. The District Court denied the petition, but did allow Barker to appeal to the Court of Appeals for the Sixth Circuit. The Sixth Circuit affirmed the decision of the District Court, arguing that the time between Barker’s first objection to the continuances and his trial, twenty months, was “not unduly long” and the delay did not result in any serious prejudice to the petitioner in the case (*Barker v. Wingo*, 1972).

While the U.S. Supreme Court affirmed the lower courts’ decisions, agreeing the delay in Barker’s case did not result in any serious prejudice to the petitioner, their unanimous decision also ruled that a defendant’s constitutional right to a speedy trial cannot be established by any inflexible rule (*Barker v. Wingo*, 1972). Instead, the Court found that the right to a speedy trial could only be determined by an ad hoc balancing basis, in which the conduct of the prosecution and the defendant are weighed. This reiterated the point made by the Court in the previous decision in *Beavers v. Haubert* (1905), which decided that a speedy trial claim must be considered in the context of the particular case.

In the majority opinion, Justice Powell wrote that the right to a speedy trial is inherently vague compared to other procedural rights provided to the accused (*Barker v. Wingo*, 1972). He argued that it would be impossible to determine how much time would need to pass before the right could be established as being denied. Therefore, the Court made the decision to provide the
balancing test for courts to use when assessing whether a particular defendant was denied their right to a speedy trial. The balancing test established in the *Barker* decision included consideration of the following factors:

1. Length of the delay: A delay of a year or more from the date on which the speedy trial right “attaches” (which is the date of the arrest or indictment, whichever occurs first) is termed as “presumptively prejudicial,” but the Court did not rule that any absolute time limit applies.

2. Reason for the delay: The prosecution may not excessively delay the trial for their own advantage, but the trial may be delayed in order to secure the presence of an absent witness or for other practical considerations, such as a change of venue.

3. Time and manner in which the defendant has asserted his right: If a defendant agrees to the delay when it works to his own benefit, they cannot later claim that they have been unduly delayed.

4. Degree of prejudice to the defendant which the delay has caused (as provided in *Barker v. Wingo*, 1972).

In addition to setting criteria for the examination of cases, like Chief Justice Warren before him, Justice Powell discussed the issues that can arise from interminable delays in the court. Justice Powell wrote that the right to a speedy trial “is generically different from any of the other rights enshrined in the Constitution…[in that] there is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused” (*Barker v. Wingo*, 1972). For example, the Court argued that the lack of speedy trials
could contribute to court backlogs, which would then allow defendants to negotiate more effectively when pleading guilty to lesser charges. Furthermore, the Court argued that individuals released on bond would be more likely to commit new crimes or jump bail as the time before trial stretched on and that delay between the arrest and punishment might negatively impact rehabilitation (Barker v. Wingo, 1972). There was also acknowledgement of issues that could potentially arise for the defendant, such as being subject to poor living conditions in jail and the impact those conditions might have on the individual’s ability to rehabilitate. So the Court not only provided the balancing test, but also made strides in identifying court delay as a problem for the entire community, not just the courts.

However, there was the common frustration with the Court’s failure to identify specifics, such as setting a detailed timeline for case dispositions. In the majority opinion, Justice Powell discussed the Court’s reluctance to establish specific time periods in which trials must commence as they believed such a procedural rule should be established by legislatures (Barker v. Wingo, 1972). The U.S. Congress promptly responded later that year by amending the Federal Rules of Criminal Procedure with Rule 50 which required each U.S. District to submit a plan for increasing the speed of case disposition for criminal cases (Federal Rules of Criminal Procedure, 2014). Most U.S. Districts followed the plan outlined by the Judicial Conference of the U.S., which required criminal cases to begin trial within 180 days of the case filing.

As the federal courts were considering their standards for speedy trials, the U.S. Supreme Court went on to establish the repercussions for denying a defendant’s right to a speedy trial in Strunk v. U.S. (1973). The Court ruled that if the reviewing court finds that a defendant’s right to a speedy trial was violated, then the indictment must be dismissed or the conviction must be
overturned and that no other remedy would be appropriate. Furthermore, a reversal or dismissal of a criminal case on speedy trial grounds means that no further prosecution for the alleged offense could take place (Strunk v. U.S., 1973).

In 1974, the U.S. Congress passed the Federal Speedy Trial Act, which set more detailed and timely requirements for the disposition of criminal cases (Federal Speedy Trial Act of 1974, 2015). The Act required that an indictment or information be filed within 30 days of arrest and the trial would need to begin within 70 days of the arraignment. In 1979, the Act was amended to ensure that defendants were not rushed to trial without proper preparation, a signal that there was concern over the quality of justice being dispensed under the new time limits. The amendment required that trials only commence after 30 days from the defendant’s initial appearance in court, unless the defendant agreed to an earlier date (Federal Speedy Trial Act of 1974, 2015).

After these major decisions by the U.S. Supreme Court and the establishment of new rules and procedures by the U.S. Congress, many states followed suit and passed their own standards for speedy trials. The current standards for a speedy trial set by the American Bar Association include: 90% of felony cases should be disposed of within 120 days of arrest and 98% of felony cases should be disposed of within 180 days, but also required that 100% of felony cases be disposed of within one year (American Bar Association, 2006). Currently, Washington State Superior Courts abide by similar standards adopted by the Washington Board of Judicial Administration, which recommends that 90% of all felony criminal cases be adjudicated within 120 days of the filing of the information, 98% within 180 days, and 100% within 270 days (Washington Board of Judicial Administration, 1997).
The primary outcome of the U.S. Supreme Court decisions and preceding legislation was the development and implementation of these time standards for case processing times. These time standards helped state courts begin to acknowledge that the right to a speedy trial needed to be recognized. They also sparked discussion about the potential consequences that could stem from the slow pace of litigation and paved the way for the close examination of state court processing through systematic research.

**Searching for the Causes of Court Delay: The First Wave of Research**

The studies conducted on the pace of litigation and court delay beginning in the 1900s and continuing until 1970 represent the first wave of research. Church (1982) refers to these studies as “the old conventional wisdom,” because many of them relied on unfounded assumptions about the factors that influenced the pace of litigation and resulted in solutions built on a fundamental misunderstanding of court operations and behavior. However, similar to the rest of the criminal justice system, the turn of the twentieth century would mark the beginning of a push to systematically study and improve the court system in the United States.

In 1906, Roscoe Pound gave a speech to the American Bar Association in which he argued that the “archaic judicial organization and procedure” was at the root of the publics’ dissatisfaction with the court system (Pound, 1906). Pound argued that the courts were poorly organized and therefore wasted court resources that could be better used to reduce court backlogs. In 1913, Pound helped create the American Judicature Society, the first organization with court reform as its primary mission. While the American Judicature Society was focused more on alleviating problems associated with judicial selection and tenure, it laid the
groundwork for future efforts to organize and reform court operations and procedures (Tobin, 1997).

In 1914, William Howard Taft gave a law school commencement address in which he criticized the complexity and rigidity of the federal court system (Berkson, 1977). Taft recommended such reforms as reducing the number of cases reviewed by the U.S. Supreme Court and redistributing federal judges to alleviate court backlogs. Later, as Chief Justice of the U.S. Supreme Court, Taft continued efforts to reduce the backlog of the Court by seeking broader discretion for the acceptance of cases. President Franklin Roosevelt would also attempt to increase the number of U.S. Supreme Court Justices from nine to fifteen in response to claims that the Court was slow and inefficient (Berkson, 1977). Many of these suggested reforms reflect the poor understanding of the influences on the pace of litigation and courtroom operations that would plague early research and reform efforts.

However, the development of national organizations and court administrators did help set the stage for the court and case management movement that would soon take hold of court reformers. In 1939, Chief Justice of the U.S. Supreme Court, Charles Evans Hughes, asked Congress to create the Administrative Office of the U.S. Courts to deal with the administration of the federal court system (Berkson, 1977). In 1948, acting as the Chief Justice of the New Jersey Supreme Court, Arthur T. Vanderbilt designated the first state court administrator. Many states soon followed suit, and by 1955 the National Conference of Court Administrator Officers was created. By the 1980s, every state had a state-level court administrator and are represented by the Conference of State Court Administrators (Tobin, 1997). In 1963, what is now the National Judicial College was created to provide education and training for the judiciary. In 1969, Warren
Burger became the Chief Justice of the U.S. Supreme Court and established the Institute for Court Management to assist with the education and training of court employees (Steelman, 2000). Then, during the first ICM conference in 1971, the National Center for State Courts was created, which remains the main hub for court research in the United States to this day.

The earliest studies of the pace of litigation and court delay were weak in several ways. First, the studies relied on commonly-held assumptions about court behavior and the causes of court delay. For example, many in the court system believed that factors such as court resources and formal rules and procedures dictated the pace of litigation and therefore argued that court delay was the result of large caseloads, too few judges, and too many trials (Church, 1982; Steelman, 2000). Second, the studies lacked the methodological rigor needed to establish the underlying causes of court delay and the studies often focused on one jurisdiction, failing to make comparisons across multiple court jurisdictions. Third, the studies often focused only on civil case disposition, ignoring criminal case disposition for years. Fourth, and perhaps most damaging, there was wide disagreement on how to accurately measure the pace of litigation (Steelman, 1997).

One of the earliest studies that attempted to understand the phenomenon of court delay and suggest solutions for courtrooms was an examination of the civil case processing of the Manhattan Superior Court in New York City (Zeisel, Kalven, & Buchholz, 1959). In this study, the researchers focused on measuring factors that were assumed to be causes of court congestion and delay, such as the population of the county, the number of judges, trial rates, and caseload levels. Furthermore, the study measured the pace of litigation as the time between counsel and parties being ready for trial and the actual commencement of the trial. This measurement failed
to take into account the pretrial time period and the vast majority of civil cases that are disposed of through settlements instead of trials. The researchers justified their measurement by arguing that since pretrial time is not under the control of the court, but instead under the control of the counsel and parties, it was an irrelevant factor (Zeisel, et al., 1959). This justification demonstrates the lack of understanding about the inner workings and relationships of the courtroom workgroup during this time period. Therefore, it was not surprising that the three major suggestions that resulted from the study were to speed up the amount of time required for the disposition of cases, to reduce the number of trials by encouraging more settlements, and to increase the amount of available judge time by directly adding judges or by increasing the efficiency with which judge time was used (Zeisel, et al., 1959).

Studies conducted in the wake of Delay in the Court had similar problems in regards to assumptions about court delay and their methodology and therefore resulted in suggesting similar solutions that would quickly fail (Banfield & Anderson, 1968; Katz, Litwin, & Bamberger, 1972; Rosenberg & Sovern, 1959). One of the earliest large-scale studies of the court system was a series of calendar status studies initiated by the Institute for Judicial Administration at New York University’s School of Law in 1953 and continuing annually until 1974 (Vanderbilt, 1957). The Institute for Judicial Administration (IJA) study was unique for the time in it examined case processing times for civil trial cases in over one hundred courts across the U.S., with at least one court in each state (IJA, 1953-1974). However, the study lacked the available methodology to determine the reasons for differences in case processing across the jurisdictions and continued to focus on civil cases that went to trial, but not settlement (Steelman, 1997). Furthermore, the study continued to measure case processing times as starting when the case was “at issue,”
defined as the time at which counsel and parties were ready to set a trial date, and still ignoring the elapsed time during pretrial procedures (Vanderbilt, 1957).

Studies conducted by national commissions during this time followed the trend of recommending standards for the timetable with which cases should be disposed. The President’s Commission on Law Enforcement and Administration of Justice (1967) created a model timetable for the disposition of criminal cases in order to speed up the pace of litigation. The final report recommended that a person arrested and detained prior to trial should be brought to trial within 71 days of arrest and a person arrested and released on bail should be brought to trial within 81 days of arrest (President’s Commission, 1967). A 1973 report by the National Advisory Commission on Criminal Justice Standards and Goals suggested limiting the pretrial processing time from arrest to trial to 60 days for felonies and 30 days for misdemeanors and to hold preliminary hearings for felonies within two weeks of arrest in order to speed up case processing times (National Advisory Commission, 1973). The setting of such standards was popular during the time period as discussed above, but the concerns over how to implement or enforce such standards raised by Supreme Court Justice Powell were echoed by many.

Even though many of these early studies of court delay were often misinformed and fell victim to the methodological limitations of the time period, a study of the civil case process in Pennsylvania counties showed promise when it identified the need for reforms to focus on the courtroom workgroup and court culture (Levin & Woolley, 1961). In addition, the study recognized that some of the commonly held beliefs about the causes of court delay were indeed false, including the role of county population and number of judges in determining case processing times. The report concluded with the recommendation that the role of the judge
needed to be expanded from “a mere umpire (Levin & Woolley, 1961). The research showed that instead of relying on the attorneys to drive the court process, the faster courts included judges who took a more active role in supervising the progress of cases, including taking a broad overview of the court docket to ensure that postponements in some cases are not negatively impacting other cases on the docket. Furthermore, the study found that judges in faster courts closely supervised the progress of individual cases and determined the causes of delay within each case.

In addition, the report also recognized that in order for fundamental change to take place there needed to be an attitude change among those working within the courtroom (Levin & Woolley, 1961). The study found that courts that had faster disposition times also had courtroom actors who viewed court delay as a problem and were interested in creating a more efficient process. The researchers argued that while this process often relied on strong judicial leadership, it was important that these opinions be held by attorneys and clerks as well. These recommendations for increasing judicial leadership and changing attitudes towards court delay and reform among the workgroup would later be confirmed as consistent characteristics of successful courts and reforms (Church, et al., 1978; Hewitt, Gallas, & Mahoney, 1990). While the majority of the studies conducted during the first wave of research were weak in many ways, they helped set the stage for the coming decades when the knowledge about the pace of litigation and court delays and backlogs would dramatically shift and expand.

**The Advent of Case Management: The Second Wave of Research**

Several major studies conducted during the 1970s would dramatically shift knowledge about the factors related to the pace of litigation. Instead of focusing on the influence of court
structure, resources, and formal rules and procedures, in-depth studies of the courts revealed a more comprehensive understanding of courtroom operations and behavior. These studies represent the second wave of research on the problem of court delay.

In 1973, the American Bar Association Commission on Standards of Judicial Administration provided standards for the number of days a case should need to work its way through the court process, from arrest to disposition (Tobin, 1997). At this time, the commission also had Maureen Solomon conduct a study about caseflow management (Solomon, 1973). Solomon concluded that in order to manage court delay, judges needed to take control of courtroom management and utilize court administrators to track the progress of cases and fulfill the new standards being set for case-processing. These recommendations demonstrate the shift in focus to the actual process that cases travel through in the court system that would become the hallmark of case management strategies.

A study conducted using data from civil cases in U.S. District Courts during 1974 and 1975 was one of the earliest studies to demonstrate the value of case management (Flanders, 1977). After examining data on civil cases and interviewing courtroom actors in ten U.S. district courts, the findings of the study found several factors related to faster, more efficient courts. First, the results showed that the fastest courts were those that closely monitored case-processing, including discovery, plea negotiations, and trials. These courts ensured that each step of the process was promptly initiated, instead of allowing cases to languish for extended periods of time. The fastest courts also utilized court clerks to manage control of the docket and maintain communications with attorneys during the discovery period (Flanders, 1977). These courts also had judges who controlled the timing of settlement negotiations. Furthermore, the
findings noted that the most efficient court procedures were those implemented intentionally by court policy. These factors would continue to be associated with faster case disposition times in future studies on case management methods.

The most influential study of court delay during this time period was known as the Pretrial Delay Project, a collaborative effort between three organizations working to improve state courts, the National Center for State Courts, The National Conference of Metropolitan Courts, and the Courts Division of the Law Enforcement Assistance Administration (Church, Carlson, Lee, & Tan, 1978). This study differed from those in the past in three main ways. First, the study examined the case processing of multiple jurisdictions and utilized both civil and criminal cases. Second, while the study used limited statistical analyses, the methods were a vast improvement over previous studies. Third, there were no assumptions made about the factors related to the pace of litigation and therefore the causes and solutions for court delay.

In the study, the pace of litigation was examined in twenty-one courts of general jurisdiction in major cities across the U.S. (Church, et al., 1978). The goal of the study was to develop a general theory about the factors that determine the pace of criminal and civil litigation rather than solely investigate the factors commonly-assumed to be influential. Research questions included: (1) why were cases disposed of at a faster rate in some courts than in others, (2) what factors account for the pace of litigation in a court, (3) what are the most promising approaches for expediting litigation within a given court.

The study improved upon previous studies by analyzing both civil and criminal cases and cases from across multiple jurisdictions (Church, et al., 1978). Data included 500 civil and 500 criminal cases sampled from all the cases disposed in each of the twenty-one courts of general
jurisdiction in 1976. Five courts of general jurisdiction were also chosen for field observations and formal interviews with members of the courtroom workgroup, including Bronx County, NY; Dade County, FL; Allegheny County, PA; Essex County, NJ; Orleans Parish, LA.

The study also included the most comprehensive measurement of the pace of litigation compared to previous studies. Felony case processing time was measured in three ways: (1) total court disposition time, defined as the median number of days from arrest to disposition (2) upper court disposition time, defined as the median number of days from filing of the indictment or information in the general jurisdiction court to disposition and (3) time to jury trial, defined as the median number of days from filing of the indictment or information in general jurisdiction court to commencement of jury trial (Church, et al., 1978).

The findings in the final report entitled “Justice Delayed,” showed that court delay, or excessive case processing time, did not emerge as a result of many of the factors included in the old conventional wisdom model of court delay (Church, et al., 1978). For example, one of the most commonly-held beliefs about court delay at this time was that larger courts would be slower at disposing of cases than smaller courts. However, the study found little relationship found between the size of the court and the case processing time, as some larger courts processed cases faster than smaller courts and vice versa. This finding disproved the assumption that court delay was only a problem of large, urban courts and that only small courts with small caseloads could speed up their disposition times.

Another common belief was that slow case processing times were the result of a lack of resources in a court with a high caseload. But again, findings showed that there was little relationship between case processing time and the number of felony filings per judge or the
number of felonies pending per judge (Church, et al., 1978). In fact, it was actually two courts with the worst delay problems, Boston and the Bronx, which also had the lowest number of felony filings per judge. Furthermore, the study showed that two courts, Boston and San Diego, had a similar number of cases pending per judge, and yet San Diego was the second fastest court in disposition time, whereas Boston was second to slowest. The study demonstrated that there was little reason to believe that court caseloads had an impact on case processing times.

Another commonly-held belief that even continues to inform policy today is that jury trials need to be avoided if a court wants to increase their pace of litigation. While trials can take up an extensive amount of time in preparation and hearings, in this study and many studies conducted after it, there have been few findings to support the claim that a high trial rate will result in slower case processing times. In fact, the findings of the “Justice Delayed” report showed that the court with the highest trial rate actually had faster disposition times and more productivity than courts with fewer trials (Church, et al., 1978). Furthermore, courts in Seattle and Portland had higher trial rates and some of the fastest case disposition times among all the courts. Therefore, it is possible that a higher trial rate actually helps maintain a quick pace of litigation as the court has to be better at managing their time in order to accommodate the trials.

While the study was able to begin debunking some of the myths about the pace of litigation, the study also found a few factors that were associated with the pace of litigation. For example, it was found that specific charging process used in criminal cases did have an impact on case processing time (Church, et al., 1978). Courts that utilized the grand jury had slower disposition times compared to those that had the prosecutor file an information. A related finding showed that the amount of control or management exercised by the court during pretrial
stages was also important, especially for criminal cases. The fastest of the criminal courts focused on judicial control over case management early in the filing stage by setting a firm trial date (Church, et al., 1978). For example, the shortest time period to jury trial was in courts where the time between filing and trial was brief and there were a high proportion of cases starting trial on or near that date. In these courts, defense attorneys and prosecutors reported knowing that if a plea bargain was not reached, a trial would commence shortly. In contrast, the slower courts did not have the threat of a trial, and therefore there was no incentive to move quickly. The setting of firm trial dates would later be included among the most successful methods of case management.

Perhaps the most important conclusion of the study was the finding that it was the informal expectations, attitudes, and practices of attorneys and judges that influenced court delay more than any other aspect of the court system. For example, the study found that the slowest courts were characterized by more lax controls over case processing in the early pretrial stages (Church, et al., 1978). New Orleans had the fastest upper court disposition time and the judges and prosecuting attorney for the Orleans Parish stressed case management and delay reduction to a considerable degree and employed an extensive data processing system. On the flip side, the Superior Court in New Jersey was among one of the slowest courts and the judges there did not express many concerns about case management or postponements. Furthermore, the judge who oversaw the master calendar left most of the responsibility for moving the calendar to the prosecutor’s office, which was also not concerned with delay reduction or case management.

These findings were among the earliest to discover the strong influence of the court culture on the pace of litigation. The researchers recommended that in order to reduce court
delay, courts must view the pace of litigation as an important issue and see delay as an institutional and social problem (Church, et al., 1978). These findings and recommendation would have major repercussions for the direction of court delay research and the development of court and case management for years to come and created a “new conventional wisdom” about influences on the pace of litigation.

**The New Conventional Wisdom: The Influence of Court Culture**

Church (1982) summarizes his “new conventional wisdom” as the idea that while court structure, resources, and formal rules and procedures can influence court behavior such as the pace of litigation, these factors operate within a “local legal culture” comprised of the informal expectations, relationships, and attitudes of the courtroom actors. While the idea of a local legal culture seems to be commonplace today, it was actually the push for research on the slow pace of litigation that began building the knowledge and understanding about inner-workings of the courtroom. This research also helped shift the ongoing debate about court culture, which at the time included two prevailing notions: that courts could be characterized as bureaucracies (Blumberg, 1967) and that courts actually act as complex organizations (Feeley, 1973; Eisenstein & Jacob, 1977; Eisenstein, Flemming, & Nardulli, 1988; Sarat, 1978).

Blumberg (1967) has often been used as the representation of the idea that courts act as a bureaucracy. Blumberg often posited that the main goal of the courts was to strive for court efficiency and that it would be this over-arching goal that would influence all court behavior. For example, Blumberg argued that it was caseload pressure that created a “bureaucratic due process” that resulted in the increasing use of plea bargaining within the criminal court system (Blumberg, 1967). But this focus on efficiency is also one of the defining elements of
bureaucracies. The bureaucratic model also argues that the pursuit of efficiency relies heavily on actors using rationality and the rule of law to guide their behavior. However, many researchers negated the proposition that the bureaucratic model could accurately explain court behavior (Eisenstein & Jacob, 1977; Feeley, 1973; Sarat, 1978).

Feeley (1973) argued that the bureaucratic model fails to account for the impact of discretion on decision-making within the court process. Rather than relying solely on “the law on the books,” research has shown that the courtroom workgroup possesses a large degree of discretion at each decision point of the court process (Davis, 1969; Feeley, 1973; Ohlin & Remington, 1993; Walker, 1992). This exercise of discretion allows for the courtroom workgroup to tailor responses to the individual situation. Davis (1969) argues that it would be impossible to develop rules and procedures that would apply to every single case and this type of mechanical and rigid application of the law would be undesirable.

Sarat (1978) also argued that courts lack many of the characteristics of a traditional bureaucracy, such as a centralized, hierarchical structure and authoritarian leadership. Instead, courts are characterized by a decentralized “courtroom workgroup” comprised of several main actors from their own sponsoring agencies (Eisenstein & Jacob, 1977). The main courtroom workgroup consists of the judge, prosecuting attorney, and defense attorney and each party brings their own set of goals, priorities, and personal interests into the courtroom workgroup. Feeley (1973) argued that this presence of competing goals provides a better explanation for court behavior. For example, when it comes to case processing, judges are more likely to be concerned with the management of the court docket (Albonetti, 1991), whereas the prosecution will be concerned with the likelihood of securing a conviction (Albonetti, 1987), and the defense attorney will be concerned with advocating for their client (Mather, 1979). Therefore, it should
be expected that different members of the courtroom workgroup will view issues such as the pace of litigation and potential solutions for court delay in different ways and a program implemented to impact the pace of litigation would need to account for these different views and incorporate input from all of the stakeholders in order to be successful.

Building on the idea of the existence of a local legal culture influenced by the competing goals and interests of a unique courtroom workgroup, researchers also argued that factors outside of the courtroom would impact court behavior (Eisenstein, Flemming, & Nardulli, 1988; Friesen, 1984). Friesen, Geiger, Jordan, & Sulmonetti (1979) argued that barriers to changing the litigation process are “as much social, political, and economic as they are legal.” Eisenstein, et al. (1988) utilized the term “county legal culture” to describe the influence of the economic, social, and political atmosphere of the surrounding community on court behavior. For example, a jurisdiction that lacks the resources for new court programs or has a political atmosphere that is not conducive to cooperation across different criminal justice agencies might experience problems in attempting to reform the court process.

An understanding of this contemporary view that courts are complex organizations that have a unique local legal culture is vital to the implementation and success of a court reform such as those designed to influence the pace of litigation. As Feeley (1983) argued, any attempt to implement a court reform without taking into consideration this local legal culture will likely fail.

**Verifying the New Conventional Wisdom: The Third Wave of Research**

The research conducted on the pace of litigation and court culture during the second wave of research resulted in a monumental shift in how courts viewed the factors related to the pace of litigation and the potential role of case management in assisting courts in reducing their delay.
and backlogs (Steelman, 2000). While issues related to court structure, resources, and formal rules and procedures play a role in influencing the pace of litigation, the third wave of research now recognized that these variables were mediated through the norms, values, and attitudes of the local legal culture operating within a particular court system. Therefore, the studies that followed would more closely examine the local legal culture to determine its role in determining case processing. The growing use of case management methods during this period also allowed for researchers to confirm the usefulness of such tactics as early and continuous control over case progress and the setting of firm trial dates. The third wave studies also incorporated better methodology, such as using large, cross-jurisdictional samples and multivariate analysis to make comparisons. It is not surprising that it was the National Center for State Courts (NCSC) that was responsible for conducting multiple follow-up studies to verify the role of local legal culture as an influence of court behavior, such as the pace of litigation, and demonstrated the usefulness of case management methods.

