REVIEW OF THE COOK COUNTY FELONY CASE PROCESS
AND ITS IMPACT ON THE JAIL POPULATION

TECHNICAL ASSISTANCE REPORT

Bureau of Justice Assistance
CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT
A Joint Program of the Bureau of Justice Assistance, U.S. Department of Justice, and American University School of Public Affairs
REVIEW OF THE COOK COUNTY FELONY CASE PROCESS AND ITS IMPACT ON THE JAIL POPULATION

Submitted to the
Cook County Judicial Advisory Council

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September 26, 2005
# REVIEW OF THE COOK COUNTY FELONY CASE PROCESS AND ITS IMPACT ON THE JAIL POPULATION

## CONTENTS

<table>
<thead>
<tr>
<th>Acknowledgments</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>II. THE FELONY ADJUDICATION PROCESS IN COOK COUNTY</td>
<td>4</td>
</tr>
<tr>
<td>A. Overview</td>
<td>4</td>
</tr>
<tr>
<td>B. Prosecutorial Screening</td>
<td>6</td>
</tr>
<tr>
<td>C. Release Determination</td>
<td>6</td>
</tr>
<tr>
<td>D. Activity Prior to Preliminary Hearing</td>
<td>8</td>
</tr>
<tr>
<td>E. Lawyer Assignments</td>
<td>9</td>
</tr>
<tr>
<td>F. Preliminary Hearing to Assignment and Arraignment</td>
<td>9</td>
</tr>
<tr>
<td>G. Post Assignment/Arraignment Process</td>
<td>10</td>
</tr>
<tr>
<td>H. Drug Treatment Intervention and Mental Health Court Special Dockets</td>
<td>11</td>
</tr>
<tr>
<td>1. The Cook County Drug Treatment Court</td>
<td>11</td>
</tr>
<tr>
<td>2. The Cook County Mental Health Court</td>
<td>13</td>
</tr>
<tr>
<td>I. Trials</td>
<td>15</td>
</tr>
<tr>
<td>1. Bench and jury trials</td>
<td>15</td>
</tr>
<tr>
<td>2. Scheduling</td>
<td>15</td>
</tr>
<tr>
<td>3. Law enforcement witness availability</td>
<td>16</td>
</tr>
<tr>
<td>4. Lawyer turnover</td>
<td>16</td>
</tr>
<tr>
<td>J. Sentencing and Post-Trial Activity</td>
<td>17</td>
</tr>
<tr>
<td>III. CASE PROCESSING PERFORMANCE IN THE CRIMINAL DIVISION</td>
<td>17</td>
</tr>
<tr>
<td>A. Clearance Rates</td>
<td>17</td>
</tr>
<tr>
<td>B. Time to Disposition</td>
<td>19</td>
</tr>
<tr>
<td>C. Age and Custodial Status of the Caseload</td>
<td>20</td>
</tr>
<tr>
<td>IV. FACTORS IMPEDING CASE PROCESSING EFFICIENCY</td>
<td>21</td>
</tr>
<tr>
<td>A. Absence of Adequate Information for the Pretrial Release Decision-making and Screening Functions</td>
<td>21</td>
</tr>
<tr>
<td>1. Pretrial release decisions</td>
<td>21</td>
</tr>
<tr>
<td>2. Prosecutorial screening</td>
<td>22</td>
</tr>
<tr>
<td>B. A “Legal Culture” That Facilitates Unnecessary Delay in Case processing</td>
<td>23</td>
</tr>
<tr>
<td>1. Expectations of the attorneys</td>
<td>23</td>
</tr>
<tr>
<td>2. Lack of judicial control of caseflow</td>
<td>24</td>
</tr>
<tr>
<td>C. Lack of Accurate and Routinely Available Data to Guide Judicial Caseflow Management and General Court Management</td>
<td>26</td>
</tr>
<tr>
<td>D. Underutilization of Interagency Mechanisms</td>
<td>27</td>
</tr>
</tbody>
</table>
### E. Other Issues

1. Jail access and transportation  
2. Insufficient early dispositional or diversionary alternatives  

### V. THE ADJUDICATION PROCESS AND JAIL USAGE

#### A. Length of Stay in the Cook County Jail  
#### B. Analysis of Days in Custody, by Charge and Bond Amount

  1. Jail usage by charge  
  2. Jail usage by method of release  
  3. Jail usage by cash required to make bond  

#### C. Commentary on Comparative Jail and Case Processing Data – Major Metropolitan Jurisdictions

### VI. RECOMMENDATIONS

**RECOMMENDATION NO. 1**: Initiate a Circuit Court-led, interagency process to develop and adopt appropriate time standards and events for disposition of various categories of cases—i.e., a Differentiated Case Management (DCM) System.

**RECOMMENDATION NO. 2**: The Court should sponsor training for all of the Criminal Division judges, lawyers and Court and Clerk’s Office staff in caseflow management generally, and the new DCM system in particular.

**RECOMMENDATION NO. 3**: The County should reconstitute a Pretrial Release and Services Agency to serve the criminal courts.

**RECOMMENDATION NO. 4**: The Court should develop a Strategic Plan for attainment of national standards for court and judicial performance.

**RECOMMENDATION No. 5**: Use the National Commission-developed Trial Courts Performance Standards and Measurement System Forms to monitor and report on progress towards case processing goals and other court improvement initiatives.

**RECOMMENDATION No. 6**: Initiate immediately a process to develop and implement the compilation of timely, accurate, and system-relevant data on the adjudication process by the Court, the Clerk’s Office, State’s Attorney and Public Defender Offices, and the DOC, using uniform definitions.

### VII. NEXT STEPS AND TIMETABLE

<table>
<thead>
<tr>
<th>Step</th>
<th>Timeline</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>November 1, 2005 - February 28, 2006</td>
</tr>
<tr>
<td>B.</td>
<td>November-December 2005</td>
</tr>
<tr>
<td>C.</td>
<td>November 2005 – April 14, 2006</td>
</tr>
<tr>
<td>D.</td>
<td>April 17, 2006</td>
</tr>
<tr>
<td>E.</td>
<td>May 1, 2006</td>
</tr>
<tr>
<td>F.</td>
<td>January 2006 - December 2006</td>
</tr>
</tbody>
</table>
APPENDICES:

A. American Bar Association Standards [Excerpts]
   - ABA Criminal Justice Standards: Pretrial Release
   - ABA Criminal Justice Standards: Discovery
   - ABA Criminal Justice Standards: Speedy Trial and Timely Resolution of Criminal Cases
   - ABA Standards Relating to Trial Courts: Caseflow Management and Delay Reduction

B. The Environmental Context of Criminal Justice in Cook County -- Commentary by Judge Charles Edelstein

C. Resumes of the Study Team

* * *

This report was prepared by the Bureau of Justice Assistance Criminal Courts Technical Assistance Project at American University, Washington, D.C. This project is supported by Grant No. 2003-DD-BX-0356, awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. The Cook County, Illinois Government shared in the costs of the study and the follow-up DCM training to be provided. Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.
ACKNOWLEDGMENTS

This report is the work product of many agencies and individuals in Cook County who made an extraordinary effort to assist the study team in understanding what is a complex criminal justice system and in compiling the wide range of information that provided the foundation for the team’s findings and recommendations.

The study team interviewed over 100 individuals in the private and public sectors who were involved in some way with the criminal justice process in Cook County, all of whom willingly gave their time, insights and perspective regarding criminal justice system operations and the nuances of practice and procedure relevant to the study’s focus. In addition, some individuals were in a position to provide the team not only with existing information or documentation that appeared relevant to our study, but to put in extra effort to design, program and produce special data runs and analyses to provide us with information not otherwise available.

Special note is made of the cooperation and assistance provided by the following individuals and their agencies:

- **The Cook County Board of Commissioners**
  John H. Stroger, Jr., President

- **Cook County Criminal Justice System Leadership**
  Judge Timothy C. Evans, Chief Judge, Circuit Court of Cook County
  Judge Paul P. Biebel, Jr., Presiding Judge, Criminal Division of the Circuit Court
  State’s Attorney Richard A. Devine
  Public Defender Edwin P. Burnette
  Clerk of the Court Dorothy Brown
  Sheriff Michael P. Sheahan
  William R. Quinlan, Chairman, Cook County Criminal Justice Coordinating Council

- **In the Office of the Chief Judge of the Circuit Court**
  Dawn Catuara, Executive Officer
  Michael McGowan, Director, Electronic Information Division

- **In the Criminal Division of the Circuit Court**
  Peter Coolsen, Court Administrator
  William Sullivan, Staff Attorney
  James Jordan, Staff Attorney

- **In the Cook County Clerk of Court’s Office**
  Dennis McNamara, Associate Clerk of the Criminal Bureau
  Leopoldo Lastre, Chief Deputy Clerk of the Criminal Division
  Karen Landon, Project Manager, MIS Division and
  Lakshmi Vaitla, Charles Wasserman, and Edda Bowlds, Programmers

- **In the Law Office of the Cook County Public Defender**
  Xavier Velasco, Chief of Operations
  Paul D. Fields, Director of Policy Affairs
  Scott Slonum, Supervising Attorney, Third Municipal District
In the Office of the State’s Attorney of Cook County
Randall E. Roberts, Executive Assistant State’s Attorney
Patrick T. Driscoll, Jr., Chief, Civil Actions Bureau
Bernie Murray, Chief, Criminal Prosecutions Bureau
John Murphy, Chief, Felony Trial Division
Mark Kammerer, Director, Treatment Programs, Narcotics Prosecution Bureau

In the Cook County Sheriff’s Office
Zelda R. Whitler, Undersheriff
Scott Kurtovich, First Assistant Executive Director, Department of Corrections
Dwayne Peterson, Director, MIS, Department of Corrections
Sgt. Marcus Hargrett, MIS Division, Department of Corrections

In the Cook County Judicial Advisory Council
Daniel J. Coughlin, Executive Director
Kay Schroeder, Senior Attorney

In the Bureau of Public Safety and Judicial Coordination of Cook County
J.W. Fairman, Chief Coordinator

In the Chicago Police Department
Thomas Epach, Office of the Superintendent

* * *
REVIEW OF THE COOK COUNTY FELONY CASE PROCESS AND ITS IMPACT ON THE JAIL POPULATION

I. INTRODUCTION

In September 2004, the Cook County Judicial Advisory Council, acting on behalf of both the Circuit Court of Cook County and the Cook County Criminal Justice Coordinating Council, invited the Criminal Courts Technical Assistance Project, a U.S. Department of Justice/Bureau of Justice Assistance-sponsored program housed at American University, in Washington, D.C., to conduct a review of the felony case adjudication process in Cook County. The objective of the review was to determine if the criminal case process was itself contributing to jail population pressures that the Board of Commissioners was under legal obligation to bring under control and into compliance with the terms of a Consent Decree in a long-standing case in the U.S. District Court for the Northern District of Illinois, known as the Duran case, alleging un-constitutional conditions of confinement in the Cook County Jail. Cook County and individual county officials are the defendants in that case.

Regardless of whether the criminal adjudication process has been contributing to jail population pressures, the review was also intended to identify areas of the process that could be improved to enhance the efficiency of the criminal case disposition process generally and which might also, as a byproduct, ameliorate the jail population situation. This review was requested by the Court, in keeping with the judicial system’s responsibility to provide fair, timely and responsible adjudication of criminal cases. We were asked to report our findings and submit recommendations for adjudication system improvement for consideration and action by Court and County authorities. This report is the work product of that review.

The Criminal Courts Technical Assistance Project (CCTAP), which had conducted a similar study on behalf of the County and the Circuit Court in 1989, also in the context of the Duran case, was selected for this review because of its prior experience with the Cook County criminal justice system and its experience in court system administration analysis. A second component was added to the CCTAP project’s services to Cook County in the present engagement at the request of the Presiding Judge of the Criminal Division of the Circuit Court, the Honorable Paul P. Biebel, Jr. Judge Biebel asked that, following our review of the criminal case process, and irrespective of the results, the CCTAP project conduct workshops on national “best practices” in case and trial management for the Criminal Division judges, as well as for prosecution and defense counsel, and Clerk’s Office and court staff. The study and follow-on training effort together were beyond the normal scope of “short-term technical assistance” that the CCTAP project is designed to provide to local jurisdictions nationally with its own budget. Nevertheless, the federal Bureau of Justice Assistance approved the project’s commitment to undertake both the study and the follow-on training on the condition that Cook County share in the cost of the overall

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1 Duran v. Sheahan, et al., 74 C 2949
effort. This the County agreed to do, and a cost-sharing contract was approved by the Cook County Board of Commissioners in the amount of approximately $44,000 for that purpose.

The project assembled a five-person team of court and criminal justice system specialists to undertake the review. This team consisted of: the Honorable Charles D. Edelstein (senior judge, Dade County [Miami], Florida), who had been the team leader for the 1989 study and agreed to accept that responsibility in the present study; Ernest Friesen, a national expert on judicial system administration and judicial education; Richard Hoffman, a specialist in trial and appellate court administration; and Caroline Cooper and Joseph Trotter, both of American University and both of whom also had participated in the 1989 study. The resumes of the study team members are presented in Appendix D.

Mr. Friesen will also lead the training component of the CCTAP project’s work, joined by Ms. Cooper, Mr. Hoffman, and two other consultants, in October – November 2005.

Due to scheduling delays caused by the election period and holiday season in the last quarter of 2004, the felony case process review took place essentially between January and June 2005. During that period, team members made six multi-day site visits to Cook County, during which they:

- interviewed over 100 system participants, including most of the Criminal Division judges exercising felony jurisdiction, First Municipal District judges, prosecutors, police, corrections and probation officers, public defenders, court clerks, and staff from various levels of their respective organizations, private defense counsel, and others;
- attended several Cook County Criminal Justice Coordinating Council, Principals’ Committee, and other system meetings;
- reviewed a wide range of existing reports and meeting minutes -- some current and others dating back to the early 1990's;
- collected data relating to felony case processing and length of stay in local detention centers in ten other large metropolitan jurisdictions; and
- requested a number of hard data runs from the court, Corrections Department and the Clerk’s Office to provide information on the case process and the jail population that was not otherwise available.

Because of the limitations of existing data systems in terms of data availability and reliability [see discussion in Section III.(C), below] and the labor-intensive nature of programming antiquated legacy information systems, we ultimately did not have sufficiently detailed data to definitively reconcile a number of widely varying perceptions expressed by interviewees as well as reviewers of the preliminary draft of this report regarding the system’s operations. Hopefully, refinement of the information compiled and reported, and development of consistent definitions for data elements -- a key recommendation of the study team -- will provide the information necessary to reconcile these conflicting viewpoints in the future.
It should be noted at the outset that the Cook County criminal justice system in general, and the Criminal Division of the Circuit Court of Cook County in particular, possesses some important attributes that will make improved performance that much more attainable a goal. These include the competence of the judges, prosecutors, and defense counsel in trying those cases that ultimately reach the trial stage. Jury trials, though relatively few in number, appear to be conducted in Cook County with a high degree of professionalism. The more frequently used bench trials are themselves efficiently conducted and reflect confidence in the judges on the part of counsel (although more effective screening could reduce their current large number). Furthermore, the ongoing work of the Cook County Criminal Justice Coordinating Council (CCCJCC) attests to how the leaders of the system have shown by their cooperation that they are ready to take on the multi-pronged initiative that is needed to solve the problems identified by this study.

The Court has already introduced a number of initiatives to improve the management of criminal cases and reduce time to disposition, some of which have had an impact on the jail population. These initiatives have included:

- organization of the criminal bench into judicial teams, with each team headed by a supervising judge with well-developed case management skills;
- introduction of several problem-solving dockets (e.g., drug court, mental health court) to which appropriate cases, which otherwise would consume substantial jail and judicial system resources, are assigned promptly after filing and through which detained defendants are released to appropriate community-based programs;
- development of a series of management reports submitted regularly to the Presiding Criminal Court Judge which highlight case disposition activity and case age data, and provide a tool for the court to better manage the caseload; and
- creation of an interagency committee, the Principals’ Committee, which has been meeting regularly to discuss systemic issues of common concern, including the adoption of time standards for case processing.2

Recently, the State’s Attorney, the Public Defender, and the Presiding Judge of the Criminal Division have been meeting to review the status of the oldest pending cases and develop case management plans for their appropriate disposition. These initiatives provide a foundation for introducing more vigorous changes to the operational policies

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2 One such proposal was made by the State’s Attorney’s Office in a memorandum from the Chief Deputy State’s Attorney to Presiding Judge Biebel in April 2002. It suggested the following timelines for felony case dispositions:

1. Death Penalty Murders; Multiple Defendant Murders; Complicated Murder Cases: Should not be on a call longer than 2 1/2 years;
2. First Degree Murder Cases: 12 to 18 months;
3. Class X Felonies; Home Invasion; ASCA; Complicated Drug Conspiracy Cases: 6 months to 1 year;
4. Residential Burglary; Burglary; Possession of a Stolen Motor Vehicle; Unauthorized Use of a Weapon(?); Drugs: 3 to 5 months

These suggested time periods were largely adopted and recommended for implementation by the judges in an interim order from Presiding Judge Biebel to the judges dated March 16, 2005.
and procedures which govern the felony case process in Cook County, as further outlined in Section VI, below. Chief among these are the development and maintenance of clearly articulated time standards for case disposition, active judicial control and management of the felony calendar, and instilling the expectation that each event scheduled will, in fact, be conducted.

