

**Seattle City Attorney's Office  
Criminal Division Backlog Report  
Part 2**

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# Seattle City Attorney's Office – Criminal Division Backlog Recommendations (Part 2)

## I. Executive Summary

While there are still several impediments to the efficient and timely processing of criminal cases, considerable progress has been made by putting new cases coming into the office at the front of the queue and making filing decisions within five days. This system prevents adding cases to the backlog and has even begun to incrementally reduce the backlog. Difficult decisions remain about how to begin addressing the bulk of the 5,000 cases still pending review.<sup>1</sup>

## II. Overview of RFU Under the “New System”

The final step in my review was to meet with the Review and Filing Unit (RFU) Assistant City Prosecutors (ACPs) after reviewing all other City Attorney Office (CAO) Criminal Division units. This provided for better and more focused questions, and also allowed the RFU ACPs to come up to speed on the new system of filing cases within five days rather than putting them at the back of the queue. These meetings were very productive in rounding out how the CAO may best address the current backlog.

My meetings occurred after the new system of filing or declining cases had been in place for almost three full weeks. My sense is that the RFU ACPs were working hard to make the system work, and so far it has appeared to have had the intended effect. See *DATA, infra*.

With twenty days under the new system (as of 2/27), an average of 31 cases were received each day, with the high being 101 cases and the low being 0. On average, this

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<sup>1</sup> The ultimate number of cases in the backlog will vary depending on what is and what is not counted as part of the backlog; *i.e.*, cases waiting for State Patrol Tox lab results, cases where a filing decision has been made by an ACP but the paperwork is being processed for filing, etc. Regardless of how it is defined, on the low end the backlog is in excess of 4,000 cases and 6,000 on the high end; both are too high.

is 19 fewer cases per day, or 38% fewer cases, than the average of 50 per day projected in my first report.

*Significantly, during this time period, the CAO was—for the first time in a very long time—able to review and then file or decline 128 more cases than came into the office.* Whether this trend can hold and even increase over the long term remains to be seen, but this is positive news and primarily due to the concerted efforts of the RFU ACPs and professional staff.

### **III. Meetings with the RFU ACP's**

While the new system of filing cases within five days shows great progress, there are still a number of issues that serve as an “anchor” on efficiency in the RFU that need to be addressed. Each is discussed below.

#### **(A) Too Many “Clicks” to Process Cases**

The RFU ACPs confirmed what I had heard across the office; the office's current system for filing cases is far from user friendly, involves too much going back and forth between ACPs and the professional staff, and hinders the ability to move cases along expeditiously. Much of this is driven by limitations to the CAO's case management system Damion.

In order to file a case, an ACP first reviews the case and then makes the decision the case should be filed. At this point, the matter is then turned over to the Prosecution Support team to draft the charging document, check with all victims and most witnesses to see if they would like to see charges filed and are willing to assist in the prosecution, and assemble all discovery before the case is filed. The matter eventually makes its way back to the RFU ACP once everything is assembled and the Complaint is ready to be signed. But before that happens, the ACP often needs to re-review the file and assembled information before signing the Complaint.

There is no question there are cases where victim and even witness contact is necessary before filing a case. *But it is not needed in all cases.* This topic is addressed more fully in a companion report and the process has now been modified, although additional efficiencies must still be realized.

#### **(B) Technology as an Impediment**

A constant refrain from RFU ACPs is that going from a purely paper-driven filing system to a paperless environment was a tremendous anchor on efficiency. As the RFU ACPs

point out, the current system, Damion, does not allow them simply to complete a charging template when reviewing the matter. Rather, that function defaults to a member of the professional staff and numerous “touches” and clicks are required to actually complete the filing process.

The policy and practical reasons for going paperless were sound and remain so. But rather than create efficiencies, the CAO’s move to a paperless environment has had precisely the opposite effect. RFU ACPs have been spending too much time manipulating computer check boxes, passing filing duties back and forth with the professional staff, and working with IT on their technological issues and too little time on their core job—reviewing cases. In short, the CAO’s current Damion system hinders the efficient processing of cases.