In a three-year case study of eighteen courts of general jurisdiction, findings confirmed the important roles of the local legal culture and case management in managing the pace of litigation and decreasing court delay (Mahoney, 1988). Data was collected on 500 felony cases from each jurisdiction from 1983-1986 and the fastest courts were found to share several characteristics. First, the results confirmed that the courts with strong and attentive leadership at all levels of the courtroom had the fastest case processing times. Second, courts that had clear goals, especially a focus on disposing of cases in a timely manner, were also among the courts with the fastest case processing times. Third, courts that consistently collected and examined information about their cases were better at understanding and managing their case progress (Mahoney, 1988). Open and constant communication among the courtroom workgroup was also
found to be an important part of case management. This finding is indicative of the growing consensus that courts needed accurate information and consistent communication about the progress of cases in order to successfully manage the caseflow.

Fourth, courts that exercised early and decisive screening of cases were also among the courts with the fastest case processing times (Mahoney, 1988). For example, many of the fastest courts included a prosecutor’s office that was devoted to managing their caseloads, providing quick indictment/information, and quickly provided discovery to the defense. The findings also verified previous studies in that courts that scheduled trial dates early on in the process and held to those trial dates were among the fastest courts. Last, it was found that jurisdictions where court delay reduction programs had been implemented, the local legal culture was found to have actually changed. That is, the acknowledgement of court delay being an issue serious enough for court attention is an important step in changing the culture of the courtroom. Courts that viewed the pace of litigation as an important issue were among the most successful courts in managing court delay. In fact, the fastest courts were characterized by viewing caseflow management as having “legitimacy and desirability,” whereas those attitudes did not exist in other courts marked by slower disposition time (Mahoney, 1988). This was one of the first studies to confirm the findings of Flanders (1977) and Church, et al. (1978) and an important step in the progress of the case management movement.

Another NCSC study examined data from twenty-six large urban trial courts and their caseload characteristics, judicial resources, and case managements procedures as they related to case processing times (Goerdt, Lomvardias, Gallas, & Mahoney, 1989). Interestingly, the findings of the study supported the notion that courts with higher jury trial rates also produced
shorter case disposition times. The study also reiterated that courts with strong leadership and a commitment to accomplishing their goals were better at managing caseloads and having access to information about caseloads and case progress played an important role in case management. The study also confirmed that early and continuous control over the caseflow was an important part of case management (Goerdt, et al., 1989). For example, instituting firm trial date policies and quick disposition of pretrial motions were two of the most important factors in predicting faster disposition times.

Interestingly, the study was one of the few that found that caseload composition was related to case disposition times (Goerdt, et al., 1989). Specifically, the results showed that caseloads with a higher percentage of “more serious” cases were also associated with slower disposition times. “More serious” cases included those involving a violent offense, burglary, and drug cases. This finding supports the argument that a certain segment of a caseload may be responsible for dragging down the case disposition time for all cases. In fact, there was a growing consensus during this time period that the sharp increase in the number of drug offenses during the time period greatly contributed to the increasing caseloads, backlogs, and court delay (Cooper & Trotter, 1994). For example, according to the Uniform Crime Report between 1980 and 1989 the arrests for drug violations increased 125% (Federal Bureau of Investigation, 1990). In some jurisdictions this resulted in the proportion of drug arrests resulting in indictment and conviction to rise from 37% to 51% (Bureau of Justice Statistics, 1992).

As a result, many judges and court administrators expressed concern over the possibility that drug cases were at least partly responsible for the slow pace of litigation. For example, a New York appellate judge argued that it was the “rising tide of drug cases” that led to a “crisis
nearly out of control” in the New York courts (Goerdt, Lomvardias, & Gallas, 1991). The concern over the influence of drug cases on the court caseload would lead to the design of case management methods specifically targeted at monitoring and expediting drug cases (Cooper & Trotter, 1994).

The largest study conducted on the pace of litigation to date utilized 500 randomly selected felony cases from thirty-nine urban trial courts in 1987 (Goerdt, Lomvardias, & Gallas, 1991). Again, the findings confirmed the results of previous studies by demonstrating the relationship between early control over pretrial procedures and firm trial dates and shorter case processing times. The results also helped to clarify the relationship between caseload composition and the pace of litigation. The study showed that one measure of caseload composition, the seriousness of the caseload, was related to case disposition time (Goerdt, et al., 1991). For example, a higher percentage of serious cases within a caseload, including those cases involving murder, rape, and robbery, was associated with longer case disposition times. Furthermore, those courts that experienced a significant influx in drug cases between 1983 and 1987 also had a significant increase in case disposition time.

Interestingly, the study also chose to analyze twenty-one courts that had been examined by previous studies, which allowed to determine fluctuations in case disposition time over several years (Goerdt, et al., 1991). So perhaps one of the most important findings was that between 1976 and 1987 nine of the courts were able to reduce their case disposition time by 10% or more. This finding demonstrated that case disposition time could be modified, and as a result of the collective knowledge gained from the third wave of research, many courts would begin pursuing the implementation of the now empirically-based strategies of case management.
Characteristics and Methods of Successful Case Management

As these three waves of research increased our knowledge about the true impacts on the pace of litigation, a picture of what successful case management would look like began to emerge. As reviewed in the previous sections, there are several characteristics that have been consistently found to be related to successful case management and several methods of case management that positively impact the pace of litigation.

Between 1988 and 1989, six metropolitan courts with histories of successful case management were examined by the National Center for State Courts to determine recommendations for similar courts throughout the country (Hewitt, Gallas, & Mahoney, 1990). The study provided a good roadmap for other courts sharing similar concerns about their pace of litigation and court delay. Some of the characteristics shared by these successful courts were strong judicial leadership, the setting of specific goals, information tracking, effective communication, accountability, and education and training.

All six metropolitan courts had strong judicial leadership that guided their courtrooms and case management efforts. Having judges who took an active role in managing the court and case process was vital to creating a successful court. For example, in the Montgomery County, Ohio Court of Common Pleas, the presiding judge and trial court administrator were devoted to creating an atmosphere of open communication and cooperation among the court staff (Hewitt, et al., 1990). Both judges were well-respected and provided stability for the court. This kind of leadership contributed to a consistent record of timely case dispositions and innovative case management strategies. Second, the creation of specific, achievable goals was another common characteristic of the successful courts. For example, in Detroit’s Recorder Court, the court had
set specific goals related to case management and were expected to reach those goals (Hewitt, et al., 1990). The court set a standard of having all cases disposed of within 180 days and required all trial dates to be set within 90 days of the arraignment. Furthermore, once the trial dates were set they were not allowed to be changed except under extraordinary circumstances.

In addition, to strong leadership and goal-setting, the six successful courts also utilized sophisticated systems of information tracking and encouraged effective communication among the courtroom workgroup and staff (Hewitt, et al., 1990). For example, the Circuit Court of Fairfax County, Virginia utilized monthly caseload reports to track case disposition times and the age of the pending caseload. This allowed the court to consistently review the progress of the caseload and determine areas for improvement. The court also required monthly meetings involving all the circuit court judges and created a case management committee that met daily to assess progress (Hewitt, et al., 1990). There was also consistent daily communication among the judges about potential problems and delays that were arising in the courtrooms. In addition, the bar’s circuit court committee was consulted and updated about case management efforts. This focus on information tracking and open communication allowed the court to successfully manage their caseload and achieve timely dispositions.

Another key characteristic of successful courts is creating mechanisms for accountability. For example in the District Court of Sedgwick County, Kansas, the court sent monthly caseload reports to the state and were compared with other counties on their performance (Hewitt, et al., 1990). The court managers and judges were also required to send quarterly reports with updates on the progress of a statewide delay reduction program. As judges were held accountable for their progress, there was also investment in holding the bar accountable for caseload progress.
and keeping the court on track. In addition to encouraging accountability, the training and education of judges and court administrators was an important part of all six successful courts. Many of the courtroom actors had received training specifically in case management, many of the judges received training through the National Judicial College and Institute for Court Management (Hewitt, et al., 1990). Furthermore, when specific delay reduction programs were implemented, the courts made great efforts to provide training to court staff and administrators on how the programs would work. In some cases, even the bar was included in the training for the programs and provided periodical updates.

Taken together, these characteristics of strong judicial leadership, setting specific goals, utilizing information tracking systems, encouraging effective communication, creating mechanisms for accountability, and providing training and education allowed these courts to achieve success in case management, and often court delay reduction too. Following this roadmap would be vital for future courts interested in implementing successful case management programs and achieving optimal court performance.

Similar to the consistency in characteristics related to successful case management, there are also a variety of methods or tactics that have been found to impact the pace of litigation by decreasing case processing time (Steelman, 2000). There were a variety of programs implemented following the research in the 1980s and early 1990s and the most successful ones incorporated either some or all of these methods.

First, the early intervention in and continuous monitoring of case progress has consistently been found to be a successful method of case management (Steelman, 2000). It is important for courts to understand that it should have a role in controlling the caseload rather
than allowing the attorneys and parties to drive the progress. Court intervention should begin when the case is opened by collecting detailed information on cases and entering it into the court’s automated case management system. It will also involve the scheduling of hearings and trial dates and constant communication to the parties about case progress. This monitoring should then be continuous throughout the cases’ journey in the court process. This ensures that cases never languish in “judicial limbo” (Friesen, 1984). This early intervention and continuous monitoring also relies heavily on the characteristics of strong judicial leadership, information tracking, and effective communication.

Second, Steelman (2000) identifies the use of Differentiated Case Management (DCM) as another method that has found success in monitoring case progress and reducing court delay. DCM while be discussed in detail in the following chapter, but can be briefly summarized as the categorization and tracking of cases based on the required resources and court attention needed to dispose of the cases in a timely manner (Cooper, Solomon, & Bakke, 1993). Cases that are similar across defined criteria will be tracked together for similar dispositions. The ultimate goal of DCM is to increase the efficiency in which court resources and time are utilized on a case-by-case basis. The exact approaches to DCM will vary across jurisdictions, but in general research has found that DCM results in decreased case disposition times and decreased lengths of pretrial detention (Steelman, 2000).

Third, research has consistently identified the pretrial time period as an important stage of the court process when it comes to influencing the pace of litigation (Steelman, 2000). If there is strict control over the pretrial procedures, the pace of litigation can be increased. Therefore, an important method of case management should be strict and purposeful when scheduling events...
during the pretrial stage. Otherwise, the pretrial stage can become protracted by attorneys with the delaying discovery, hearings, filing motions, and participating in plea negotiations. However, Steelman (2000) also argues that it is important to be realistic when scheduling pretrial events to ensure that attorneys are able to appropriately prepare for case progress. Related to the method of controlling the pretrial stage, it is also an important part of case management to set firm and credible trial dates. Research has shown that the pretrial stage is most often abused within courtrooms that do not utilize firm trial dates because attorneys come to expect the luxury of multiple continuances and therefore have little incentive to efficiently complete the pretrial processes (Steelman, 2000).

Even though trials are a rare event within criminal case processing, the management of trials when they do occur is another important method of case management (Steelman, 2000). The managing of trials should include pretrial conferences to ensure that preparation is proceeding appropriately, including the resolution of any impending issues. Trial management should also include the judge setting strict requirements for start times, estimating an appropriate amount of time for the trial events, and holding to any established time limits. Last, managing a trial efficiently requires that there is consistent momentum in the progress of the trial. Effectively managing trials can assist courts with using court time efficiently in other court proceedings as there is some evidence that a higher jury trial rate helps contribute to an overall faster pace of litigation (Steelman, 2000).

Summary

The slow pace of litigation in our court system has been viewed as a problem almost since the beginning of time. There are many consequences of slow case processing times that
negatively impact the courtroom workgroup, victims, defendants, and the legitimacy of the courts. Therefore, it is vital to the court system to continue investigating the causes and potential solutions for impacting the pace of litigation. While early research was often based on false assumptions, a second wave of research utilizing a better understanding of the courts as organizations and the local legal culture, and a third wave of research utilizing large-scale studies and rigorous methodology led to the development of successful case management characteristics and methods. And once these characteristics and methods of successful case management were established, courts across the country could implement better informed and empirically-based programs aimed at increasing court efficiency. One of the most commonly implemented programs is the use of differentiated case management.

However, consistent examination and evaluation of these programs is vital to increasing our understanding of the operations and outcomes of our court system. Such evaluations become even more important in light of the concerns about the unintended consequences on the fairness of the court process as a result of speeding up the pace of litigation. Therefore, the following chapter will review programs that are currently implemented that utilize case management methods, with a specific focus on the use of differentiated case management.
CHAPTER THREE: Evaluating the Impact of Current Programs Utilizing Case Management

Introduction

As case management became a focus of researchers and courtrooms during the 1980s and 1990s, we began to see an increase in the implementation of court programs focused on increasing control and monitoring on case processing, the creation of specialized case-tracking systems, and specialized courts tailored to the specific needs of cases. This is a trend that we continue to see evolving even today, as there are a variety of programs currently implemented across the United States that attempt to impact the pace of litigation through case management approaches. While these programs might go by many different names, they tend to adopt a selection of the characteristics and methods identified as successful case management approaches in the previous chapter. This includes the early and continuous control over the case process, strict timelines for pretrial procedures and trial dates, strong court leadership and goal-setting, information-tracking, and the use of differentiated case management.

In fact, Differentiated Case Management (DCM) is one of most popular forms of case management implemented in the court system today. Therefore, this chapter will review the process and impact of DCM in detail. In addition, the outcomes of a DCM-like program in the federal court system, known as the Federal Fast-Track Program, will also be reviewed. Last, the program that is the focus of the current study, the Early Case Resolution program (ECR), will be introduced and its impact on the counties where it is currently implemented will be discussed. Within this discussion of the ECR program, the main concerns and issues surrounding its impact on the pace of litigation and the quality of justice will also be discussed in detail.
Differentiated Case Management

Differentiated Case Management (DCM) incorporates many of the characteristics and methods of successful courts as discussed in the previous chapter (Steelman, 2000). For example, DCM allows for courts to have early and continuous control over case progress. In addition, DCM recognizes the need for courts to distinguish between different types of cases based on specific factors perceived to be related to the required court time and resources needed for case disposition, including the case seriousness, case complexity, defendant characteristics, the required expertise. Therefore, rather than apply the same amount of attention and resources to every case, in DCM it is important to tailor to cases’ specific needs. The ultimate goals of DCM according to the Bureau of Justice Assistance are:

1. Timely and just disposition of all cases consistent with their preparation and case management needs.

2. Improved use of judicial system resources by tailoring their application to the dispositional requirements of each case (Cooper, Solomon, & Bakke, 1993).

In order to achieve these goals, it is suggested that courts begin by creating tracks for different types of cases depending on the perceived processing requirements of the cases (Cooper, et al., 1993). Specifically, these tracks should be determined by the different procedural requirements and timeframes for decisions that will be necessary for case disposition. Next, courts should implement a case screening process that occurs soon after the filing of cases in order to determine the appropriate track. Once a case has been selected for a track, the court should continuously monitor the progress of the case to ensure it is meeting the requirements and deadlines as provided for the specific track. In addition, the program emphasizes the need to
incorporate all court agencies, including judges, prosecutors, defense attorneys, and court administrators into the implementation and use of DCM. Perhaps the most important step in DCM is developing relevant criteria for tracking individual cases.

Again, it is emphasized that this criteria should be based on factors related to the amount of “preparation and court intervention” needed for cases to be disposed of in “just and timely” manner (Cooper, et al., 1993). While cases are always categorized based on simple characterizations such as whether the case is of a criminal or civil nature or whether a case involves a felony or misdemeanor, DCM categorizes cases in a more distinct manner. Jurisdictions will often vary on the particular criteria that is used to differentiate between cases, but some of the factors often used include measures of case seriousness, case type, or the needed expertise. Another example of a commonly used criterion is an assessment of case complexity and its relationship to court time and resources (Steelman, 2000). Neubauer & Ryan (1982) assess case complexity as the presence of multiple defendants or multiple charges and hypothesize that cases with these characteristics will require more attention and resources from the court for case disposition due to their complexity. When case complexity is used as a criterion for DCM, it allows courts to identify certain cases as more or less complex based on these characteristics during the early screening process and then track the case accordingly. This will help ensure that cases receive the necessary time and resources from the courtroom workgroup for disposition (Cooper, et al., 1993).

However, in order to use DCM appropriately to track cases, it is emphasized that the courtroom workgroup in charge of defining the criteria and reviewing the cases have expertise and experience in assessing the necessary time and attention for cases and that the workgroup
includes coordination and cooperation from all agencies within the court system (Cooper, et al., 1993). For example, a pilot report on DCM completed by the National Center for State Courts discussed that traditionally the role of case management fell solely to the prosecution, but DCM recognizes that prosecutors’ priorities for assessing cases will likely differ from courts’ priorities (Henderson, Munsterman, & Tobin, 1990). For example, regarding the use of case complexity as a criterion, the inclusion of actors from all court agencies becomes very important when considering that research has found that different courtroom actors, including judges, juries, prosecutors, and defense attorneys, view the factors related to case complexity and assess case complexity in different ways (Heis, 2004). Therefore, successful DCM programs should focus on building an inclusive workgroup to define such criteria or run the risk of biasing the tracking of cases and alienating courtroom workgroup members.

In addition to properly assessing cases for appropriate tracking, DCM programs often utilize other characteristics and methods of successful case management, such as strong judicial leadership, effective communication, the early and continuous control over cases, and strict timelines for pretrial procedures (Steelman, 2000). For example, cases assessed as not requiring much time or court intervention might be selected for an expedited track that would include strict timelines for the filing of charges, initial appearances, discovery, plea negotiations, and guilty pleas and continuous monitoring by the court to ensure these timelines were being met. Another unique type of DCM program that became popular in the 1990s was targeted at handling cases involving drug offenses (Jacoby, 1994).

The use of differentiated case management (DCM) was expected to have several major benefits for court systems (Cooper, et al., 1993). First, and foremost, was the expectation that
the implementation of DCM would result in a more efficient use of court time and resources. Second, it was expected that as time and resources were used more efficiently, the time to case disposition would also likely be reduced. Third, it was argued that DCM would allow for more public access to the court process due to the expedited timelines and case dispositions. Fourth, it was hypothesized that under circumstances involving ideal inclusion in the designing and implementation of a DCM program, that cooperation among the courtroom workgroup would increase. Fifth, it was argued that the use of DCM would decrease court costs for certain stages of case processing. Sixth, there was a belief that DCM would decrease the length of pretrial detention and the number of bench warrants issued due to the increased pace of litigation (Cooper, et al, 1993). Last, it was hypothesized that DCM could create a more positive public perception of the court system by increasing court efficiency.

The earliest evaluation of the use of DCM was actually an examination of six courts that participated in a DCM pilot study that was funded by the Bureau of Justice Administration (Cooper, et al., 1993). For the pilot study, four criminal courts and two civil courts implemented programs between 1988 and 1991. The four criminal courts included Pierce County, Washington; Camden County, New Jersey; Berrien County, Michigan; and Wayne County, Michigan. Pierce County implemented the DCM program with the hopes of decreasing the case disposition time for drug cases and reducing jail overcrowding (Alliegro, Bright, Chacko, Cooper, Gish, Lawrence, Rutigliano, & Torkelsen, 1993). The program involved the development of a tracking criteria plan by both the prosecutor’s and public defender’s offices and when the prosecutor and defense attorneys began their meetings to make track assignments, approximately half of the cases ended up being settled during the meetings using plea
negotiations. Findings showed that the implementation of DCM resulted in 50% of felony drug cases being disposed of within 30 days of filing and the program was also credited with reducing the number of days from filing to disposition from 210 days to 90 day (Alliegro, et al., 1993). Furthermore, surveys of the judges and attorneys participating in the program demonstrated positive attitudes and satisfaction with the program (Henderson, et al., 1990).

The Bureau of Justice Assistance pilot study soon added three additional locations for the implementation of DCM programs specifically targeted at expediting the disposition of drug cases, often referred to as Expedited Drug Case Management (EDCM). These pilot sites included the Superior Court of Middlesex County, New Jersey; the Philadelphia Court of Common Pleas; and Marion County, Indiana (Jacoby, 1994). The EDCM program implemented in New Brunswick, New Jersey resulted in a significant decrease of case disposition time, with EDCM cases being disposed within an average of 81 days and comparable cases outside the program disposed of within an average of 191 days (Jacoby, 1994). Prior to the implementation of the program, the average number of days until disposition was 238 days.

Findings from the EDCM in the Philadelphia Court of Common Pleas also showed that the program significantly reduced the number of days from indictment to sentencing (Jacoby, 1994). Prior to implementation, the average number of days until case disposition was 209 days and after implementation this was reduced to 155 days. The findings also showed a 36% decrease in the length of pretrial detention. However, the results also showed a significant increase in the number of guilty pleas and a significant decrease in the number of trials and dismissals (Jacoby, 1994). A sharp reduction in the trial rate and increase in the guilty plea rate raises concerns over the methods being used to achieve expedited case dispositions.
Furthermore, a decreased dismissal rate could reflect a “widening of the net” effect in that utilizing EDCM allowed the prosecution to secure convictions in cases that would have been previously dismissed (Taxman & Elis, 1999).

In Ramsey County, Minnesota, a DCM program was implemented to address the slow disposition time and excessive continuances for civil cases but the program was quickly expanded to criminal cases as well (Mott, 1994). The DCM program allowed for judges and attorneys to provide input when designing the program and when designating cases for certain expedited tracks. In addition, pretrial procedures such as probable cause hearings and plea negotiations were encouraged to happen quickly. After the implementation of the program, the percentage of felony cases resolved during the initial appearance or probable cause hearing using guilty pleas rose from 39% to 79%. In terms of case processing time, the number of days from arrest to disposition for felonies significantly decreased (Mott, 1994). Furthermore, the rate of continuances on the date of the trial dropped significantly and the number of bench warrants issued decreased. Overall, the court reported significant improvements in court efficiency and cost savings from the improved predictability of the criminal caseflow.

Taxman and Elis (1999) examined a DCM-like program implemented in Baltimore City, Maryland to determine the impact the program had on pretrial detention length, case outcomes, and case disposition time. Interestingly, this is one of the few studies that utilized random assignment to study the impact of such a program. The program involved a quality case review process (QCR) that allowed for an experienced courtroom workgroup to review misdemeanor cases early in the pretrial process and provided an expedited trial process for eligible cases. The eligibility of a case depended on the arrest charges involving a misdemeanor, a defendant
detained prior to trial, and representation by the public defense office (Taxman & Elis, 1999). During a three-week period, cases were randomly assigned to either the QCR program or traditional court (Taxman & Elis, 1999). The results showed a significant decrease in the pending caseload, average case disposition time, length of pretrial detention, and the average sentence length for misdemeanors. However, the program also increased the overall number of guilty dispositions. So while the length of pretrial detention and post-conviction sentences were reduced, there was actually no change in the average number of beds used by the district court due to the increase in guilty dispositions.

While the rate and length of incarceration did not increase, Taxman & Elis (1999) argued that the unintended consequence of increasing the number of guilty dispositions could indirectly result in net-widening by increasing the likelihood of future incarceration. For example, if the QCR program increased the likelihood of a guilty disposition, then a defendant’s criminal history may become more extensive than previously expected. Since criminal history is consistently used as a benchmark for many decision points within the criminal justice system, it could increase the likelihood of being detained prior to trial and impact the sentence type and length in future cases (Taxman & Elis, 1999). Furthermore, after the program was implemented the courtroom workgroup assigned to the QCR program began to rotate and the researchers raised concerns over whether a less experienced workgroup would be able to achieve similar results. These concerns reiterate the importance of an experienced workgroup being involved in defining the criteria and screening cases for DCM-like tracking.

Furthermore, since the QCR program requires defendants to agree to plead guilty in order to receive the benefits of shorter pretrial detention and sentence lengths, the researchers and
some courtroom workgroup members raised concerns about the fairness of the process (Taxman & Elis, 1999). For example, one prosecutor was quoted in the study as wondering how timely dispositions achieve fairness if “coerced participation” is the method in which they are achieved. In addition, the study found that there were many cases that were eligible for QCR but because defendants were unwilling to make decisions so quickly in order for participation, many of these cases ended up not being processed through the program. It is easy to see that such a program could inadvertently provide even more negotiating power to prosecutors and as a result, defense attorneys and defendants would be wary of participation.

An early disposition court was then implemented in Baltimore City, Maryland in 2000, but resulted in similar issues with convincing defendants to participate (Kelly & Levy, 2002). The early disposition court was created with the intention of expediting cases involving minor, nonviolent crimes by arranging guilty pleas during the arraignment just a few days after arrest. There was also hope that the court would result in fewer defendants detained prior to trial, fewer court appearances, and reduce caseloads. However, results of the program after 18 months showed that only about 17% of eligible cases were actually disposed of by the court (Kelly & Levy, 2002).

Interestingly, the study found that defendants were often unwilling to accept guilty pleas for several reasons (Kelly & Levy, 2002). First, defendants saw an advantage to delaying the court process because police officers often failed to show up as witnesses at trials and resulted in cases being dismissed. Second, defendants also recognized that plea negotiations in the circuit courts often resulted in more favorable sentences than the early plea deals offered in district court (Kelly & Levy, 2002). Therefore, there was a clear benefit to delaying the case until it was
bound over to the circuit court. Third, many of the defendants eligible for the program were on
probation and recognized that a new conviction would also violate the conditions of their
probation. Therefore, defendants were unwilling to accept a plea offer unless the subsequent
probation violation would be made part of the deal. These findings reflect the fact that
expediting the court process is not always in the best interest of every party in the courtroom
workgroup, especially for the defense.