II. THE FELONY ADJUDICATION PROCESS IN COOK COUNTY

A. Overview

The Circuit Court of Cook County is a unified trial court, with over 400 judges organized into three major departments: the County Department, Municipal Department and the Juvenile Justice and Child Protection Department. The Criminal Division of the County Department of the Circuit Court is charged with handling felonies arising in Chicago, which constitute about 75% of the felonies filed in all of Cook County, from arraignment through sentencing. Judges from the First Municipal District (Chicago) division of the Municipal Department conduct bond hearings and preliminary hearings for all cases assigned to the Criminal Division. The remaining 25% of the county’s felony caseload is handled by the five Municipal District courts serving various suburban geographic districts of Cook County.

The Criminal Division consists of 40 full-time judges, 32 of whom (plus four “floating judges”, who fill in for judges when needed) are located in the Criminal Courts Building of the Circuit Court, located at 2600 S. California Avenue, adjacent to the Cook County Jail (officially, Cook County Department of Corrections). The remaining eight (8) Criminal Division judges are chambered in the Municipal District courthouses in Skokie (2nd Municipal District) and Bridgeview (5th Municipal District), where they hear only Chicago-based felonies. The Criminal Division handles about 32,000 felony filings a year, making it one of the busiest felony trial courts in the country. Although the outlying courthouses were visited for corroboration of interview data, particularly with respect to pretrial release screening activities, the team concentrated its analysis on the processing of cases at the Criminal Courts Building.

The flow chart depicted below describes in rough overview the typical case processing for felony defendants. The flow is from decision point to decision point.

As the diagram indicates, once a defendant appears initially in the Central Bond Court, held in the Criminal Courts Building but presided over by judges from the First Municipal District, the case is put over for preliminary hearing which may occur between eight and 30 days later, but tends to occur after 21 days in narcotics cases – the majority of the caseload – because of the time required to obtain a lab report. After the preliminary hearing, also conducted by First Municipal District judges, the case goes on hold for three weeks before it is assigned to an individual judge of the Criminal Division who will preside at the arraignment and retain the case from that point until disposition.

Out-of-custody defendants go from arrest and bond hearing release to preliminary hearing (PH) in 45-50 days or to the grand jury (GJ) in 60 days. The remaining events
and time frames for case disposition involving out-of-custody defendants are the same as those for in-custody defendants.

**Figure 1: Cook County Felony Case Flow, with average number of days between events**

<table>
<thead>
<tr>
<th>Event</th>
<th>Grand Jury/ Bond Hrg</th>
<th>Prelim. Hrg.</th>
<th>Assignment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrest</td>
<td>Day 2</td>
<td>21 days - narcotics</td>
<td>21 days</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8 days – other cases, but up to 30 days</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Event</th>
<th>Status Conferences</th>
<th>1st Trial Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arraignment</td>
<td>same day as assignment</td>
<td>varies by judge</td>
</tr>
<tr>
<td></td>
<td>(up to 7 days in suburbs)</td>
<td>varies</td>
</tr>
<tr>
<td></td>
<td>First Call</td>
<td>typically 30 days</td>
</tr>
<tr>
<td></td>
<td>Status Conferences</td>
<td>varies by judge</td>
</tr>
<tr>
<td></td>
<td>2nd Trial</td>
<td>varies by judge</td>
</tr>
<tr>
<td></td>
<td>Setting, etc.</td>
<td>varies</td>
</tr>
<tr>
<td></td>
<td>Trial/Plea</td>
<td>From Arraign: usually</td>
</tr>
<tr>
<td></td>
<td></td>
<td>all classes of: same day</td>
</tr>
<tr>
<td></td>
<td></td>
<td>felonies except as conviction,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>murder: 119 – 240 days, average if plea; PSI</td>
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<tr>
<td></td>
<td></td>
<td>if requested.</td>
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As the diagram further indicates, after a case is assigned and arraigned, its subsequent progress “varies by judge,” suggesting a substantial, unexplained variation in the felony case process that points up the wide variation among the individual judges in managing their calendars.

The Department of Corrections prepared a special data run on inmates in custody and released in 2004 which includes the booking date, the exit date and the dates of each court appearance. To say the least, this was a massive report done with equivalent effort. Sampling the data using half of the defendants booked in January 2001 and released in 2004 and those booked in December of 2001 and released in 2004, indicated that it is not uncommon for inmates to have 20 or more court appearances before the case is disposed.

This data run was consistent with comments from many of those interviewed that cases tend to be reset in roughly 30 day increments for so called status hearings. Given the limitations of the data systems, it is impossible to determine the reasons for these status hearings or why the incarcerated defendant needs to appear and why the case was reset. Continuances are routinely granted in most courtrooms by agreement and without prior written requests for a continuance, although written requests are required by statute.

The Clerk’s Office estimates that 16,000 continuances are granted monthly. The study team, with the cooperation of the judges and Criminal Division and Clerk’s Office staff, reviewed all of the continuance requests submitted in 18 courtrooms of the Criminal Courts Building during one week in April 2005. A total of 1,282 continuance requests were reported and documented to varying degrees of detail. Our review revealed that:

- almost all were submitted orally at the hearing;
• very few were objected to and, in fact, more than 75% were by consent of both parties;
• only five were denied;
• the most common reasons recorded for the continuances were:
  i. discovery not complete (39%);
  ii. “in the interest of justice,” without further specificity (22%); and
  iii. witness not available (14%); and
• the typical time to next court date was 30 days.

B. Prosecutorial Screening

In serious cases, an assistant state’s attorney will go to the crime scene or station for an initial review. All potential felony cases other than drug cases will be reviewed by the Felony Review Unit. Prosecutors do not screen drug cases until these reach the preliminary hearing stage. This means that many drug cases enter the system that might have been dismissed or diverted at the very start of the process, or even before any court appearance. It is clear that the court is deluged with narcotics cases. These cases should be subjected to the same degree of early scrutiny by experienced prosecutors as are all other felony cases brought to the Circuit Court.

The prosecutor’s file starts building early on, and by the time of the bond hearing will usually consist of a failure to appear history, if any, a criminal history and possibly the police initial offense report. The assistants who appear at the station house or work in the felony screening unit are a mix of relatively new and senior prosecutors.

C. Release Determination

Our report in 1989 recommended that a pretrial service agency be established in Cook County to provide the judges at the first appearance and thereafter with accurate, complete information on defendants so that appropriate conditions of release could be determined by the judges. This pretrial agency was organized and operated for several years but subsequently was merged into the Probation Department, whereupon budgetary pressures required a substantial restriction of the scope and coverage of pretrial services to the Circuit Court. Other than use of rap sheets, currently, there is no jurisdiction-wide gathering and verification of defendant information pretrial (e.g. residence, family and community ties, prior compliance with court appearance requirements, etc.) upon which informed release decisions can be made. The pretrial services of the Probation Department are essentially confined to the suburban Municipal District Courts. No such resources are available at the Criminal Courts Building.

Bond hearings for Criminal Division defendants are conducted at the Central Bond Court in the Criminal Courts Building 365 days a year by judges from the First Municipal District Court assigned there for that purpose. On weekends, bond court hearings are held for persons charged with both misdemeanors and felonies. Unlike the situation in some of the Municipal Districts, there are no pretrial services interviews or defendant self reported information verification at the Central Bond Court, nor are there any pretrial services officers to make recommendations to the judges about appropriate conditions of release. Duty assistant public defender interviews of defendants are brief, if at all. There are generally no witnesses or family members of the defendant in court.
sum, the judge has little evidence to rely on in making an informed pretrial release decision.

There are four types of pretrial release determinations made by the judges in Central Bond Court: granting of an I-bond, which is a personal recognizance bond requiring no cash outlay by the defendant; granting of a D-bond, or deposit bond, which is a cash bond for which the defendant may pay 10% deposit with the court (90% of which is returned upon disposition of the case); a C-bond, or cash bond requiring the full amount of the bond to be posted; and “no bond,” meaning no amount of cash payment will be able to secure the defendant’s pretrial release. There is no bond schedule, and we were told that bond amounts for similarly situated defendants vary widely. It is conceded by many of those interviewed that bail bond amounts are generally set very high and require prohibitive cash outlays by inmates and their families despite the 10% deposit nature of many of the bonds. A review of the amount of cash outlay required of inmates in the Cook County Jail on January 1, 2004, and December 31, 2004, indicated that approximately 40% of the pretrial detainees on both dates were in “no-bond” status and half of the roughly 60% of inmates who had bonds set required a cash outlay of more than $10,000 to secure their release. [See Figure 6 later herein]. This same detainee population is reportedly about 75% unemployed.

Increasing, legislatively-mandated prison sentences and a general hardening of attitudes are said to influence judges to set higher bonds. This is not limited to Cook County, but is a feature of U.S. criminal justice systems generally. Even judges who do not face opponents in contested elections feel the pressure. The prosecution is not immune from similar forces and less inclined to accede to lower dollar amounts. Some releasees will be rearrested and the higher the percentage of defendants released, the greater the risk of a releasee getting arrested for a serious offense. Media reports of these sporadic occurrences rarely present them in the context of the much larger number of those released who do not get rearrested, nor do they portray the cost of detaining all but the least dangerous of the accused, or advocate alternative strategies for monitoring pretrial defendants that might be considered.

There is another pretrial release possibility for defendants who are not able to post bond. Information provided by the Department of Corrections (DOC) on August 1, 2005, indicated the following “approximate” level of detainee participation in the department’s “alternative custody” programs during Calendar Year 2004:

- During 2004, the jail transferred 22,318 jail inmates into its several community- based alternative custody programs;

- A total of 16,268 individuals (15.5% of the total number of 105,238 detainees “discharged from custody” by the DOC during 2004) were in alternative custody programs at the time of their release and not occupying jail beds. Considering that they averaged 80.6 days per inmate in the alternative programs before their release at the conclusion of their court case, their participation in the programs saved 1,311,181 days of jail bed use.  

These alternative custody programs, initiated in the mid ‘90’s to relieve population pressures on the jail, are impressive in their range of both services and
supervision. Together with the Sheriff’s Administrative Mandatory Furlough (AMF) authority, they are the central component of Cook County’s jail capacity management capability.

One of the Sheriff’s program that should be expanded is the use of electronic monitoring (EM) which will enable defendants not otherwise eligible for unconditional or less controlled release to be released in a manner permitting their location to be known to the Sheriff’s Office at all times.

D. Activity Prior to Preliminary Hearing

There is little or no defense counsel activity prior to preliminary hearings. The time between the bond and preliminary hearing (6-8 days for non-drug cases, 21 days for drug cases, almost always within 30 days) seems excessive given the minimal nature of the effort needed by the state to prepare for the hearing. These hearings are conducted by 1st Municipal District judges who do not handle cases once they appear in felony court. Accordingly they have no information on case success or failure (what some would call a feedback loop). To the extent this process features judges who conduct bond hearings exclusively, their feedback loop is even less. The amount of discovery given by the state to the defense varies widely from prosecutor to prosecutor. Rarely does the defender get any discovery prior to the preliminary hearing. This is remarkable since the constitutional requirement of advance notice of a hearing is usually to give the parties an opportunity to prepare for the hearing. The opportunity to prepare provides not only protection to the litigants but enables the court to make a more informed decision.

Some judges will provide for balance in the adversary system at the preliminary hearing by allowing defense to cross examine and present witnesses. Motions to suppress are typically not heard since, we were told, a decision of the judge generally forecloses re-litigation of those issues. Guilty pleas are few at this point in the process compared with what we were told was the case in the 1980’s and later. Some attribute this situation to the creation of the Central Bond Court and elimination of these hearings in the Chicago preliminary hearing courts. Others cite the loss of both experienced assistant public defenders and experienced prosecutors. Inexperienced prosecutors tend to be more cautious, and inexperienced defense attorneys have a harder time gaining the confidence of their clients.

3 The detainees transferred into the DOC alternative custody programs do not occupy jail beds, since the programs are community-based, although they are still in the custody, and are the responsibility, of the DOC. Detainees released under Administrative Mandatory Furlough (AMF) procedure, a safety valve release mechanism adopted in response to a need for jail population reduction required by the federal judge managing the Duran case and completely within the discretion of the Cook County Sheriff, are not considered “in custody” upon their release from the jail, since they are free from DOC supervision. There were 2,071 AMF releases from the jail in 2004, and, reportedly, the procedure has been little used in 2005.

4 We have been informed that governing Illinois law does not provide for criminal discovery before an indictment or information is filed. It is also asserted that obtaining police reports for use at the preliminary hearing has proven “to be difficult if not impossible” (Letter dated Sept. 9, 2005 from the State’s Attorney to the study team, p. 4) and that the defense, given early discovery, might seek to continue preliminary hearings to complete its own investigations. In response, it should be noted that nationally, the trend has been toward earlier and more complete discovery in criminal cases—such discovery in civil cases is totally accepted—even since the American Bar Association approved its Standards Relating to Discovery and Procedure Before Trial more than 30 years ago, stating then, “The need for changes in procedures appeared manifest in order to lend more finality to criminal dispositions, to speed up and simplify the process, and to make more economical use of resources.” American Bar Association Project on Standards for Criminal Justice, Standards Relating to the Administration of Criminal Justice, Compilation (1974), p. 244.
Many observers assert that “public defender culture” requires full discovery before meaningful plea discussions can take place. Although this approach is often taken by defenders, who of course are entitled to see relevant evidentiary material, the delay in getting lab results in many drug cases also may postpone serious plea negotiations in many cases. Nevertheless, the result may be both better prepared lawyers and longer pretrial incarceration.

E. Lawyer Assignments

Both assistant state’s attorneys and assistant public defenders are assigned to particular courtrooms by their offices. Cases assigned to their courtrooms are their cases. Cases are assigned to the lawyers who are assigned to the particular judge, and with few exceptions, stay with the lawyer as long as the lawyer is with the judge. This “horizontal” arrangement avoids most of the conflicting engagements of counsel for the lawyers so assigned. The impact of this practice, however, is vitiated by the length of time cases last in the system: assignment of the lawyers to a courtroom is often for a lesser time than the time the case takes to a disposition. The advantage of the assignment may thus be lost. This phenomenon also may result in some attorneys avoiding preparation of some of the cases they think are less likely to enhance their statistics.

Coordination between the courtroom-assigned defenders and the Public Defender’s special units handling multiple-defendant and murder cases has also slowed case movement. The Public Defender has implemented a new system to improve notice of scheduling to these units and thus expedite their cases. In contrast, the special units of the State’s Attorney’s Office handling gang-related and financial cases, as well as other specialized prosecutions, from start to finish (“vertical representation”) have worked well with their courtroom prosecution colleagues, largely because the specialized prosecutors only prepare one case at a time and thus avoid conflicting engagements.

In the cases where there is private defense counsel, conflicting engagements of counsel is a frequent problem.

F. Preliminary Hearing to Assignment/Arraignment

There is considerable dispute over the effectiveness of the preliminary hearing to weed out weak cases. To some extent, the defense fails to waive preliminary hearings because of their potential discovery value even though there is little expectation that the judge will find no probable cause. Some cases with illegal searches are not being screened out at preliminary hearing. For these reasons, we recommend that the interested parties--the court, prosecution, defense, law enforcement and others embark upon a cooperative study to determine if the use of preliminary hearings should be restricted and more cases screened and filed by indictment.

The time from bond hearing to preliminary hearing should be only that needed to prepare the case for the hearing. At present, most delays result from the wait for lab results in drug cases and cases requiring DNA analysis.

Defenders contend that the prosecution has often been able to prepare its case prior to arrest and that it does not need all this time to prepare either for the preliminary
hearing, for presentation to the grand jury, or for preparation of an information. The defense counsel emphasize that since they do not receive discovery materials until arraignment, they can do nothing until that occurs.

Experienced lawyers on both sides should be assigned to the preliminary hearing sessions. They have the best feel for how the cases will proceed in the trial court. They have the judgment to evaluate and terminate cases at preliminary hearing and they have the confidence of their respective offices that they will do the right thing. Putting the best resources on the cases early on--called by some, “front-end loading” -- translates into fewer weak cases clogging the trial courts subsequently.

From preliminary hearing to assignment/arraignment, the defense, not having any discovery, has little to do but interview the client and perhaps a defense witness or two. The state prepares the information and the indictments and perhaps does some further investigation. There appears to be no reason why this takes 21 days in the run of the mill felony case. In drug cases – which account for approximately half of the defendants detained – we were told there is little or no prosecutorial screening.5

Cases are randomly assigned to almost the entire felony bench at a rate of about three to five per day on most days. If they are assigned to a judge at the Criminal Courts Building, the arraignment often takes place the same day or no later than the next business day. The presiding judge handles the assignment calendar and attempts to balance the workload among the judges.

Several judges (nine currently) handle only drug cases but usually carry other cases that they brought with them from previous assignments when they took over their current assignment. These cases are often very serious cases that have been aging. Indeed, there appears to be a general expectation among prosecutors, defense counsel, and the judges that there will be no movement of serious criminal cases until after several continuances have been granted. This has led to continuances being routinely granted. Combined with a reluctance on the part of many judges to force either side to trial, the result is a culture of significant built-in delay, especially in major felony cases.