I am aware that a new computer case management system is coming online and that it should allow RFU ACPs to work through a charging decision and to file or decline it without having it “ping pong” back and forth with the professional staff. It is my hope that this new system will serve to create additional efficiencies for the RFU and entire Criminal Division.

### **(C) “De-Felonization”**

The SPD submits numerous prosecutable felony cases directly to the CAO. These are cases where the officers and detectives know the amounts or type of crime involved will not reach the King County Prosecuting Attorney’s Office (KCPAO) felony filing standards. The crimes that these occur most with are thefts, assault in the third degree against officers, and various court order violations that are felonies.

While these issues involve policy calls and a desire and need to work collaboratively with the CAO’s colleagues in the KCPAO, two efficiencies can be realized. First, if the matter clearly involves a felony crime but doesn’t meet the KCPAO’s filing standards, *serious consideration should be given to requiring SPD to refer the matter to the KCPAO and not the CAO in the first instance.*

If the matter does not meet the KCPAO’s felony crime criteria, they may still charge the matter in the King County District Court, even if the crime occurred in the City of Seattle. This allows the crime to still be addressed and leaves the KCPAO with the very real threat that unless a plea or agreed disposition in the King County District Court is reached, the possibility of the matter being handled as a felony is clear and present. That is not the case if the CAO takes the matter over.

In addition, many assault in third degree cases against police officers—felonies—are routinely sent directly to the CAO unless there are “significant” injuries (not an element of the crime). While it is a policy decision by the KCPAO to not file these cases as felonies, I strongly recommend that these cases be referred to the KCPAO. If they decline to file them as felonies, the KCPAO can elect to file them as misdemeanors in District Court and then refile as felonies if needed. I believe there will be great support for this position within the SPD.

Finally, if the KCPAO makes the decision that a case is not provable as a felony, there is no value in the city re-reviewing the matter for misdemeanor charges. The burden of proof and evidentiary standards does not change and sending cases to the CAO that are not prosecutable only adds to the RFU ACPs’ workloads.

#### **(D) Audit of Declined Cases**

I have audited a handful of the decline decisions that are now being made under the new system. As I expected, cases that might otherwise be prosecutable with follow-up are now declined. The hard truth is that in a criminal justice “eco-system” with fewer police officers to follow up on criminal cases and a large backlog of cases pending review, many more potentially prosecutable cases will be declined.

It is clear the RFU ACPs had little direction from top management about what cases they should and should not file. Since there were no filing guidelines in place, individual ACPs elected to not try to “address every transgression” that occurred in the city. But rather than decline these low-level cases, they just continued to pile up and add to the backlog.

It bears noting that making “file/no file” charging guidelines are far easier to implement anywhere in the criminal justice system outside a city attorney’s office. If the U.S. Attorney’s office declines to file a provable case due to resource issues, it can usually go to the county prosecutor. If a provable felony case goes to the county prosecutor, he or she can always file it as a felony or address it in their District Court as a gross misdemeanor or misdemeanor. And, as we see in the case of the KCPAO, claiming resource issues, they can always refer felony and non-felony matters to the CAO if they occurred in the city.

But the CAO has nowhere to send its provable cases when resources are stretched. If the CAO declines a provable case, that means a provable crime simply goes unpunished. Moreover, city attorney offices have far fewer tools to address criminal behavior.

For example, if an offender is mentally incompetent, the ACPs in the CAO do not have the statutory tools available to send the person to have his or her competency restored. Similarly, and as noted above, if a provable felony crime is sent to the CAO because it doesn't meet county filing guidelines, the CAO has no real leverage to resolve the case.

#### **IV. Backlog Reduction Options**

With a backlog of roughly 5,000 cases that was created over that past two plus years, the CAO is facing a “Hobsons” choice not of its making. On one hand, it is theoretically possible to review and make charging decisions on all or most of these cases. But even if only 50% of them are charged, a backlog of 2500 cases still exists and is merely pushed down the stream to the trial prep staff, trial teams, the SCU, and ultimately the Court. And, of course, there is also work associated with declines; there is “follow-up” needed in a substantial number of cases to make an informed charging decision.