In Cuyahoga County, Ohio, an expedited case management program was implemented in
two municipal courts as part of a pilot project aimed at improving the speed of disposition times
(Carlson, 2008). The program incorporated several characteristics of case management, such as
expediting the booking process, screening process, initial appearances, and indictments. A
preliminary analysis of the pilot project found the case disposition times decreased to an average
of 10 to 15 days compared to 70 to 80 days prior to implementation (Carlson, 2008).
Furthermore, the arrest to indictment time decreased to an average of 11 days from 68 days and
the first hearings in the Court of Common Pleas were occurring within 5 to 7 days of arrest
compared to 5 to 6 weeks. It was also found that the length of stay in the municipal jails
decreased from 10 to 15 days to 1 to 2 days and the number of failure to appear decreased
(Carlson, 2008). However, there were also complaints from the courtroom workgroup that the
expedited process left an insufficient amount of time for pretrial screening and assessment,
preliminary investigation, assignment of efficient counsel, and discovery and case preparation.
So, while the program may have been successful at achieving some positive benchmarks in terms
of reducing the use of court time and resources, it also raised questions regarding the amount of
time provided to ensure due process for defendants.
In 1993, the Circuit Court for Montgomery County, Maryland implemented a DCM program in an attempt to increase the predictability of case processing and case disposition times (Circuit Court for Montgomery County, Maryland, 2010). As a result, Montgomery County led the state in timely dispositions for over a decade. However, by 2009 the court believed that the impact of the program was diminishing and decided that the program needed major revisions and updates to take into account changes that occurred over time. The goals of the program incorporated several of the characteristics and methods of case management, including the early and continuous control over cases, ensuring the proper use of pretrial procedures, creating firm and credible trial dates, and tracking cases according to case complexity (Circuit County for Montgomery County, Maryland, 2010). Preliminary findings show that the court consistently abides by the ABA standards for the timely resolution of cases (Harris, 2010). In addition, the efforts to revise and update the plan involved members from all of the key stakeholders in the county criminal justice system and there were leaders committed to the program, factors that are also vital to the implementation and success of such a program.

Efforts to design and implement a DCM program in Cook County, Illinois do not appear to have the same consensus over the pace of litigation in their criminal courts or the potential efforts to reduce delayed case processing times. In 2005, the Criminal Courts Technical Assistance Project at American University suggested that Cook County, Illinois develop a DCM program for criminal cases in response to issues with jail overcrowding (Coolsen, 2007). As a result of this suggestion, the county participated in an assessment of their criminal case processing and the main stakeholders from the criminal courts were surveyed about the potential implementation of a DCM program.
The results of the survey showed that there was some apprehension regarding the program (Coolsen, 2007). For example, less than half of the stakeholders surveyed believed that the courts were suffering from the problem of delayed case processing times for felony cases. Interestingly, when examined by role in the courtroom, it was found that judges and prosecutors were more likely to agree that delay was an issue compared to defense attorneys. This reiterates the finding that different workgroup members view the issue of delay very differently. When asked about the potential limiting of continuances, approximately half of the respondents supported the limitation of continuances (Coolsen, 2007). However, once again judges and prosecutors were much more likely to support changes to continuance policies compared to defense attorneys. In addition, only about one-third of respondents believed that setting time standards for felony cases was a feasible approach. Furthermore, the majority of the respondents were concerned that expediting case processing through case management could result in injustice. While defense counsel made up the largest group of respondents concerned with the fairness of the program, about half of the judges and prosecutors also expressed such concerns (Coolsen, 2007). Overall, the assessment of the stakeholders demonstrated that many of them had some concerns about the implementation of a DCM program and these concerns would need to be addressed in order to optimize the use of such a program.

In 2013, interviews with Cook County officials reiterated the problems resulting from jail overcrowding and the inability of the county to implement a case management program. For example, the Cook County Board President was quoted as saying “There’s no case management in the circuit court. No case management at all.” (Steinberg, 2013, July 31). The Cook County Sheriff identified the long lengths of stay for defendants detained prior to trial as one of the main
contributors to the jail overcrowding problem. However, the Chief Judge of Cook County expressed the need for caution when it comes to creating solutions, saying “One of the major problems here is some would put a price tag on justice. That’s a huge mistake.” (Steinberg, 2013, July 31). While some of the officials stated that the county was not currently using DCM, according to the article the county was currently involved in updating the information provided in the original assessment of case processing for the county.

Overall, there are several main conclusions regarding the implementation and impact of differentiated case management programs. There is evidence that DCM programs can reduce the length of stay for pretrial detainees and case disposition times. These results are especially true for programs that incorporate input from all of the legal stakeholders and utilize an experienced courtroom workgroup to design criteria for tracking cases and to participate in case screening. However, due to the competing interests of different parties within the courtroom workgroup, there can also be major barriers to the success of such programs. For example, defense attorneys and defendants often appear to have issues with participating in a program that removes their ability to control the case process and expedites plea negotiations.

In addition, there is also evidence that the implementation of DCM programs can have unintended consequences, such as reducing the rate of jury trials and dismissal rates while also increasing the rate of guilty pleas. Furthermore, the excessive use of guilty pleas in exchange for the benefits of an expedited case disposition raises concerns about the fairness of the program and the potential coercive power provided to the prosecution. It should also be noted that the design, implementation, and outcomes of the program vary widely depending on the county and the local legal culture within that county. All of these findings further reiterate the need to
evaluate similar types of programs that are implemented in other counties and in other legal jurisdictions, such as the federal court system.

**The Federal Fast-Track Program**

The federal court system has also experimented with the use of differentiated case management to control and manage rising caseloads. For example, as the number of immigration offenses sentenced in the federal court system increased, the Department of Justice and U.S. Attorneys’ Office developed a “fast-track program” in order to process cases involving such offenses quicker and help reduce the caseload pressure for the rest of the system (Kim, 2013). The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003 allowed the United States Sentencing Commission (USSC) to create policies that allowed “downward departures” from the recommended sentences within federal sentencing guidelines as incentive to participate in the early disposition program. In September 2003, Attorney General Ashcroft released a memorandum directing individual districts on how to apply for and implement a fast-track program for immigration offenses. Originally the Department of Justice only approved programs in districts along the southwestern border of the U.S. due to their high number of cases dealing with immigration offenses. However, in January 2012, the Deputy Attorney General released a memorandum stating that fast-track programs would no longer be limited to the southwestern border districts (Cole, 2012).

The federal fast-track program allows eligible defendants to receive a reduction in their charges and sentences in exchange for waiving certain rights and pleading guilty (Kim, 2013). The ultimate goal being that with a quick disposition of the case, the defendant will save the court time and resources that can then be used for other cases. Furthermore, the agreement to
plead guilty is viewed as an acceptance of responsibility of the offense. However, such programs raise concerns about the equality in sentences for similarly situated offenders. Since defendants processed through the fast-track program receive leniency in exchange for their guilty plea, sentencing disparity is an inevitable outcome of the program. Therefore, a study attempted to address the impact of the fast-track program on efficiency, defined as elapsed time from filing to disposition, and equity, defined as sentencing length (Kim, 2013).

In 2013, the Urban Institute published a study on the impact of the federal fast-track program that was funded by the National Institute of Justice (Kim, 2013). The data utilized for the study included cases disposed in federal courts for fiscal years 2006 to 2009, one of only a few studies to examine federal criminal cases. In addition, it is one of the only studies examining a program with an expedited pace of litigation that used a matching method to build relevant comparison groups. The study used propensity score matching to build two groups, those cases that received fast-track treatment and comparable cases that did not receive fast-track treatment (Kim, 2013). Selected cases were limited to those that involved an immigration offense as the primary charge as this would be the offense that would make the case eligible for fast-track. Defendant characteristics were used to match similar cases, including race, gender, age, education level, and criminal history of the defendant. Case characteristics used for matching included pretrial detention status and attorney type.

The comparison between fast-track and non-fast-track cases resulted in a few relevant findings. First, cases processed through the fast-track program had an average case processing time from filing to disposition of 64 days compared to 80 days for the non-fast-track cases (Kim, 2013). Second, cases processed through the fast-track program also received a reduction in their
average sentence length. The average sentence length for fast-track cases was 26 months compared to 31 months for similar, non-fast-track cases.

The study also involved a comparison of cases included in the federal fast-track program to similar cases processed in U.S. District Courts where the federal fast-track program was not available (Kim, 2013). Results again showed that cases processed through the fast-track program had shorter case processing times. Perhaps more interesting was that the average case processing time for non-fast track cases processed in U.S. District Courts with a fast-track program was still significantly shorter than the average case processing time for cases in districts without the fast-track program (Kim, 2013). This finding lends supports for the idea that the unique courtroom culture in the individual districts helps drive the case processing times. It is possible that districts with fast-track programs recognize the burden that a large number of cases with immigration offenses has on the entire court and therefore generates a culture that contributes to the faster case processing times.

Again, results showed that cases processed through the fast-track program had shorter sentence lengths. However, there was little difference found in the sentence lengths for non-fast track cases in districts with fast-track programs and cases in districts without the fast-track programs (Kim, 2013). Therefore, it appears that the unique culture of the district has less of an impact on the sentencing outcomes than the case processing times. This is likely due to the use of federal sentencing guidelines within the districts controlling the sentencing decisions.

The study also investigated whether there were any differences in the impact of defendant characteristics, also known as extra-legal factors, on sentence lengths in cases processed through the fast-track program and those non-fast-track cases (Kim, 2013). Results showed that the
impact of the defendants’ age on sentence length was more pronounced for the non-fast-track cases compared with cases processed through the fast-track program. In addition, Hispanic defendants processed through the fast-track program were more likely to receive a longer sentence compared to Hispanic defendants not in the fast-track program. In comparison, there were no significant differences in the impact of defendants’ characteristics on sentence length when comparing similar cases in districts with the fast-track program and those districts without the fast-track program. Kim (2013) hypothesized that the presence of influential extra-legal factors in the districts with the fast-track program could be evidence of prosecutorial bias made possible by the discretionary nature of the fast-track programs. Overall, it appears that the federal fast-track program does indeed result in unequal treatment across similarly situated defendants.

The results of this study further demonstrate the need to evaluate discretionary court programs that aim to speed up criminal case processing to determine the impact they have on the influence of extra-legal factors and case outcomes. In addition, this study is one of the only studies examining the impact of a faster pace of litigation on case outcomes to utilize propensity score matching to build comparable treatment and control groups. Considering programs that attempt to speed up the pace of litigation through differentiated case management often develop specific case criteria to select cases, it is vital to control for the impact of these case characteristics on case outcomes to ensure any effects found can be attributed to the treatment. The current study will incorporate several aspects of the methodologies presented in this study in order to better understand the impact of a similar program known as Early Case Resolution.
Early Case Resolution

The Early Case Resolution (ECR) program incorporates several characteristics and methods of case management, including strong judicial leadership, goal-setting, early intervention and continuous control over cases, and differentiated case management. The ultimate goal of the ECR program is to expedite criminal case processing for cases deemed appropriate by a courtroom workgroup in order to allocate time and resources more efficiently for the entire criminal justice system. The ECR program was originally designed for implementation in Washoe County, Nevada and has been implemented in several other jurisdictions with the assistance of David Bennett Consulting.

The ECR program uses a specialized courtroom workgroup comprised of one judge and several prosecutors and defense attorneys to conduct daily case reviews of new arrests to determine their eligibility for the ECR program. It is emphasized that this courtroom workgroup be comprised of experienced attorneys who can make the decisions regarding case eligibility and the ultimate dispositions. The program allows for early intervention in the cases and utilizes the same courtroom workgroup to tightly control the processing of the cases from start to finish. The criteria used to determine eligible cases will vary from county to county, similar to the implementation of differentiated case management across other counties. Once cases are chosen for the ECR program, strict timelines and procedures for the pretrial stages are used to expedite case processing. For example, case screenings and filings, initial appearances, offender assessments, discovery, plea negotiations, and guilty pleas are all encouraged to happen quickly.

A defendant’s participation in the program is voluntary and they can opt out of the program at any time.
ECR programs are currently implemented in several counties in the western U.S., including Washoe County, Nevada; Washington County, Oregon; Sonoma County, California; Salt Lake County, Utah; and Spokane County, Washington (Hickert, Worwood, Sarver, & Butters, 2011). While the ECR program does utilize some successful characteristics and methods of case management, the implementation of the program has not been without its controversy. Concerns have been raised by court practitioners working within the program, as well as researchers, about the process of the ECR program and the impact it has on the quality of justice being dispensed by the program (Carroll, Spangenberg, Alwis, & Bailey, 2000). Perhaps the first ECR program established in Washoe County, Utah best exemplifies these concerns about the potential for compromising the quality of justice for the sake of increasing court efficiency.

**Washoe County, Nevada**

The first Early Case Resolution (ECR) program was established in Washoe County, (Reno) Utah in 1997 under the direction of the district attorney’s office. Initially there were high hopes that the program would help expedite a subset of less serious cases and help alleviate jail overcrowding in the county. However, the implementation of the ECR program in Washoe County would soon become embroiled in controversy due to major concerns about the methods and consequences of the program.

In 2000, the Spangenberg Group conducted a study in Nevada for the Supreme Court Task Force on the Elimination of Racial, Gender and Economic Bias under a grant of the United States Department of Justice and the American Bar Association. In December of 2000, the Spangenberg group issued a report on problems with Nevada’s indigent defense system,
including their concerns with the ECR program in Washoe County (Carroll, et al., 2000). While Washoe County estimated a savings of $905,186 for the fiscal year of 1999 due to 1,681 defendants pleading guilty through the ECR program, during interviews with public defenders working in the ECR program concerns were raised about serving the best interest of clients in a program that asks defendants to waive their rights in exchange for speedy dispositions and financial savings.

For example, the Washoe County ECR program aimed to provide early discovery and expedited plea agreements in order to resolve the case within 72 hours of arrest. While defendants’ participation in the program was voluntary and they had the right to accept or reject the plea agreement offered by the district attorney’s office, the public defenders reported that sometimes they would participate in plea negotiations prior to having received the state’s discovery (Carroll, et al., 2000). As a result, it was difficult for a public defender to fully advise their client on whether to agree to plead guilty because they had not received information about the case against the defendant. Defendants often believed that pleading guilty to the crime was the best course of action because they believed it would result in leniency and a quick disposition. However, under such time constraints it would be difficult for the defense attorney to fully advise their clients about the decision or for the defendant to fully consider the consequences of their guilty plea. For example, interviews conducted with defendants with substance abuse problems who were detained prior to trial revealed that they may have been motivated to accept a plea agreement in order to be released on their own recognizance (Carroll, et al., 2000).

Furthermore, while the ECR program was originally intended to be used only with non-serious cases, public defenders reported that several serious felonies were disposed of through
the ECR program (Carroll, et al., 2000). Another concern raised was that the ECR program was impacting the number of cases being taken to trial by the Washoe County Public Defender’s Office. For example, in 1999 only approximately 30 cases out of 6,391 were taken to trial, a trial rate of less than 1%. This finding is consistent with previous research on similar differentiated case management programs that showed a reduction in the dismissal and jury trial rate and an increase in the guilty plea rate after implementation of the program (Taxman & Elis, 1999).

The concerns of the Washoe County Public Defender’s Office about the ECR program came to a head in January 2008 when the Nevada Supreme Court issued Administrative Order ADKT No. 411. After years of issues with the state indigent defense system, this order proposed new performance standards for attorneys providing indigent defense, removed the judiciary from overseeing the administration of indigent defense, ordered studies for caseload standards, proposed a uniform standard to determine indigency, and required each country to submit an administrative plan for delivering indigent defense services (Nevada Supreme Court, 2008, October 16). In February of 2008, the Washoe County Public Defender’s Office withdrew from participating in the ECR program due to concerns about whether they could abide by the new standards while working within the ECR program and the program was stopped (Washoe County Commissioner, 2008, February 27). In April of 2008, then director of research at the National Legal Aid & Defender Association wrote a letter to the Nevada Supreme Court raising concerns about the ability of defense attorneys to adequately represent their clients and encouraged the Court to reconsider re-implementing the program until such concerns were addressed (Carroll, 2008, April 18).

In keeping with the requirements of ADKT No. 411, the Second Judicial District, which includes Washoe County, submitted their required administrative plan for delivering indigent
services to the Nevada Supreme Court in May of 2008 (Washoe County Public Defender, 2012, June 28). Known as the “Model Plan,” the plan included guidelines for the appointment of legal counsel for indigent defendants, including that the Washoe County Public Defender receive the initial appointment and that cases with conflicts of interest would be transferred to Washoe County’s Alternate Public Defender. However, the county soon became concerned about how the District Attorney’s Office and Washoe Public Defender’s Office would continue to handle their caseloads without the ECR program (Washoe County Commissioner, 2008, February 27). Therefore, the District Attorney’s Office and county staff began exploring the possibility of re-establishing a program similar to ECR that would also allow attorneys to comply with the new performance standards.

In June 2011, the assistant county manager and district attorney proposed a pilot program to the Board of County Commissioners, in which Washoe Legal Services would be contracted to provide services to indigent defendants in the ECR program (Berkich & Gammick, 2011, June 21). According to their proposal, the proposed program would be “designed to provide for more timely review of discovery, enable defendants to meet with their attorneys sooner, and facilitate expedited settlement offers.” It was also stated that the proposed program would “lower per case cost to the county using Washoe Legal Services contract resources versus in-house legal staff” while also significantly reducing the caseload for the public defender (Berkich & Gammick, 2011, June 21).

The Board of County Commissioners directed the group to develop a contract with Washoe Legal Services for the pilot program (Berkich & Gammick, 2011, July 28). However, the Nevada American Civil Liberties Union (ACLU) wrote the county commissioners urging them to reconsider the re-initiation of the ECR program and the hiring of Washoe Legal Services
for indigent defense representation (ACLU of Nevada, 2011, June 28). Specifically, the Nevada ACLU raised concerns over the ability of defense attorneys working in the ECR program to form effective working relationships with their clients due to the time constraints of the program. They also discussed concerns about defense attorneys recommending their clients accept a guilty plea agreement without the proper time for pretrial procedures such as thorough investigations and discovery. Furthermore, the Nevada ACLU expressed concern about contracting with the Washoe Legal Services for indigent representation, which was a "civil legal office with no mandated indigent defense training or responsibility" (Nevada ACLU, 2011, June 28).

On June 8, 2012, Chief Judge David A. Hardy of the Second Judicial District Court issued Administrative Order 2012-07, which instructed the implementation of the ECR pilot program (Nevada Second Judicial District Court, 2012, June 8). The order allows for Washoe Legal Services to be appointed to represent indigent defendants in criminal proceedings deemed appropriate for the ECR pilot program. It also stipulated that if a case is withdrawn from the ECR program at any time, then Washoe Legal Services will be relieved, and the Washoe Public Defender’s Office would represent the defendant in remaining proceedings.

On June 28, 2012, the Washoe County Public Defender’s Office filed a Writ of Mandamus in the Nevada Supreme Court requesting that the decision of the Second Judicial District Court for Nevada be rescinded. In the petition, the chief public defender argued that the administrative order violated the master plan developed for the provision of indigent defense in the Second Justice District and “fails to provide effective criminal representation under the Sixth Amendment to the Constitution of the United States” (Washoe County Public Defender, 2012, June 28). For example, the petition points out that the Nevada Supreme Court had previously stated in ADKT No. 411 that “participation by the trial judge in the appointment of counsel,
other than public defender and special public defenders…creates an appearance of impropriety” (Nevada Supreme Court, 2008, October 16). The chief public defender argued that the ECR pilot program exacerbates this “impropriety” further by allowing the district court judges to appoint Washoe Legal Services representation to indigent defendants only for cases in which the Washoe County District Attorney has decided that other counsel to be necessary. Furthermore, it was argued that the ECR pilot program does not meet constitutional standards or the Nevada Supreme Court’s standards for indigent defense because it allows for the recommendation of a guilty plea before additional discovery or investigation can occur (Washoe County Public Defender, 2012, June 28).

On July 5, 2012, the Nevada Attorneys for Criminal Justice (NACJ) submitted an amicus curiae brief in support of the petition for the writ of mandamus (Nevada Attorneys for Criminal Justice, 2012, July 5). And in August, the Nevada ACLU joined the amicus curiae brief in support of the Washoe County Public Defender’s Office. In a press release, the executive director of the Nevada ACLU argued that “early case resolution proponents seem to think that the paramount objectives of the justice system are to save money, save time, and to prevent or limit any inconveniences that anyone involved experiences unless a defendant is sentenced to jail time. But the paramount objective of the justice system is justice itself, which by the definition requires constitutional due process” (ACLU of Nevada, 2012, August 1).

In October 2013, the Nevada Supreme Court unanimously decided that there was no statute prohibiting the use of ECR programs (Nevada Supreme Court, 2013, October 9). However, they also concluded that Chief Judge Hardy’s order allowing the pilot ECR program “does interfere with the independence of counsel” because it prevented public defenders from working on a case until it was deemed unsuitable for the ECR pilot program. The Court also
ruled that in order for the program to operate, the public defenders have to be allowed to participate in the program and “zealously advocate for their clients in accordance with their professional ethics” (Nevada Supreme Court, 2013, October 9).

The decision by the Nevada Supreme Court placed the continuation of the ECR program in Washoe County in limbo. However, the case does serve as an example of how seeking increased court efficiency through such a program raises serious concerns, especially among defense attorneys who want to ensure effective legal representation to defendants in the criminal court process. It also appears that issues with large caseloads and slow disposition times are still at the forefront in Nevada. In November of 2014, Nevada voters approved the establishment of a new intermediate appellate court to help deal with rising appellate caseloads in the state, which were previously only handled by the Nevada Supreme Court (Ritter, 2014, November 11).

Washington County, Oregon

In March 2007, Washington County, Oregon implemented an Early Case Resolution program for cases involving specific misdemeanors and felonies. The goal of the ECR program was “the swift, efficient, and fair resolution of new criminal cases deemed eligible by the district attorney’s office, along with certain probation violation matters” (Washington County, Oregon, Circuit Court, 2008, July 11). District Attorney Bob Herman estimated that approximately 75% of the crimes eligible for ECR were misdemeanors and the remaining 25% were comprised of low level felonies, including all drug possession cases. Some probation violations were also eligible, including those defendants who only violated the conditions of their probation, but did not commit a new crime and defendants on probation who committed a new crime that was ECR eligible. The District Attorney estimated that there would be approximately 4,000 new cases
eligible and 2,000 probation violation cases eligible for ECR each year. (Washington County, Oregon, Circuit Court, 2008, July 11).

A memo issued by the Washington County Circuit Court outlined the details of the ECR program process (Washington County, Oregon, Circuit Court, 2008, July 11). The program utilizes similar methods of other ECR programs and differentiated case management programs in that it speeds up the pretrial timeline by setting strict deadlines for discovery, arraignments, and trials. It also encourages starting plea negotiations as soon as defense counsel is retained and the acceptance of guilty pleas at arraignment. In April 2008, the Oregon Judicial Department released their annual report, including an optimistic report on the first six months of the ECR program. The report showed that over 30% of criminal cases were now resolved at arraignment or within two weeks of the arraignment (Oregon Judicial Department, 2008, April). It was also reported that the district attorney’s office and public defense service providers all experienced cost savings due to reductions in their criminal caseload after arraignment.

Furthermore, the report said the ECR program also “enhanced the safety of the community by enabling the sheriff’s office to reduce its number of ‘forced releases’ caused by overcrowding in the jail and by allowing the community corrections department to more quickly engage offenders in probation services” (Oregon Judicial Department, 2008, April). It would appear that those involved in the ECR program in Washington County, Oregon appeared optimistic about the resulting increase in efficiency and saved resources for the criminal justice system, especially among the judiciary and district attorney’s office, but without further evaluation it is difficult to understand the full impact of the program.
Sonoma County, California

In 2009, Sonoma County, California implemented an Early Case Resolution Court in order to reduce their jail population through alternatives to incarceration. Interestingly, Sonoma County did not restrict the use of ECR to a specific type or severity of offense as most counties choose to do, instead establishing that “all criminal felony matters...shall be initially set in the designated Early Case Resolution Department (ECR)” (Pozzi, 2012, September 26). A memo written by the Interim Public Defender in September 2012, mentioned that ECR was “disposing of an average of 85% of all felony cases arraigned,” that the implementation of ECR had “greatly accelerated” case disposition time, and that the case disposition times in the county were faster than other California counties.

In a 2011 local newspaper article discussing the ECR program, court officials stated that approximately 4,000 cases per year were processed through ECR, with more than 90% resolved within weeks (Payne, 2011, August 3). It was also estimated that within the first quarter of 2011, 72% of all felony cases reached disposition within 30 days compared to only 30% of cases for non-ECR cases. One judge interviewed admitted to being skeptical of the program at first, but “was sold by its efficiency and cost savings to other county departments.” The first judge that presided over the program assured that the cases receive “strict scrutiny.” However, some defense attorneys interviewed discussed that they felt pressured to make decisions about plea negotiations in cases prior to having all of the evidence they needed (Payne, 2011, August 3). A law enforcement officer also discussed concerns that the ECR program was compromising the safety of the community by focusing too narrowly on court efficiency. These comments reflect the often polarizing nature of the implementation of the ECR program, in that it might achieve court efficiency and save resources, but leave some court practitioners wondering at what cost.
Salt Lake County, Utah

The ECR program in Salt Lake County, Utah has been subjected to the most comprehensive evaluation of an ECR program prior to the current study. The two main goals of the ECR program were: “to reallocate criminal justice and human services resources to create a more effective and efficient criminal justice process and increase public safety and better protect victims by reducing recidivism rates in the County” (Hickert, Worwood, Sarver, & Butters, 2011). The implementation of the program was a response to an audit of the Utah Courts that found many of their District Courts were not meeting the ABA standards for disposition times for criminal cases.