G. Post-Arraignment/Assignment Process

An issue which we could not illuminate through data analysis was the frequency with which police witnesses were unavailable and/or supplemental police reports were not timely filed, thereby requiring continuance of the case. Many of those interviewed, however, commented that these factors were a major cause of delay. Many judges, clerks, defenders and some prosecutors said that the unavailability of supplemental reports prepared by the detectives assigned to the case requires two or more status dates to complete discovery. The detectives’ hand written notes, the supplemental reports and lab results are subpoenaed by the defense, and the Chicago Police Department has assigned four staff plus supervisors to meet the demand. While initial offense reports are

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5 In a letter to the study team September 9, 2005, the State’s Attorney suggested that these timeframes may be shorter. This is at variance with our review of Clerk of Courts data on time between case events and a case sample from 2004, as well as our interviews. However, we recognize that a recently initiated dialogue between the Court, Clerk, State’s Attorney and Public Defender to improve data precision and consistency may result in greater congruence among the various agencies on this and other case management statistical differences.
forwarded quickly and staff sends what they have, if the detective has not finished the supplemental reports, the report unit apparently does not routinely query to get the report. There is an effort currently being made by the Police Department to address this issue.

The defense, we were told, will not really move on the case until all the state’s discovery is in. On lower level offenses, discovery is available at arraignment or shortly thereafter in some courtrooms. DNA evidence in sex and murder cases was frequently cited to cause long delays in case processing. There is a conflict between DNA requests for investigative purposes as opposed to those for prosecutorial ones. The state does not provide the funding to meet all the requests in a timely fashion. The Chicago Police Department and the State Police make significant and regular efforts to triage requests. At $400 each, the tests are expensive and cases likely to be resolved without trial often do so without a DNA test. We could not determine if the greater availability of tests in those cases might affect the timing of a plea or dismissal of the case. While there is a cost for each DNA test, it may be cost-beneficial to increase the capability for conducting DNA testing if it can result in an earlier disposition of the case and savings in jail costs.

H. Drug Treatment Intervention and Mental Health Court Special Dockets

The Criminal Division has two specialized calendars that, by all accounts, are having a beneficial impact on both the jail population level and the image of the judicial system in the community.

1. The Cook County Drug Treatment Courts

In 1997, the Cook County Circuit Court received a federal grant to institute a drug court which began in April 1998 under the guidance of Judge Lawrence Fox, who continues to preside over the program. The program, which operates at the 26th and California Courthouse, targets defendants already on probation who are arrested for drug possession.6

Defendants determined to be eligible for the drug court are identified within 48 hours of arrest at the bond hearing at which time they are screened for eligibility by the State’s Attorney’s Office. Defendants must meet the initial eligibility criteria (being on probation and then being arrested for a drug crime), and be formally evaluated as being addicted and amenable to the treatment the drug court can provide. They then are offered the option of proceeding with the normal process of adjudication of the new charge and related VOP or participating in a 15- to 18-month program of closely judicially supervised drug treatment in the community – i.e. the “drug court”. If the drug court is chosen, the new case will be nolle prossed, the case will be transferred to Judge Fox’s Drug Court, and charges will be filed on the probation violation for the original charge. Successful completion of the program will result in dismissal of both the new charge and the related VOP.

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6 Defendants charged with distribution or who have been convicted of a violent crime are not eligible for the program.
In addition to the drug court at the Criminal Courts Building (officially, the First Municipal District Drug Court, since it serves only Chicago), three other drug treatment intervention court calendars have been established in Cook County: a combined felony/misdemeanor drug court in the Fourth Municipal District Court in Maywood; and separate felony and misdemeanor drug courts in the Sixth Municipal District Court in Markham. The felony programs, each of which is approximately half the capacity of the First Municipal District Drug Court, operate similarly to that drug court except that they (1) accept defendants arrested on new charges, whether or not they are violating their probation; and (2) also accept defendants arrested on a drug-related charge, such as retail theft or burglary committed to support a drug habit.

**Impact.** Since eligible participants for the drug court are identified within 48 hours of arrest and transferred into the drug court, all of the ensuing events of the adjudication process for the new arrest plus the probation violation -- and the multi-agency resources entailed -- are obviated. In terms of judicial, prosecutorial, public defender and jail resources, these savings are significant. Considering that the drug court has handled almost 1,300 cases, the program has removed this number of new offenses from the adjudication process as well as an approximately equal number of cases that would otherwise have had to go through the violation of probation process.

In terms of jail bed savings, we are told that each defendant charged with a VOP generally remains in jail for a minimum of five weeks before the VOP hearing is held and, depending upon the outcome of the hearing, may well remain longer. Therefore, the savings in jail days resulting for VOP defendants who enter the drug court have been considerable. These savings are multiplied when recidivism reduction is considered. To date, the drug courts have had over 600 graduates. The State’s Attorney’s Office has tracked recidivism of drug court graduates since the program’s inception. Tracking is done for each graduate for a one-year, three-year, and five-year period and following completion of the drug court program. The results of this tracking indicate:

- the 295 graduates of the drug court at the Criminal Courts Building who completed the program at least one year ago have had a 92% decrease in felony arrests one year after graduation and, for the 211 graduates followed for a three year period, a decrease in felony arrests of 84%;

- the 56 graduates of the drug court in the Fourth Municipal District Court in Maywood who completed the program at least one year ago had a decrease of 86% in felony arrests for the year following graduation and, for the 28 graduates followed for three years after graduation, the reduction in felony arrests was 77%;

- the 75 graduates of the drug court in the Sixth Municipal District Court in Markham who completed the program at least one year ago had a reduction in felony arrests of 90% during the first year and, for the 51 graduates followed for three years following program completion, the reduction in felony arrests was 87%.

In addition to these recidivism results, at least 12 participants have given birth to drug free babies.
2. The Cook County Mental Health Court

The Cook County Mental Health Court is a two year, voluntary probation program which began in April 2004, targeting defendants charged with nonviolent felonies and have an identifiable/diagnosed mental illness. The program is the result of the collaborative efforts of the Cook County judiciary, the State’s Attorney’s Office, the Public Defender’s Office, the Adult Probation Department, including the Mental Health Probation Unit, the State of Illinois Division of Mental Health; the Chicago Police Department’s Crisis Intervention Team, and Treatment Alternatives for Safe Communities (TASC). To date, it has received no special funding for services, and is therefore limited in the number of participants it can accept. However, additional funding sources are presently being sought which would allow the program to expand significantly.

The goals of the program are to decrease criminal activity and jail use once the defendant can be stabilized and a treatment plan developed using community-based services. Eligible participants must be able to understand the terms/expectations of the program, voluntarily agree to enter the program and comply with its rules, have no recent history of violent or sex crimes, and usually not have charges involving a civilian victim.

Defendants can be referred to the program in several ways. Most commonly, they are offenders who are either known as having a mental illness and therefore incarcerated in areas of the Cook County Jail’s hospital section; or identified in the individual courtrooms to which their cases had been assigned as possibly having a mental illness. They are then cross matched with the records of the Illinois Division of Mental Health for recipient status. Those defendants who meet these criteria and indicate a willingness to participate in the program, are evaluated for appropriateness by the Adult Probation Department and TASC, and their criminal history is reviewed by the State’s Attorney’s Office for further eligibility. If the defendant meets all criteria for eligibility and continues to be willing to participate in the program, a treatment plan is developed and the defendant pleads guilty to the pending charge and is placed on 24 months Mental Health Court Probation. Generally, the participant is then released from jail within 24 hours and transported by a case manager to the next level of care identified in the treatment plan. If, subsequently, a participant or potential participant is found unfit for trial, the participant is removed from the program and his/her case is handled under the provisions of 725 ILCS 5/104-10 et seq.

Program participants have frequent status hearings before the judge; are required to report frequently to probation and TASC; participate in frequent drug testing; and attend treatment sessions as outlined in their individual case plans. On-going treatment is provided through the resources of community based agencies and may include residential or intensive-out-patient services, medication management, as well as academic and vocational services. Sanctions for noncompliance are imposed by the court and frequently entail re-stabilization of the individual and reconfiguring the treatment services as well as any other measures deemed appropriate.

To date, 73 defendants have been referred to the Mental Health Court, and 37 participants (20 female and 17 male) have been admitted, with 33 currently active. An
additional five participants are currently being evaluated for possible program entry. Five participants have been terminated.

Since the program draws many of its participants from the Jail’s hospital section, it is dealing with defendants whose extreme mental health problems have made them unsuitable for the general population and are therefore probably the most difficult population of any mental health court in the country. It is also reportedly one of only three mental health courts in the country which is dealing exclusively with felony offenders.

Most of the defendants referred to the Mental Health Court have long criminal records -- generally much greater than those in the drug court -- with some having 40 or more prior arrests, and 10 or more prior felony convictions. Analysis of the criminal history of the 17 male participants indicates that, prior to entering the program, they had an average of 38 arrests each over their lifetime and had served an average of 3.4 years each in the Illinois Department of Corrections; the 20 female participants had an average of 30 arrests each prior to entering the program and had each served an average of 2.6 years in the Illinois Department of Corrections. Most of these prior offenses entailed theft crimes and prostitution. Any violent criminal history disqualifies a participant from the program.

Impact.  During the 15 months of the program’s operation, its most immediate fiscal impact has been on the savings in correctional costs (jail and prison) and recidivism reduction. By design, the program is getting participants out of the jail at the earliest possible time, thereby saving not only jail days but the added costs of jail hospital resources. By maintaining the participants in community-based services, the program is also avoiding the costs for prison to which most, if not all, of the participants would otherwise be sentenced.

In the year prior to admission to the program, the 37 enrollees had spent an average of 115 days each (a total of 4,271 days) in Cook County custody at a cost of approximately $298,970 ($8,080 per participant). In contrast, during the program’s first year, participants have spent an average of 15 days each in Cook County during their first eight months of participation. Most of these jail days were imposed for probation violations for noncompliance with treatment requirements and not for new criminal activity, and were used to re-stabilize the defendant in an attempt to return him/her to the community as quickly as possible.

As with the Drug Court, the State’s Attorney’s Office has been tracking the progress of each participant in the Mental Health Court since the program began. As of this date, the State’s Attorney’s Office reports that five of the 37 participants in the Mental Health Court have had their probation revoked and been sent to prison. There have been 14 misdemeanor and two felony arrests of enrollees (compared with the average of 3.9 arrests for each enrollee in the year prior to program entry), resulting in 72 days of traditional incarceration. In addition, 23 enrollees have had VOPs filed, with 17

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7 Source: Mark Kammerer, Director, Treatment Programs, Narcotics Prosecutions Bureau, Office of the State’s Attorney, Cook County, Illinois: various memoranda and data runs prepared for the study team.
taken into custody, resulting in 486 days of jail-based treatment, or a total of 558 jail days used for these enrollees, compared with the 4,271 jail days used during the year prior to program entry.

I. Trials

1. Bench and Jury Trials

According to reports supplied by the court and clerk’s office, the Criminal Division’s 40 full-time judges average about 50 bench and between 4 to 9 jury trials annually. Since many judges handle mostly drug cases, which generally do not get tried by jury, the actual average number of jury trials for the rest of the bench is higher. We were told that bench trials generally occur in less serious cases where the defendant has a strong case, while jury trials tended to occur in serious cases where long sentences were in the offing. Bench trials have become increasingly rare in urban courts as the systems become more politicized. That so many cases are tried to the court without a jury is a strong indication of the confidence the defense bar has in the integrity of the court. It may also be a result of the general decline in jury trials nationally, caused by high case volume and effective plea bargaining. The State’s Attorney’s Office believes that conducting more jury trials, especially of the relatively speedy three- to four-day ones that are common in the Criminal Division, serves to expedite cases generally by demonstrating that the court can conduct jury trials and still dispose of cases efficiently. This, in turn, leads to increased willingness of defense counsel to negotiate pleas in appropriate cases. The professional incentive for promotion purposes in the Chicago prosecution and defender bars to maximize jury trial numbers may also play a role in the frequency of jury trials.

2. Scheduling

Complex cases, especially those involving multiple defendants, cause much delay. There appears to be difficulty in coordinating defense counsel from the Public Defender’s Multiple Defendant Division (MDD) to which these cases are frequently assigned; these coordination difficulties are said to be the reason for many continuances. Some judges try each defendant separately in order to minimize the risk of reversal. Other judges, we were told, will empanel a separate jury for each defendant and then try all the cases simultaneously.

When private defense counsel are participating in such cases, scheduling becomes more problematic. Most private defense counsel in state prosecutions must carry many

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8 There are significant discrepancies in jury trial data reported by the Court, the Clerk’s Office, and the State’s Attorney. For Calendar Year 2004, the Court reported 285, the Clerk’s Office reported 167, and the State’s Attorney reported 364. In the first eight months of 2005, the court has already conducted 322 jury trials, which, if annualized, would produce an annual total of 483. This significant increase has resulted from coordinated emphasis on increasing dispositions through regular meetings of the Presiding Judge, the State’s Attorney, and the Public Defender, who have each stressed this effort to their respective organizations.

9 Cases assigned to the State’s Attorney’s special prosecution units do not appear to cause delay as the prosecutors coordinate their cases closely with the prosecutors assigned to the individual judges and each prosecutor is ready to proceed on the calendared case when it is called, rather than possibly being subject to simultaneous calls on other cases.
active pending cases in order to survive economically. Court-appointed and state-paid counsel earn so little that the appointment cases may take a back seat to ones more rewarding.

3. Law Enforcement Witness Availability

There is widespread disagreement as to the degree to which police witnesses are available on trial dates. On the one hand, senior Chicago Police Department personnel, even at the commander level, are involved in police witness scheduling, often communicating with novice prosecutors. Some say that the prosecution simply subpoenas all police officers with any contact with the case, while others say they need to subpoena all officers because they cannot determine what each potential police witness knows about the case. The existing court-related data systems cannot answer this dispute.

Although we were unable to obtain copies of prosecution files, we were told that a form filed pursuant to Supreme Court Rule 412 early in the case process can identify the specific role and information to which each listed police witness will testify. In any event, the prosecutors and police should create a classification system which would allow easy determination of the need for a particular police witness. Prosecutors generally want to notice all but marginally useful witnesses while cost considerations may lead law enforcement to limit police witnesses to those deemed essential to the case. A system that identifies those witnesses who are essential, those witnesses who aren’t really needed, and those witnesses who may be needed “under special circumstances” should be developed.

4. Lawyer Turnover

Lawyer turnover was mentioned frequently as a major problem. Many beginning lawyers graduate law school with over $100,000 of debt. Just as the new lawyers are getting their feet wet and becoming real assets to their offices, but facing loan payments of up to $1000 a month, they go into private practice. This is a national issue. Experienced prosecutors and defenders leave for private practice to increase, and sometimes double, their remuneration. A typical prosecutor or defender may have tried 25 or more cases to a jury while those who went from law school to the private firm have not tried any cases to a jury.

Another manifestation of lawyer turnover that has had a significant impact on case processing efficiency was the early retirement option offered to county employees in late 2003-early 2004, when 89 personnel, the great majority of them supervising and senior attorneys, but valuable administrative staff as well, retired from the Public Defender’s office over a six-month period. The overall effect of this experience is compounded in its effect on the case process in the Criminal Courts Building by union rules that give priority in job assignments to those with the longest tenure; these rules will undoubtedly impact requests from a number of remaining senior public defender attorneys for assignments to courts in the districts outside of Chicago that are closer to their residences.

While we have less specific data on other agencies, it is our understanding that the State’s Attorney’s Office also experienced a significant loss of experienced personnel to the county’s early retirement option.
J. Sentencing and Post-trial Activity

Judges make infrequent use of pre-sentence investigations (PSI’s) and typically sentence defendants on the day of the disposition or very shortly thereafter. While no precise data was available on the frequency and volume of probation violation cases, they constitute a significant Criminal Division workload element that is not evident from available felony caseload statistics. The recently implemented (April 2005) Criminal Division Statistical Reports system will capture and report this data (and other data on a weekly basis, and the verified courtroom activity reporting form, which is among our recommendations, would capture this data on a daily basis.

We did not include an examination of the post-conviction appeals process and workload in the present study.

III. Case Processing Performance in the Criminal Division

A. Clearance Rates

In calendar year 2004, Clerk’s Office records reflect that there were 31,475 felony cases filed in the Criminal Division. In the same year, 30,284 felony cases were disposed of: 86% by plea; 7.3% by bench trial; 0.6% by jury trial; and 6% by nolle prossequi, pretrial dismissal and other means. There were 13,427 cases pending in the Criminal Division on December 30, 2004, constituting a reasonable five- to six-month inventory. The pending caseload stood at 12,545 on June 30, 2005, a substantial reduction.

During the first six months of 2005, both case filing and trial activity in the Criminal Division proceeded at a substantially more intense pace than during the same period in 2004. Although Clerk’s Office data shows that filings were slightly lower in the first half of 2005 than for the same period of 2004 (17,855 versus 18,632), dispositions were up 11% (16,341 versus 14,683); and while overall trial activity, considering both bench and jury trials, was equal in both periods (1,242 versus 1,233), jury trials increased by 47% (132 versus 90). This rise in the pace of dispositions through increased trial rates can be attributed to the pressure to expedite cases and to complete old cases maintained through the regular meetings of the Presiding Judge, State’s Attorney, and Public Defender.