##### **(A) Backlog Data and Prioritization**

On January 20, 2022, the backlog looked like this:

Offense	Reports	REV	HOLD
Theft	1312	1060	32
Domestic Violence	1317	148	41
Assault (non-sexual)	1055	198	8
Assault with Sexual Motivation	74	20	0
Harassment/Menacing	553	84	7
Weapons Charges	212	64	12
DUI	974	4	455
Trespassing	537	151	15
Property Destruction	598	152	7

In my limited review of cases being declined, many, and maybe even a majority, will be declined, one at a time, as they are reviewed. This is an expected result of the RFU ACPs being overwhelmed, in the position of filing the most serious offenses first, and not trying to address “every transgression in the city” with criminal charges.

Addressing the backlog is going to require an “all-hands-on-deck” approach to review cases for filing, but it must also balance the need to address crime without overloading the CAO, the courts, and the public defenders by pushing too many cases into the system at once.

In a prior memo, I suggested the following case prioritization be used to address the backlog:

1. All cases within one month of a statute of limitation expiration.<sup>2</sup>
2. Domestic Violence and Assaults with Sexual Motivation.
3. Firearm and all other Assaults and Harassment-related Offenses.
4. High-Priority Offenders—*e.g.*, cases involving individuals with three or more current pending matters in the backlog.
5. DUIs.
6. Property Destruction.
7. Theft.
8. Trespassing.
9. Non-DUI traffic.
10. All other offenses.

Once the office adopts a formal case prioritization, whether it is the one above or some other, the RFU Unit Lead can then identify and prioritize cases in the backlog accordingly.<sup>3</sup>

Some of the foregoing categories also contain sub-categories. For example, a case referred as a misdemeanor Criminal Trespass case may actually be a felony Burglary case that should have been handled by the KCPAO; a first time DUI with a BAC just over the legal limit and no prior DUIs is likely less serious than one where the offender has a high BAC and two prior DUIs; and so on.

Even under the above prioritization, there remains inherent tension in the system. Notably, the least serious cases in the backlog (numbers 6-10) will also have one year statute of limitations. As a result, these cases are much more likely to appear in greater numbers in the most serious tier level: level (1) (cases within one month of a statute of limitation expiration). The point is that prioritizing processing cases properly within each

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<sup>2</sup> This may require some significant data base manipulation based on the charge(s) referred and then matching those up with the appropriate statute of limitation (*e.g.*, one or two years).

<sup>3</sup> These case prioritizations were finalized with the input of the Criminal Division Unit Leads.



category requires good judgment from experienced ACPs—something the CAO has in abundance.

### **(B) Assigning Cases to all Available ACPs**

As noted in my initial report (“Backlog Report Part 1”), the CAO was able to significantly reduce its much smaller backlog beginning in March 2020. Based on my interviews with numerous staff, there did not appear to have been a coordinated or organized approach *from the top of the CAO* to tackling the backlog. Rather, the gains were made by seeking “volunteers” among the non-RFU ACPs to take a handful of cases in addition to their own duties.

Unfortunately, the gains made in March 2020 were relatively short term and disappeared over the next several months. The current backlog is now much larger and reducing it will not happen with volunteers taking on 30 or so cases. Instead, there must now be a system-wide approach to reducing the backlog, it must (eventually) involve the efforts of most, if not all, ACPs, and it must be monitored and enforced by the CAO’s top leadership.

The CAO has roughly 25 non-RFU ACPs assigned to the Criminal Division. If each of the 25 ACPs assumed responsibility for 100 cases for review over the next six months, or just under 17 per month, half the backlog will be eliminated. If that is doubled, to 200 cases per ACP, or about 35 cases per ACP per month, the entire backlog will be virtually eliminated. But an approach this aggressive does not appear to be currently possible.

In discussions with the Unit Leads, ACP “bandwidth” around the office to assist in filing review is unequal and hard to come by. The Domestic Violence Unit is short two ACPs and are hard pressed to stay even with their current caseloads and DV charging. But there are pockets of bandwidth available in the SCU, Appellate, and TTU, and this week two new ACPs and the Criminal Chief joined the office.

Even with increased filing review bandwidth, the CAO must still consider that just because the filing backlog will decline, it creates burdens elsewhere in the criminal justice eco-system. Substantial increases in decisions to file charges will be revisited by the CAO’s filing and case prep professional staff, trial teams and the SCU, and the SPD, courts, and public defenders. Thus, any solution must keep all parts of the criminal justice system front of mind since breaking one part of it will essentially break all parts.