In order to improve criminal case processing, multiple county agencies collaborated to produce a number of changes using the ECR program. First, the court implemented a strict timeline for pretrial procedures (Hickert, et al., 2011). For example, it was required that law enforcement agencies submit their case to the District Attorney’s Office (DA) for review and that the DA complete case screening and filing within two days of the arrest. The goal of this strict timeline for filing was to have 85% of felony arrests filed with the court within 72 hours of booking. Next, the initial court appearance needed to occur within 10-14 days of the jail booking (Hickert, et al., 2011). It was also expected that some cases be resolved during this initial appearance. With these changes, it was expected that the ECR program would be used to resolve 30% of all felonies and Class A Misdemeanor cases within 30 days of arrest and then quickly move ECR offenders into their sentencing or treatment programs.

In order to determine whether the ECR program is meeting these goals, the Utah Criminal Justice Center is in the midst of conducting a three-year evaluation (Hickert, et al., 2011). At the time of writing, two phases of the evaluation had been completed, including an
examination of ECR case characteristics, case processing timelines, the number of warrants issued, and disposition times. The sample included a random sample of Class A Misdemeanor and felony bookings for new charges and warrants from the Adult Detention Center for two study periods: the year prior to ECR being implemented (2010) and cases from October 1, 2011 through September 30, 2012, when ECR had already been implemented (Hickert, et al., 2011). By October of 2011, ECR had been implemented and utilized for several months but the early months were chosen to be excluded as the program was just beginning and fluctuations were expected.

In total, the random sample included 1,500 cases from the pre-ECR period and 4,000 cases from the period after ECR had been implemented. The post-ECR sample included cases processed through ECR and non-ECR cases. While the sample selection was randomized, it should be noted that the study did not control for differences across defendant characteristics, including criminal history. This does limit the ability to draw conclusions about the impact of the ECR program on the case processing and outcomes reviewed and emphasizes the need to ensure that the treatment and control groups are comparable across factors that could impact case processing and outcomes in the current study.

The study did find that the pre-ECR cases and post-ECR cases did not differ much across defendant characteristics, including gender, race/ethnicity, and age (Hickert, et al., 2011). However, when comparing the ECR cases and non-ECR cases, results showed that the cases resolved through ECR were more likely to involve female, white, and younger defendants than the non-ECR cases. This finding reiterates the need for the current study to examine the factors related to cases being chosen for the ECR program in Spokane County and to examine the potential influence for legally irrelevant factors on decisions made within the ECR program.
It was also found that the ECR cases often involved less serious crimes compared to the non-ECR cases and the majority of ECR cases involved either a property or drug offenses as their primary charge (Hickert, et al., 2011). Therefore, the cases handled by the ECR program in Salt Lake County are similar to those in seriousness and offense type as those cases handled by Spokane County. When comparing the pre-ECR period to the post-ECR period, it was found that the post-ECR period utilized pretrial release, especially release on own recognizance, compared to the pre-ECR period. Therefore, there may have been an effort by the court culture to increase utilization of pretrial release to assist with relieving jail overcrowding. However, the results also showed that the ECR cases were less likely to be released prior to trial compared to the non-ECR cases, even though the severity of the charges among the ECR cases tended to be less serious compared to the non-ECR cases.

The study measured case disposition time as the number of days from case filing to disposition (Hickert, et al., 2011). However, since the case filing occurred at different time points for the cases that likely impacted some of the case processing, the sample was split into three categories: (1) cases filed prior to the qualifying booking; (2) cases filed during the qualifying booking; and 3) cases filed after release from qualifying booking. For the pre-ECR and post-ECR cases, approximately half of the cases were filed prior to their qualifying booking, one-third of the cases were filed during the qualifying booking, and one-quarter were filed after release from qualifying booking. When comparing the ECR cases and non-ECR cases, the results showed that the ECR cases were more likely to be filed during or after qualifying booking compared to the non-ECR cases (Hickert, et al., 2011). In terms of case disposition, the majority of all cases were disposed once the defendant was released from jail on their qualifying booking. However, the ECR cases had the highest percentage of cases that were disposed while the
defendant was in jail. Again, this could be evidence of the changes made to the case processing timeline within the ECR program.

For the first filing timeline, cases that were filed prior to the qualifying booking, there was typically one month between the actual offenses and when the cases were filed with the court (Hickert, et al., 2011). This length of time did not vary between the pre-ECR and post-ECR cases and it did not vary between ECR cases and non-ECR cases. However, when examining the more accurate measure of case processing time, the time between filing and disposition, results did begin to vary significantly across the groups. For example, for ECR cases there was an average of 62 days between filing and disposition compared to 149 days for non-ECR cases and 198 days for pre-ECR cases. Furthermore, the length of pretrial detention was also shorter for ECR cases compared to non-ECR cases and pre-ECR cases (Hickert, et al., 2011). In addition, the percentage of cases that were filed prior to qualifying booking that were disposed within 90 days of the offense increased during the post-ECR period. These results show some of the impact the ECR program had regards to case disposition time and length of pretrial detention.

For cases that were filed during the qualifying booking, the average time from filing to disposition was only nine days for the ECR cases compared to 52 days for the pre-ECR cases and 66 days for the non-ECR cases (Hickert, et al., 2011). In addition, the average length of pretrial detention was only 33 days for the ECR cases compared to 71 days for pre-ECR cases 73 days for the non-ECR cases. Within 30 days of filing, there were 87% of ECR cases disposed compared to only 31% of pre-ECR cases and 18% of non-ECR cases. When examining pretrial detainees, the results showed that the amount of time from the booking to the first hearing for defendants who were detained prior to trial was the same for all three groups (Hickert, et al.,
2011). However, the amount of time from the booking to the first hearing for defendants who were released prior to trial was shorter for the ECR cases compared to the non-ECR cases and pre-ECR cases. These findings indicate that whether the defendant was detained or not did not impact the decision to expedite cases in the ECR program, but it does appear that pretrial detainees were prioritized for non-ECR cases. Interestingly, the ECR cases also had the fewest pre-disposition hearings compared to the pre-ECR cases and non-ECR cases. Due to the emphasis on the strict pretrial timeline, it is possible that the ECR program results in less time for these pretrial hearings.

For those cases filed after qualifying booking, the ECR cases had the shortest average time from filing to disposition at 28 days compared to 94 days for non-ECR cases and 122 days for pre-ECR cases (Hickert, et al., 2011). However, the average length of pretrial detention was similar across all three groups. When a defendant was released from jail without having their case filed yet, they were provided a “Notice to Appear” (NTA) upon their release. The NTA date was set out approximately two weeks from their release from jail and the defendants were told to appear in court on that date. If a case was not filed by the NTA date, then there would be no court information to provide to the defendant when they appeared. With the implementation of the ECR program, it appeared that the court was able to significantly increase the percentage of cases that were filed by the NTA date (Hickert, et al., 2011). Again, this is evidence of the court making an effort to expedite the filing of all cases, not just those in the ECR program. However, ECR cases were still found to have the fewest pre-disposition hearings compared to non-ECR and pre-ECR cases.
When examining the number of warrants issued by the court to defendants on pretrial release for failure to appear (FTA) or failure to comply to conditions of release (FTC), the ECR cases had a slightly lower percentage of cases with at least one FTA or FTC warrant issued at or prior to disposition when compared to non-ECR and pre-ECR groups (Butters, et al., 2014). This finding is what we would expect to find because ECR cases with defendants on pretrial release have shorter case processing periods and previous research has shown that the longer the amount of time spent on pretrial release, the more likely pretrial misconduct will occur (Cohen & Reaves, 2007).

In terms of the impact of the ECR program on the rates of dismissals, the results showed that ECR cases were less likely to have their primary charge or all charges dismissed compared to the pre-ECR and non-ECR cases (Hickert, et al., 2011). This finding could be evidence of the theory that programs that utilize differentiated case management methods might widen the net by prosecuting cases that would have normally been dismissed (Taxman & Elis, 1999). The researchers’ hypothesize that the lower dismissal rate is due to the prosecution having an offer for sentencing at the initial appearance for ECR cases (Butters, et al. 2014). However, this still raises concerns about the coercive power the prosecution can exercise in the ECR program, as defendants may feel accepting the early sentencing offer is in their best interest in order to avoid a harsher punishment later on.

In terms of the rates of charge reductions, the results did show that ECR cases were more likely to have their primary charge reduced compared to pre-ECR and non-ECR cases (Hickert, et al., 2011). However, the rates for count bargaining were similar for all three groups, as they were equally as likely to have subsequent charges dismissed. This finding could indicate that
defendants in the ECR program were rewarded for their participation in the ECR program, but primarily through charge bargaining as opposed to count bargaining.

In the second phase of the research study, the analysis included an examination of the sentencing outcomes for the ECR cases, non-ECR cases, and pre-ECR cases (Butters, Hickert, Worwood, Bradley, & Prince, 2014). For cases involving a misdemeanor drug or property offense, results showed that ECR cases were more likely to receive a sentence involving community service or restitution compared to non-ECR and pre-ECR cases. ECR cases were also less likely to be sentenced to probation compared to non-ECR and pre-ECR cases, but when they were sentenced to probation it was for a shorter length of time. For misdemeanor drug cases, the ECR cases were less likely to be sentenced to jail in comparison to non-ECR and pre-ECR cases and when ECR cases did receive a jail sentence it included a significantly shorter length of time (Butters, et al., 2014).

However, for misdemeanor property cases, the ECR cases were sentenced to jail at a similar rate as the non-ECR cases and pre-ECR cases, but the ECR cases still received a shorter jail sentence (Butters, et al., 2014). For misdemeanor property cases, the ECR cases were just as likely to receive credit for time served than non-ECR cases and pre-ECR cases, but for misdemeanor drug cases, the ECR cases were more likely to receive credit for time served than non-ECR cases and pre-ECR cases. However, for all misdemeanor offenses, the non-ECR and pre-ECR cases were more likely to have their entire jail sentence suspended compared to ECR cases (Butters, et al., 2014). Most of the results regarding the sentencing of misdemeanor offenses supports the theory that defendants in the ECR program received more lenient sentences compared to non-ECR cases and pre-ECR cases. While the study does stick to comparing cases
involving similar severity and types of offenses, the lack of matching across defendants’ criminal history makes this finding especially difficult to assess.

For cases involving third-degree drug felonies, ECR cases were just as likely to be sentenced to probation compared to non-ECR cases and pre-ECR cases, but the length of time on probation was shorter for ECR cases (Butters, et al., 2014). However, for cases involving third-degree property felonies, ECR cases were sentenced to probation at a lower rate but still received a shorter length of probation compared to non-ECR and pre-ECR cases. For cases involving third-degree drug felonies, ECR cases were sentenced to jail at a similar rate to non-ECR cases and pre-ECR cases, but the length of the jail sentences was significantly shorter (Butters, et al., 2014). For cases involving third-degree property felonies, ECR cases were sentenced to jail at a higher rate than non-ECR and pre-ECR cases, but still received a shorter sentence length. For all third-degree felonies, ECR cases were more likely to receive a sentence that included community service or fines.

Interestingly for third-degree drug felonies, the ECR cases and non-ECR cases were less likely to receive credit for time served compared to pre-ECR cases, however this could be due to the fact that the pretrial detention lengths post-ECR were significantly shorter than those during the pre-ECR period (Butters, et al., 2014). For cases involving third-degree drug felonies, ECR cases were sentenced to prison at a lower rate compared to non-ECR cases and pre-ECR cases, and the majority of the ECR cases that received prison sentences had their entire sentence suspended. For cases involving third-degree property felonies, the ECR cases were sentenced to prison at a lower rate, but the percentage of cases that had their entire sentence suspended was similar for all three groups. Again the majority of the results here demonstrate a more lenient
sentencing outcome for those ECR cases involving third-degree drug or property felonies, but the lack of control for criminal histories is still an issue.

Overall, the findings reported by the evaluations of the ECR program in Salt Lake County tend to support several of the theories about the ECR program. First, it definitely appears as though the implementation of the ECR program did significantly decrease the case disposition time for ECR cases. Second, the results confirmed that the use of ECR could reduce the amount of time pretrial detainees spend in jail and defendants spend on pretrial release, which could assist with reducing jail overcrowding and the issuance of warrants for pretrial misconduct. Third, it is possible that the defendants processed through the ECR program receive the benefits of an increased likelihood of charge bargaining and more lenient sentences.

However, without controlling for some case characteristics and criminal history it is difficult to fully understand these findings. Some results also signal reasoning for caution surrounding the use of tactics similar to this ECR program, including the increased likelihood for defendants who were women, white or, younger to have their cases processed through the ECR program, the decrease in the number of pre-disposition hearings, and the lower rate of dismissals among the ECR cases. These findings support the notion that fair and equal treatment are potentially being compromised by the ECR program and that such programs warrant further examination.

Such concerns surrounding the use of the ECR program were voiced in surveys of practitioners from various agencies working within the program in Salt Lake County (Hickert, et al., 2011). The results of the survey reiterated findings from previous studies of DCM programs that demonstrated the differences in opinions among courtroom workgroup members regarding the purpose and impact of such programs. For example, the majority of those surveyed viewed
the expeditious disposition of cases as the primary mission of the program and they entered the program with the expectation that it would speed up case processing time. Another general belief was that the program would lead to a better allocation of resources to the criminal justice system which would increase efficiency (Hickert, et al. 2011). Both of these findings are line with the stated goals of the program upon implementation. However, one judge describing the mission of the program said, “the primary mission of the ECR court appears to be an adjunct to the jail’s overcrowding release program. It does not dispense justice, it does not protect the public, nor does it foster any likely rehabilitation of the criminal defendant” (Hickert, et al., 2011). So while the program’s stated goals of expediting case processing and allocating resources more efficiently appeared to be in the minds of many respondents, there were still questions as to areas where the program may be falling short.

When discussing the impact of the program on the caseload of the court, some respondents believed that the program allowed for time and resources to be shifted to other cases and issues that needed attention (Hickert, et al., 2011). However, other respondents felt that their workloads had actually increased after the implementation of the ECR program, with one attorney remarking that they thought there was actually a higher percentage of cases that needed more time and attention after the implementation of the program. This perception that some cases now needed more time and attention could be a result of the program freeing up more time to handle the serious, complex cases. So while the less serious cases were using up less time, that time was then redirected to the handling of other serious cases. This could be evidence of a larger impact of the ECR program and other DCM-like programs in that the courts are not actually building up a repository of saved time and resources, but instead only creating a “vacuum” for other cases to fill. This outcome becomes concerning in those courts where the
workgroup was already stretched way beyond their capabilities and resources to begin with because instead of relieving some of the pressure on these workgroups, the program is actually just shifting the burden from one set of cases to another.

One of the biggest concerns about the ECR program was about the types of cases being handled within the program. Some respondents felt that the program was being used for inappropriate cases, such as those with serious crimes of repeat offenders (Hickert, et al., 2011). There was also debate over whether the ECR program should use incentives in order to increase defendant participation in the program. Some respondents had the initial expectation that defendants would receive a similar sentence to what they would receive in traditional court, in line with the “same justice sooner” tagline. For example, one probation officer felt that the plea negotiations used to achieve faster case processing times were creating “a misrepresentation of the criminal behavior” and that the punishments did not fit the actual behavior (Heckert, et al., 2011).

However, some attorneys believed that the program should be incentivized with favorable plea offers considering that the faster disposition times would benefit the court and district attorney’s office. For example, one attorney discussed that the district attorney’s office had originally told the defense bar “to expect favorable offers in order to encourage early resolution of cases…but most of the plea offers are very similar to what I see in other courts, and do not provide a strong incentive to resolve the case quickly” (Hickert, et al., 2011). In fact, the results of the survey showed that it was often the attorneys who raised concerns over the purpose and methods of the program. For example, one attorney remarked about the program that “the underlying problems that face these defendants are not being addressed…defendants in similarly situated circumstances with similar criminal histories are not treated similarly” (Hickert, et al.,
2011). In addition, some respondents expressed concern over whether those defendants processed through the ECR program might actually be punished harsher for violating their probation post-disposition. One attorney remarked, “They seem to be punished more severely because prosecutors and judges feel as if they were given a ‘gift’ to begin with” (Hickert, et al., 2011). This suggestion also raises concerns over the fair treatment of defendants and the potential for net-widening as a result of the program.

When discussing whether the ECR program should be continued, the opinions again differed across the party being surveyed (Hickert, et al., 2011). Those working in the district attorney’s office and sheriff’s office were very supportive of the ECR program and believed it should be continued, or even expanded in some cases. This kind of support from law enforcement and the prosecution is common among assessments of other similar programs sense the goals of the program are often in line with their interests. However, those surveyed from the judiciary were more evenly split as to whether the ECR program should be continued or expanded and less than half of those surveyed from the probation and parole department were supportive of the continuation or expansion of the program.

Again, these comments from practitioners working with the ECR program demonstrate the differing expectations for the program and potential sources of conflict over certain aspects of the program. For example, there are several concerns raised by respondents related to the ability of the program to properly dispose of cases. Findings from the evaluation of the ECR program in Salt Lake County demonstrate the need for an assessment of the ECR program currently implemented in Spokane County, Washington since it has yet to be subject to evaluation.
Spokane County, Washington

In recent years, Spokane County, Washington has been experiencing a multitude of issues with their administration of justice. One of these issues has been a recurring debate over the construction of a new county jail. In 2007, the county hired Integrus Architecture to assist with the planning of new correctional facilities for the county (David Bennett Consulting & Donna Lattin Consulting, 2008, February 14). In addition, David Bennett Consulting and Donna Lattin Consulting worked in conjunction to assess the county’s entire criminal justice system in order to plan for the future of the county. The assessment of the criminal justice system identified several major problems in criminal case processing that were impacting the jail population, including a fragmented adjudication process, long delays for case filings, high failure to appear rates, a lack of risk assessment for the pretrial release decision, a large caseload for drug offenses, and a heavy reliance on jail sentences (David Bennett Consulting & Donna Lattin Consulting, 2008, February 14).

In order to address some of the problems specific to criminal case processing that were impacting the jail population, there were several major recommendations suggested for the county. First, it was suggested that the county reduce the overall length of stay in jail (David Bennett Consulting & Donna Lattin Consulting, 2008, February 14). Second, it was suggested that the county increase the efficiency of the court system by consolidating the services of the prosecution and public defender. Last, it was suggested that the prosecutor’s office institute strict timelines for law enforcement to submit their reports and a 72 hour deadline for the filing of charges by the prosecutor’s office. In order to do accomplish these goals, it was recommended that the county implement an Early Case Resolution program to speed up case disposition times.
The recommendations were based on an assessment of the criminal case processing in the county at the time. This assessment involved analyzing criminal case processing for a sample of defendants processed through Spokane County during 2007 (David Bennett Consulting & Donna Lattin Consulting, 2008, February 14). The results of the analysis showed issues with the timeline of case processing and the consequences it was having on the jail population. First, the consultants found that the county experienced unusually high rates of pretrial misconduct. For example, the pretrial re-arrest rate was 29% for felony cases and the failure to appear rate was 23% for the district court and 31% for the superior court. These rates are much higher than the national average for pretrial misconduct (Cohen & Reaves, 2007).

It was then suggested that these high rates of pretrial misconduct were related to the delays in case filing and case disposition (David Bennett Consulting & Donna Lattin Consulting, 2008, February 14). For example, the average amount of days from booking to the filing of an information in Superior Court was 70 days for released defendants. In addition, the average case disposition time for defendants released prior to trial was an average of 219 days. Previous research has showed that the longer defendants are released prior to trial, the more likely they are to engage in pretrial misconduct and it appears that the lengthy case disposition times may have contributed to this misconduct (Cohen & Reaves, 2007). For example, the assessment found that approximately 55% of failure to appear occurred after four months or more of release (David Bennett Consulting & Donna Lattin Consulting, 2008, February 14). The results of the assessment showed similar delays for those defendants detained prior to trial. For example, the time from booking to the filing of an information in Superior Court was 57 days for detained defendants and the average case disposition time was 135 days.
The plan suggested that the implementation of the Early Case Resolution program would “result in increased system efficiency and help reduce jail overcrowding” (David Bennett Consulting & Donna Lattin Consulting, 2008, February 14). Specifically, the ECR program was said to “relieve crowded dockets, reduce case processing times, reduce number of pretrial defendants, reduce average length of stay, and reduce jail impact.” In addition, it was expected that by expediting the processing for low-level offenders that more court and correctional resources could be diverted to more serious offenders. In order to accomplish these goals, it was stated that the ECR program would implement several of the characteristics and methods of case management, including the early screening of cases, recommend plea negotiations start early in the process, assign experienced prosecutors and public defenders to the courtroom workgroup in charge of the ECR program, implement new policies encouraging the quick resolution of certain cases, and increase the sharing of information (David Bennett Consulting & Donna Lattin Consulting, 2008, February 14).

Spokane County Superior Court followed through with the implementation of the ECR program in June 2009. The ECR program involves one court docket that processes selected Class B and C Felonies and a few Misdemeanors and Gross Misdemeanors through the expedited case disposition (Johnson & Schaffer, 2012, October 21). The courtroom workgroup tasked with handling ECR-eligible cases includes one judge and a group of experienced prosecutors and public defenders. This workgroup then handles ECR cases starting with a review of daily arrests, including initial appearances, pretrial release decisions, plea negotiations, and the ultimate case disposition. The goal of the ECR workgroup is to expedite the resolution of these selected cases using plea negotiations and guilty pleas that occur within 30 days of arrest (Johnson & Schaffer, 2012, October 21).
The ECR program implemented in Spokane County Superior Court utilizes several of the methods of differentiated case management, including establishing criteria for case-tracking, assigning an experienced courtroom workgroup to case-tracking and disposition, and the early and continuous control of eligible cases. These are also factors found to be part of successful case management and related to impacting the pace of litigation. However as discussed throughout this chapter, there are aspects of differentiated case management and Early Case Resolution programs that raise concerns about the quality of justice and previous research has shown that these concerns are not unfounded. Furthermore, due to the established influence of the local legal culture it is important to study the unique impact of different programs.

**Understanding the Impact of Early Case Resolution**

The current study will be the first evaluation of the impact of the ECR program, specifically examining the program’s impact on the pace of litigation and the quality of justice. The Bureau of Justice Assistance (BJA) Trial Court Performance Standards (1997) established five performance areas for trial courts: (1) Access to Justice; (2) Expedition and Timeliness; (3) Equality, Fairness, & Integrity; (4) Independence & Accountability; (5) Public Trust & Confidence. The current study will utilize two of these performance areas: (2) Expedition and Timeliness and (3) Equality, Fairness, & Integrity.

**Pace of Litigation: Expedition and Timeliness**

In terms of the performance area for expedition and timeliness, Standard 2.1 describes the following standard for case processing: “The trial court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload” (Bureau of Justice Assistance, 1997). As previously discussed, the timely case processing is important for all members of the courtroom workgroup, in addition to crime
victims, defendants, and the general public. Since one of the main goals of the ECR program is to speed up the pace of litigation it will be important to assess whether the implementation of the program actually impacted case processing and to what degree. Case processing will be assessed using one of the performance measures established by the National Center for State Courts (NCSC) for their “CourTools” performance measures for trial courts, “time to disposition” (NCSC, 2005). The time to disposition for criminal cases will be measured by calculating the average time from the case filing to the case disposition for all cases, the measure used by the NCSC and well-established in previous research (Hickert, et al., 2011; Kim, 2013; Taxman & Elis, 1999).

Quality of Justice: Equality, Fairness, & Integrity

While abiding by the standards for expedition and timeliness are very important, research has also shown that the public considers the fairness of the court process the most important factor in determining whether to put trust in the court system (Casper, Tyler, & Fisher 1988; Tyler, 1990; Warren, 2000). However as Ostrom & Hanson (1999) argued, it is very difficult to describe and measure what quality justice looks like in the context of criminal case processing, which explains why so few studies of case management programs have not assessed the quality of justice. But there is a general consensus that the criminal case process should provide fair treatment, due process, and equal protection to defendants.

Specifically, the Trial Court Performance Standards established that Equality, Fairness, and Integrity are also important measures for trial court performance (BJA, 1997). Standard 3.1 recognizes that for a fair and reliable judicial process: “Trial court procedures should faithfully adhere to relevant laws, procedural rules, and established policies” (BJA, 1997). Standard 3.3 standardizes that court decisions and actions in trial courts should: “Give individual attention to
cases, deciding them without undue disparity among like cases and upon legally relevant factors.” However, several aspects of the ECR program raise concerns about whether these standards are still being met, including limiting the use of the adversarial process, the requirement of a guilty plea for program participation, unequal treatment for similarly-situated defendants, and the expansion of prosecutorial and judicial discretion.

**Limits on the Adversarial Process**

An extensive body of research has confirmed the importance of procedural justice to overall satisfaction with the criminal justice system (Tyler, 1990). Procedural justice within the court system has established fair treatment as the degree to which a person’s perspective or point of view was listened to and considered for an individual case (Casper, Tyler, & Fisher, 1988). In addition, Thibaut & Walker (1975) hypothesized that an adversarial process was more likely to result in a sense of procedural justice compared to a more inquisitorial process. However, achieving these standards of fairness could be an issue for the ECR program due to the shortened timeline of the case processing.