In terms of filings and dispositions, the Criminal Division has shown a steady increase in efficiency over the past five years in what is called its “clearance rate” – the

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10 Lack of statistical reporting of VOP cases by the Court is by no means unique to Cook County. It is, rather, a common situation in many trial courts because the probation violation activity is handled as part of the case processing activity of the original case, with no new case number assigned. In Cook County, as in most other courts, VOPs are generally handled by the original sentencing judge except for VOP cases referred to the drug court, which are handled by the drug court judge. From a workload measurement perspective, however, tracking the frequency and volume of probation violation cases is significant in terms of the management of judicial resources and the court’s overall caseload. Other agencies in Cook County are already tracking this activity. The newly implemented “Criminal Division Statistical Reporting System” (April 2005) will track this post trial activity on a weekly basis.
degree to which its pace of case dispositions meets or exceeds the pace at which new cases are filed in the court. A ratio of 1:1 of court dispositions to filings is considered good; a rate in excess of 1:1, as the Criminal Division shows promise of reaching in the current calendar year, is considered very good, as it indicates that the court’s inventory of pending cases is being reduced and, assuming a continuing steady level of filings, its overall average time to disposition for all cases is being reduced as well.

Since 2002 the Criminal Division’s clearance has shown a steady improvement of about 10% a year, to a rate in mid-2005 of slightly more than 100%. The improvement in this indicator of trial court performance is presented graphically in Figure 2.

**Figure 2. Clearance Rate Worksheet**

<table>
<thead>
<tr>
<th>Case type</th>
<th>Felonies – All Classes:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Calendar Years:</strong></td>
<td>2002  2003  2004  2005</td>
</tr>
<tr>
<td></td>
<td>6/30/05</td>
</tr>
<tr>
<td>1. Filings</td>
<td>33,407  29,499  31,475  15,662</td>
</tr>
<tr>
<td>2. Dispositions</td>
<td>24,644  25,234  30,284  16,341</td>
</tr>
<tr>
<td>3. Clearance Ratio</td>
<td>.737    .855    .962    1.04</td>
</tr>
<tr>
<td>(Divide line 2 by 1)</td>
<td></td>
</tr>
</tbody>
</table>

**Trend In Clearance Rate**

- 110%  x
- 100%  x
- 90%   x
- 80%   x
- 70%   x

Yr.1  Yr.2  Yr.3  Yr.4 [to 6/30]

11 Adapted from: *Trial Court Performance Standards*. Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. 1997
B. Time to Disposition

A second measure of a trial court’s caseflow management performance is the time to disposition of various categories of cases. With regard to the Criminal Division, we are essentially talking about six categories of state felonies: in descending order of seriousness-- murder, X felonies, and felonies 1 - 4.

For purposes of comparison with national data, we asked the Clerk of Court’s Office to develop a report that tracked time from arrest to arraignment to disposition to sentencing for each case closed in 2004. Analysis of that data revealed that the median time from arrest to disposition for all classes of Criminal Division cases was 134 days. A comprehensive Bureau of Justice Assistance study of felony criminal cases closed in year 2000 in 75 urban state trial courts determined the median time from arrest to disposition to be 153 days. Cook County also fares well with median times to disposition on all but the most serious cases – murders and X class felonies. Unfortunately, there is no national data with which to compare the Criminal Division’s average disposition times for the various felony classes with a broad spectrum of courts nationally, for, as we discuss below, it is here that the problem lies in case processing performance.

Figure 3, below, developed from a data run on disposed cases in calendar year 2004, presents both median and average days from arraignment to disposition (defined as to point of sentencing in the Clerk’s Office coding scheme) for each class of felony:

![Figure 3: Age of Closed Felony Criminal Cases From Arraignment to Disposition, by Class (2004)](chart)

<table>
<thead>
<tr>
<th>Felony Class</th>
<th>M Murder Cases</th>
<th>X Sent. Range: 6 - 30 years</th>
<th>1 Sent. Range: 4 - 15 years</th>
<th>2 Sent. Range: 3 - 7 years</th>
<th>3 Sent. Range: 2 - 5 years</th>
<th>4 Sent. Range: 1 - 3 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Cases</td>
<td>425</td>
<td>4,309</td>
<td>4,679</td>
<td>5,797</td>
<td>2,962</td>
<td>9,374</td>
</tr>
<tr>
<td>Average12 (in days)</td>
<td>508</td>
<td>240</td>
<td>166</td>
<td>176</td>
<td>168</td>
<td>119</td>
</tr>
<tr>
<td>Median (in days)</td>
<td>500</td>
<td>163</td>
<td>91</td>
<td>106</td>
<td>93</td>
<td>22</td>
</tr>
</tbody>
</table>

Source: Clerk of Courts’ Office, August 2005 [excludes VOP cases and cases placed on stet docket]

With the exception of murder cases, the timeframe for disposing of felony cases in Cook County varies substantially both among and within case types, as reflected in the median and average times for disposition presented in Figure 3, above. Class 4, the least serious class of felony offense, requires a median of 22 days for disposition; yet the average time for all Class 4 cases is 119 days. Similarly, the median time for disposing of Class 1, 2 and 3 offenses is roughly three months; yet the average time for disposing of all offenses in these classes is closer to five to six months. Murder cases and Class X offenses, which are the most serious cases and carry high minimum sentences,
understandably take longer. Murder cases likely are also slowed by being carried on calendars with many other less serious cases. Judges and counsel are less willing to move ahead on a murder case when any discovery material or witnesses are unavailable; with better management, these cases are still likely to take longer than others but they may be processed more efficiently.

The questions which this data raises, particularly for cases in classes 1-4, are: why is it possible to dispose of some cases within each class fairly promptly while others within the same class take more than twice as long? Are there any special factors associated with those cases that are disposed of promptly vs. those that take significantly longer?

In light of the significant variations between median and average times for disposition, particularly for the high volume of less serious felony cases, exploring how more consistent timeframes can be developed for disposing of these cases should be a priority. Determining what factors are associated with cases that can be disposed of expeditiously and those that require more time should be a central issue addressed in the development of the Differentiated Case Management (DCM) plan recommended in Section VI.

C. Age and Custodial Status of the Pending Caseload

The third measurement area for caseflow management performance is the age of a court’s pending caseload. The age of the pending caseload indicates whether and in what categories of cases a court has a backlog, (i.e., whether cases on the pending list are older than the time goals set by the court for disposing of that category of case), thereby enabling proactive measures to be taken. Unfortunately, although the Criminal Division’s newly instituted Criminal Case Statistics Reporting System has a report designed to display that data, a trial run on the court’s pending cases during the team’s site work revealed glitches in the data retrieval program, and it is now undergoing refinement.

It is essential to both identifying backlog situations and the appropriate management of daily calendars that the court also be able to indicate on its reports and its calendars whether the defendant is in custody or not. We were surprised that this is not done currently, and it is undoubtedly contributing to the average length of stay at the jail of detained defendants.

In a perverse way, the absence of routine aging reports on the pending caseload is a moot point, since the court has not yet formally adopted time standards for case disposition. The Differentiated Case Management initiative recommended in Section VI will provide that framework in the mid-term (we are recommending an implementation date for that program of April-May 2006), but even as that system is being designed over the next few months, the court may proceed in this direction through the set of time standards transmitted by Presiding Judge Biebel to the judges in March 2005 to immediately guide its targeting of old cases, particularly jail cases.

In this regard, it is important to note that since January 2005, the Presiding Judge, the State’s Attorney and the Public Defender have been meeting monthly to review the 500 oldest pending cases and to adopt strategies to get them disposed. While we are not
aware of any written report on the results of this effort by the chief officials in the Cook County judicial system, it is probable that this special initiative contributed, along with other factors, to the substantial reduction in the court’s pending caseload between January and June 2005.

IV. FACTORS IMPEDING CASE PROCESSING EFFICIENCY

A. Absence of Adequate Information for the Pretrial Release Decision-Making and Screening Functions

1. Pretrial Release Decisions

As noted above, the initial stages of the judicial process in criminal cases bound for the Criminal Division of the Circuit Court do not now permit fully informed bond and release decisions to be made by the judges assigned to these hearings for a number of reasons.

First, these decisions are made at the Criminal Courts Building by judges assigned from the First Municipal District of the Circuit Court, not the Criminal Division judges who will be responsible for cases that proceed past the initial bond-release hearing. The Municipal District judges are also responsible for preliminary hearings but then have no further involvement with criminal cases and receive no feedback as to the results of their decisions.

Second, these judges receive no information from a disinterested interviewer as to the relevant facts about the defendant (e.g., verification of residence, length of time at the address, family and other ties to the community, etc.) that would support either release or suggest that strict conditions should be set for release. This is precisely the information that an effective Pretrial Services Agency provides to the judiciary. Instead, the Assistant State’s Attorney present normally provides a criminal history (rap) sheet and a record of any failures to appear by defendants.

Third, the hearings are a mass production operation. Large numbers of defendants are “brought before the court” through video link-up with the cell block in the basement of the courthouse. The defendants may not have had the opportunity to meet with a public defender prior to the hearing, or had time to communicate more than the most limited information about their eligibility for release, and the public defender assigned to the courtroom therefore may attempt through communication with a defendant in the cell block to make any possible arguments for the defendant’s release. More recently, a public defender has been stationed with defendants in the remote downstairs location to communicate with the defender in the courtroom and make it possible to communicate more effectively with the defendants. This change, while certainly positive, is not enough to cure the adverse conditions under which defense counsel attempt to represent their clients effectively. While the emphasis remains focused on moving each hearing rapidly because of the large volume of cases being heard, the court would benefit from receiving the information that permitting effective interviews of defendants by both defenders and pretrial services staff would generate.
Another shortcoming of this process, in addition to the rendering of the release-bond decision without adequate information about the defendant, is the lack of effective review of the release-bond decision. At the bond hearing, cases are scheduled for their preliminary hearings, also before the First Municipal District judges. Both the judges at the preliminary hearings and the judges of the Criminal Division who will assume responsibility for the cases when they are arraigned, normally three weeks after the preliminary hearing, have made it clear to defense counsel that bond review applications are not favored and will rarely be granted. This situation is also complicated by the varying way in which different trial judges interpret the meaning of new information, which is what is required for a new bond motion to be heard. The Criminal Division judges also appear to hold the view that these decisions are best made by the judges at the initial hearing and should not be reconsidered. Consequently, public defenders are discouraged by these conditions from making applications for bond review and, reportedly, relatively few are filed, as compared with prevailing practice in other large urban jurisdictions.

In the courts outside the First Municipal District and the Criminal Courts Building, where pretrial services officers do interview defendants and provide the judges at the initial hearing with information relating to eligibility for release, the judges receive more useful information upon which to base their decisions. Nevertheless, it would be preferable to have the pretrial services officers propose specific conditions to support the release of a defendant. Such recommendations are generally more readily accepted by the court when coming from a neutral source—as opposed to counsel—and having one of their officers responsible for making recommendations requires the agency to examine each case thoroughly to produce a well-founded recommendation.

While it is true that the trend over the past years in Illinois, as well as elsewhere, has been to increase the statutory penalties for offenses and make fewer defendants eligible for pretrial release, we were told by prosecutors, defenders, and court staff that bonds tended to be set at a high level even in those cases in which the defendants were eligible for release on bond. In sum, even operating within the constraints set by statute, the judicial process is keeping more defendants in jail who could appropriately be released, especially if the court were provided with a proposed set of release conditions to assure appearance for trial as well as the safety of the community.

2. **Prosecutorial Screening**

In most jurisdictions, prosecutorial screening of cases during the charging process—before any court hearing—normally accounts for a large percentage of cases being dismissed. An effective prosecutorial screening program that assigns experienced prosecutors to review initial screening by their juniors has proved the most effective tool to improve the operation of criminal justice systems by getting rid of bad cases right at the start.

In Cook County, in 2005 as it was in 1989, the State’s Attorney’s Office does not include narcotics cases in its screening process. Although we were told by the State’s Attorney’s Office that approximately 37% of all cases are screened out by the completion
of the preliminary hearing, a good number are eventually dismissed after arraignment and remain in the system (and the defendants remain in jail) longer than necessary. It would appear to be a wise use of resources for the State’s Attorney’s Office to have the capability to extend its screening program to include narcotics cases.13

B. A “Legal Culture” that Facilitates Unnecessary Delay in Case Processing

1. Expectations of the Attorneys

Much has been written about the impact of the “local legal culture” on the way both civil and criminal cases proceed through the courts – the expectations of the bar (and the court) in terms of the pace at which the adjudication process should proceed and the certainty with which scheduled events should occur. The elements that comprise the “local legal culture” are complex, and include factors relating to both philosophic beliefs as well as the practicalities of the way lawyers practice. The team’s review of the felony case process in Cook County has revealed that there are many factors at work that create a legal culture that facilitates unnecessary delay in case processing. These include:

- an unwritten policy adhered to by public defenders that meaningful case investigation and potential disposition should not be pursued until the state has provided full discovery14;
- a tacit expectation that no meaningful movement in a case will occur until at least the third court appearance after arraignment;
- an expectation/perception that a major cause of delay in the case process is, and will continue to be, the failure of police witnesses to appear, a situation which does not appear to generate any sanctioning;
- internal office incentives for advancement of prosecutors and defense that put a premium on the number of trials conducted -- jury trials in particular,15 and
- lack of established timeframes for case processing or regularly published reports on case disposition status and age.16

13 We have been advised by the State’s Attorney’s Office that it has conducted early screening of narcotics cases previously on a test basis, with resulting insufficient disposition of cases that did not justify extension or expansion of the pilot program.
14 The Public Defender has informed us that this policy is neither universally adhered to nor condoned as proper trial preparation. “Meaningful case preparation, however, does require ready access to clients, possession of detectives’ reports, and a fully funded investigative staff to conduct pre-trial investigations. These essential components are not always available to public defenders.” Letter dated Aug. 25, 2005, of Public Defender to Presiding Judge.
15 Both the Public Defender’s Office and the State’s Attorney’s Office suggest that the trial experience acquired by their lawyers through frequent trials enables the lawyers to become experienced litigators better able to assess the seriousness and appropriate disposition of cases.
16 But see the time standards transmitted to the judges by the Presiding Judge in March 2005, supra note 2.
As noted earlier, the Clerk’s Office estimates that 16,000 continuances are granted monthly. The study team’s review of 1,282 continuance requests submitted during one week in April 2005 revealed that most were by consent of both parties, and almost all were submitted orally at the hearing, with no written rationale required, and almost all were granted. This level of continuance activity creates unnecessary burdens on the judges and other court staff, has clear implications for the jail population, and unnecessarily drains the resources of the court and collateral agencies by forcing them to appear unnecessarily in court for the call of a case which no one expects to proceed, instead of focusing on case disposition.

2. **Lack of Judicial Control of Case Flow**

Research on court delay and how to reduce it confirms that cases proceed to disposition most effectively when judges manage their caseloads to establish expectations that cases will progress efficiently. Interviews with the leadership and attorneys in both the Cook County State’s Attorney’s Office and the Office of the Public Defender, as well as the Chicago Police Department, disclosed that these key component agencies of the Cook County criminal justice system believe that the speed of case disposition depends mostly on how willing judges are to enforce the pace of proceedings to produce case dispositions within a reasonable time.

Both prosecutors and defenders affirmed that several unresolved procedural obstacles are primary causes of case delay. Most frequently mentioned were the often lengthy time it takes to obtain and share detectives’ supplemental reports and laboratory tests and the frequent absences of police witnesses. Nevertheless, prosecutors assert that a trial judge who makes it clear early in a case that evidence must be obtained and provided to the defense within a reasonable specified time will succeed in overcoming these bottlenecks and either resolve the case without going to trial or try the case efficiently. Defenders also attested to the importance of judicial involvement in the pretrial phase of a case.

It appears from the statements of prosecutors and defenders, as well as from our interviews with a majority of the division’s judges, that there are a number of incumbent judges who have developed the skills to manage cases effectively. There are other judges who possess this capability to a limited degree, and still other judges who either do not know how to manage a calendar or have determined that it is not their responsibility to do so.

Those judges who are using time-tested concepts and practices of modern case flow management have lower pending caseloads as a result. Even allowing for the fact that judges may have varying case types within their individual case loads despite random case assignments, the case management practitioners seem to have shorter time

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17 In this regard, the key study was FLANDERS, ET AL., CASE MANAGEMENT IN UNITED STATES DISTRICT COURTS (Federal Judicial Center, 1979). This report disclosed that the most important factor in reducing and avoiding delay in case processing was the trial judge who affirmatively managed the caseload. CHURCH ET AL., JUSTICE DELAYED (National Center for State Courts, 1979) identified the expectations of counsel as key to determining how expeditiously cases would be processed in any trial court.
frames from arraignment to disposition. That being the case, other judges in the division should be able to reach similar results.

We also were told by several judges that case law supported a requirement that the court not proceed with a case unless both the state and the defense indicated that they were ready for trial. Prosecutors and defenders both challenged that view. Prosecutors noted that judges who managed cases well were not loath to pressure the state to require police to provide necessary evidence in a timely manner and to mandate the presence of the appropriate officers when summoned. Defenders reported that they were frequently pressured by judges to be ready for trial sooner than was reasonable, as in cases the Public Defender had picked up when a private attorney managed to withdraw months after the case had started.

Analysis of the applicable Illinois law on the judicial power to enforce firm trial schedules points to the “abuse of discretion” standard as the criterion employed by reviewing courts to determine whether a trial judge acted correctly. The general rule is that such a decision is in the sound discretion of the trial court unless the court has abused its discretion. The Illinois Supreme Court has ruled in several cases that if the denial of the defense request:

- results in the inability of the defense counsel to prepare the case properly,
- prevents defense witnesses from appearing in court,
- inhibits the defendant’s right to counsel of his choice,
- results in a pressured guilty plea, or
- chills the defendant’s exercise of his right to a jury trial,

the reviewing court will find that as an abuse of discretion and reverse the trial court.