### **(C) Automatic/Presumptive Declines**

In light on the analysis above, the CAO should also consider systematically declining all Theft (1312), Trespassing (537), and Property Destruction (598) cases with “guardrails” as described below. This alone would reduce the backlog by 2,447 cases, *roughly half of the 5,000 cases in the backlog*. The reasons for not taking this approach are compelling; it means that cases that might ordinarily be charged will go unprosecuted, victims will go uncompensated, and confidence in the criminal justice system will be damaged.

But the reasons for taking a systematic approach merits serious consideration and also carries with it compelling justifications. Many of these case—perhaps most of the cases in the backlog—will not be charged in any event; victims, witnesses, and even police officers will no longer be available; more cases may exceed their statute of limitations while waiting to be reviewed; and keeping these lower-level crimes in the queue means the ability to pursue more serious crimes suffers.<sup>4</sup>

Finally, any systematic decline approach should implement guardrails. For example, ACPs could be instructed that the governing principle is that certain crimes are *presumed* to be declined, *but that the reviewing ACP should do a “once over” on all cases to determine if the matter warrants an exception*. For example, a case coded as Criminal Trespass might actually be a Burglary, a crime coded as a Theft might involve a theft from a person making it a felony, etc.

In sum, both experience and a recent audit of decline decisions proves that a very large number of these lower-level cases will be declined if they are reviewed one at a time. Turning this process around, applying a presumption that certain classes of cases will be declined, but reviewing each of them for an exception to the presumption, will exponentially speed up the review of these cases and likely yield the same, or nearly the same, result.

## **V. Conclusion**

Based on the foregoing, I recommend consideration be given to the following steps to reduce the current backlog:

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<sup>4</sup> In conversations with a long serving KCPAO prosecutor, I was advised that this approach was taken in the past by their office to get out from under backlogs. I am also aware that county prosecutors in other jurisdiction have taken a “no file” approach with certain types of crimes and also raised their filing standards above those thresholds set in the RCW’s, *i.e.*, thefts.

1. Work with Unit Leads to identify those ACPs with current filing review capacity and then *assign* each available ACP a minimum of 20-25 cases per week to review. Monitor compliance with these expectations. Do not rely on an “all-volunteer” system.
2. As new ACPs come on board, reevaluate the ability of additional ACPs to receive filing review assignments.
3. Employ a presumptive decline system for the least serious classes of cases; but employ a mandatory review process to screen out cases for an exception.
4. As the office staffs up and fills more vacant positions, broaden out mandatory filing review assignments to more ACPs, set case output metrics that will clear the backlog, monitor them, and do so at a level that will not overburden other CAO functions or others in the criminal justice eco-system.