Resnik (1982) expressed concern about the expanded role of judges in all case management programs, arguing that it could result in them overlooking the quality of justice being dispensed by the court. For example, a traditional adversarial system allows for the parties to direct the course of a case, leaving the judge to act as a neutral and impartial referee. However, case management programs such as the ECR program require a much more involved role for the judge than the traditional adversarial system foresaw. Interviews with defense attorneys who have participated in ECR programs and other similar programs demonstrate their apprehension about relinquishing control over the case processing timeline to the judge as there
is often a strategy and benefit to delaying cases for their clients (Hickert, et al., 2011; Kelly & Levy, 2002).

Furthermore, Resnik (1982) argued that it was possible that with judges focusing on factors such as the pace of litigation, pending caseloads, and case backlogs that a defendant’s rights will be overlooked. For example, attorneys who have participated in ECR programs often complain that the shortened timeline limits their ability to thoroughly investigate the case and fully prepare for the case with the assistance of their client (Carroll, et al., 2000). Some attorneys even reported participating in plea negotiations and making recommendations to their clients about guilty pleas before having access to the full discovery of evidence. In addition, the shortened timeline in the ECR program might be partly achieved through having fewer pretrial hearings and motions (Hickert, et al., 2011). There is also evidence that ECR programs and other similar types of programs result in fewer jury trials (Carroll, et al., 2000). This result is concerning considering that the right to a jury trial is one of the most important aspects of the adversarial process.

**Guilty Pleas as the Preferred Mode of Disposition**

Another potential consequence of speeding up the pace of litigation is in the increasing use of plea negotiations/bargaining to achieve quicker case dispositions (Taxman & Elis, 1999). In fact, the ECR program in Spokane County Superior Court actively pursues such a result, as it exclusively uses guilty pleas as the mode of disposition. In fact, defendants with cases being processed within the ECR program who do not agree to plead guilty have their cases “re-tracked” to the traditional court process. The requirement of the guilty plea becomes more complicated when considering that participation in the program does provide benefits to the
defendant, such as speeding up their disposition rather than remaining in limbo. This benefit would likely be seen as especially important by those defendants detained prior to trial.

While guilty pleas are the norm for disposition in most trial courts, it is generally agreed that defendants are often in a less than advantageous position during plea negotiations. In the U.S., plea bargaining has been defined as “the process by which the defendant in a criminal case relinquishes the right to go to trial in exchange for a reduction in charge and/or sentence” (McCoy, 1993). Therefore, there is an expected benefit for the defendant in exchange for agreeing to forego a trial and plead guilty, but then there is also a harsher punishment for those who do not agree to plead guilty (Brerton & Casper, 1981; Mackenzie, 2007; McCoy, 2005). This so-called “trial penalty” has often raised concerns about the coercive nature of plea bargaining and creating a program that specifically provides faster disposition times and possibly more lenient sentences for those defendants who agree to forego their right to a trial might be even more coercive than the normal plea bargaining process.

**Unequal Treatment for Similarly-Situated Defendants**

In addition to the importance of procedural justice, Casper, Tyler, and Fisher (1988) argued that defendants also assess the fairness of the process based on a concept known as “distributive justice.” Distributive justice is a theory that defendants will likely compare their case outcomes to other defendants they perceive as being similar to themselves. Furthermore, this assessment of distributive justice is linked to overall satisfaction with the court process. Defendants may also use their own previous experiences in the court process as a benchmark for comparison to assess distributive justice (Casper, et al., 1988). Therefore, if defendants’ case
processing and sentencing outcomes greatly differ from previous experiences this could also contribute to their perception of whether or not the court process was fair.

The degree to which the ECR program provides for similar treatment across defendants becomes a concern due to the exclusive use of the guilty plea in the ECR program. While the program comes with the tagline “same justice sooner,” when guilty pleas are traditionally used in trial courts, it is often expected that the defendant will receive the benefit of a more lenient sentence in exchange for the guilty plea. In fact, some attorneys working within another ECR program discussed that a more favorable outcome for their defendant was the incentive to participate in the program (Hickert, et al., 2011). However, defendants will only receive this benefit if they are eligible to participate in the ECR program and then choose to forego a trial and plead guilty. If defendants processed through ECR receive such consideration, then this may lead to sentencing disparity with similarly-situated defendants processed through the traditional court process. Furthermore, those defendants who choose not to accept a guilty plea in the ECR program might actually suffer a harsher punishment than similarly-situated defendants who choose to participate in the ECR program as such a “trial penalty” is well documented by researchers (McCoy, 2005).

In order to address whether defendants who participate in the ECR program are subject to different treatment as compared to defendants who are subject to the traditional court process, the current study will examine how the ECR program uses plea bargaining. This will include testing whether the ECR program utilizes a consensus model of plea bargaining or a concessions model of plea bargaining (Nardulli, Flemming, & Eisenstein, 1985). The consensus model of plea bargaining argues that sentences resulting from plea negotiations are derived from a mutually agreed upon “going rate” established by the courtroom workgroup. If the ECR
program is simply fast-tracking a subset of cases and providing the “same justice sooner” one would expect to find the “going rate” established in the traditional court process to be the same “going rate” in the ECR program. In addition, one would expect to find similar rates of charge bargaining and count bargaining used in the plea bargaining process in both traditional court and the ECR program.

However, the concessions model of plea bargaining argues that sentences resulting from plea negotiations are derived from a “give-and-take” exchange between the prosecution and defense (Nardulli, Flemming, & Eisenstein, 1985). This means the prosecution incentivizes pleading guilty by providing the defendant with a more lenient sentence as a result of plea bargaining. For example, in the federal fast-track program, the PROTECT Act of 2003 authorized federal prosecutors to utilize downward departures as an incentive for defendants to participate in the program (Kim, 2013). Under this model, cases disposed of through ECR would be expected to result in more instances in charge bargaining and count bargaining compared to cases processed through traditional court due to the prosecution incentivizing participation in the ECR program. In addition, it would be expected that defendants in the ECR program would receive sentences that are more lenient than those sentences received by similarly-situated defendants processed in the traditional court.

**Expanded Prosecutorial Discretion and the Influence of Extralegal Characteristics**

In addition to the concerns surrounding equal treatment during the plea negotiation process and in the sentencing outcomes of that process, the ECR program could also increase the likelihood that case processing and outcomes will be impacted by extra-legal characteristics. The liberation hypothesis was first developed by Kalven, Zeisel, Callahan, & Ennis (1969) in their landmark study on jury decision-making and then later applied to sentencing outcomes by
Spohn & Cederblom (1991). The liberation hypothesis argues that case processing and outcomes in the most serious cases often leave less room for the influence of discretion and therefore legally relevant factors, such as the seriousness of the offense and the defendant’s criminal history, will have more of an impact on cases than legally irrelevant factors, such as the defendant’s race or gender.

However in less serious cases, such as those handled by the ECR program, the liberation hypothesis argues that the appropriate sentence cannot always be clearly determined by the influence of legally relevant factors and leaves more room for discretion (Spohn & Cederblom, 1991). As a result of this broader discretion in case processing and outcomes, the influence of legally irrelevant factors could be greater. Since the ECR program makes a point of dealing with such cases involving less serious offenses, it is possible that legally irrelevant factors such as the defendants’ race, gender, and age will have more of an influence on decisions regarding the plea negotiation process and sentence outcomes.

This concern is exacerbated by the fact that the ECR program provides almost unlimited discretion to the courtroom workgroup, specifically the prosecution, in the decision for a case to be disposed of through ECR and the process and outcome of the plea negotiations that occur within the program. Prosecutors already exercise a great deal of discretion over criminal case processing, including the charging decision, pretrial release decisions, plea negotiations, and sentencing recommendations (Albonetti, 1987; Heumann, 1978; Jacoby, 1997). Previous research has also shown that prosecutorial can be influenced by both legally relevant and legally irrelevant factors (Ball, 2006; Frohman, 1997). For example, Forst & Bushway (2010) argue that discretionary decisions are often based on practical considerations, such as the demands on the time and resources of the criminal justice system. The ECR program would be an example of the
influential nature of the demands on court time and resources. Focal concerns theory also hypothesized that “practical constraints and consequences” would influence judicial decision-making, in addition to the defendant’s blameworthiness and culpability and the desire to protect the community (Steffensmeier, Ulmer, & Kramer, 1998).

Spohn, Beichner, & Davis-Frenzel (2001) applied the focal concerns theory to prosecutors, hypothesizing that similar concerns will influence prosecutorial decision-making. They argue that prosecutors’ consideration of the seriousness of the offense, degree of harm to the victim, the culpability of the defendant, and the strength of the evidence will provide an assessment of the blameworthiness and culpability of the defendant and the need to protect the community. They also argue that the practical concern of disposing of cases in a timely manner in order to ensure that court time and resources are directed towards those most serious cases will influence prosecutors’ decisions (Spohn, et al., 2001). However, under certain circumstances it is possible that prosecutors are limited in their ability to use legally relevant factors such as those proposed by the focal concerns theory. While the criteria established by the courtroom workgroup for entry into the ECR program definitely utilizes these concerns, whether their influence remains when examining the case processing and outcomes of cases once they have entered the program is unknown. In fact, once these cases are admitted into the ECR program, these factors could become “neutralized.”

For example, the most consistent legally relevant factor to influence decisions in the court process is the seriousness of the offense (Steffensmeier, et al., 1998). However, within the ECR program, the seriousness of the offenses are essentially controlled for by the program criteria for entry. The ECR program only admits cases that involve certain Class B and C Felonies. By its own admittance, cases admitted into the ECR program are those that are considered less serious
by the courtroom workgroup. These could be the types of less serious cases that allow for more
discretionary decisions to take place as opposed to cases dealing with more serious offenses.

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community. These could be the types of less serious cases that allow for more
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shortened timeline prevents the ability to thoroughly investigate the evidence in the case (Carroll, et al., 2000). This raises concerns about whether or not the courtroom workgroup is able to make an accurate assessment of such important factors like the strength of the evidence in the case prior to the plea negotiations or even case disposition.

Davis (1969) argues that discretionary decisions need to be confined, structured, and checked in order to refrain from becoming problematic. Furthermore, he argues that when broad discretion is exercised with little oversight, then scrutiny of those decisions should be even stricter. However, within the ECR program discretion is expanded and the avenues for accountability are further limited. Such circumstances should produce serious concerns about the ability of program to ensure fair treatment for defendants who choose to participate in the program.

Summary

Since the development of case management and the widespread acceptance of its use as a successful tool for court systems, courts across the U.S. have implemented a variety of programs using the method, including differentiated case management, the federal fast-track program, and the Early Case Resolution program. Evaluations of such programs continue to find results that the programs provide many benefits to the court system, including shorter case disposition times and shorter length of stays for pretrial detainees. However, previous evaluations have mainly focused on examining the impact of such reforms on the pace of litigation and rarely the impact on the quality of justice. Therefore the current study will take preliminary steps to increasing the understanding of the relationship between the pace of litigation and the quality of justice.

Such an evaluation is especially important with the implementation of the Early Case Resolution program in several counties in the western United States. While preliminary
evaluations of the ECR program have showed that it can impact the pace of litigation, several findings and experiences in the program raise concerns about whether the program is potentially compromising the adversarial process, unduly coercing defendants into accepting guilty pleas, creating unequal treatment across similarly-situated defendants, and allowing for the influence of legally irrelevant factors on discretionary decision-making. With the research on the impact of the ECR program just beginning, many of the questions surrounding its impact on the pace of litigation and the quality of justice have yet to be answered. Furthermore due to the uniqueness of the local legal culture and its effect on the court process, it is important to study the outcomes of the unique version of the ECR program implemented in Spokane County Superior Court, which until now has gone without evaluation.
CHAPTER FOUR: Methodology

Introduction

The Trial Court Performance Standards established five performance areas for trial courts: (1) Access to Justice; (2) Expedition and Timeliness; (3) Equality, Fairness, & Integrity; (4) Independence & Accountability; (5) Public Trust & Confidence (BJA, 1997). The current study focuses on two of the Trial Court Performance Standards: (2) Expedition and Timeliness and (3) Equality, Fairness, & Integrity. In terms of the performance area for expedition and timeliness, Standard 2.1 describes the following standard for case processing: “The trial court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload” (BJA, 1997). As previously discussed, the timely case processing is important for all members of the courtroom workgroup, in addition to crime victims, defendants, and the general public. Since one of the main goals of the ECR program is to speed up the pace of litigation it will be important to assess whether the implementation of the program actually impacted case processing and to what degree.

While abiding by the standards for expedition and timeliness are very important, research has also shown that the public considers the fairness of the court process the most important factor in determining whether to put trust in the court system (Casper, Tyler, & Fisher 1988; Tyler, 1990; Warren, 2000). However as Ostrom & Hanson (1999) argued, it is very difficult to describe and measure what quality justice looks like in the context of criminal case processing, which explains why so few studies of case management programs have not assessed the quality of justice. But there is a general consensus that the criminal case process should provide fair treatment, due process, and equal protection to defendants.
Specifically, the Trial Court Performance Standards established that Equality, Fairness, and Integrity are also important measures for trial court performance (BJA, 1997). Standard 3.1 recognizes that for a fair and reliable judicial process: “Trial court procedures should faithfully adhere to relevant laws, procedural rules, and established policies” (BJA, 1997). Standard 3.3 standardizes that court decisions and actions in trial courts should: “Give individual attention to cases, deciding them without undue disparity among like cases and upon legally relevant factors.” However, several aspects of the ECR program raise concerns about whether these standards are still being met, including limiting the use of the adversarial process, the requirement of a guilty plea for program participation, unequal treatment for similarly-situated defendants, and the expansion of prosecutorial and judicial discretion.

**Research Questions**

In order to examine the performance of the ECR program, this study focused on a comparison of case processing and case outcomes for cases disposed of through the ECR program (treatment group), cases disposed prior to the implementation of the ECR program (historical comparison group), and cases disposed during a concurrent period of time in the traditional court process (comparison group). The following research questions were examined:

1. Do ECR cases differ from the traditional court cases in case disposition time?
2. Do ECR cases differ from the traditional court cases in pretrial misconduct?
3. Do ECR cases differ from the traditional court cases in the rate of dismissal?
4. Do ECR cases differ from the traditional court cases in the rate of conviction?
5. Do ECR cases differ from the traditional court cases in the rate of plea bargaining?
6. Do ECR cases differ from the traditional court cases in the rate of types of sentences?
7. Do ECR cases differ from the traditional court cases in the rate of credit for time served?
8. Do ECR cases differ from the traditional court cases in length of incarceration?

**Research Procedure**

For this research, statistical analysis of criminal court case data from the Spokane County Superior Court was conducted to determine the impact of the Early Case Resolution program. By using propensity score matching to create a comparable sample of ECR cases and non-ECR cases, the study was able to examine the differences in case processing and outcomes when comparing the ECR program and the traditional courtroom process.

The data that was utilized included criminal cases in which a defendant was charged and the case disposed between January 1, 2006 and December 31, 2012, with the exception of the 2009 calendar year when the ECR program was being piloted. Data on these criminal court cases was provided from the internal records of the Spokane County Prosecutor’s Office and data collected on cases in Spokane County Superior Court by the Washington State Administrative Office of the Courts.

**Sample Selection**

The current study used a quantitative design to examine the impact of the Early Case Resolution program in Spokane County Superior Court. Spokane County, Washington is located in eastern Washington State, near the border of Idaho. The city of Spokane and surrounding area is the largest city on the eastern side of the state, and second largest city in the state after Seattle. Spokane County Courts serve a population of approximately 471,000, making it the fourth largest county in the state. Washington State utilizes a two-tier system for their court structure, with courts of limited jurisdiction known as district courts and courts of general jurisdiction known as superior courts. The sampling frame only included criminal cases, since the ECR program focuses on expediting criminal case processing and not civil case processing.
The study utilized two sampling frames, one prior to the implementation of the ECR program and one after the implementation of the ECR program. The prior to ECR implementation sampling frame was limited to cases with a filing and disposition date between January 1, 2006 and December 31, 2008. These cases will make up the historical comparison group. The post-ECR implementation sampling frame was limited to cases with a filing and disposition date between January 1, 2010 and December 31, 2012. These cases will make up the ECR cases and the second comparison group of cases processed through traditional court concurrent to the ECR program. By using these two comparison groups, the current study aims to provide a more complete picture of the impact of the ECR program as compared to the outcomes of the court process without the program and the outcomes of the court process for those cases not selected for the ECR program.

Propensity Score Matching

In order to examine the research questions, a comparable sample of ECR cases and non-ECR cases was created. Since the selection of cases for the ECR program is not randomized, a quasi-experimental sampling method known as propensity score matching was used to create these comparable samples. Propensity score matching methods are often used to estimate the impact of a treatment, policy, or program on treatment and non-treatment subjects (Rosenbaum & Rubin, 1985). Since treatment selection within the criminal justice system is not often randomized, propensity score matching allows researchers to overcome the selection bias that results from this lack of random assignment among cases. As cases are selected for participation in ECR based on selected criteria, as opposed to randomly selected, it was likely that some case characteristics had a greater likelihood of being tracked into ECR. Therefore, it is important to
control for these case characteristics as well as other factors that could be related to the outcome measures being examined.

The first step in creating the comparable samples was to limit cases selected to only those cases that involved a primary offense that was eligible for the ECR program. The ECR program only allows for the inclusion of certain misdemeanor and felony offenses to be processed through the program (see Appendix A for the listing of the ECR eligible offenses). Therefore, the sampling frames were limited to those cases involving a primary charge that qualified as an offense eligible for ECR. Kim (2013) utilized a similar sampling method for the evaluation of the federal fast-track program.

Once the sampling frames were limited to include these cases (n = 8,370 cases), the current study utilized a nearest-neighbor matching strategy to create comparable samples of ECR cases and the two comparison groups of non-ECR cases. The process began by determining whether selected case and defendant characteristics were significantly related to whether or not a case was selected for the ECR program. These predictor variables were selected based on their use by the ECR workgroup in selecting cases for the ECR program and their role in explaining criminal case processing as demonstrated in previous studies that investigated similar case outcomes. Each of these variables is discussed in detail below and included in Table 1.

After removing non-qualifying measures using the regression, the predicted probabilities of treatment were then saved as propensity scores, or the probability of treatment (inclusion in ECR) conditional on these factors. Then cases in the comparison group were matched to cases in the treatment group by selecting cases with the same or similar propensity score using a caliper of 0.01. Unmatched case and those exceeding the caliper parameters were then removed from
the sample. Once the comparison groups were created, the hypotheses could be examined. The outcome measures of interest for the research design are discussed in detail below.

Measures

Seriousness of the Primary Offense

One of the factors consistently found to be related to discretionary decisions about criminal case processing is the seriousness of the offense (Albonetti, 1987; Ball, 2006; Eisenstein & Jacob, 1977; Freiburger & Hilinski, 2010; Kim, 2013; Mather, 1979; Steffensmeier, et al., 1998). This was a factor that is utilized by the ECR workgroup to determine whether a case would be selected for the ECR program or processed through traditional court. For the study’s designated time frame, the criteria for ECR inclusion required the primary offense to consist of specific Class B Felonies, Class C Felonies, Misdemeanors, and Gross Misdemeanors. In addition, the seriousness of the offense has been found to influence case disposition time (Church, et al., 1978; Hickert, et al., 2011; Neubauer & Ryan, 1982; Ostrom & Hanson, 1999), the defendant’s decision to plead guilty (Meyer & Gray, 1997), the prosecutor’s decision to reduce charges (McDonald, 1985; Meyer & Gray, 1997), and sentencing outcomes (Albonetti, 1991; Steffensmeier, et al., 1998). Therefore, it was important to account for the influence of the seriousness of the primary offense when assessing the possible differences in case processing and outcomes for ECR cases and non-ECR cases.

All cases in the sample were coded for the seriousness of the primary offense based on the Washington State Adult Sentencing Guidelines Manual (Caseload Forecast Council, 2012). Since this measurement is based on the state’s own classification of the seriousness of these crimes, it provides a good indicator of the court’s assessment of the seriousness of the offense. In addition, similar studies have measured offense seriousness using this classification (Kim,
2013; Shermer & Johnson, 2010). The primary offense was used since it is the most serious of the offenses charged in each case.

**Table 1: Independent Variables**

<table>
<thead>
<tr>
<th>Variable</th>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seriousness of Primary Offense</td>
<td>1</td>
<td>Minimum of 0 days</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>Minimum of 1 months</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>Minimum of 3 months</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>Minimum of 12 months</td>
</tr>
<tr>
<td>Offense Type</td>
<td>1</td>
<td>Property Offense</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>Drug Offense</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>Other Offense, including Traffic, DUI, Escape, Sex, or Violent Offenses</td>
</tr>
<tr>
<td>Multiple Charges</td>
<td>0</td>
<td>One Charge</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>Two or More Charges</td>
</tr>
<tr>
<td>Co-Defendants</td>
<td>0</td>
<td>One Defendant</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>Two or More Defendants</td>
</tr>
<tr>
<td>Detained Pretrial</td>
<td>0</td>
<td>Not Detained Prior to Trial</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>Detained Prior to Trial</td>
</tr>
<tr>
<td>Number of Continuances</td>
<td></td>
<td>Range = 1 to 17</td>
</tr>
<tr>
<td>Gender</td>
<td>0</td>
<td>Female</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>Male</td>
</tr>
<tr>
<td>Race</td>
<td>0</td>
<td>Nonwhite</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>White</td>
</tr>
<tr>
<td>Age</td>
<td></td>
<td>Range = 17 to 81</td>
</tr>
</tbody>
</table>

Each offense eligible for the ECR program was coded for a seriousness level based on the minimum sentencing length possible according to the sentencing guidelines (1 = minimum of zero days; 2 = minimum of one month; 3 = minimum of three months; 4 = minimum of twelve months).
Offense Type of Primary Charge

The offense type of the primary charge is another factor found to be related to discretionary decision-making during criminal case processing (Albonetti, 1987; Ball, 2006). Research has also shown that the offense type can have an impact on case processing time, with some offense types taking longer for case disposition compared to other types of offenses (Goerdt, et al., 1989; Goerdt, et al., 1991). Therefore, it was important to account for the influence of the offense type of the primary charge when assessing the possible differences in case processing and outcomes for ECR cases and non-ECR cases. Offenses were classified as either a property offense, drug offense, or other offense, which included traffic/DUI, escape, sex, or personal offenses (1 = property offense; 2 = drug offense; 3 = other offense). The classifications for offense type were similar to those used for other studies (Butters, et al., 2014; Hickert, et al., 2011).

Case Complexity – Presence of Multiple Charges, Presence of Co-defendants, & Number of Continuances

Case complexity has been consistently identified as an important factor related to criminal case processing (Neubauer & Ryan, 1982) and the specific use of differentiated case management (Cooper, et al., 1993; Steelman, 2000). Therefore, it is likely that case complexity will be an influential factor for the ECR workgroup when deciding whether to process a case through the ECR program and therefore associated with the ECR program. Research has also shown that case disposition time increases as the number of charges increases (Hausner & Seidel, 1979; Neubauer & Ryan, 1982) and instances of plea bargaining are impacted by the number of charges in the case (Ball, 2006). The number of pretrial hearings and number of
continuances have also been found to be an influence on case disposition time and can also provide insight into the ability of the defendant to have their case heard before the court (Banfield & Anderson, 1968; Neubauer & Ryan, 1982). Case complexity was measured in three ways: the presence of multiple charges, the presence of co-defendants, and the number of continuances. These measures have been used by previous studies to assess case complexity (Banfield & Anderson, 1968; Neubauer & Ryan, 1982).

Cases with the presence of multiple charges may be viewed as more complex because they might require multiple cases to be condensed. This could also complicate pretrial procedures and plea negotiations. Therefore, it is possible that the presence of multiple charges will have an impact on the outcomes (Only One Charge = 0; Two or More Charges = 1). The presence of co-defendants may result in similar issues as it could complicate the assignment of counsel and the plea bargaining process (Wice, 1978). Therefore, it is possible that the presence of co-defendants will have an impact on the outcomes (Only One Defendant = 0; Two or More Defendants = 1). The number of continuances is another factor that can complicate case processing and draw out case disposition time (Banfield & Anderson, 1968). Since a reduction in the number of continuances can also impact the outcomes, the number of continuances was included as a continuous variable.

*Pretrial Custody Status*

Since one of the main goals of the ECR program is to reduce jail overcrowding, it is likely that the pretrial custody status of the defendant bears some importance on the decision of whether to select a case for the program. For example, defendants who are detained prior to trial make up a significant portion of a jail’s population and therefore there is an added benefit to expediting these cases in order to free up space in the jail (American Bar Association, 2006;
Davis, Applegate, Otto, Surette, & McCarthy, 2004; Taxman & Elis, 1999). It is also an important decision point to examine due to the broad discretion provided to judges in making the decision and the lack of scrutiny the decision is subject to (Freiburger & Hilinski, 2010).

The pretrial custody status of the defendant has also been found to be an important influence on several decision points in criminal case processing, including case disposition time (Banfield & Anderson, 1968; Casper, 1972; Hickert, et al., 2011; Nardulli, et al., 1985; Neubauer & Ryan, 1982; Ostrom & Hanson, 1999) and sentencing outcomes (Demuth, 2003; Freiburger & Hilinski, 2010; Spohn & Beichner, 2000; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2006). Therefore, the pretrial custody status of the defendant was included (Out of Custody = 0; In Custody = 1).

**Gender**

While legally relevant factors have often been found to be the most important factors influencing criminal case processing, studies have also found evidence that legally irrelevant factors or extra-legal factors are also related to criminal case processing (Steffensmeier, et al., 1998). Again, the Focal Concerns Theory discusses the perceptions of defendant’s blameworthiness and risk to the community as being influential on decision-making. While such perceptions can be based on legally relevant factors such as the seriousness of the offense and criminal history, decisions can also rely on a “perceptual shorthand” when there is a lack of information or high degree of uncertainty associated with making a decision (Steffensmeier, et al., 1998). This perceptual shorthand can be associated with extra-legal variables such as a defendant’s gender, age, and race.