Review of the leading case of People v. Ward, 154 Ill.2d 272 (1992), cited as authority in People v. Morey, 308 Ill.App.3d 722 (2d Dist. 1999), discloses that despite the existence of case law that recites specific fact situations in which abuse of discretion has been found, the abuse of discretion standard is not easily satisfied. In Ward, the defendant was charged with murder and armed robbery. The question was whether to grant a continuance so the defendant could secure the presence of a witness. Ward laid out three criteria for decision:

- whether the defendant was diligent in his efforts;
- whether the evidence was material and the evidence might have affected the verdict; and
- whether the defendant was prejudiced by the ruling of the trial court.

The Illinois Supreme Court held that the trial court did not abuse its discretion in failing to grant a continuance since these criteria were not met by the defendant.

Other leading cases define the standard as requiring a reasonable opportunity for counsel to prepare for trial and that the court have a fair opportunity to hear the facts at trial. These rulings and the definitions within them do not directly address the fundamental situation in the court today: the need of the judges to restrict the current situation of virtually automatic granting of repeated continuances. In view of this
prevailing atmosphere, it appears likely that a judge enforcing a “reasonable” restriction of continuances will not be found to have abused his or her discretion.

Judges certainly should be employing the basic principles of effective caseflow management. These include:

- enforcing a tight policy on granting continuances (phasing this policy into effect to permit institutional litigants to adjust their procedures in view of continuing budgetary constraints);
- only scheduling a court appearance when something meaningful can be accomplished to advance the case; and
- always having a next scheduled event docketed in each case.

While there are some courts, relatively few in number (but one is the U.S. District Court for the Northern District of Illinois, in Chicago18), which hold very tightly-scheduled status calls in cases on a regular basis, there normally is no good cause to hold anything resembling a status hearing or conference. Instead, the court should focus on scheduling a proceeding to a time when some action will be taken to move the case toward disposition.

C. Lack of Accurate and Routinely Available Data to Guide Caseflow Management and General Court Management

Gathering data about the decisions at each point in the caseflow process in terms of results and time from decision point to decision point is essential in order to describe what is happening to the caseload and the time it is taking to proceed from each stage in the process to the next. Additional data is needed to manage other elements of the process, as well as to describe the system’s operation and, by comparing it with local and national norms, fostering more accurate system evaluation.

The Clerk’s Office and Corrections Department have done much to squeeze some life from their legacy automated information systems to provide data on the jail population and felony case process that is needed for management. Joint efforts by the Presiding Judge, his staff and senior information systems specialists from the Clerk’s Office and Chief Judge’s Office have created, tested, and implemented a series of management-oriented reports, which are continually being refined. Despite their best efforts, however, we are not optimistic that complete, accurate, and useful information can be developed without substantial changes in the Court’s management information capabilities. This will require the development of uniform definitions for data to be entered; report forms upon which relevant data can be recorded (for example, what party requested the continuance? why? what was the court’s action? what disposition did the case receive?); training of staff who enter the data; and an agreement on what data elements (from the court as well as other agencies) must be included in the Court’s information system in order for the Court to be able to meaningfully manage the

18 The illustrative example is given because of the location of the court in the same city. Clearly, all federal courts have far more limited caseloads than do state criminal courts, so comparison of relative performance is not a useful exercise.
caseload. For example, the Court’s current information system does not permit it to retrieve cases according to the custodial status of the defendant.

The existing Clerk’s system has judges as the main data input source, most frequently through the mechanism of the courtroom clerks. The perception throughout the criminal justice community is that the data, and particularly data on dispositions, is not reliable. Error rates generally increase with the number of times the same data is entered and the number of inadequately trained data entry personnel who are entering key management information. As the system gets bigger and the amount of data entries swells, the error rate creeps up. This is what we were told characterizes the Cook County criminal justice data system, and we are convinced the interviewees are right. A high error rate draws all data in the system into question. The cost of multiple data entry is staggering. The misidentification of an individual can mean an illegal arrest or the premature and erroneous release of a dangerous felon.

The ramifications of the information deficiencies can be seen in every department. For example, it has been necessary to post clerks with laptops in the lobby of the Criminal Courts Building to search through a hard copy printout of 10,000 or more inmates to provide scheduling information to the public. Correctional staff have little access to accurate, timely data to support their support of court operations. Law enforcement agencies for whom inaccurate data can be life threatening are frustrated with the pace of automation in the rest of the system. Even with the best of intentions and hard work, improving court and other agency operations will most likely fail unless the courts and allied agencies agree to drastic modernization of the information system. Time consuming, yes; expensive, no doubt; absolutely essential, certainly.

Of paramount importance to the Court’s ability to manage the caseload is the quality of the data being entered and the usefulness of the data that is being collected. Online/real-time, in-court data entry, audited frequently, is one of the two most critical building blocks of such a system. Clearly defined and collaboratively reached agreement on the data which the system should output is the other.

**D. Underutilization of Interagency Mechanisms to Address Systemic Issues**

Two of the recommendations in our 1989 report that were subsequently implemented, in slightly modified versions, were the establishment by the County Commission of a Cook County Criminal Justice Coordinating Council (CCCJCC), consisting of the top officials of state, county and city agencies with operational or policy responsibilities affecting the county’s criminal justice system, and a Circuit Court-established Principals’ Committee, consisting of senior staff/deputies of the court and judicial system agencies. The former was recommended as the venue for criminal justice system policy coordination, government-community interaction in criminal justice system policy development, and city-county interaction with state agencies on criminal justice system issues. The latter was designed to be the judicial system’s operational monitor, goal setter and troubleshooter, working on analysis and planning tasks primarily through designated staff task forces within each agency and reporting to the CCCJCC through its Chair, the Presiding Judge of the Criminal Division of the Circuit Court.
Both of these mechanisms have been viable for their intended purposes for most of the period since they were established, and the Minutes of the CCCJCC, in particular, evidence a consistently cooperative and productive interchange on system-wide issues and state-local agency relations. The Principals’ Committee, more so than the CCCJCC, appears to have changed somewhat in its orientation and centrality to judicial system improvement along with the changes in political and administrative leadership in the member agencies since its establishment. The predominance in recent years of state-level-generated issues such as the impact of mandatory sentencing legislation and parole violation enforcement policy rather than police enforcement priorities, prosecution screening practices, and public defender access to jailed clients, has shifted the venue for these operationally relevant issues to the venue of the CCCJCC.

Another significant change in the Principals’ Committee is that its thrice-yearly meetings have gradually become open to representatives of non-member government agencies and community organization representatives, with the result that there may be 20 or so observers and seven or eight Committee members at any one meeting. This has the advantage of sharing judicial system developments with a broader audience and therefore contributing to system transparency. However, it has the disadvantage of curtailing the comprehensive discussion of controversial views and alternative solutions to problems and dysfunctions for which it was the intended venue. This disadvantage may be accommodated by the regular meetings, mentioned earlier, of the Presiding Judge, State’s Attorney, and Public Defender.

To date, there has been little apparent use of subcommittees or staff task forces as was originally envisioned for the Principals’ Committee over the past several years, and it seems to us that the quarterly periods between Committee meetings could be used as periods for task- or problem-specific analyses that could make the quarterly meetings decision points in system improvement efforts.

E. Other Issues

1. Jail Access and Transportation

The already overburdened workload of the Public Defender’s Office is further needlessly increased by the difficulties counsel encounter in visiting the jail to confer with their incarcerated clients. While we learned that the Acting Director of the Cook County Department of Corrections has sought to improve the procedures, counsel are made to wait for unduly lengthy periods both to enter the jail and to leave it. Shift changes for corrections officers occur squarely within the prime afternoon time when lawyers are likely to be available to go to the jail for client conferences. Interviewees in the branch courts report that transportation of prisoners to these locations is frequently late and delays the start of court proceedings. It is evident that this situation is capable of correction.

2. Early Dispositional and Diversionary Alternatives and

The State’s Attorney’s Office sponsors an effective “drug school” pre-plea diversion program and, as noted earlier, the Criminal Division of the Circuit Court, with strong support from the State’s Attorney, has implemented a Drug Treatment Court
calendar that offers post-plea alternative treatment that, while not a diversionary drug court, may enable convictions to be erased upon graduation. There are also the relatively new Mental Health Court and a new treatment-oriented CCOAI program being organized by Treatment Alternatives for Safe Communities (TASC). The capacity of these programs, as well as several related “alternative custody” programs operated by the Cook County Sheriff’s Office, needs to be enlarged as there are reportedly more eligible defendants than can now be accommodated in these programs. Not only are these programs effective in responsibly reducing the jail population, but they offer treatment that may both help a defendant end addictive behavior and make recidivism less likely.

IV. THE ADJUDICATION PROCESS AND JAIL USAGE

A. Length of Stay in the Cook County Jail

A brief discussion of some basic concepts of jail capacity management might be helpful to improve communication about this controversial subject. Two of them, measuring jail capacity and accurately describing jail usage are frequently misunderstood and misapplied.

Some observers view a single number of existing jail beds as the indicator of jail capacity. In fact, there can be multiple measures imposed by several standards. The Department of Corrections may impose its standards. Accrediting bodies such as the American Correctional Association via its Standards for Adult Local Detention Facilities may take a different view. If there is state or federal litigation, a judge may impose caps on the maximum number of allowable inmates. Under State standards, a jail may house up to 1000 inmates while under an accreditation organization, the number may be only 800 and a judge may find 900 constitutional. In addition, both constitutional requirements and inmate and staff safety considerations dictate that a jail’s housing capacity be utilized in such a way that certain categories of inmates are not mingled with others: e.g., males and females, pretrial and sentenced inmates, high risk or suicidal and low risk inmates, etc.

These differential custodial requirements may mean that an institution that has an overall capacity of 900 beds may be crowded with a population of only 800 because of the mix of housing and supervision needs. Conversely, a 900 bed jail to which 1,200 defendants have been remitted, whether pretrial or sentenced, may have beds to spare if 400 of those “in custody” are in “alternative custody” programs administered by the Department of Corrections and are not occupying jail beds.

Accurately describing actual jail usage is often misunderstood and sometimes is a bone of contention. Jails intake inmates and release others. Sometimes admissions equal releases. For example if 10 people are admitted to jail on January 11 and exactly 10 people are released on January 11, the population is said to be in a stable state. Other times, the admissions increase and the number of releases does not. For example, if 20 people are admitted (10 being the norm) and the usual 10 are released, and this trend continues, an overcrowded jail will eventually be the result, absent any “safety valves” to handle an overflow population. Admissions can be in a stable state but the time many
inmates spend in jail increases, thereby ultimately overcrowding the jail. When admissions increase and the number of days inmates stay in jail increases as well, the jail can overfill rapidly. [See Jail Crowding: Understanding Jail Population Dynamics, pg. 29-31. National Institute Corrections, Washington, D.C. 2002]

Two of the most important measures and planning tools for effective jail management are the “average daily population” of the institution and the “average length of stay” by each inmate admitted.

Average daily population (ADP) is the average of the number of inmates housed at the jail each day during a given period, usually a month or a year. It is usually measured on a monthly basis, and entails totaling the actual number of inmates on each day of the month being measured and dividing the result by the number of days in the month. Yearly ADP is usually calculated by adding the monthly ADPs for the year and dividing by 12, although it can also be calculated by adding the actual daily counts in the institution for each day of the year and dividing by either 365 or, in leap years, 366.

Length of stay (LOS) is the number of days between an inmate’s admission and release. It is usually expressed as an average length of stay (ALOS) for all or a subcategory of the inmate population; that is, the number of days, on average, that each inmate (or each inmate in a certain category; e.g., sentenced, pretrial, charged with felony or misdemeanor, etc.) is in jail prior to release. This measure of jail usage is usually calculated on a yearly basis, although some institutions prepare it more frequently as a monitoring measure on criminal justice system performance.

There are two formulas customarily used by local correctional authorities to calculate ALOS. All of the major metropolitan jurisdictions contacted by the study team in order to prepare a national comparative overview for Cook County officials of key jail usage statistics use one or the other (see Comparative Jail Statistics Chart, Figure 7). One of these formulas entails dividing the annual ADP of the institution by the annual average daily admissions; the other divides the aggregate total time in custody for all inmates released during a period of time (usually a year) by the number of inmates released from the institution during the period.

In addition to ADP and ALOS data, there is another frequently used jail management tool, called a “Snapshot,” which is a statistical profile of the inmate population on a given day. This enables administrators to determine the relative proportions of various categories of inmates in the institution (e.g., pretrial and sentenced; felons and misdemeanants), the time each inmate has spent in the institution as of the date of the snapshot, and other valuable reporting, resource allocation and planning data.

These three jail management statistical tools have a use in helping to analyze overall criminal justice system performance and the impact of sister criminal justice agency policies and practices on the jail population level. For example, the Snapshot could reveal the presence in the population of an unusually large proportion of persons charged with a relatively minor charge that has resulted from a new law enforcement initiative; or it may reveal that individuals awaiting parole violation hearings and either release or transfer to the state prison system have been taking up an unusually high
proportion of jail bed resources compared to earlier periods. ALOS data may suggest a problem with the pace of case processing or the handling of special sub-populations – e.g., inmates requiring transfer to the state prison following sentencing. Identifying these problems, especially in a timely fashion, facilitates discussion and resolution of them within an interagency framework such as the Cook County Criminal Justice Coordinating Council.

Problems arise, however, when the jail usage measurement tools are misunderstood or misused for what they reveal. Over the seven months of our study in Cook County, we have been informed through our background reading and interviews that the Circuit Court is perceived in some quarters of the criminal justice community as the major contributor to the jail crowding situation that is (among other issues) the focus of the Duran case. The justification given for this assessment is a purported ALOS in the County Jail in excess of 180 days.

When the basis for this extraordinary figure was examined by the study team, it became apparent that the 180+ figure was determined on the basis of a County Jail snapshot in mid-2004. This is an improper use of the snapshot tool and an inaccurate interpretation of the data it presents. When the two formulas customarily used for determining ALOS in local corrections institutions were applied to jail usage data for calendar year 2004 provided to the study team by the Department of Corrections, the ALOS in the Cook County Jail was 36.5 days by one formula [annual average daily population for 2004 divided by the annual average daily admissions: 10,535 / 288.9 and 37.5 by the other measure [jail days accounted for by all individuals released from custody during 2004 divided by the total number of releasees during 2004], 19 On both bases, the Cook County Jail’s ALOS was consistent with or better than other major metropolitan jurisdictions nationally (see Comparative Chart of Jail Statistics, Figure 7).

Use of the snapshot-derived duration of stay data for current inmates to represent ALOS carries with it some problems that are not associated with the formulas in common use. The snapshot procedure tends to result in a much larger proportion of lengthier-stay inmates among the population measured. In contrast, the formulas, which have been proven over time to reflect closely the actual average lengths of stay in local correctional institutions, mix in a higher proportion of short-term inmates in the aggregate data. In sum, the use of a snapshot to determine ALOS is a red herring; it overstates average length of stay and it inevitably invites unfavorable comparison with the ALOS in jails in other jurisdictions, which almost universally use the formula methods described above to calculate actual LOS data.

An unfortunate consequence of using the inflated, snapshot-derived data to calculate “ALOS” and comparing that figure to much lower ALOS figures from other jurisdictions is that it gives rise, understandably, to a perception of laggard case processing performance by the Circuit Court. This is entirely without basis.

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19 The total number of jail days for the in-custody inmates released during 2004 was 3,946,748, which is derived by subtracting from the 5,257,929 cumulative total number of in-custody days of the inmates discharged the 1,311,181 days included in the total of “in-custody” days that were spent by 16,268 of the releasees who were in the DOC’s alternative custody programs rather than in the jail prior to their discharge from custody, and dividing the resultant figure by the number of discharged inmates (3,946,748 / 105,258).
In fact, in another section of this report dealing with case processing, we noted that the Criminal division of the Court has increased its clearance rate over the past several years by more than 10% a year and is currently at the point of eating into its pending case inventory; and in the chart presenting comparative case processing data on ten major metropolitan jurisdictions (Figure 8), the Cook County Circuit Court was among only several whose dispositions exceeded or equaled the pace of new filings in 2004. In addition, as has also been noted, its median disposition time for “all categories” of cases is significantly shorter than that reported in a U.S. Department of Justice study of 75 urban jurisdictions in 2000. All of this indicates that the Circuit Court’s Criminal Division is a hard-working bench and that the principal litigating agencies—the State’s Attorney’s Office and the Public Defender’s Office—are also doing their part to improve disposition levels and time.

This is not to say that the court and judicial system agencies in Cook County cannot do more to increase the efficiency and fairness of the adjudication process and ameliorate some of the population pressure on the County Jail. But it does indicate that the focus of adjudication system improvement efforts should be upon developing greater efficiencies for handling specific classes of cases rather than on speeding the pace of case disposition generally which, by a number of measures, is consistent with and, in some instances, exceeds that of other urban courts.