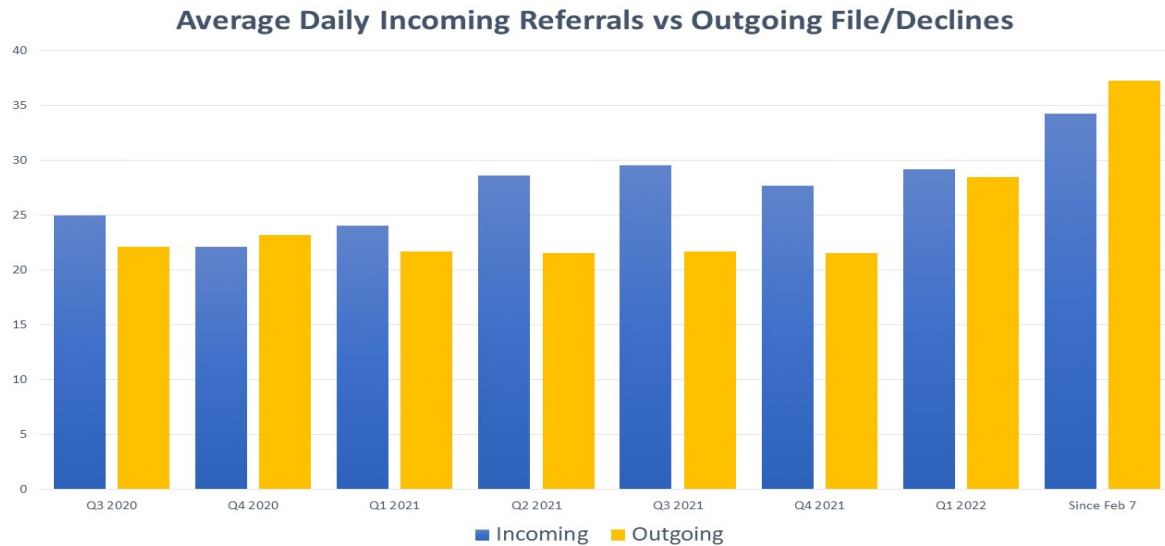
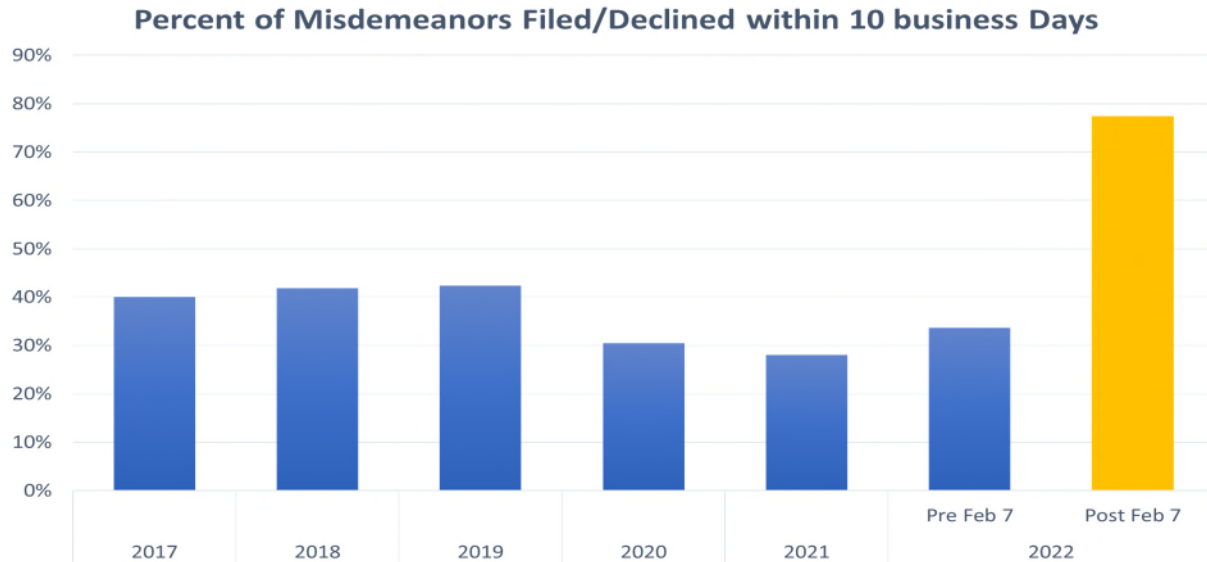
It is unfortunate that the current Administration inherited the current backlog and the myriad of problems that come with it. The point here is not to criticize the prior Administration, and while much of my time was spent looking forward, it was important to also spend time understanding how the CAO got here in the first place.

Moreover, the current problem is not just due to Covid. The CAO has had large backlogs before, has relied on a case management system that was outdated, and managed the office by the “seat of the pants” rather than relying on monitoring case inputs and outputs and other data. There is too much at stake, the public expects, demands, and deserves more, and it simply cannot be repeated.

I leave my assignment with a great sense of optimism. The CAO is staffed with dedicated professionals who care deeply about the public they serve, the CAO’s mission, and the role they play in accomplishing it. If they are given the direction they desire and the tools they need, they will almost certainly accomplish the difficult task ahead.

# DATA

## Case Review Metrics<sup>5</sup>



<sup>5</sup> Cases not filed within five days include such matters as cases sent to a Domestic Violence Advocate for victim contact, additional information requested from SPD, DUI's waiting for toxicology results from WSP lab, etc.