For example, there is consistent research showing that female defendants are treated more leniently than male defendants. Research has shown that female defendants were more likely to
be released (Daly, 1987; Demuth & Steffensmeier, 2004; Freiburger & Hilinski, 2010; Kruttschnitt & Green, 1984; Spohn, Gruhl, & Welch, 1987), more likely to receive a non-financial release (Nagel, 1983), and more likely to be assigned bail amounts (Kruttschnitt, 1984) when compared to male defendants. The defendant’s gender has all been found to be related to case outcomes. For example, the defendant’s gender has been found to influence the defendant’s decision to plead guilty (Figueira-McDonough, 1985; Johnson, 2003), the prosecutor’s decision to reduce charges (Albonetti, 1992; Farnworth & Teske, 1995), and sentencing outcomes (Steffensmeier, et al., 1998). Therefore, the current study utilized a measure of the defendants’ gender (Female = 0; Male = 1).

Age

Similar to the defendant’s gender, the Focal Concerns Theory hypothesizes that a defendant’s age could also be an influential factor on decision-making during criminal case processing (Steffensmeier, et al., 1998). For example, research has shown that younger defendants were more likely to receive pretrial release compared to older defendants (Freiburger & Hilinski, 2010). Kim (2013) also found that younger defendants were more likely to be chosen for the federal fast-track program compared to older defendants. The defendant’s age has also been found to influence the defendant’s decision to plead guilty (Kellough & Wortley, 2002; LaFree, 1985), the prosecutor’s decision to reduce charges (Albonetti, 1992; Farnworth & Teske, 1995), and sentencing outcomes (Steffensmeier, et al., 1998). Therefore, the current study included age as a continuous variable.

Race

Similar to gender and age, the Focal Concerns Theory hypothesizes that a defendant’s race could be been associated with certain decisions in criminal case processing (Steffensmeier,
et al., 1998). For example, studies have shown that a defendant’s race was associated with whether or not the defendant was released prior to trial, with black defendants being less likely to be released prior to trial compared to white defendants (Demuth, 2003; Freiburger & Hilinski, 2010; Katz & Spohn, 1995). In addition, Demuth (2003) found that black defendants were more likely to denied bail. Another study found that non-white defendants were less likely to receive a bail amount lower than the suggested amount compared to white defendants (Patterson & Lynch, 1991). Also, studies found that black defendants were less likely to receive continuances (Banfield & Anderson, 1968) and had faster case disposition times in homicide cases (Swigert & Farrell, 1980).

The defendant’s race has also been found to influence the defendant’s decision to plead guilty (Albonetti, 1997; Johnson, 2003; Kellough & Wortley, 2002; LaFree, 1985), the prosecutor’s decision to reduce charges (Bernstein, Kick, Leung, & Schulz, 1977; Farnsworth & Teske, 1995), and sentencing outcomes (Spohn, 2000). Therefore, the defendants’ race was accounted for (Non-White = 0; White = 1).

**Outcome Variables and Hypotheses**

*Case Disposition Time*

Since one of the main goals of the ECR program is to speed up the pace of litigation, it will be important to assess whether the implementation of the program actually impacted the pace of litigation and to what degree. One of the issues with many previous studies on the impact of programs on case disposition time is the failure to control for certain case characteristics and defendant characteristics that might influence case disposition time (Hickert, et al., 2011; Kim, 2013; Taxman & Elis, 1999). Therefore in order to determine the impact of the ECR program, the average time from case filing to disposition for cases within the ECR
The program will be compared to the average time from case filing to disposition for similarly-situated cases processed through the traditional court concurrent to the ECR program.

Studies on the pace of litigation have long battled with defining when the case process officially begins and ends (Steelman, 1997). However, the general consensus is that the pace of litigation or case disposition time should be measured as the number of days from case filing (indictment or information) to case disposition (NCSC, 2005). Case disposition is defined as any type of mode of disposition that ends the case, including dismissal, trial decision, or guilty plea. Case disposition time was measured by subtracting the date of case filing from the date of disposition for all cases in the ECR sample and the non-ECR concurrent sample and then creating an average case disposition time. For this outcome, the following hypotheses were tested:

H1 a.) The average case disposition time will be shorter for cases processed through the ECR program compared to cases processed prior to ECR implementation.

H1 b.) The average case disposition time will be shorter for cases processed through the ECR program compared to cases processed through traditional court concurrently.

Presence of Pretrial Misconduct – Failure to Appear & Failure to Comply

The presence of pretrial misconduct, including the failure to appear and failure to comply with conditions of pretrial release have been found to be related to case disposition time, with longer case disposition times being associated with an increased likelihood of pretrial misconduct (Cohen & Reaves, 2007). Therefore, it is important to determine if the ECR program has contributed to a lower rate of pretrial misconduct. Pretrial misconduct was measured by whether a defendant had an event of failure to appear or failure to comply during case processing. For this outcome, the following hypotheses were tested:
H2 a.) The rate of pretrial misconduct will be lower for cases processed through ECR when compared to cases processed through traditional court prior to ECR implementation.

H2 b.) The rate of pretrial misconduct will be lower for cases processed through ECR when compared to cases processed through traditional court concurrently.

*Mode of Disposition Rates – Dismissal & Conviction*

In order to determine if the ECR program impacted how cases were disposed of, the rates of two modes of disposition will be examined. This will include an assessment of the dismissal rate and conviction rate among ECR cases and traditional cases. For example, previous studies have found that the implementation of DCM-like programs resulted in a higher conviction rate and lower dismissal rate (Taxman & Elis, 1999). For this outcome, the following hypotheses were tested:

H3 a.) The dismissal rate will be lower for cases processed through ECR when compared to cases processed through traditional court prior to ECR implementation.

H3 b.) The dismissal rate will be lower for cases processed through ECR when compared to cases processed through traditional court concurrently.

H4 a.) The conviction rate will be higher for cases processed through ECR when compared to cases processed through traditional court prior to ECR implementation.

H4 b.) The conviction rate will be higher for cases processed through ECR when compared to cases processed through traditional court concurrently.

*Plea Negotiation Process – Charge Bargaining & Count Bargaining*

Many previous studies examining the influence of legal and extra-legal factors on criminal case processing have focused on the sentencing decision rather than decisions during
the plea negotiation process, such as the decision to dismiss or reduce charges (Ball, 2006; Shermer & Johnson, 2010). This is an unfortunate oversight, as prosecutors exercise a great deal of unchecked discretion during the plea negotiation process. Concerns about the potential unintended consequences of such broad discretionary power are heightened within a program such as ECR, where prosecutors are seeking to expedite criminal case processing using guilty pleas to save the court time and resources. Therefore, the current study will assess the likelihood of receiving a change in the offenses charged (charge bargaining) or a reduction in the number of charges (count bargaining) in the ECR program and the non-ECR concurrent cases processed through traditional court (Ball, 2006; Ostrom & Hanson, 1999; Shermer & Johnson, 2010). For this outcome, the following hypotheses were tested:

H5 a.) The plea bargaining rate will be higher for cases processed through ECR when compared to cases processed through traditional court prior to ECR implementation.

H5 b.) The plea bargaining rate will be higher for cases processed through ECR when compared to cases processed through traditional court concurrently.

Sentencing Outcomes – Sentence Type, Credit for Time Served, & Sentence Length

Very few studies have examined the impact of DCM-like programs on sentencing outcomes (Taxman & Elis, 1999). While the ECR program uses the tagline “same justice sooner,” little is known about the impact of the program on sentencing outcomes for defendants. The responses from practitioners working with the ECR program in Salt Lake County produced mixed findings regarding whether defendants processed through the program were receiving more lenient sentences in exchange for their participation in the program or whether defendants were receiving sentences similar to those they would have received in the traditional court process (Hickert, et al., 2011). Some attorneys expressed the desire for a more lenient sentence
for their clients considering their participation in the program provided the benefit of saving the court time and resources by accepting the guilty plea. There is also ample evidence that the acceptance of a guilty plea often comes with the promise of certain considerations from the prosecutor in order to incentivize the decision (McCoy, 2005). Therefore, it is possible that the ECR program in Spokane County is incentivizing ECR participation through the provision of more lenient sentences.

However, states have also spent decades implementing sentencing laws that focused on limiting judicial discretion and reducing the existence of sentencing disparity across similarly-situated defendants (Tonry, 1996). Sentencing disparity has been viewed by some as a serious issue for the integrity of the court system (Frankel, 1972; Von Hirsch, 1976). For example, Casper, Tyler, & Fisher (1988) linked several concepts to a defendant’s sense of satisfaction with the court process, including distributive justice, which they describe as the defendant’s assessment of whether they received a comparable sentence to similarly-situated offenders. If the ECR program does in fact incentivize participation through more lenient sentences, than it is inherently creating sentencing disparity between similarly-situated defendants who are not chosen or chose not to participate in the ECR program.

Traditionally, the sentencing decision is viewed as a two-stage decision process: the decision of whether to incarcerate and then the decision of the length of incarceration (Kramer & Steffensmeier, 1993; Steffensmeier, et al., 1998; Taxman & Elis, 1999). Therefore, the study will measure sentencing outcomes in three distinct ways: the type of sentence, presence of credit for time served, and the length of incarceration. The type of sentence is sometimes known as the “in or out” decision and is measured by whether the sentence resulted in no incarceration, a jail
sentence, a suspended sentence, or a prison sentence. For this outcome, the following hypotheses were tested:

H6 a.) The rate of sentences to no incarceration will be higher for cases processed through ECR when compared to cases processed through traditional court prior to ECR implementation.

H6 b.) The rate of sentences to no incarceration will be higher for cases processed through ECR when compared to cases processed through traditional court concurrently.

H6 c.) The rate of sentences to jail will be higher for cases processed through ECR when compared to cases processed through traditional court prior to ECR implementation.

H6 d.) The rate of sentences to jail will be higher for cases processed through ECR when compared to cases processed through traditional court concurrently.

H6 e.) The rate of suspended sentences will be higher for cases processed through ECR when compared to cases processed through traditional court prior to ECR implementation.

H6 f.) The rate of suspended sentences will be higher for cases processed through ECR when compared to cases processed through traditional court concurrently.

H6 g.) The rate of sentences to prison will be lower for cases processed through ECR when compared to cases processed through traditional court prior to ECR implementation.

H6 h.) The rate of sentences to prison will be lower for cases processed through ECR when compared to cases processed through traditional court concurrently.

The presence of credit for time served is measured by whether a sentence to incarceration received at least some credit for time served. Analysis of this measure will include only those
cases that received a sentence to period of incarceration. For this outcome, the following hypotheses were tested:

H7 a.) The rate of sentences with credit for time served will be higher for cases processed through ECR when compared to cases processed through traditional court prior to ECR implementation.

H7 b.) The rate of sentences with credit for time served will be higher for cases processed through ECR when compared to cases processed through traditional court concurrently.

The length of sentence is measured by the number of days of incarceration given in the sentence. Sentencing length will be examined between similarly-situated defendants in the ECR sample, the non-ECR concurrent sample, and the prior to ECR implementation group. If the ECR program is simply fast-tracking a subset of cases and providing the “same justice sooner” one would expect to find the “going rate” established in the traditional court process to be the same “going rate” in the ECR program and in the historical comparison group from prior to the implementation of the ECR program. For this outcome, the following hypotheses were tested:

H8 a.) The average length of incarceration will be lower for cases processed through ECR when compared to cases processed through traditional court prior to ECR.

H8 b.) The average length of incarceration will be lower for cases processed through ECR when compared to cases processed through traditional court concurrently.

**Strengths and Limitations of Sample**

The current study is unique in that it is evaluating the impact of the ECR program in Spokane County Superior Court that has thus far gone without evaluation and there is little evaluation of the ECR program in general. In addition, due to the ability to link data from the Spokane County Prosecutor’s Office to data from the Washington State Administrative Office of
the Courts, the study will be able to assess the impact of ECR on several decision points within criminal case processing, including ECR selection, pretrial misconduct, the plea negotiation process, and sentencing outcomes. The ability to assess differences in the plea negotiation process is of particular importance, as this decision point has not been subjected to the same level of research as the sentencing decision in previous research. Furthermore, the data provided by the various agencies has allowed for the creation of a large sample of cases to analyze.

However, there are several limitations to the data as well. First, the study is limited to exploring the jurisdiction of Spokane County Superior Court only. While it is important to assess the impact of the program in its unique form in Spokane County, this also limits the study’s ability to generalize the findings to other jurisdictions that have implemented the ECR program or other similar programs. Second, there are several variables that were not available to be included in the study, including the defendant’s criminal history, the strength of the evidence, socio-economic status of the defendant, and employment status of the defendant.

Along with the seriousness of the offense, the defendant’s criminal history is a factor that is consistently found to influence discretionary decision-making during criminal case processing. The ECR courtroom workgroup may take a defendant’s criminal history into consideration when determining eligibility for the program. Furthermore, a defendant’s criminal history has been found to influence several outcome measures, including the likelihood that a prosecutor will file charges in the case (Albonetti, 1987; Mather, 1979; Neubauer, 1974; Swigert & Farrell, 1976), the pretrial release decision (Freiburger & Hilinski, 2010), and sentencing outcomes (Spohn, 2000). The lack of a criminal history measure greatly limits the current study and the conclusions drawn from the results.
Previous studies have also found the strength of the evidence to be an important influence on prosecutor decision-making during the charging decision (Albonetti, 1987; Feeley, 1992; Mather, 1979; Miller, 1969; Spohn & Holleran, 2000). However, this is a particularly difficult piece of data to gain access to, therefore the current study does not include a measure of the strength of the evidence. Also, in addition to the influence of the defendant’s race, gender, and age on case processing and case outcomes, the defendant’s socio-economic status and employment status have also found to influence criminal case processing (Ball, 2006; Chiricos & Bales, 1991; Spohn & Holleran, 2000; Steffensmeier, et al., 1998; Wooldredge, 2012). However, the current study is limited in that it does not include a measure of either variable.

Third, the current study is limited in that it does not evaluate the impact of the ECR program on the likelihood of recidivism among program participants. As previously discussed, deterrence theory puts forth the hypothesis that decreasing the time between the offense and the punishment for the offense could contribute to lower rates of recidivism (Nagin & Pogarsky, 2001). In fact, this is hypothesized as one of the benefits of timely case resolution as discussed in the American Bar Association Standards for Speedy Trial and Timely Resolution of Criminal Cases (American Bar Association, 2006). However, the results of studies investigating the relationship between a faster case disposition time and recidivism rates have been inconclusive (Bouffard & Bouffard, 2001; Howe & Loftus, 1996; Legge & Park, 1994; Nagin & Pogarsky, 2001; Wagenaar & Maldonado-Molina, 2007; Yu, 1994).

In addition, studies examining the impact of programs designed to speed up case disposition time such as DCM or ECR have rarely included recidivism rates as an outcome measure. This is a gap in the research that needs to be examined since it is also possible that by fast-tracking defendants through the court process the program is having an adverse effect on the
recidivism rate. It could also be increasing an already overburdened caseload for community corrections officers and impacting the court docket for revocation hearings. Evaluating recidivism outcomes for those defendants processed through the ECR program will contribute to the research surrounding these questions.

**Summary**

The methods of the current study will help bridge a gap in the research and improve upon previous research in several ways. First, the current study is the first evaluation of the impact of the ECR program implemented in Spokane County Superior Court. Second, the current study attempts to contribute to the conversation surrounding the relationship between the quality of justice and the pace of litigation. Third, the current study utilizes propensity score matching to reduce the selection bias inherent in the cases being analyzed. Last, the current study assesses several important and highly discretionary decision points in criminal case processing, including case dismissal, pretrial detention, plea bargaining, and sentencing.
CHAPTER FIVE: Results

Introduction

This analysis set out to examine whether there were differences in processing and outcomes between cases processed through the ECR program during the first three years of its implementation and two comparison groups. The comparison group that was analyzed was comprised of cases processed through traditional court during the three years prior to the piloting and implementation of the ECR program. The chapter will begin with a detailed explanation of the propensity score matching method that was used to create a comparable sample for the prior to ECR implementation group and the results of this match. Next, the analyses and results of each of the research questions and hypotheses comparing the ECR group and the prior to ECR implementation comparison group will be discussed in detail. The second comparison group comprised of cases disposed in traditional court concurrent to the ECR program was not used in the analysis due to issues obtaining a sufficient match of comparable cases. A detailed discussion of this process and the results of the match can be found in Appendix B.

Propensity Score Matching

Since selection for the ECR program was not randomized, using propensity score matching allowed for a reduction in the selection bias by creating two comparable samples, one comprised of ECR cases and one comprised of cases processed through traditional court prior to ECR implementation. Specifically, propensity score matching was used to control for the predictor variables that were either used as criteria for selection in the ECR program or found by previous research to impact the outcome measures that will be analyzed that were available in the data. The first step in the propensity score matching process (PSM) was to compare the
continuous variables and categorical variables for the ECR group and prior to ECR implementation group using the standard t-test and chi-square test to determine if there were significant differences across the groups. The results of these analyses are provided in Table 2.

**Table 2: Predictor Characteristics of ECR Group and Prior to ECR Implementation Group**

<table>
<thead>
<tr>
<th>Predictor Characteristics</th>
<th>Before PSM N = 5,345 cases</th>
<th>After PSM N = 3,036 cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seriousness of Primary Offense</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum of 0 days</td>
<td>70.8 (79.8)</td>
<td>83.8 (79.8)</td>
</tr>
<tr>
<td>Minimum of 1 month</td>
<td>8.4 (13.0)</td>
<td>7.7 (13.1)</td>
</tr>
<tr>
<td>Minimum of 3 months</td>
<td>8.3 (3.6)</td>
<td>5.0 (3.6)</td>
</tr>
<tr>
<td>Minimum of 12 months</td>
<td>12.5 (3.5)</td>
<td>3.4 (3.6)</td>
</tr>
<tr>
<td>Offense Type</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property</td>
<td>42.4 (37.4)</td>
<td>39.0 (37.5)</td>
</tr>
<tr>
<td>Drug</td>
<td>48.5 (53.2)</td>
<td>51.7 (53.1)</td>
</tr>
<tr>
<td>Other</td>
<td>9.1 (9.4)</td>
<td>9.3 (9.3)</td>
</tr>
<tr>
<td>Multiple Charges</td>
<td>37.4 (24.2)</td>
<td>24.7 (24.3)</td>
</tr>
<tr>
<td>Co-Defendants</td>
<td>21.8 (11.3)</td>
<td>11.9 (11.4)</td>
</tr>
<tr>
<td>Detained Pretrial</td>
<td>19.4 (13.5)</td>
<td>14.6 (13.5)</td>
</tr>
<tr>
<td>Number of Continuances</td>
<td>1.707 (1.152)</td>
<td>1.159 (.157)</td>
</tr>
<tr>
<td>Gender (Male)</td>
<td>70.0 (67.9)</td>
<td>69.5 (67.9)</td>
</tr>
<tr>
<td>Race (White)</td>
<td>83.7 (89.1)</td>
<td>89.2 (89.0)</td>
</tr>
<tr>
<td>Age</td>
<td>33.43 (.300)</td>
<td>33.01 (.301)</td>
</tr>
</tbody>
</table>
The pre-match sample size was 1,527 cases for the ECR group and 3,818 cases for the prior to ECR cases. The results show that when comparing the ECR group to the prior to ECR group, there were significant differences in the two groups across all of the predictor variables except gender and age. For example, while the pre-match analyses show that both groups were mainly comprised of cases that involved a primary offense ranked at seriousness level one by the Washington State Sentencing Guidelines, there were a few differences in the two groups. In comparison to the ECR group, the prior to ECR implementation group had more cases with a primary offense classified as a seriousness level of three or four, with 20.8% of cases for the prior to ECR group and only 7.1% of cases for the ECR group. Both groups were mainly comprised of cases involving a primary offense of either a property or drug offense. In addition, the distribution across gender and age were almost identical between the two groups, hence their lack of significance. The ECR group was slightly more likely to include cases with a white defendant compared to the prior to ECR cases.

The ECR group was also less likely to include a case with multiple charges, with only 24.2% of cases compared to 37.4% cases in the prior to ECR group. Similarly, the ECR group was less likely to involve cases with co-defendants, with only 11.3% of ECR cases compared to 21.8% of prior to ECR cases. These results show the importance of using propensity score matching to select cases from the comparison group that closely match the cases in the ECR group across the predictor variables, otherwise the results could be attributed to these differences in the groups instead of the effect of the program.

The second step in the PSM was to use a backward-step logistic regression with a selection alpha of 0.50 to determine which predictor variables were associated with the treatment status, defined as inclusion in the ECR program. When the predictor variables were included in
the model, the model was significant at each step. However, the model only explained 12.0% of the variance in the outcome variable, which was only slightly higher than the model with no predictor variables. This finding confirms that there are other confounding variables that are impacting whether a case is included in ECR that the current model does not include.

The third step in the PSM was to use a multivariate logistic regression model to estimate the propensity scores, which represent the predicted probability of being included in the ECR program. These propensity scores will serve as a single summary measure that can then be used to match similar cases from the prior to ECR comparison group and the ECR group. All of the predictor variables that were significant in the backward-step logistic regression were included in this analysis, which included all predictor variables with the exception of gender. The results of these analyses are provided in Table 3. Prior to matching, an area under the curve analysis of the propensity scores was performed and further demonstrated the differences in the two pre-matched groups, with an AUC = 0.667.

Once the propensity scores were estimated using logistic regression, they were used to match cases from the prior to ECR group to the ECR group using a caliper of 0.01. Cases that could not find a match were removed. The resulting sample included 1,521 ECR cases and 1,515 prior to ECR cases. Once the matching process was completed, several diagnostic tests were performed in order to evaluate the efficiency and validity of the propensity score matching. First, the resulting AUC of the post-match propensity scores showed the impact of the propensity score matching, with an AUC = 0.502. Second, the standardized differences of the predictor variables were calculated using the post-matching results to determine if there was still an imbalance in the predictor variables between the ECR and prior to ECR groups. A standardized
difference or effect size above a 0.20 would be considered an imbalance (Cohen, 1988). The results of these calculations showed that none of the predictor variables had an effect size above 0.20 after matching.

Table 3: Logistic Regression Predicting Inclusion in the Early Case Resolution Program, n = 5,345 cases

<table>
<thead>
<tr>
<th>Predictor Variables</th>
<th>b</th>
<th>SE</th>
<th>Sig. (p)</th>
<th>Exp(B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seriousness of Primary Offense</td>
<td>-0.259</td>
<td>0.032</td>
<td>&lt;.001</td>
<td>0.772</td>
</tr>
<tr>
<td>Offense Type</td>
<td>0.129</td>
<td>0.050</td>
<td>0.010</td>
<td>1.137</td>
</tr>
<tr>
<td>Multiple Charges</td>
<td>-0.547</td>
<td>0.071</td>
<td>&lt;.001</td>
<td>0.579</td>
</tr>
<tr>
<td>Co-Defendants</td>
<td>-0.622</td>
<td>0.093</td>
<td>&lt;.001</td>
<td>0.537</td>
</tr>
<tr>
<td>Detained Pretrial</td>
<td>-0.418</td>
<td>0.088</td>
<td>&lt;.001</td>
<td>0.659</td>
</tr>
<tr>
<td>Race (White)</td>
<td>0.495</td>
<td>0.096</td>
<td>&lt;.001</td>
<td>1.640</td>
</tr>
<tr>
<td>Age</td>
<td>-0.007</td>
<td>0.003</td>
<td>0.030</td>
<td>0.994</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.395</td>
<td>0.167</td>
<td>0.018</td>
<td>0.674</td>
</tr>
</tbody>
</table>

Model fit: $R^2 = 0.101$, df = 8, p < 0.001, AUC = 0.667

Finally, the standard t-tests and chi-square tests were again performed using the predictor variables to determine if the post-matching sample was able to control for the differences in predictor variables that existed in the pre-matching groups. The results of these analyses are provided in Table 2. The results showed that only one of the predictor variables was still significant after the match, the seriousness of the primary offense. Therefore, it was concluded that the post-matching prior to ECR sample and the ECR sample were now sufficiently comparable to proceed with the analyses.
Case Disposition Time

In order to examine whether the ECR program achieved the goal of shorter case disposition times, an event history analysis, also known as a survival analysis, was used. Survival analysis estimates the probability of units “surviving” an event past given time points, otherwise known as creating a survival distribution. The survival distribution or survival time for the current study measured the number of days it took for cases to go from the case filing to the case disposition. Unlike many of the studies using survival analysis, the event studied was a desired outcome, as it was defined as the case reaching disposition. The analysis also allowed for a comparison of the survival distributions of two or more groups to determine whether they are equal. Therefore, the survival analysis was used to examine the survival distributions of cases that were processed through the ECR program and those cases that were processed through the traditional court prior to ECR implementation to determine if there were significant differences.

The continuous time indicator for the analysis was measured by the number of days from case filing to case disposition, which was created by subtracting the case filing date from the case disposition date for all cases. This indicator was clearly defined and precisely measured for each case included in the sample. However, since the outcome variable of case disposition time measured the number of days from case filing to case disposition, it was impossible for a case to have a negative number of days. Therefore, the variable violated the assumption of normality for any parametric method used to examine differences in the median number of days it would take for a case to be disposed. One of the benefits of using a survival analysis to examine this outcome variable was that the analysis is a non-parametric method, meaning that the outcome
variable does not need to be normally distributed.\(^1\) Using the post-propensity score matching sample, Kaplan Meier survival distributions were created for the ECR group and the prior to ECR historical comparison group. These survival distributions are provided in Figure 1.