B. Analysis of Days in Custody by Charge, Method of Release, and Bond Amount

During the course of this study, we viewed the jail population from several perspectives and, with the assistance of Department of Corrections staff, conducted a number of analyses to identify factors associated with jail usage and potential ways for reducing the jail population based on the number of inmates charged with common offenses and the amounts of available jail bed days they utilized. Using special data runs prepared by DOC staff, we looked at the jail population and length of stay from the perspectives of: (1) the charges of detained inmates; (2) categories of releases; and (3) bond amounts. The following are the results of these analyses.

1. Jail Usage by Charge

At the study team’s request, the jail prepared a report listing the number of charges, average number of jail bed days and total jail bed days for all 105,000+ inmates released in 2004. Since the report listed charges and not defendants, the jail then provided a report listing the total number of defendants and the total number of charges so that a ratio of charges to defendants could be determined. For most charges there was a 1:1 ratio of charges to defendants.

The report groups some related offenses into one category. For example, the “illegal possession of controlled substances” category includes many related offenses charged under different subsections of the statute. Thus, 23,974 charges are grouped under “illegal possession of a controlled substance,” with an average of 59 days in custody for each charge/defendant, for a total of 1,418,570 days accounted for by
defendants charged with these offenses who were released in 2004. The total number of custody days utilized by the 105,000 inmates released during 2004 was 5,130,095, some of whom were admitted to the jail in prior years.

Using the categories supplied by the jail, the following is a list of major offense categories, the average length of time in custody associated with each category for defendants released during 2004, and the total “days in custody” accounted for by these defendants.\(^{20}\)

**Figure 3: Time in DOC Custody for Inmates Charged with Major Felony Offenses Discharged From Custody in 2004, by Charge**

### I. Offenses Relating to Illegal Possession/Manufacture/Sale of Controlled Substances

<table>
<thead>
<tr>
<th>Charge</th>
<th>Number of Defendants</th>
<th>Average Time in Custody</th>
<th>Total Days In Custody</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illegal possession of a controlled substance</td>
<td>23,974</td>
<td>59</td>
<td>1,416,570</td>
</tr>
<tr>
<td>Manufacture or delivery</td>
<td>5,717</td>
<td>101</td>
<td>577,417</td>
</tr>
<tr>
<td>Illegal possession of cannabis</td>
<td>3,452</td>
<td>41</td>
<td>141,532</td>
</tr>
<tr>
<td>Possess amt. con sub except (A) (D)</td>
<td>2,842</td>
<td>71</td>
<td>201,782</td>
</tr>
<tr>
<td>Manufacture/delivery cannabis</td>
<td>1,043</td>
<td>53</td>
<td>55,279</td>
</tr>
<tr>
<td>Manufacture/deliver other amount</td>
<td>698</td>
<td>105</td>
<td>73,290</td>
</tr>
<tr>
<td>Manufacture/deliver/sell subst</td>
<td>423</td>
<td>110</td>
<td>46,530</td>
</tr>
<tr>
<td>other drug charges</td>
<td>1,578</td>
<td>87</td>
<td>137,554</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>39,727</strong></td>
<td><strong>67</strong></td>
<td><strong>2,651,954 (51.2%)</strong></td>
</tr>
</tbody>
</table>

### II. Murder Offenses

<table>
<thead>
<tr>
<th>Charge</th>
<th>Number of Defendants</th>
<th>Average Time in Custody</th>
<th>Total Days in Custody</th>
</tr>
</thead>
<tbody>
<tr>
<td>First degree murder (all classes)</td>
<td>1,189</td>
<td>577</td>
<td>686,438</td>
</tr>
<tr>
<td>Second degree murder / voluntary mans.</td>
<td>28</td>
<td>321</td>
<td>8,988</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>1,217</strong></td>
<td><strong>571</strong></td>
<td><strong>695,426 (13.4%)</strong></td>
</tr>
</tbody>
</table>

\(^{20}\) The term “days in custody” is used rather than “jail days” or “jail bed days” because the data on 2004 releases includes 16,268 defendants who were discharged directly from DOC alternative custody programs and therefore did not occupy a jail bed for the full duration of their time in DOC custody. These individuals spent approximately 1.3 million of their Total Days in Custody in the alternative custody programs and not in the jail.
### III. Other Major Felony Charges

<table>
<thead>
<tr>
<th>Charge</th>
<th>No. of Defendants</th>
<th>Average Time in Custody</th>
<th>Total Days in Custody</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armed robbery</td>
<td>1,186</td>
<td>286</td>
<td>339,196</td>
</tr>
<tr>
<td>Robbery</td>
<td>697</td>
<td>154</td>
<td>107,338</td>
</tr>
<tr>
<td>Robbery: robbery/school</td>
<td>157</td>
<td>146</td>
<td>22,922</td>
</tr>
<tr>
<td>Home invasion</td>
<td>41</td>
<td>320</td>
<td>13,120</td>
</tr>
<tr>
<td>Home invasion</td>
<td>23</td>
<td>418</td>
<td>9,614</td>
</tr>
<tr>
<td>Vehicular highjacking</td>
<td>84</td>
<td>249</td>
<td>20,916</td>
</tr>
<tr>
<td>Vehicular invasion</td>
<td>29</td>
<td>200</td>
<td>5,800</td>
</tr>
<tr>
<td>Aggravated veh highjacking/weapon</td>
<td>115</td>
<td>355</td>
<td>40,825</td>
</tr>
<tr>
<td>Aggravated battery w/firearm/person</td>
<td>41</td>
<td>257</td>
<td>10,537</td>
</tr>
<tr>
<td>Burglary</td>
<td>2,993</td>
<td>121</td>
<td>362,153</td>
</tr>
<tr>
<td>Aggravated criminal sexual assault</td>
<td>365</td>
<td>364</td>
<td>132,860</td>
</tr>
<tr>
<td>Predatory criminal sexual assault</td>
<td>107</td>
<td>440</td>
<td>47,080</td>
</tr>
<tr>
<td>Aggravated battery of a child</td>
<td>13</td>
<td>428</td>
<td>5,564</td>
</tr>
<tr>
<td>Aggravated kidnapping person under</td>
<td>9</td>
<td>392</td>
<td>3,528</td>
</tr>
<tr>
<td>Contraband in non state penal</td>
<td>5</td>
<td>882</td>
<td>4,410</td>
</tr>
<tr>
<td>Contraband in state penal institution</td>
<td>61</td>
<td>490</td>
<td>29,903</td>
</tr>
<tr>
<td>Parole violation (state post-judgment matter)</td>
<td>6,209</td>
<td>104</td>
<td>645,736</td>
</tr>
<tr>
<td>Violation of parole/mandatory (state post-judgment matter)</td>
<td>17</td>
<td>780</td>
<td>13,260</td>
</tr>
<tr>
<td>Violation of probation or revocation</td>
<td>6</td>
<td>201</td>
<td>1,206</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>12,240</strong></td>
<td><strong>150</strong></td>
<td><strong>1,836,386 (35.4%)</strong></td>
</tr>
</tbody>
</table>

Source: Cook County Sheriff’s Department

Note: This chart reflects an aggregate of 53,184 defendants charged with major felony offenses who were discharged from in 2004 after accounting for 5,183,730 “in-custody” days. Because some of the defendants were charged with multiple offenses, they were counted more than once, and the total number of in-custody days is, therefore, somewhat overstated. The proportional distribution of “in-custody” days, however, is consistent with our analysis of a sample of 2004 releasees.

As the above analysis reflects, drug cases accounted for about half of the total days in custody for inmates released in 2004 in Cook County. Murder cases, while much
fewer in number, obviously take much longer to close and account for almost 700,000 days used, or 13.4% of the total time spent in custody by those discharged in 2004. Robbery cases used approximately 470,000 custody days (9% of the total), are more numerous than murder cases, take longer for disposition than drug cases but less time than murder cases to complete. A total of 645,736 (12.5% of the total) jail days were used by parole violators discharged in 2004.

A closer review of the case process for these various classes of cases and the time – and DOC resources – being consumed by them, should be a prerequisite to the development of appropriate case processing timeframes and events which will be part of the Differentiated Case Management (DCM) program recommended in Section VI.

2. **Jail Usage by Method of Release**

The jail staff also ran a special report (Figure 5, below) providing the length of stay for all inmates discharged in 2004 by type of release.

As Figure 5 reflects, the bulk of the defendants admitted to the Cook County Jail are either released fairly early in the process or remain for considerable periods of time. Of the 105,258 inmates released in 2004, 31% bonded out within an average of 11.10 days or a total of 359,978 (7%) of the total days in custody accounted for by those released in 2004. Approximately 20% of the inmates released were transferred to the Illinois Department of Corrections, having consumed 54% (2,867,120) of the in-custody days. The remaining 49% of the inmates, accounting for 37% of the days used by all inmates discharged in 2004 were discharged for a variety of reasons, some of which related to the strength of the case (e.g., “warrant quashed”, “not guilty”; “motion to vacate sustained”), others as a result of some type of disposition (e.g., time considered served”; “probation terminated”. Of those discharged in 2004, approximately 9% (9,388) were discharged after serving their sentence. The 2,071 inmates released via the Administrative Mandatory Furlough (AMF) procedure constituted 2% of the total releases and less than 1% of the custody days of the inmates released in 2004.

The DAA category in the left hand upper corner refers to those discharged to appropriate authorities, generally to county agencies in other Illinois or out-of state jurisdictions. The “Supervision” category is for defendants released to the supervision of other county agencies. “Nolle” refers to cases which the State Attorney’s Office declines prosecution while “SOL” means stricken with leave to refile.

The LOS for 32,428 defendants who bonded out was 11.10 days. A close look at this segment of the jail population might well result in reducing the average time from bail setting to release. Noteworthy is the LOS of those in the Sheriff’s release program of 2 days for the 2071 inmates released. Expansion of this program or improvement in overall pretrial release activities through expansion of current pretrial operations or, preferably, through establishing a dedicated pretrial services agency, would ease the pressure on the jail.

Those released to probation numbered 7,277 with an LOS of just under 66 days. Those shipped to the state prison system accounted for almost 20% of those released and averaged 138 days to transfer. This population is generally detained prior to disposition.
With earlier guilty pleas, the LOS for these inmates could be reduced. Determining how to speed up the many inevitable guilty pleas, as well as the conduct of trials for those cases disposed of through trial, should be part of the process for developing the Differentiated Case Management System and associated case “tracks”, discussed further in Section VI.

**Figure 5. Time in Custody, by Type of Discharge: 2004**

<table>
<thead>
<tr>
<th>TYPE OF RELEASE</th>
<th># Inmates</th>
<th>ALOS</th>
<th>Total DAYS</th>
<th>% of TOTAL</th>
<th>% of DAYS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bonded Out</td>
<td>32,428</td>
<td>11.10</td>
<td>359,978</td>
<td>30.81%</td>
<td>6.85%</td>
</tr>
<tr>
<td>TOTAL-BONDED OUT</td>
<td>32,428</td>
<td>11.10</td>
<td>359,978</td>
<td>30.81%</td>
<td>6.85%</td>
</tr>
<tr>
<td>AMF</td>
<td>2,071</td>
<td>1.80</td>
<td>3,730</td>
<td>1.97%</td>
<td>0.07%</td>
</tr>
<tr>
<td>TOTAL-AMF</td>
<td>2,071</td>
<td>1.80</td>
<td>3,730</td>
<td>1.97%</td>
<td>0.07%</td>
</tr>
<tr>
<td>DAA</td>
<td>5,121</td>
<td>32.33</td>
<td>165,578</td>
<td>4.87%</td>
<td>3.15%</td>
</tr>
<tr>
<td>Del. Mental Health</td>
<td>145</td>
<td>201.75</td>
<td>29,254</td>
<td>0.14%</td>
<td>0.56%</td>
</tr>
<tr>
<td>Illinois Youth Center</td>
<td>6</td>
<td>56.83</td>
<td>341</td>
<td>0.01%</td>
<td>0.01%</td>
</tr>
<tr>
<td>Shipped to IDOC</td>
<td>20,711</td>
<td>138.44</td>
<td>2,867,120</td>
<td>19.68%</td>
<td>54.53%</td>
</tr>
<tr>
<td>TOTAL TRANSFERRED TO ANOTHER AUTHORITY</td>
<td>25,983</td>
<td>117.86</td>
<td>3,062,293</td>
<td>24.69%</td>
<td>58.24%</td>
</tr>
<tr>
<td>TASC</td>
<td>203</td>
<td>117.66</td>
<td>23,884</td>
<td>0.19%</td>
<td>0.45%</td>
</tr>
<tr>
<td>Probation</td>
<td>7,277</td>
<td>65.81</td>
<td>478,876</td>
<td>6.91%</td>
<td>9.11%</td>
</tr>
<tr>
<td>Same Bond to Stand</td>
<td>911</td>
<td>22.57</td>
<td>20,564</td>
<td>0.87%</td>
<td>0.39%</td>
</tr>
<tr>
<td>Sentence Expired</td>
<td>9,388</td>
<td>27.91</td>
<td>262,048</td>
<td>8.92%</td>
<td>4.98%</td>
</tr>
<tr>
<td>Supervision</td>
<td>3,362</td>
<td>16.70</td>
<td>56,140</td>
<td>1.97%</td>
<td>1.07%</td>
</tr>
<tr>
<td>Time Considered Served</td>
<td>6,784</td>
<td>53.42</td>
<td>362,387</td>
<td>6.45%</td>
<td>6.89%</td>
</tr>
<tr>
<td>Probation Terminated</td>
<td>714</td>
<td>78.95</td>
<td>56,140</td>
<td>0.68%</td>
<td>1.07%</td>
</tr>
<tr>
<td>Probation Terminated Unsatisfactory</td>
<td>780</td>
<td>28.18</td>
<td>21,983</td>
<td>0.74%</td>
<td>0.42%</td>
</tr>
<tr>
<td>STS</td>
<td></td>
<td></td>
<td></td>
<td>0.00%</td>
<td>0.00%</td>
</tr>
<tr>
<td>TOTAL-FINAL DISPOSITION/COMMUNITY SERVICE</td>
<td>29,419</td>
<td>43.59</td>
<td>1,282,250</td>
<td>27.95%</td>
<td>24.39%</td>
</tr>
<tr>
<td>Nolle</td>
<td>3,174</td>
<td>30.93</td>
<td>98,170</td>
<td>3.02%</td>
<td>1.87%</td>
</tr>
<tr>
<td>Charge Dropped Pros</td>
<td>2,279</td>
<td>35.27</td>
<td>80,378</td>
<td>2.17%</td>
<td>1.53%</td>
</tr>
<tr>
<td>Charge Not File</td>
<td>27</td>
<td>17.11</td>
<td>462</td>
<td>0.03%</td>
<td>0.01%</td>
</tr>
<tr>
<td>Conditional Release</td>
<td>36</td>
<td>43.94</td>
<td>1,582</td>
<td>0.03%</td>
<td>0.03%</td>
</tr>
<tr>
<td>Deceased</td>
<td>38</td>
<td>251.40</td>
<td>9,553</td>
<td>0.04%</td>
<td>0.18%</td>
</tr>
<tr>
<td>Def. Exam &amp; Discharged</td>
<td>725</td>
<td>84.19</td>
<td>61,041</td>
<td>0.69%</td>
<td>1.16%</td>
</tr>
<tr>
<td>Motion to Vacate Sustained</td>
<td>289</td>
<td>39.82</td>
<td>11,507</td>
<td>0.27%</td>
<td>0.22%</td>
</tr>
<tr>
<td>No Probable Cause</td>
<td>3,553</td>
<td>23.41</td>
<td>83,170</td>
<td>3.38%</td>
<td>1.58%</td>
</tr>
<tr>
<td>Not Guilty</td>
<td>447</td>
<td>249.66</td>
<td>111,598</td>
<td>0.42%</td>
<td>2.12%</td>
</tr>
<tr>
<td>Warrant Quashed</td>
<td>93</td>
<td>51.42</td>
<td>4,782</td>
<td>0.09%</td>
<td>0.09%</td>
</tr>
<tr>
<td>Wrong Defendant</td>
<td>91</td>
<td>19.53</td>
<td>1,777</td>
<td>0.09%</td>
<td>0.03%</td>
</tr>
<tr>
<td>SOL</td>
<td>4,233</td>
<td>17.78</td>
<td>75,267</td>
<td>4.02%</td>
<td>1.43%</td>
</tr>
<tr>
<td>TOTAL-NO FURTHER LEGAL ACTION</td>
<td>14,985</td>
<td>35.99</td>
<td>539,287</td>
<td>14.24%</td>
<td>10.26%</td>
</tr>
<tr>
<td>Others</td>
<td>372</td>
<td>41.73</td>
<td>10,391</td>
<td>0.35%</td>
<td>0.20%</td>
</tr>
<tr>
<td>TOTAL RELEASES</td>
<td>105,258</td>
<td>49.95</td>
<td>5,257,929</td>
<td>100.00%</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

---

21 **Note:** Due to MIS system limitations, this run of discharges during 2004 includes 16,268 individuals, accounting for 1,311,181 of the total “LOS” days, who were released directly from DOC alternative custody programs. Making these adjustments in the # of Inmates column and the Total Days column reduces the actual ALOS for all who were discharged from the jail itself to 37.5 days. See footnote 20.
Reviewing the last section of the report “Total – No Further Legal Action” section provides a snapshot of the system’s screening efforts. The “Nolle Pros, Charge Dropped” and “Charge Not Filed” categories total 5,481 defendants, with an average LOS between 30 – 35 days. Formal judicial screening reflected in the disposition categories of the “No Probable Cause” category (3,553 defendants) or 3.38% of releases and “SOL” (4,233 defendants), or 4.2%, consumed a total of 336,985 jail days or 6.4% of the total. It should be noted that these are percentages of all releases, many of which are for misdemeanors as well as felonies.