**Figure 1: Survival Distributions for Case Disposition Time, by ECR Status**

\(^1\) In addition, there was an issue with outliers in the outcome variable across both groups. However, when the analysis was performed without the outliers, the results were the same as those found when the outliers remained in the data. Since there was no rationale for removing the outliers from the sample, the results presented here reflect the sample that retained the outliers.
The survival distributions for ECR and the prior to ECR group appear to show that there are differences across the two groups in the number of days from case filing to case disposition. The space between the two distributions shows that it takes a fewer number of days to dispose of the majority of cases in the ECR program compared to those cases disposed of using the traditional court process prior to ECR implementation. For example, at approximately 200 days, the ECR program had disposed of about 90% of the cases; however, there were only about 65% of similarly-situated cases disposed of through traditional court prior to ECR implementation.

The median survival time was calculated for each group when the cumulative survival proportion reached 0.50 or less, meaning when the percentage of cases still waiting to be disposed reached 50% or less. As shown in Table 4, the median survival time for the ECR group was 50 days with 95% confidence intervals from 47 to 52 days. In comparison, the median number of days until case disposition for the prior to ECR implementation group was 126 days with 95% confidence intervals from 119 to 132 days. These figures support the conclusion that the ECR program takes fewer number of days to dispose of cases compared to similarly situated cases disposed of through traditional court prior to ECR implementation.

<table>
<thead>
<tr>
<th>ECR Status</th>
<th>Median Number of Days Until Case Disposition (SE)</th>
<th>95% Confidence Interval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to ECR Implementation</td>
<td>126.00* (3.119)</td>
<td>119.88 132.11</td>
</tr>
<tr>
<td>ECR</td>
<td>50.00* (1.300)</td>
<td>47.45 52.54</td>
</tr>
</tbody>
</table>

N = 3,036 cases; *p < .001

So while it does appear that there are differences in case disposition times across the two groups, the log rank test allowed for the determination of whether these differences were
The log rank test works by comparing a weighted difference between the observed number of case dispositions and the number of expected events at each time point (Hosmer, Lemeshow, & May, 2008). The log rank test weights the difference at each time point equally; it is also the most commonly used test of significance for survival analyses (Bland & Altman, 2004). The log rank tests the null hypothesis that there was no significant difference in the survival distributions between the two groups. The results of the log rank test showed that the survival distributions were significantly different, $\chi^2(2) = 394.41$, $p < .001$. Therefore, it can be concluded that the survival distributions for the ECR group and the prior to ECR implementation group were significantly different, meaning there are significant differences in the case disposition time between the two groups.

**Pretrial Misconduct & Case Disposition Time**

Interestingly, when examining those cases that had an instance of pretrial misconduct, the median number of days from case filing to case disposition increased for both the ECR cases and the prior to ECR cases. The median number of days for case disposition for the ECR cases increased to 99 days and increased to 170 days for the prior to ECR cases for those cases involving pretrial misconduct. In comparison, the median number of days for case disposition for cases without pretrial misconduct were 43 days and 108 days, for ECR cases and the prior to ECR cases respectively. These differences can be seen when examining Figures 2 and 3, which provide the survival distributions of case disposition time for cases with pretrial misconduct and cases without pretrial misconduct.

While the ECR cases are still disposed of in a fewer number of days, when examining the shape of the survival distributions in Figure 2 there appears to be fewer differences between the
ECR cases and the prior to ECR cases that included pretrial misconduct. This is evident by the lack of space between the two lines, meaning the two groups were disposing of a more similar percentage of cases over a more similar period of time. In comparison, there was a much more noticeable separation between the ECR cases and the prior to ECR cases for those cases without pretrial misconduct as shown in Figure 3, meaning the differences that existed in the two groups in Figure 1 are being replicated in this figure.

**Figure 2: Survival Distributions for Case Disposition Time for Cases with Pretrial Misconduct, by ECR Status, n = 977 cases**
It can also be seen that pretrial misconduct plays a role in at least some of the cases that have extraordinarily long case disposition times. The differences between the two figures are due to the relationship between case disposition time and pretrial misconduct. Therefore, while the ECR cases were disposed of in a fewer number of days for cases with pretrial misconduct and those without, occurrences of pretrial misconduct created a slower pace of litigation for both groups.

**Figure 3: Survival Distributions for Case Disposition Time for Cases without Pretrial Misconduct, by ECR Status, n = 1,632 cases**
**Pretrial Detention & Case Disposition Time**

Related to the relationship between pretrial misconduct and case disposition time, there were also noticeable differences in the survival times for cases depending on whether the defendant was detained or released prior to case disposition. For those defendants who were detained prior to disposition, case disposition time was shorter with a median of 30 days for ECR cases and 86 days for those similar cases processed prior to ECR. In comparison, defendants who were released prior to disposition had a median of 54 days for ECR disposition and 133 days for disposition for cases prior to ECR. These differences can be partly explained by the role of pretrial misconduct among those defendants who were released prior to disposition. However, it is also likely that this is evidence that the courtroom workgroup takes a defendant’s pretrial custody status into consideration when processing the case. Those defendants who are detained prior to disposition are often prioritized over those defendants who spend their pretrial time released to the community. By processing cases faster for defendants who are detained, defendants will spend less time in jail and free up bed space in an overcrowded jail.

**Offense Type & Case Disposition Time**

When examining possible differences in case disposition time across offense type, there were actually few differences in the survival times between the different types of offenses. While the ECR cases were always disposed of in fewer days compared to cases processed prior to ECR, cases involving a primary offense of either a property offense or drug offense had similar median case disposition times. For property offenses, ECR cases had a median of 48 days compared to 140 days for prior to ECR cases. For drug offenses, ECR cases had a median of 51 days compared to 122 days for prior to ECR cases. For other offenses, which included
traffic, DUI, escape, sex, and minor violent offenses, the median number of days for ECR disposition was 53 days compared to 116 days for prior to ECR cases.

The median case disposition time for ECR appears to stay somewhat consistent across offense types compared to slightly more fluctuations among the cases processed prior to ECR implementation. This is likely due to the strict timelines placed on case processing and increased awareness about the pace of litigation created by the ECR program. Previous studies have found mixed results regarding the impact of offense type on case disposition time, therefore these findings are not surprising.

**Pretrial Misconduct**

In order to determine whether the rates of pretrial misconduct differed across the ECR group and the prior to ECR implementation group, a chi-square test was performed. An instance of a failure to appear or failure to comply with conditions of release resulted in a case being coded as having an instance of pretrial misconduct. The sample of cases utilized to examine this outcome variable had to be limited to only those cases where the defendant was released prior to disposition, n = 2,609 cases. Those defendants who were detained prior to disposition were unable to have the opportunity to participate in pretrial misconduct as defined here. The results of this analysis are provided in Table 5.

**Table 5: Chi-square for Rates of Pretrial Misconduct, by ECR Status**

<table>
<thead>
<tr>
<th>ECR Status</th>
<th>Number of Cases with Pretrial Misconduct (%</th>
<th>Number of Cases without Pretrial Misconduct (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to ECR Implementation</td>
<td>653* (50.5)</td>
<td>641* (49.5)</td>
</tr>
<tr>
<td>ECR</td>
<td>324* (24.6)</td>
<td>991* (75.4)</td>
</tr>
</tbody>
</table>

N = 2,609 cases; *p < .001
The results show that there were fewer cases with pretrial misconduct within the ECR program when compared to the number of cases with pretrial misconduct prior to the implementation of ECR as hypothesized. Cases in ECR only had a rate of pretrial misconduct of 24.6%, whereas similarly situated cases processed through traditional court prior to the implementation of ECR had a rate of pretrial misconduct of 50.5%. Further tests showed that there was a statistically significant association between ECR status and the rate of pretrial misconduct, $\chi^2(1) = 185.69, p < .001$. The strength of the association between ECR status and the pretrial misconduct rate was moderately strong, $\phi = -.267, p < .001$.

These results are evidence that by reducing the number of days for case disposition, the ECR workgroup has successfully reduced the rate of pretrial misconduct among those defendants released prior to disposition. However, when considering the findings that those cases with instances of pretrial misconduct still result in a slower pace of litigation it appears that there is still work to be done in reducing instances of pretrial misconduct and the resulting impact on court time and resources.

**Dismissals and Convictions**

In order to determine whether the rates of dismissal and conviction differ between the ECR cases and similarly-situated cases that were processed through traditional court prior to ECR implementation, a standard chi-square analysis was used. The dismissal rate was measured by whether a case resulted in a dismissal or not. The reasoning for the dismissal varied by each case. The majority of the dismissals for both ECR and the prior to ECR cases were made by the prosecutor and were for various reasons, including lack of evidence, inadmissible evidence, witness problems, and victim requests. Some cases were also dismissed after the defendant successfully completed a diversion program, such as participating in the drug court. Other cases
were dismissed due to actions by the defense or the court. The dismissed cases were not further stratified for the analysis due to small sample sizes, therefore all cases were coded as “dismissed” regardless of the reasoning. The conviction rate was measured by whether a case resulted in a conviction or not. The majority of cases were convicted through the entering of a guilty plea by the defendant. The analysis examining dismissal and conviction rates utilized a chi-square test. The results of this analysis are provided in Table 6.

Table 6: Chi-square for Rates of Dismissal and Conviction, by ECR Status

<table>
<thead>
<tr>
<th>ECR Status</th>
<th>Number of Cases Dismissed (%)</th>
<th>Number of Cases Convicted (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to ECR Implementation</td>
<td>289* (19.1)</td>
<td>1226* (80.9)</td>
</tr>
<tr>
<td>ECR</td>
<td>204* (13.4)</td>
<td>1317* (86.6)</td>
</tr>
</tbody>
</table>

N = 3,036 cases; *p < .001

The results show that the majority of cases in both groups resulted in a conviction. In addition, there were more cases resulting in a conviction within the ECR program when compared to the number of cases resulting in a conviction prior to the implementation of ECR as hypothesized. ECR cases had a conviction rate of 86.6% compared to a conviction rate of 80.9% for those cases processed prior to ECR. This also means there were fewer cases dismissed within the ECR program when compared to the number of cases dismissed prior to the implementation of ECR as hypothesized. ECR cases were dismissed at a rate of 13.4% compared to a rate of 19.1% for those prior to ECR cases. Further tests showed that there was a statistically significant association between ECR status and the rate of dismissal, $\chi^2(1) = 17.90$, $p < .001$. However, the strength of the association between ECR status and the dismissal rate was not very strong, $\varphi = -.077$, $p < .001$. The results of these analyses demonstrate that there are
differences in the dismissal rate and conviction rate for ECR cases compared to similarly-situated cases processed through traditional court prior to ECR implementation, however the strength of the relationship was not strong.

**Plea Bargaining**

In order to determine whether the rates of plea bargaining were different between similarly-situated ECR cases and cases processed through traditional court prior to the implementation of ECR, a standard chi-square test was utilized. Plea bargaining was measured as those cases where the disposition involved either charge bargaining or count bargaining compared to those cases that involved a guilty plea for the original charges. The analysis was limited to those cases where there was a conviction and that were disposed of using a guilty plea, which does not exclude a large portion of the sample considering the majority of cases resulted in a conviction and were disposed of using guilty pleas. The results of the analysis are provided in Table 7.

**Table 7: Chi-square for Rates of Plea Bargaining, by ECR Status**

<table>
<thead>
<tr>
<th>ECR Status</th>
<th>Number of Cases with Plea Bargaining (%)</th>
<th>Number of Cases without Plea Bargaining (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to ECR Implementation</td>
<td>601 (51.6)</td>
<td>564 (48.4)</td>
</tr>
<tr>
<td>ECR</td>
<td>1152 (87.6)</td>
<td>163 (12.4)</td>
</tr>
</tbody>
</table>

N = 2,480 cases; *p < .001

The results show that there was a statistically significant association between ECR status and the rate of plea bargaining, \( \chi^2(1) = 386.71, p < .001 \). As hypothesized, there was a higher rate of plea bargaining in ECR cases when compared to cases processed through traditional court.
prior to the implementation of ECR, with 87.6% of ECR cases resulting in either charge or count bargaining with the guilty plea in comparison to only 51.6% of cases processed prior to ECR implementation. The strength of the association between the two variables was also moderately strong, $\varphi = .395$, $p < .001$. Therefore, it can be concluded that ECR cases do have a significantly higher rate of plea bargaining compared to cases processed prior to ECR implementation.

**Sentencing Outcomes**

*Sentence Type*

In order to determine whether there were differences in the rates of type of sentence between the ECR cases and similarly-situated cases that were processed through traditional court prior to ECR implementation, a standard chi-square test was used. The type of sentence was measured using four categories, cases with a sentence of no incarceration, a jail sentence, a suspended sentence, and a prison sentence. A sentence of “no incarceration” typically involved a fines, restitution, and/or a period of community custody. A suspended sentence involved a term of incarceration that was suspended as long as the conditions of community custody were followed. The sample of cases utilized in the analysis was limited to those cases that resulted in a conviction. The results of this analysis are provided in Table 8.

**Table 8: Chi-square for Rates of Sentence Types, by ECR Status**

<table>
<thead>
<tr>
<th>ECR Status</th>
<th>Number of Cases with No Incarceration Sentence (%)</th>
<th>Number of Cases with Jail Sentence (%)</th>
<th>Number of Cases with Suspended Sentence (%)</th>
<th>Number of Cases with Prison Sentence (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to ECR</td>
<td>56 (4.6)</td>
<td>774 (63.1)</td>
<td>245 (20.0)</td>
<td>151 (12.3)</td>
</tr>
<tr>
<td>Implementation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ECR</td>
<td>34 (2.6)</td>
<td>814 (61.8)</td>
<td>441 (33.5)</td>
<td>28 (2.1)</td>
</tr>
</tbody>
</table>

N = 2,543 cases; *p < .001
Overall, the vast majority of convictions for both groups resulted in a jail sentence. Prison sentences were fewer among both groups, which is likely due to the less serious nature of the offenses included in the analysis. Sentences to no incarceration were also rare, but suspended sentences were much more common among both groups. When comparing the two groups across sentence type, the results were more mixed. As hypothesized, the results show that the rate of prison sentences was lower for the ECR group compared to the prior to ECR group, with 2.1% of ECR cases receiving prison sentences compared to 12.3% of prior ECR cases. The results also showed that there was a higher percentage of ECR cases receiving a suspended sentence compared to the prior to ECR group, with 33.5% of ECR cases receiving suspended sentences and only 20.0% of the prior to ECR cases receiving such sentences. When examining the rate of jail sentences, it was more similar across the two groups, with 61.8% of ECR cases receiving jail sentences compared to 63.1% of the prior to ECR cases. Last, when examining the rate of sentences to no incarceration there were few cases in both groups that received such sentences, with only 2.6% of ECR cases and 4.6% of prior to ECR cases.

Further tests showed that there was a statistically significant association between ECR status and the rate of sentence types, $\chi^2(1) = 143.83, p < .001$. The strength of the association between ECR status and the sentence type was moderately strong, $\phi = .238, p < .001$. These results are more nuanced, as there are many factors that are considered in a sentencing decision. The lower rates of prison sentences and higher rates of suspended sentences among the ECR cases could be a result of the increased use of plea bargaining tactics of charge and count bargaining that appear among the ECR cases. Interestingly, jail sentences appear to continue to
be used at a similar rate to those cases disposed of prior to the implementation of ECR. However, it is possible that the use of credit for time served plays a role in this result.

Credit for Time Served

In order to determine whether there were differences in the rate of sentences receiving credit for time served, a chi-square test was used. For this analysis, only those cases that resulted in a sentence with a period of incarceration were included in the analysis. The results provided in Table 9 show that the majority of cases sentenced to incarceration in both groups were given at least some credit for time served. Further examination shows that the ECR cases did have a higher rate of cases that received credit for time served compared to cases processed prior to ECR implementation, with 85% of ECR cases receiving credit compared to 80% of prior to ECR cases. In addition, tests showed that there was a statistically significant association between ECR status and credit for time served, $\chi^2(1) = 10.82$, $p = .001$. However, the strength of the association between ECR status and credit for time served was not very strong, $\phi = .066$, $p = .001$. Therefore, ECR cases were only slightly more likely to receive credit for time served compared to similarly-situated cases disposed of prior to the implementation of ECR.

Table 9: Chi-square for Rates of Credit for Time Served, by ECR Status

<table>
<thead>
<tr>
<th>ECR Status</th>
<th>Number of Cases with No Credit for Time Served (%)</th>
<th>Number of Cases with Credit for Time Served (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to ECR Implementation</td>
<td>232* (19.8)</td>
<td>938* (80.2)</td>
</tr>
<tr>
<td>ECR</td>
<td>190* (14.8)</td>
<td>1093* (85.2)</td>
</tr>
</tbody>
</table>

N = 2,453 cases; *$p = .001$
Sentence Length

In order to determine whether there were differences in the sentence length for cases processed through ECR and cases processed through traditional court prior to the implementation of ECR, cases that resulted in a conviction and were sentenced to a period of incarceration were analyzed. The total sample size for this analysis was 2,453 cases. Since the outcome variable of sentence length was a count variable and therefore inherently not normally-distributed, a Mann-Whitney U test was used for the analysis. The Mann-Whitney U test examines the differences the distributions of two groups on a continuous dependent variable that is not normally distributed.\(^2\)

The results of the Mann-Whitney U test showed that there were no significant differences in the distributions of sentence length for the ECR cases and the prior to ECR cases. Further analysis showed that sentence length for the ECR cases (mean rank = 1,224.96) and the prior to ECR cases (mean rank = 1,224.96) were not statistically different (p = .891). As a result, the null hypothesis that the ECR cases and the prior to ECR cases had no significant differences in their distributions of sentence length could not be rejected. Therefore, there are no significant differences in the distribution of sentence length between ECR cases and prior to ECR cases.

\(^2\) There were also approximately twenty-five cases that were found to be outliers when examining the outcome variable. However, the results of the analyses with the outliers and without the outliers were the same. Since there was no rationale for removing the outliers, the results presented here reflect the analysis which retained the outliers in the data.
CHAPTER SIX: Discussion

General Findings

Overall, the findings of the study provided some evidence that the implementation of the Early Case Resolution program in Spokane County Superior Court has impacted the processing and outcomes of criminal cases. A summary of the results for each hypothesis are summarized in Table 10. First, there is strong evidence that cases processed through the ECR program are disposed of significantly faster compared to the time it took to process similar cases prior to the implementation of the ECR program. The median number of days from case filing to case disposition for the ECR cases was significantly shorter at 50 days compared to the median of 126 days for the cases prior to ECR. In addition, the ECR workgroup was able to dispose of a greater percentage of cases in a fewer number of days. These findings show that the ECR workgroup has been able to successfully alter the case processing timeline in order to reduce the number of days it takes for a case to move from case filing to case disposition. This reduction in the case disposition time has many benefits for the courtroom workgroup and the victims and defendants involved in the cases.

The findings also show evidence that the ECR workgroup was able to dispose of cases faster than prior to ECR for pretrial releasees, with a median of 54 days for pretrial releasees in ECR compared to a median of 133 days for pretrial releasees prior to ECR cases. This finding is likely related to a reduction in instances of pretrial misconduct among the ECR cases. However, the finding likely also shows that pretrial detainees’ cases are prioritized. For example, pretrial detainees in ECR had a median of 30 days for case disposition time compared to a median of 54 days for those defendants released prior to disposition in ECR. This finding supports a trend that existed even prior to ECR, as those cases in the prior to ECR comparison group where the
Table 10: Summary of Study Findings

<table>
<thead>
<tr>
<th>Hypothesis</th>
<th>Result of Analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hypothesis 1: Case Disposition Time</td>
<td>Reject the Null Hypothesis</td>
</tr>
<tr>
<td>Hypothesis 2: Pretrial Misconduct</td>
<td>Reject the Null Hypothesis</td>
</tr>
<tr>
<td>Hypothesis 3: Dismissals</td>
<td>Reject the Null Hypothesis</td>
</tr>
<tr>
<td>Hypothesis 4: Convictions</td>
<td>Reject the Null Hypothesis</td>
</tr>
<tr>
<td>Hypothesis 5: Plea Bargaining</td>
<td>Reject the Null Hypothesis</td>
</tr>
<tr>
<td>Hypothesis 6: Sentence Type</td>
<td>Reject the Null Hypothesis</td>
</tr>
<tr>
<td>Hypothesis 7: Credit for Time Served</td>
<td>Reject the Null Hypothesis</td>
</tr>
<tr>
<td>Hypothesis 8: Sentence Length</td>
<td>Fail to Reject the Null Hypothesis</td>
</tr>
</tbody>
</table>

defendant was detained possessed a faster disposition time with a median of 86 days for case disposition time compared to the median of 133 days for pretrial releasees. The prioritization of cases with a defendant who is detained prior to disposition has several benefits. First, it can save space in the jail used by pretrial detainees by moving them through case processing quicker. Second, it also reduces the amount of time pretrial detainees have to spend in jails that are overcrowded and lacking in rehabilitation programs.

Second, the findings regarding case disposition times support a relationship between disposition time and instances of pretrial misconduct. The hypothesis that the ECR program contributed to a lower rate of pretrial misconduct among defendants released prior to trial was supported by the findings. The rate of pretrial misconduct among ECR cases with a defendant released prior to trial was 24.6% compared to 50.5% for those cases prior to ECR. Therefore,
defendants processed through the ECR program had fewer instances of failure to appear or failure to comply with the conditions of their release. This result is likely related to the shorter case disposition times produced by the ECR program. Shorter case disposition time leaves less time for pretrial releasees to engage in pretrial misconduct. This could also be an indicator that those defendants selected for the ECR program have a lower risk of engaging in pretrial misconduct. Future studies should include measures related to risk level for pretrial misconduct to better understand these findings.

However, when there were instances of pretrial misconduct present, the ECR case disposition time may have been shorter compared to cases with pretrial misconduct prior to the implementation of ECR, but the median number of days for case disposition was still significantly longer compared to ECR cases without pretrial misconduct. For example, cases in ECR that included instances of pretrial misconduct had a median case disposition time of 99 days compared to 170 days for prior to ECR. But this pales in comparison to ECR cases without instances of pretrial misconduct, which had an average case disposition time of 43 days.

This finding is not all that surprising considering the problems that arise when a defendant engages in pretrial misconduct. For example, if a defendant fails to appear in court, a bench warrant will be issued, law enforcement will have to find, arrest, and book the person again, continuances will be issued, and future court appearances delayed, all of which will contribute to an increase in the case disposition time. In addition, depending on the period of time that passes between the failure to appear and the defendant’s re-appearance, case disposition time could stretch out for long periods of time. Similarly, if a defendant fails to comply with the conditions of their release, such as by committing a new offense, this will increase the
complexity of the case as the courtroom workgroup determines whether to handle the new offense along with the current offense. Future research studies examining case disposition time for criminal cases should account for periods of time that are viewed as being outside the control of the court.

In spite of this limitation in measurement, it does appear that the presence of the ECR program is associated with a reduction in the rate of pretrial misconduct. However, more attention should be given to the impact those cases that do have pretrial misconduct and their impact on court time and resources. For example, when a defendant fails to appear for a court hearing it results in more time and resources used by the system in the form of bench warrants, arrests and bookings, continuances, and court appearances. Such cases are an example of a unique subset of cases that can be especially problematic for the court and therefore would be appropriate for a more in-depth case study.

Third, the findings also supported the hypothesis that cases in the ECR program would be less likely to be dismissed when compared to similarly-situated cases processed prior to the ECR program. For example, cases selected for the ECR program had a dismissal rate of 13.4% compared to a dismissal rate of 19.1% for similar cases processed prior to the implementation of ECR. While the dismissal rate was significantly associated with whether a case was processed through ECR, the strength of the association was not very strong. This can be seen in the only moderate difference in the two rates.

The decision to dismiss a case is highly discretionary and therefore there are likely many factors contributing to this result. First, it is possible that the early screening process utilized by the ECR workgroup allows for the quicker dismissal of cases lacking in strong evidence for
prosecution and therefore there are fewer instances of cases being dismissed later in the court process. Second, it is possible that the ECR program has freed up more time and resources for the prosecutor’s office to pursue prosecution in more cases than prior to the implementation of the program. An understanding of the degree to which the program saves time and resources for the courtroom workgroup and how those resources are being redistributed amongst the court could provide more insight into this theory. Third, it is possible that the fast-tracking of ECR cases allows for the prosecution of some weaker cases that may have been dismissed prior to the program, which could be a form of the indirect net widening that was discussed by previous research on a similar program (Taxman & Elis, 1999). For example, Taxman and Elis (1999) argued that the increased likelihood for a case to be prosecuted and convicted could contribute to more extensive criminal records for defendants, which could then lead to an increased likelihood of incarceration in the future. Future research should attempt to include a measure of the strength of the evidence in cases to determine how the influence of this important legal factor may have changed within the ECR program. Furthermore, more in-depth research on the discretionary decision to dismiss cases would likely provide more insight into the processes contributing to these results.

Fourth, the findings supported the hypothesis that the ECR program was more likely to use plea bargaining methods such as charge bargaining and count bargaining when processing cases. ECR cases were more likely to have charges reduced or have multiple counts dropped due to a decision made by the prosecutor compared to the cases processed prior to ECR implementation, with a rate of 87.6% for ECR cases compared to 51.6% for prior to ECR cases. While it is well-documented that such plea bargaining methods are widely used by courts across
the country, this is likely evidence that the ECR program is being incentivized even further using charge bargaining and count bargaining in exchange for guilty pleas from defendants. This would be evidence of a concessions form of plea bargaining in which the defendant saves the court time and resources by agreeing to plead guilty and in exchange for their cooperation and acknowledgment of responsibility they are rewarded with a more lenient sentence and faster case disposition. This finding is further supported by the results of the analyses on sentencing outcomes.

For example, the findings regarding sentencing outcomes supported the hypothesis that ECR cases would be less likely to receive a sentence to prison when compared to similar cases processed prior to the ECR program. In addition, ECR cases were more likely to receive a suspended sentence when compared to similar cases processed prior to ECR. These findings could be a product of the plea bargaining methods being used by the ECR workgroup. One of the side effects of charge bargaining and/or count bargaining can be a reduction in the sentence received. For example, if a charge is reduced from an offense classified as a Felony B to an offense that is classified as a Felony C or Gross Misdemeanor, the sentence would subsequently be reduced as well. In addition, a defendant who is facing multiple charges could have their sentence reduced when one or more of those counts are dropped as a result of plea bargaining.

These findings could also be evidence of a concerted effort by the ECR workgroup to reduce or avoid the use of the jail as punishment to help save space in an overcrowded jail. And while the cases in ECR had a similar percentage of cases sentenced to jail as cases processed prior to ECR implementation, the ECR cases were more likely to receive credit for time served. Therefore, some of the jail sentences would not actually add up to much time spent in the jail on
the punishment side of the process. For example, when examining the analyses of sentence length, the findings did not show any significant differences between the cases processed through ECR and similarly-situated cases processed prior to the implementation of the ECR program. But again, these findings are complicated by the use of credit for time served and suspended sentences. Futures studies should attempt to create a more accurate count of the actual number of the days spent in the jail by subtracting credit for time served and suspended time in the sentence to better determine how actual time served may differ between the two groups. This would also assist with examining how the jail is being used by the ECR program for pretrial detention and as a sanction.

In addition, all of the findings about the sentencing outcomes for the ECR cases and prior to ECR cases raised some interesting questions about how the county jail is being utilized by the ECR cases compared to how the jail was being utilized prior to the implementation of ECR. While many factors impact the average daily population and average length of stay in the jail, future studies should closely examine how the ECR program uses the jail for pretrial detention and sentencing. This is especially important considering one of the intended goals of the program was to help reduce jail overcrowding.

**Limitations of Current Study**

There are many limitations of the current study that need to be kept in mind when interpreting and utilizing the results of the study. First and foremost, the study was limited by not including measures of a defendant’s criminal history as a predictor variables in the propensity score matching method. The criminal history of a defendant has consistently been established as an important predictor of several of the outcome measures investigated by the
study and contributed to the decision of the ECR workgroup to select a case for the program.
Future research will include measures of criminal history to account for this limitation. Also, there are likely other predictors that could have been included in the analysis to help explain case inclusion in the ECR program and factors related to other outcomes that the current data did not include. For example, the current study does not attempt to measure the strength of the evidence present in cases or other important measures of case processing such as the number of days until discovery, the number of meetings between the defense attorney and their client, and the number of motions filed. Future studies will attempt to combine more data from other criminal justice agencies to create a more complete picture of case processing and outcomes.

Second, the current study is limited by not using separate propensity score matching methods for the subset samples that were analyzed for several of the research questions. Future studies will account for this issue by incorporating separate matching processes for these samples. This will help ensure that the findings presented here were not influenced by the predictor variables. Third, since the comparison group was comprised of cases that were processed through Spokane County Superior Court from 2006 to 2008, it is possible that other changes to court policy and procedure since have impacted the findings of the study. This is where the second comparison group of cases processed concurrently to the ECR program would have been useful, but unfortunately the differences between those cases and the cases processed in ECR were too great to proceed with the planned analysis.

Fourth, the current study is limited by not analyzing the impact of the ECR program on recidivism. It is possible that the shortened case disposition time is impacting the recidivism rate for those defendants processed through the program. It is also possible that the program is
impacting the caseload of community custody agents and the court caseload of revocation hearings. This question is vital to determining whether the ECR program is having an adverse impact on important processes and outcomes in other parts of the criminal justice system. Future studies will include an assessment of the recidivism for defendants processed through the ECR program and defendants processed prior the implementation of the ECR program.

Finally, the study is limited to only one jurisdiction and their methods of implementing and utilizing the ECR program. This does limit the ability to generalize the findings about the ECR program to other jurisdictions. However, as research has consistently found that the courts are unique in their local legal culture, it is always difficult to generalize about how different jurisdictions will incorporate a specific court intervention. Furthermore, jurisdictions differ across their court procedures and processing of criminal cases, which makes comparing different jurisdictions complicated. Therefore, this is an issue encountered by previous studies examining the problem of court delay and case processing and is difficult to compensate for in the current study.

**Future Research**

There is much work to be done in the future on the questions raised by the ECR program and the larger impact of speeding up the pace of litigation in criminal case processing. The current study only takes into consideration one subset of cases that Spokane County Superior Court processes each year. Future research should examine the impact the ECR program might be having on the remaining caseload and case processing of other courtroom workgroups in both superior and district courts. In addition, future studies should attempt to assess the degree to
which the ECR program is saving court time and resources and how this additional time and additional resources are being utilized by the court.

Future research also needs to examine the impact the program has had on the average daily population and average length of stay in the Spokane County jail. This will contribute to an understanding of how use of the jail may have shifted due to the ECR program in both pretrial detention and jail sentences. While there are many contributing factors to the jail population, these are questions that should be evaluated in regards to the ECR program since one of the goals of the program was to assist with reducing jail overcrowding.

The current study assessed several important decision points in criminal case processing. However, these decision points are all highly-discretionary and influenced by a multitude of factors. Observations and in-depth interviews with the ECR courtroom workgroup would provide more insight into the thought process behind some of these decisions. This research would also provide more context for the day-to-day operations of the ECR program and the attitudes and opinions of the ECR workgroup. Therefore, future research needs to assess the qualitative context of the ECR program to allow for a better understanding of the findings of the current study.

In addition, the current study does not attempt to measure the courtroom culture present within the ECR workgroup. As previous research indicates, the courtroom culture has a great deal of influence on case disposition time. It is likely that a specialized courtroom workgroup with a mission of expediting cases and adhering to strict timelines would foster a culture that helps produce the faster case disposition times found in the current study. Therefore, future research should provide an in-depth examination of this courtroom culture to determine whether
it differs from the culture present in the traditional court process, how it differs, and if there are aspects of the ECR culture that could be successfully translated to other areas of the court and vice versa.

Finally, future research should not only focus on the attitudes and opinions of the courtroom workgroup, but also those of crime victims and defendants who have their cases handled in the ECR program. While there is some evidence that victims are likely to be in favor of a faster case disposition time, future research should examine their perceptions in the context of the ECR program, where a faster disposition may also equal a less severe sentence for the defendant. In general, defendants’ perceptions of criminal case processing have often gone unexamined, which is a larger gap in the research that needs to be addressed. However, such research becomes especially important in the context of ECR since the program might be hindering the ability of defense attorneys to advise and zealously defend their clients, which could also impact the defendants’ perceptions of fairness and equality. Courts should be cautious about implementing a court intervention that could damage the perception of the court system as a fair and equal process and potentially compromise the legitimacy of the institution.
CHAPTER SEVEN: Conclusion

Policy Implications

In terms of the policy implications of the current study, it does demonstrate the impact that certain case management methods can have on case disposition time. By using some of the tried and true methods of case management, the ECR program was able to significantly reduce the number of days from case filing to case disposition for the selected cases. This is further proof that courts are not doomed to a slow pace of litigation, but that change is possible. However, additional research on the specific aspects of the courtroom culture that are contributing to the faster pace of litigation should be investigated to determine how they might be implemented in other courtrooms and jurisdictions.

The findings also demonstrated that defendants who engage in pretrial misconduct are still presenting issues for the court through their extraordinarily long case disposition times. This finding could indicate the need to revise the factors being used to determine whether a defendant should be detained or released prior to trial. The creation and validation of a pretrial risk assessment to be used by pretrial services would be an important step for the court.

The current study also found evidence supporting the supposition that the exclusive use of guilty pleas within the ECR workgroup is contributing to defendants receiving less severe sentences than would have been received prior to the implementation of the program. While plea bargaining is a commonly-used approach in criminal case processing, opinions and attitudes about this potential tradeoff should be examined by crime victims, defendants, and the general public to determine its acceptability as an approach to increasing court efficiency.

Last, the findings of the current study also reiterate the need to examine how the county jail is being utilized by different processes. Since one of the stated goals of ECR was to assist
with reducing jail overcrowding, there was a heightened awareness regarding how the jail was used for pretrial detention and as a sanction. While findings supported the theory that pretrial detainees would have their cases expedited, the findings regarding how the jail was used by ECR as a sanction were more mixed. For ECR to help contribute to a more efficient use of the county jail, an in-depth examination of how the program has impacted the jail is required.

**Conclusion**

The slow pace of litigation has long been a problem facing our court system as it can contribute to a multitude of problems, especially in criminal case processing. The results of the current study have confirmed the findings of previous research that this slow pace of litigation is not inevitable. By using methods and characteristics of differentiated case management, the ECR program was able to reduce the case disposition time for a subset of cases in Spokane County Superior Court. In addition, this faster case disposition time coincided with a lower rate of pretrial misconduct among defendants selected for ECR. These outcomes can be very beneficial to the courtroom workgroup and defendants and victims by saving court time and resources and reducing the uncertainty for all of the included parties.

However, the current study only provided a preliminary examination of the ECR program implemented in Spokane County Superior Court. While the findings indicate that the ECR program has reduced case disposition time and the rate of pretrial misconduct, it is still too soon to declare the program a success. There are many unanswered questions, especially surrounding the impact of ECR on recidivism and the use of the county jail. A future study will examine whether the program has an adverse effect on the likelihood of reoffending for defendants and how it is impacting the caseloads for community corrections agents and revocation hearings. A future study will also examine how the average daily population of the jail and average length of
stay in the jail were impacted by the ECR program. This study will help practitioners determine the impact of the ECR program on the correctional resources in Spokane County.

In addition to these studies, concerns regarding the potential compromise of the quality of justice during case processing to achieve these faster case disposition times in ECR are not diminished by the findings of the current study. The findings support the theory that instances of charge bargaining and count bargaining are more commonly used in the ECR program as an incentive for defendants to participate in the program. The findings also provide preliminary evidence that these guilty pleas are resulting in less severe sentences. The result is not necessarily the “same justice” as touted by the ECR program. Furthermore, the current study does not assess how the shortened timeline of case processing is impacting defense attorneys’ ability to do their job. Future studies will include additional measures of the quality of justice by incorporating case processing information from defense attorneys and defendants. This will provide a more complete picture of how ECR is impacting all of the parties involved in criminal case processing.

The current study has demonstrated the importance of evaluating the potential unintended consequences of court interventions that attempt to impact the pace of litigation. This was the first evaluation of the ECR program implemented in Spokane County Superior Court and one of only a few studies that has evaluated the overall program. Therefore, this study should only be considered the first step in determining the appropriate use of the ECR program in criminal case processing. Until additional research can be conducted, courts should hesitate in the implementation of a program that focuses so heavily on expediting criminal case processing while simultaneously limiting the adversarial process.
## APPENDIX A: Offenses Eligible for Spokane County Superior Court

### Early Case Resolution Program

<table>
<thead>
<tr>
<th>Offense Severity</th>
<th>Description of Crime</th>
<th>RCW Statute</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Misdemeanors</strong></td>
<td>Possession of a Controlled Substance - Marijuana</td>
<td>69.50.4014</td>
</tr>
<tr>
<td></td>
<td>Criminal Trespass – Second Degree</td>
<td>9A.52.080</td>
</tr>
<tr>
<td><strong>Gross Misdemeanors</strong></td>
<td>Operating a Vehicle with a Suspend License - Habitual Offender</td>
<td>46.20.342(1)(A)</td>
</tr>
<tr>
<td></td>
<td>Reckless Driving</td>
<td>46.61.500</td>
</tr>
<tr>
<td></td>
<td>Driving While Under the Influence - First Offense</td>
<td>46.61.502G</td>
</tr>
<tr>
<td></td>
<td>Driver Under 21 Consuming Alcohol</td>
<td>45.61.503</td>
</tr>
<tr>
<td></td>
<td>Physical Control of the Vehicle While Under the Influence</td>
<td>46.61.504G</td>
</tr>
<tr>
<td></td>
<td>Harassment</td>
<td>9A.46.020(2)(A)</td>
</tr>
<tr>
<td></td>
<td>Malicious Mischief - Third Degree</td>
<td>9A.48.090(G)</td>
</tr>
<tr>
<td></td>
<td>Conspiracy to Commit Theft in the Third Degree - Property Valued &lt;750</td>
<td>9A.56.050(1)(A)CO</td>
</tr>
<tr>
<td></td>
<td>Theft in the Third Degree - Property Valued &lt;750 Lost or Misdelivered</td>
<td>9A.56.050(1)(A)LO</td>
</tr>
<tr>
<td><strong>Felony C</strong></td>
<td>Attempting to Elude Police Vehicle</td>
<td>46.61.024</td>
</tr>
<tr>
<td></td>
<td>Driving While Under the Influence - Prior Offenses</td>
<td>46.61.502(1)(6)</td>
</tr>
<tr>
<td></td>
<td>Delivery of a Controlled Substance</td>
<td>69.50.401(1)(2)(C/D/E)/D</td>
</tr>
<tr>
<td></td>
<td>Manufacturing of a Controlled Substance</td>
<td>69.50.401(1)(2)(C/D/E)/M</td>
</tr>
<tr>
<td></td>
<td>Possession of a Controlled Substance with Intent to Deliver</td>
<td>69.50.401(1)(2)(CDE)PD</td>
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<td></td>
<td>Possession of a Controlled Substance</td>
<td>69.50.4013(1)</td>
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<td></td>
<td>Knowingly or Attempting to Obtain a Controlled Substance</td>
<td>69.50.403[C]</td>
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<tr>
<td></td>
<td>Unlawful Use of Building for Drug Purposes</td>
<td>69.53.010</td>
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<td></td>
<td>Community Custody Violator</td>
<td>72.09.310</td>
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<td></td>
<td>Identity Theft - Second Degree</td>
<td>9.35.020(1)(3)</td>
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<td></td>
<td>Unlawful Possession of a Firearm - Second Degree</td>
<td>9.41.040(2)(A)(I)</td>
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<td></td>
<td>Possession of a Controlled Substance by a Prisoner</td>
<td>9.41.041(2)</td>
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<td>Assault to Prevent Lawful Process - Third Degree</td>
<td>9A.36.031(1)(A)</td>
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<td></td>
<td>Assault of Transit Personnel - Third Degree</td>
<td>9A.36.031(1)(B)</td>
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<td></td>
<td>Assault with Criminal Negligence - Third Degree</td>
<td>9A.36.031(1)(D)</td>
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<tr>
<td></td>
<td>Assault of Firefighter - Third Degree</td>
<td>9A.36.031(1)E</td>
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<tr>
<td></td>
<td>Assault of Law Enforcement Officer - Third Degree</td>
<td>9A.36.031(1)(G)</td>
</tr>
<tr>
<td>Crime</td>
<td>Statute</td>
<td></td>
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<td>----------------------------------------------------------------------</td>
<td>---------</td>
<td></td>
</tr>
<tr>
<td>Assault - Third Degree</td>
<td>9A.36.031(1)(H)</td>
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<td>Malicious Harassment (Motivated by Hate)</td>
<td>9A.36.080(1)(B)</td>
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<td>Custodial Assault – Adult Corrections Employee</td>
<td>9A.36.100(1)(B)</td>
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<td>Custodial Assault – Community Corrections Employee</td>
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<td>Failure to Register as a Sex Offender</td>
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<td>Harassment - Threated to Kill</td>
<td>9A.46.020(2)(B)(II)</td>
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<td>Harassment of Criminal Justice Actor</td>
<td>9A.46.020(2)(B)(IV)</td>
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<td>Unlawful Discharge of a Laser at Law Enforcement Officer</td>
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<td>Conspiracy to Commit Theft in the Second Degree - Property Value 750&lt;x&lt;5000</td>
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<td>Theft in the Second Degree by Deception</td>
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<td>Theft in the Second Degree - Property Lost or Misdelivered</td>
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<td>Conspiracy to Commit Theft of Credit Card</td>
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<td>Taking a Motor Vehicle without Permission - Second Degree</td>
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<td>Possession of Stolen Credit Card</td>
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<td>Theft with Intent to Sell</td>
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<td>Organized Retail Theft - $750-5000 in Value</td>
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<td>Organized Retail Theft - Multiple Items Totaling $750-5000 in Value</td>
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<td>Retail Theft with Extenuating Circumstances - Second Degree</td>
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<td>Retail Theft with Extenuating Circumstances - Third Degree</td>
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<td>Creation of Forged Object</td>
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<td>Criminal Impersonation</td>
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<td>Collection of Unlawful Debt</td>
<td>9A.82.050</td>
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<td>Trafficking in Stolen Property - Second Degree</td>
<td>9A.82.055</td>
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<td><strong>Felony B</strong></td>
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<td>69.50.401(1)(2)(A/B)M</td>
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<td>Crime</td>
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<td>Welfare Fraud</td>
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<td>Identity Theif - First Degree</td>
<td>9.35.020(1)(2)</td>
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<td>Malicious Mischief - First Degree</td>
<td>9A.48.070(1)(A)</td>
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<td>Malicious Mischief - Second Degree</td>
<td>9A.48.080(1)(A)</td>
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<td>Residential Burglary</td>
<td>9A.52.025(1)</td>
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<td>Theft - First Degree</td>
<td>9A.56.030(1)(A)</td>
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<tr>
<td>Conspiracy to Commit Theft - First Degree</td>
<td>9A.56.030(1)(A)CO</td>
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<tr>
<td>Theft by Deception - First Degree</td>
<td>9A.56.030(1)(A)DE</td>
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<tr>
<td>Theft from Person - First Degree</td>
<td>9A.56.030(1)(B)</td>
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<tr>
<td>Motor Vehicle Theft</td>
<td>9A.56.065</td>
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<tr>
<td>Possession of a Stolen Vehicle</td>
<td>9A.56.068</td>
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<td>Theft of Rental Property</td>
<td>9A.56.096(1)(5)</td>
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<td>Possession of Stolen Property – First Degree</td>
<td>9A.56.150(1)</td>
<td></td>
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<tr>
<td>Escape – First Degree</td>
<td>9A.76.110</td>
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APPENDIX B: Results of Propensity Score Matching for the
Non ECR Concurrent Comparison Group

Propensity score matching was attempted for the second comparison group comprised of cases processed through traditional court during the time period concurrent to the ECR program. However, a sufficient match could not be created using this comparison group. The first step in the propensity score matching process (PSM) was to compare the continuous variables and categorical variables for the ECR group and non ECR comparison group using the standard t-test and chi-square test to determine if there were significant differences across the groups.

The results of these analyses are provided in Table 10. The results show that there were significant differences in the two groups across all of the predictor variables prior to the propensity score matching. The second step in the PSM was to use a backward-step logistic regression to determine which predictor variables were significantly associated with the treatment status, defined as inclusion in the ECR program. When the predictor variables were included in the model, the model was significant at each step at the p < .001 level. In addition, the model explained 20.9% of the variance in the outcome variable, which is considerably higher than the variance explained by the model using the prior to ECR implementation comparison group.

The third step in the PSM was to use a multivariate logistic regression model to estimate the propensity scores, which represent the predicted probability of being included in the ECR program. The area under the curve analysis showed the propensity scores to have an AUC = 0.737, which again is considerably higher than the AUC for the propensity scores for the model.
including the prior to ECR cases. These were both early indicators that the non ECR comparison group had greater differences from the ECR group than the historical comparison group.

Appendix B Table 1: Predictor Characteristics of ECR Group and Non ECR Comparison Group

<table>
<thead>
<tr>
<th>Predictor</th>
<th>Before PSM</th>
<th>After PSM</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N = 4,552 cases</td>
<td>N = 2,094 cases</td>
</tr>
<tr>
<td></td>
<td>Non ECR %/M (SE)</td>
<td>ECR %/M (SE)</td>
</tr>
<tr>
<td>Seriousness of Primary Offense</td>
<td>&lt; .001</td>
<td>.009</td>
</tr>
<tr>
<td>Minimum of 0 Days</td>
<td>61.9 (79.8)</td>
<td>71.7 (77.6)</td>
</tr>
<tr>
<td>Minimum of 1 month</td>
<td>14.1 (13.0)</td>
<td>15.5 (13.3)</td>
</tr>
<tr>
<td>Minimum of 3 months</td>
<td>13.8 (3.6)</td>
<td>7.0 (4.6)</td>
</tr>
<tr>
<td>Minimum of 12 months</td>
<td>10.2 (3.5)</td>
<td>5.9 (4.5)</td>
</tr>
<tr>
<td>Offense Type</td>
<td>&lt; .001</td>
<td>.007</td>
</tr>
<tr>
<td>Property</td>
<td>53.8 (37.4)</td>
<td>48.9 (42.9)</td>
</tr>
<tr>
<td>Drug</td>
<td>31.8 (53.2)</td>
<td>39.1 (45.9)</td>
</tr>
<tr>
<td>Other</td>
<td>14.4 (9.4)</td>
<td>12.1 (11.2)</td>
</tr>
<tr>
<td>Multiple Charges</td>
<td>45.0 (24.2)</td>
<td>&lt; .001 (37.7)</td>
</tr>
<tr>
<td>Co-Defendants</td>
<td>25.5 (11.3)</td>
<td>&lt; .001 (17.3)</td>
</tr>
<tr>
<td>Detained Pretrial</td>
<td>20.8 (13.5)</td>
<td>&lt; .001 (16.3)</td>
</tr>
<tr>
<td>Number of Continuances</td>
<td>2.325 (.049)</td>
<td>1.152 (.039)</td>
</tr>
<tr>
<td>Gender (Male)</td>
<td>73.1 (67.9)</td>
<td>&lt; .001 (73.6)</td>
</tr>
<tr>
<td>Race (White)</td>
<td>86.2 (89.1)</td>
<td>.007 (87.5)</td>
</tr>
<tr>
<td>Age</td>
<td>32.72 (.192)</td>
<td>33.00 (.278)</td>
</tr>
</tbody>
</table>
Once the propensity scores were estimated using the logistic regression, they were used to match cases from the non ECR comparison group to the ECR group, starting with a caliper of 0.01. While this match was completed, the results of the match were not encouraging. In order to closely evaluate the efficiency and validity of the propensity score matching, several diagnostic tests were performed. First, the area under the curve analysis was again performed using the propensity scores and even after the matching process the AUC was still strong, AUC = 0.633. Second, the continuous variables and categorical variables for the ECR group and non ECR comparison group were again analyzed using the standard t-test and chi-square test to determine if there were still significant differences across the groups after the matching process.

The results of these post-match analyses are also shown in Table 10. These results showed that there were still five of the nine predictor variables significant even after the matching process, including seriousness of the primary offense, offense type, multiple charges, number of continuances, and gender. In addition, the co-defendants variable was on the edge of being significant at the p = .05 level. To have this many predictor variables still significant after the matching was not acceptable. Additional propensity score matching attempts were conducted using several different calipers, including a caliper of 0.05, 0.1, and 0.2. However, none of these attempts created a sufficient match. In many of these attempts, the SPSS program was not even able to complete the matching process. Considering these difficulties in creating a usable match, it was decided that the non ECR comparison group could no longer be used in the analysis. Any significant findings found during the analyses could have been attributed to the differences in the predictor variables between the two groups instead of the effect of the treatment.
While this decision was a setback in that the non ECR comparison group was processed through the traditional court during the time period concurrent to the ECR program, it was not surprising to find such significant differences in the two groups. It is likely that these differences are a result of the ECR workgroup using the established criteria to select the most appropriate cases for the program and leaving those cases that failed to meet the criteria to be disposed of through the traditional court process. A close examination of the pre-matching analyses showed that there were significant differences in the seriousness of the offenses and case complexity between the two groups from the beginning. For example, the non ECR comparison group was more likely to be comprised of cases that had a primary offense classified as more serious by the Washington State Sentencing Guidelines. For those cases with an offense ranked as level four seriousness, the non ECR group had 10.2% of cases compared to only 3.5% of ECR cases. For those offenses ranked as level three, the non ECR group had 13.8% of cases compared to only 3.6% of ECR cases. For those offenses ranked as the least seriousness at level one, the non ECR group only had 61.9% of cases compared to 79.8% of ECR cases.

In addition, prior to the match the non ECR cases had 45.0% of cases that had multiple charges present in the case as compared to only 24.2% of ECR cases. The same issue arose across those cases with co-defendants, with only 11.3% of ECR cases with co-defendants compared to 25.5% of non ECR cases. Both of these measures indicate a higher degree of case complexity that the ECR workgroup would likely try to avoid. The findings that the non-ECR cases were more likely to have a defendant detained prior to trial and a higher number of continuances lend further support that the non ECR cases were markedly different from the ECR cases across seriousness and complexity. All of these findings likely represent the choices being
made by the ECR workgroup to handle cases that were viewed as being less serious and less complex and leaving more serious and complex cases to be processed through traditional court.

The failed attempts to produce a comparable sample using cases processed through traditional court during the same time period as the ECR program was implemented demonstrate that the ECR cases are markedly different from those cases the ECR workgroup does not select for participation in the ECR program. The differences in the two groups reflect the use of criteria such as the seriousness of the offense and case complexity. Those cases included in the ECR program were more likely to include primary offenses classified as less serious by the Washington State Sentencing Guidelines. In addition, the ECR cases were less likely to include the presence of multiple charges, which can be seen as an indicator of seriousness and case complexity. ECR cases were also less likely to involve co-defendants. These findings fit the goals of the ECR program to fast-track those cases that are considered to be less serious and less complex and therefore requiring less time and attention from the court compared to more serious and complex cases.
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