As can be seen from the above discussion, more detailed reporting on a regular basis can assist policy makers in balancing the need to control jail usage with other, competing justice system goals. Further analysis of the reasons for discharge presented in this report can provide an added tool for Cook County justice system officials to use in reviewing the current case process and determining potential areas for reducing the time entailed to reach case disposition decisions, including those leading to discharge.

3. Jail Usage by Cash Required to Make Bond for Release

Illinois long ago outlawed the bail bond industry. Most bail bonds require 10% of the face value of the bond and bail bond amounts appear to be set with this factor in mind. The face amount tends to be set very high, which then requires the inmate to post large amounts of cash, although 90% is generally returned to the defendant upon case disposition.

The chart below, prepared by jail staff, is drawn from two jail snapshots: one taken on January 1, 2004 and one taken on December 31, 2004, and depicts the amount of cash needed by inmates for whom bond was set in order to secure pretrial release. Bail bond amounts set tend to be stable. The amounts cluster in $500 increments. The actual cash amounts needed to be released on bond are also displayed.

Figure 6: Cash Amounts Required for Release of Pre-Trial Inmates In Jail on January 1, 2004 and December 31, 2004

<table>
<thead>
<tr>
<th>Cash Required To Secure Release</th>
<th>January 1, 2004</th>
<th>December 31, 2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 100 - $ 999</td>
<td>360 inmates (3.9%)</td>
<td>302 inmates (3.3%)</td>
</tr>
<tr>
<td>$ 1,000 - $ 4,999</td>
<td>1,045 inmates (11.3%)</td>
<td>1,092 inmates (12.2%)</td>
</tr>
<tr>
<td>$ 5,000 - $ 9,999</td>
<td>1,302 inmates (14.1%)</td>
<td>1,340 inmates (15%)</td>
</tr>
<tr>
<td>$ 10,000 and over</td>
<td>2,333 inmates (25.3%)</td>
<td>2,484 inmates (31.8%)</td>
</tr>
<tr>
<td>No Bond</td>
<td>4,027 inmates (43.7%)</td>
<td>3,601 inmates (40.2%)</td>
</tr>
<tr>
<td></td>
<td>9,219 inmates</td>
<td>8,956 inmates</td>
</tr>
</tbody>
</table>

The above summary indicates that almost half of the defendants detained pretrial and for whom a bond amount was set, were required to deposit $10,000 or more in order to secure release pretrial. Over 40% of the inmates detained pretrial were in no-bond status. As noted elsewhere in this report, many whom the study team interviewed commented on what they perceived to be excessively high bonds frequently set as well as inconsistency in bond setting practice.
The 2004 Pretrial Services Statistical Report, prepared by the adult Probation Department, indicates that, of the 6,576 inmates interviewed during calendar year 2004 (about 12% of bondable inmates), 72% were unemployed. The interviewed population typically would be in custody for less serious offenses. It would seem, therefore, that high cash requirements for release guarantees that many are held in jail until disposition of their case because they cannot raise the money to get out.

The no-bond category includes inmates held for violations of probation, rearrested while on bond, non-bondable offenses, and inmates detained on warrants from other jurisdictions. Both the no-bond and high bond categories should be given closer scrutiny in a study of the entire bond system to determine the feasibility of any options for pretrial release that may be developed. A review of policies and practices generally in regard to bond setting should be part of the larger recommended study to determine the feasibility of expanded pretrial release options recommended in Section VI.

The study team’s compilation of LOS and related jail usage and case processing information from other metropolitan jurisdictions, summarized in Figure 8, shows that the LOS of pretrial inmates in these jurisdictions ranges from 4 to 44 days. These jurisdictions also report a range of 54 to 419 beds per 100,000 population while the Cook County Jail reports 180 beds per 100,000 population. While interesting to review comparative data, the real issue is this: the overall jail population must be reduced in Cook County. We suggest many ways to accomplish this; the way is there, and we believe, so is the will.

Other than new construction, bringing and keeping the jail population under rated capacity will be a function of a number of practices, operating simultaneously, and involving numerous agencies, including:

- expanded case screening by the prosecution and the court (primarily by preliminary hearings);
- expanded pretrial diversion programs;
- releasing more inmates prior to trial, including expanding release alternatives;
- speeding up the release date of those now being released prior to trial;
- expanding the Probation Department’s authority to handle more probation violations administratively and releasing selected violation of probation defendants under electronic monitoring, house arrest, and bond, especially for alleged technical violations;
- shortening the time from arrest to trial or plea;
- shortening the time from trial or plea to final trial court disposition;
- expanding alternative sentencing options; and
- speeding up the transfer of inmates to state prison or other jurisdictions.
C. Commentary on Comparative Jail and Case Processing Data from Major Metropolitan Jurisdictions

As part of our review of the Cook County felony adjudication process, we made a special effort to collect data on certain case processing and jail usage characteristics in ten other major metropolitan jurisdictions. A remarkable level of cooperation and encouragement was shown by corrections and court officials in almost all of the cities and counties contacted. They strove hard to provide us with accurate and roughly comparable data so that we could provide Cook County authorities with a national perspective on jail and court operations in other large communities. The results of that data gathering are presented in Figures 7 and 8, below.

The purpose of the charts is, as we have said, to provide perspective, not invite performance comparisons. Differences in traditions, statutory and court rules frameworks, and resources argue against that on the basis of a few salient characteristics. Nevertheless, the charts are informative in what they show about procedures, workload and capacity of the judicial system and local corrections functions in various communities. For example:

Comparative Jail Statistics Chart [Figure 7]:
- Cook County has the second lowest number of beds per 100,000 population of the 11 metropolitan jurisdictions surveyed
- Cook County has the highest proportion of pretrial detainees in its jail of any of the jurisdictions surveyed
- Cook County Jail’s average length of stay for “all inmates” is equivalent to or lower than all but two of the jurisdictions surveyed

Comparative Case Processing Statistics Chart [Figure 8]:
- The Criminal Division ranks in the middle of the 11 jurisdictions surveyed in the number of annual felony filings per 100,000 population
- The Criminal Division is second highest in clearance rates [dispositions /filings] of the jurisdictions surveyed and third of the 11 in number of dispositions per 100,000 population
- Case disposition times among the jurisdictions surveyed are reported in a variety of ways, precluding meaningful comparison. The percent of cases disposed of within a given time frame (the procedure recommended in the ABA Standards for case processing timeliness calculations) appears to be the preferred measurement method.
[Figure 7: Comparative Jail Statistics]
## FIGURE 7: COMPARATIVE JAIL STATISTICS FOR SELECTED U.S. COUNTIES

### Jurisdictions and Their Populations

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Atlanta/Fulton County</strong></td>
<td>816,006</td>
<td>2,550</td>
<td>2,790 (CY 2005)</td>
<td>70%</td>
<td>37.5 days / 36.5 days</td>
</tr>
<tr>
<td><strong>Chicago/Cook County</strong></td>
<td>5,376,741</td>
<td>9,679</td>
<td>10,535 (CY 2004)</td>
<td>90%</td>
<td>38.83 days / 35.55 days</td>
</tr>
<tr>
<td><strong>Denver/ Denver County</strong></td>
<td>554,636</td>
<td>1,672</td>
<td>2,073 (CY 2004)</td>
<td>29%</td>
<td>38.83 days / N/A</td>
</tr>
<tr>
<td><strong>Houston/ Harris County</strong></td>
<td>3,400,578</td>
<td>9,339</td>
<td>8,280 (CY 2004)</td>
<td>29%</td>
<td>35.55 days / N/A</td>
</tr>
<tr>
<td><strong>Los Angeles/ Los Angeles County</strong></td>
<td>9,519,338</td>
<td>2,253,362</td>
<td>17,451 (CY 2004)</td>
<td>44%</td>
<td>5.59 days [in ADD]</td>
</tr>
<tr>
<td><strong>Miami/ Miami-Dade County</strong></td>
<td>1,116,200</td>
<td>1,192</td>
<td>684 - ADD (CY 2004)</td>
<td>74%</td>
<td>45 days [ACF time only]</td>
</tr>
<tr>
<td><strong>Minneapolis/ Hennepin County</strong></td>
<td>8,008,278</td>
<td>14,288</td>
<td>13,751 (FY 2004)</td>
<td>30%</td>
<td>39.5 days (Time under jail sentence only)</td>
</tr>
<tr>
<td><strong>New York/ New York City</strong></td>
<td>3,072,149</td>
<td>8,175</td>
<td>7,171 (FY 2004)</td>
<td>66%</td>
<td>27.48 days (Time in custody for sent. &amp; oth.)</td>
</tr>
<tr>
<td><strong>Philadelphia/ Maricopa County</strong></td>
<td>1,192</td>
<td>3,021</td>
<td>9,400 (CY 2004)</td>
<td>61%</td>
<td>59 days (Sentenced only; incl. pretrial time)</td>
</tr>
<tr>
<td><strong>Phoenix/ Hillsborough County</strong></td>
<td>539</td>
<td>1,140</td>
<td>4,472 (CY 2004)</td>
<td>73%</td>
<td>4,669</td>
</tr>
<tr>
<td><strong>Tampa/ Hillsborough County</strong></td>
<td>333</td>
<td>107</td>
<td>4,472 (CY 2004)</td>
<td>27%</td>
<td>4,669</td>
</tr>
</tbody>
</table>

1 County population information is derived from 2000 data that appears on the National Association of Counties (NACO) website, [www.naco.org](http://www.naco.org).

2 The Los Angeles County Sheriff’s Department reported a current population served of 9,937,739. The NACO population figure was used for computations.

3 According to information reported in Hennepin County’s Adult Detention Division 2004 Annual Report, the Adult Detention Division has a total of 839 beds, but only had funding in 2004 to operate 604 beds. Hennepin County’s jail is a pretrial facility only. The separate Adult Correctional Facility in Hennepin County holds sentenced prisoners. According to the Adult Correctional Facility 2004 Annual Report, that facility has a total of 588 beds.

4 The New York City DOC has a potential capacity of 20,904 beds. The 14,288 figure was the number of beds in open and staffed facilities in 2004.

5 This category includes, for “Sentenced”: inmates serving jail sentences; “Other” may include individuals in one or more of the following categories: awaiting probation or parole revocation hearings, inmates sentenced to state prison and awaiting transfer, inmates being held on detainers from other jurisdictions, and other non-pretrial categories.

6 For all departments, one of two formulas was used to compute ALOS: (1) annual average daily population / annual average daily admissions, or (2) total time (days) in jail for all inmates released during year / number of inmates released during year. The color of the number printed first indicates the formula used by the subject jail to calculate its official ALOS statistic.
[Figure 7: Comparative Jail Statistics- page two]
[Figure 8: Comparative Court Statistics]
### FIGURE 8: COMPARATIVE CASE PROCESSING STATISTICS FOR SELECTED U.S. COUNTIES

#### Jurisdictions and Their Populations

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Population</th>
<th>Felony Caseload and Disposition Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlanta/Fulton County</td>
<td>816,006</td>
<td>[Data is for CY 2004 unless otherwise noted]</td>
</tr>
<tr>
<td>City of Chicago</td>
<td>2,860,000</td>
<td></td>
</tr>
<tr>
<td>Denver/Denver County</td>
<td>554,636</td>
<td></td>
</tr>
<tr>
<td>Houston/Harris County</td>
<td>3,400,578</td>
<td></td>
</tr>
<tr>
<td>Los Angeles/Los Angeles County</td>
<td>9,519,338</td>
<td></td>
</tr>
<tr>
<td>Miami/Miami-Dade County</td>
<td>2,253,362</td>
<td></td>
</tr>
<tr>
<td>Minneapolis/Hennepin County</td>
<td>1,116,200</td>
<td></td>
</tr>
<tr>
<td>New York/New York City</td>
<td>8,008,278</td>
<td></td>
</tr>
<tr>
<td>Philadelphia/Philadelphia</td>
<td>1,517,550</td>
<td></td>
</tr>
<tr>
<td>Phoenix/Maricopa County</td>
<td>3,072,149</td>
<td></td>
</tr>
<tr>
<td>Tampa/Hillsborough County</td>
<td>998,948</td>
<td></td>
</tr>
</tbody>
</table>

#### CASE FILINGS

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Annual No. of felony filings</th>
<th>Annual No. of felony filings per 100K pop.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlanta/Fulton County</td>
<td>12,719</td>
<td>1,559</td>
</tr>
<tr>
<td>City of Chicago</td>
<td>27,278</td>
<td>969</td>
</tr>
<tr>
<td>Denver/Denver County</td>
<td>4,985</td>
<td>899</td>
</tr>
<tr>
<td>Houston/Harris County</td>
<td>37,972</td>
<td>1,117</td>
</tr>
<tr>
<td>Los Angeles/Los Angeles County</td>
<td>59,921</td>
<td>629</td>
</tr>
<tr>
<td>Miami/Miami-Dade County</td>
<td>24,182</td>
<td>1,073</td>
</tr>
<tr>
<td>Minneapolis/Hennepin County</td>
<td>6,159</td>
<td>552</td>
</tr>
<tr>
<td>New York/New York City</td>
<td>34,052</td>
<td>425</td>
</tr>
<tr>
<td>Philadelphia/Philadelphia</td>
<td>14,055</td>
<td>926</td>
</tr>
<tr>
<td>Phoenix/Maricopa County</td>
<td>36,748</td>
<td>1,196</td>
</tr>
<tr>
<td>Tampa/Hillsborough County</td>
<td>17,232</td>
<td>1,725</td>
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#### CASE DISPOSITIONS: NO. AND TYPE

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>No. of Felony Judges</th>
<th>No. of Felony Dispositions (All)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlanta/Fulton County</td>
<td>15</td>
<td>10,409</td>
</tr>
<tr>
<td>City of Chicago</td>
<td>40</td>
<td>32,396</td>
</tr>
<tr>
<td>Denver/Denver County</td>
<td>7</td>
<td>32,084</td>
</tr>
<tr>
<td>Houston/Harris County</td>
<td>140</td>
<td>37,251</td>
</tr>
<tr>
<td>Los Angeles/Los Angeles County</td>
<td>25</td>
<td>42,667</td>
</tr>
<tr>
<td>Miami/Miami-Dade County</td>
<td>13</td>
<td>25,453</td>
</tr>
<tr>
<td>Minneapolis/Hennepin County</td>
<td>134</td>
<td>5,843</td>
</tr>
<tr>
<td>New York/New York City</td>
<td>42</td>
<td>30,475</td>
</tr>
<tr>
<td>Philadelphia/Philadelphia</td>
<td>24 judges &amp; 1 commrs.</td>
<td>31,306</td>
</tr>
<tr>
<td>Phoenix/Maricopa County</td>
<td>9</td>
<td>16,526</td>
</tr>
<tr>
<td>Tampa/Hillsborough County</td>
<td>39</td>
<td>1,639</td>
</tr>
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</table>

#### Jury Trials

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Jury Trials</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlanta/Fulton County</td>
<td>157 (1.5%)</td>
</tr>
<tr>
<td>City of Chicago</td>
<td>Ct: 285 (.38%)</td>
</tr>
<tr>
<td>Denver/Denver County</td>
<td>Clerk data: 167</td>
</tr>
<tr>
<td>Houston/Harris County</td>
<td>St. Atty: 364</td>
</tr>
<tr>
<td>Los Angeles/Los Angeles County</td>
<td>130 (2.6%)</td>
</tr>
<tr>
<td>Miami/Miami-Dade County</td>
<td>42 (0.11%)</td>
</tr>
<tr>
<td>Minneapolis/Hennepin County</td>
<td>2,286 (5.4%)</td>
</tr>
<tr>
<td>New York/New York City</td>
<td>514 (juries sworn; excludes mistrials) 2%</td>
</tr>
<tr>
<td>Philadelphia/Philadelphia</td>
<td>106 (2%)</td>
</tr>
<tr>
<td>Phoenix/Maricopa County</td>
<td>1,271 (4.2%)</td>
</tr>
<tr>
<td>Tampa/Hillsborough County</td>
<td>854 (5.5%)</td>
</tr>
<tr>
<td></td>
<td>473 (1.5%)</td>
</tr>
<tr>
<td></td>
<td>297 (1.8%)</td>
</tr>
</tbody>
</table>

#### Bench Trials

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Bench Trials</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlanta/Fulton County</td>
<td>29 (0.3%)</td>
</tr>
<tr>
<td>City of Chicago</td>
<td>2,417 (7.46%)</td>
</tr>
<tr>
<td>Denver/Denver County</td>
<td>2 (0.03%)</td>
</tr>
<tr>
<td>Houston/Harris County</td>
<td>2,935 (8.03%)</td>
</tr>
<tr>
<td>Los Angeles/Los Angeles County</td>
<td>152 (0.36%)</td>
</tr>
<tr>
<td>Miami/Miami-Dade County</td>
<td>8 (0.03% rate)</td>
</tr>
<tr>
<td>Minneapolis/Hennepin County</td>
<td>114 (2%)</td>
</tr>
<tr>
<td>New York/New York City</td>
<td>211 (0.73%)</td>
</tr>
<tr>
<td>Philadelphia/Philadelphia</td>
<td>2,428 (15.5%)</td>
</tr>
<tr>
<td>Phoenix/Maricopa County</td>
<td>25 (0.08%)</td>
</tr>
<tr>
<td>Tampa/Hillsborough County</td>
<td>40 (0.24%)</td>
</tr>
</tbody>
</table>

#### Pleas

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Pleas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlanta/Fulton County</td>
<td>7,167 (69%)</td>
</tr>
<tr>
<td>City of Chicago</td>
<td>27,862 (86%)</td>
</tr>
<tr>
<td>Denver/Denver County</td>
<td>Pleas, Nolle prosses/dismissals and 'other' accounted for 97% of Denver dispositions.</td>
</tr>
<tr>
<td>Houston/Harris County</td>
<td>30,227 (81%)</td>
</tr>
<tr>
<td>Los Angeles/Los Angeles County</td>
<td>30,386 (71%)</td>
</tr>
<tr>
<td>Miami/Miami-Dade County</td>
<td>18,705 (74% rate)</td>
</tr>
<tr>
<td>Minneapolis/Hennepin County</td>
<td>3,638 (62%)</td>
</tr>
<tr>
<td>New York/New York City</td>
<td>24,522 (80%)</td>
</tr>
<tr>
<td>Philadelphia/Philadelphia</td>
<td>7,844 (50%)</td>
</tr>
<tr>
<td>Phoenix/Maricopa County</td>
<td>24,419 (78%)</td>
</tr>
<tr>
<td>Tampa/Hillsborough County</td>
<td>13,488 (82%)</td>
</tr>
</tbody>
</table>

#### Nolle prosses/dismissals

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Nolle prosses/dismissals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlanta/Fulton County</td>
<td>219 (2.1%)</td>
</tr>
<tr>
<td>City of Chicago</td>
<td>1,083 (5.6%)</td>
</tr>
<tr>
<td>Denver/Denver County</td>
<td>6,429 (17%)</td>
</tr>
<tr>
<td>Houston/Harris County</td>
<td>9,795 (23%)</td>
</tr>
<tr>
<td>Los Angeles/Los Angeles County</td>
<td>2,109 (8.3% rate)</td>
</tr>
<tr>
<td>Miami/Miami-Dade County</td>
<td>1,173 (20%)</td>
</tr>
<tr>
<td>Minneapolis/Hennepin County</td>
<td>7,373 (12%)</td>
</tr>
<tr>
<td>New York/New York City</td>
<td>2,713 (17.3%)</td>
</tr>
<tr>
<td>Philadelphia/Philadelphia</td>
<td>6,261 (20%)</td>
</tr>
<tr>
<td>Phoenix/Maricopa County</td>
<td>1,196 (7.2%)</td>
</tr>
</tbody>
</table>

#### Other

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlanta/Fulton County</td>
<td>2,837 (27%)</td>
</tr>
<tr>
<td>City of Chicago</td>
<td>29 (.09%)</td>
</tr>
<tr>
<td>Denver/Denver County</td>
<td>N/A</td>
</tr>
<tr>
<td>Houston/Harris County</td>
<td>48 (0.11%)</td>
</tr>
<tr>
<td>Los Angeles/Los Angeles County</td>
<td>4,193 (16.5%)</td>
</tr>
<tr>
<td>Miami/Miami-Dade County</td>
<td>846 (14%)</td>
</tr>
<tr>
<td>Minneapolis/Hennepin County</td>
<td>722 (2.4%)</td>
</tr>
<tr>
<td>New York/New York City</td>
<td>1,834 (11.7%)</td>
</tr>
<tr>
<td>Philadelphia/Philadelphia</td>
<td>N/A</td>
</tr>
<tr>
<td>Phoenix/Maricopa County</td>
<td>1,639 (10%)</td>
</tr>
</tbody>
</table>

#### No. of felony dispos. per 100K pop.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>No. of felony dispos. per 100K pop.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlanta/Fulton County</td>
<td>1,276</td>
</tr>
<tr>
<td>City of Chicago</td>
<td>1,133</td>
</tr>
<tr>
<td>Denver/Denver County</td>
<td>907</td>
</tr>
<tr>
<td>Houston/Harris County</td>
<td>1,095</td>
</tr>
<tr>
<td>Los Angeles/Los Angeles County</td>
<td>448</td>
</tr>
<tr>
<td>Miami/Miami-Dade County</td>
<td>1,129</td>
</tr>
<tr>
<td>Minneapolis/Hennepin County</td>
<td>523</td>
</tr>
<tr>
<td>New York/New York City</td>
<td>381</td>
</tr>
<tr>
<td>Philadelphia/Philadelphia</td>
<td>1,033</td>
</tr>
<tr>
<td>Phoenix/Maricopa County</td>
<td>1,019</td>
</tr>
<tr>
<td>Tampa/Hillsborough County</td>
<td>1,654</td>
</tr>
</tbody>
</table>

---


2 Information for Los Angeles was reported in the 2004 Court Statistics Report by the Judicial Council of California. Data is for FY 2002-03. Timeframe data is from the Los Angeles Caseload Profile, July 2003-June 2004.

3 Data is for June 2003 to June 2004.

4 Unless otherwise specified, disposition is defined as adjudication. The breakdown of numbers/percentages may not add to total dispositions because of rounding or incomplete reporting. In the case of Chicago/Cook County, differing figures for total filings, dispositions, and trials, depending on the source, are noted; but all percentages are based on Court-supplied disposition data.

Data collected May-July 2005.
# Jurisdictions and Their Populations

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlanta/Fulton County</td>
<td>816,006</td>
</tr>
<tr>
<td>City of Chicago</td>
<td>2,860,000</td>
</tr>
<tr>
<td>Denver/Denver County</td>
<td>554,636</td>
</tr>
<tr>
<td>Houston/Harris County</td>
<td>3,400,578</td>
</tr>
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<td>3,072,149</td>
</tr>
<tr>
<td>Tampa/Hillsborough County</td>
<td>998,948</td>
</tr>
</tbody>
</table>

## CASE DISPOSITIONS: TIMEFRAME

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>CASE DISPOSITIONS: TIMEFRAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-cap. w/in 6 mos. (from accusation/indictment to trial/plea.)</td>
<td>Non-murder: 119-240, from arraign. Murder: 508, from arraign.</td>
</tr>
<tr>
<td>92% disposed in 365 days or less.</td>
<td>41% disposed in 60 days or less.</td>
</tr>
<tr>
<td>Average of 52.7 days from 1st appear. to dispo.; Median of 15 days</td>
<td>Not available</td>
</tr>
<tr>
<td>89% are disposed w/in 180 days from indictment</td>
<td>56% disposed of in 180 days or less</td>
</tr>
<tr>
<td>Not Available</td>
<td></td>
</tr>
</tbody>
</table>

*Data is for CY 2004 unless otherwise noted.*

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*Data collected May-July 2005.*
VI. RECOMMENDATIONS

Our 1989 report presented 72 recommendations addressed to individual state and county criminal justice system-related agencies. That study, which took place in a void of “system” orientation among the major actors, warranted an emphasis on the details of individual court and agency needs and accountability in responding to the jail crowding crisis. The present study, although focused on the court system’s role in helping to reduce jail crowding, has taken place in a context of systemic awareness on the part of judicial and agency leaders and an accepted norm of interagency collaboration to address system dysfunctions of all types, not just those related to jail population pressures. Consequently, we have chosen to limit our specific recommendations to six major ones that, although directed primarily at the Circuit Court, require collaborative action to implement and which, in a relatively short period – certainly within a year from the decision to follow the recommendations and timetable proposed – will have had a demonstrable corrective impact on unnecessary jail population pressures in Cook County.

In Sections II and III of this report, a number of organizational- and role-specific practices, procedures and consequences are identified as impediments to more effective and timely case flow in the Criminal Division. In most cases, specific suggestions for remedial action are made. We encourage the criminal justice and general government agencies that have policy, funding and operational responsibilities in the adjudication system in Cook County to review those sections of the report and to address the discrete recommendations therein in the context of their participation in the design and implementation of the following major recommendations.

RECOMMENDATION NO. 1: Initiate a Circuit Court-led, interagency process to develop and adopt appropriate time goals and events for disposition of various categories of cases—i.e., a Differentiated Case Management (DCM) System.

Establishing a DCM case management system will have a number of advantages for the Cook County Criminal Courts and justice agencies, among which will be the following:

- timeframes and events for case processing will be clearly articulated and geared to the nature and complexity of the case and the custodial status of defendant;
- all agencies involved in the adjudication process will have consistent expectations regarding the pace of the adjudication process and the certainty with which scheduled events will occur;
- the pace of the adjudication process will be predictable and not dependent upon the particular case management approach of individual judges; and
- the court and other justice system agencies will be better able to manage and allocate their resources as a result of increased predictability and consistency of the case process.
Establishing a DCM system is a collegial process in which the judges, prosecutors, public defenders, and private bar develop a framework for: (1) categorizing the various types of cases handled which can then constitute case processing classes (or tracks); and then (2) identifying the nature of events, timeframes, and judicial supervision appropriate for the just disposition of cases in each track. Maintaining the system will require ongoing information as to the age, status and history of all pending cases on a routine basis -- information for the individual judge to make decisions and plans for effective management. This information should allow supervising judges to identify cases/problems that require attention as well as determine the degree to which the system is achieving its case processing time and fairness goals.

In developing a DCM system, consideration should be given to promoting:

- provision for early and meaningful contact between defendants and their public defenders;
- the ability to screen out more cases earlier;
- mechanisms that promote pleas in appropriate cases earlier in the process;
- more timely discovery, given the nature of the case;
- establishing a prioritized /differentiated schedule for lab analyses;
- providing for reasonable but not excessive accommodation of the parties;
- creating the expectation (and reality) that events will occur when scheduled; and
- minimizing the number and length of continuances.

An effective DCM system can be established in Cook County in a manner that is compatible with current policies of random case assignment and individual judicial calendars. It is clear that serious constraints imposed by budget cuts, especially of the non-legal staff of the Public Defender’s Office, may restrict the ability of that office to operate as effectively as possible in the DCM system. The office is staffed in all areas at a lesser level than is the prosecuting agency, even when taking into account the segment of the caseload handled by private defense counsel (estimated at 10 percent of representations). Moreover, the effectiveness of Public Defender representation is vitiated by reduction in investigative and support personnel, who both augment the impact of the legal staff and free lawyers to focus on strictly legal work. Additional staff would also permit jailed defendants to be visited by nonlegal staff available more of the time and at better times than lawyers trying to perform this function after court concludes for the day.

**RECOMMENDATION NO. 2:** The Court should sponsor training for judges and lawyers in caseflow management generally, and the new DCM system in particular, making use of the valuable experience of its own judges who have mastered the techniques of effective judicial control of cases in conjunction with caseflow and trial management specialists provided by the CCTAP (American University-based/BJA-funded project conducting this study).
A multi-phase training program is needed for judges and lawyers involved with the felony case process in Cook County which should focus on basic case management concepts and skills necessary to:

- maintain early and continuous judicial control of case progress;
- make events occur when scheduled – continuing case events only for good cause; and
- assure that adequate management and monitoring is provided to ensure the maintenance of an efficient and fair case disposition process.

RECOMMENDATION NO. 3: The County should reconstitute a Pretrial Release and Services Agency to serve the criminal courts

As we have noted earlier, our 1989 assessment emphasized, in its first recommendation,22 that a full-service Pretrial Services Agency was critical to improving release decisions and supervision of released defendants. The recommendation was premised on three needs: (1) to return the bail decision to the judiciary, (2) to provide necessary information and support to guide those decisions, and (3) to implement a stratified system of supervision.

The 1989 recommendation was accepted and implemented. A pretrial services operation was organized as an independent judicial branch agency and began to interview defendants to provide information on them to the judges who were making decisions on release and setting bonds. It appears that this pretrial service agency functioned for several years and performed many of the tasks to which it was assigned. However, as has already been noted, in the mid-1990’s this function and the independent pretrial services structure were disbanded and its functions incorporated, at a reduced level and capability, into the Probation Department structure.

This decision needs to be reversed. Effective pretrial services agencies make it possible for the judiciary to reach informed decisions on both bond and release.23 Without this information, which the Pretrial Services Agency is specifically designed to provide, courts must proceed without being aware of whether a defendant is a good or bad candidate for release. In contrast to the situation at the Criminal Courts Building, where there is no pretrial interviewing or reporting, the Cook County criminal courts operating outside Chicago are staffed with pretrial services officers who, although having no pretrial supervision capabilities, interview and report to the judges making bond and release decisions.


The 1989 study team was frequently asked whether pretrial services would reduce the jail population in view of the ongoing use of Sheriff’s Office (i.e., AMF) to release defendants from jail. The 1989 report responded with what it described as a “qualified yes.” This is because while having a pretrial services system can gain judicial confidence so as to facilitate release of defendants who would not otherwise have been released, it cannot by itself fill the need for an active, consistent jail capacity management program.

Our answer in 2005 is also “yes,” and it is unqualified. Pretrial services, properly designed and operated to provide both information for the release and bond decision as well as monitoring and supervision of released defendants, will reduce the jail population for the following reasons:

First, judges making these decisions will possess good information on which release decisions and conditions of release may be based.

Second, the best pretrial services programs make recommendations on release to These judges; others only report the defendant’s community ties, criminal history, and ranking on a risk assessment scale for the judicial decision-maker. For all, it is the program’s responsibility to provide verified and relevant information objectively to the Court.

Third, in contrast, the AMF program operated by the DOC does not rely on a consistent set of risk assessment criteria to determine whether to release a defendant on AMF. Consequently, the releases are sporadic and related mostly to jail capacity rather than the suitability of a defendant to be released and the conditions that would make the release appropriate.

Fourth, an effective pretrial services program can implement a stratified system to monitor and supervise defendants based on their supervision needs and judicial directives for such supervision.

Some pretrial services programs have implemented a drug-testing protocol to provide the court with further information, in both narcotics and other criminal cases, to enable the court to review earlier decisions on release.

Following submission of the 1989 report, in furtherance of its role as the monitor for the federal court order capping the inmate population at the Cook County Jail, the John Howard Association sought assistance from the Illinois Criminal Justice Information Authority to study the impact of the DOC’s AMF release program and assess pretrial failure to appear rates. Three types of release were to be examined: the “Jail I-Bond” (i.e., the Sheriff’s AMF procedure), The Court I-bond and the cash deposit bonds. After a massive study tracking 2,127 releasees, the Authority issued its final report in June 1992.

The Authority recommended in part:
* Examine and continue to refine selection criteria for pretrial release;

* Develop additional programs to supervise and support defendants released through court-issued deposit or recognizance bonds;

* Increase resources for the Cook County Pretrial Services Program, to permit more defendants to enter the program; and

* Accommodate high-risk defendants with high levels of failure by expanding the Cook County Pretrial Services Program or creating a special focus in the program for high risk defendants.

In the area of jail-based recognizance release:

* Reduce the number of pretrial defendants released through the AMF mechanism through development and use of other, more structured, alternatives.

* If the AMF mechanism continues in use, expand the resources available to the Cook County Department of Corrections to improve pretrial release programs, such as pretrial electronic monitoring and other enhanced pretrial supervision efforts.

The Authority found that the failure rate was much lower for the releasees under pretrial supervision by the Cook County Pretrial Services Program (CCPS). Moreover, it suggested that increased funding of pretrial services might reduce recidivism. Turning to those defendants who would be arrested regardless of enhanced supervision it wrote:

“…Incarceration may be cost effective in the long run. However, a number of less expensive pretrial supervision tools and techniques are available that would ensure a higher degree of public safety than simply allowing defendants to be released with no supervision. If home confinement or pretrial supervision can reduce rearrests by even a modest amount, savings may be realized in the long run through reduce repressing costs.” (page 77)

“…information provided by that agency (the CCPS) indicates a much better chance of success for those releasees receiving more structured and staff supervised pretrial release services.” (Executive Summary, page3)

We fully support the Authority’s key recommendations. They are as timely now as when they were made. As already noted, a few years after the Authority’s Report, the Pretrial Services Agency was merged with the Cook County Adult Probation Department and the resources devoted to pretrial release activities were substantially reduced.
**RECOMMENDATION NO. 4: Develop a Strategic Plan for attainment of national standards for court and judicial system performance.**

Several justice system organizations have developed national standards for felony case processing, the most significant of which are those promulgated by the American Bar Association (ABA). These standards can serve as overall goals for the Cook County adjudication process against which progress both systemically and in regard to the operations of individual justice system components can be measured. Standard 12-1-4(a) ABA Criminal Justice Standards on **Speedy Trial and the Timely Resolution of Criminal Cases** begins: “These standards approach the issues of speedy trial and timely case resolution from a systemic perspective, recognizing that many different institutions, agencies, and individuals play key roles in criminal cases...”

Cook County judicial system officials should review these standards and develop a plan to achieve them, taking into account all stages in the adjudication process, including:

- **Reorganization of the intake process from arrest to arraignment,** that will promote:
  - better police screening of the cases filed
  - earlier effective contact by the public defender with their defendants
  - return of the I Bond process to the courts from the sheriff
  - development of an adequate pretrial services capability to assist the court in the bond-release decision

- **Provision of discovery to the defense no later than arraignment and, in simple cases, before the arraignment**

- **An adequate information system** that will permit continuous judicial monitoring of case status and progress

- **Application of accepted case management concepts,** including:
  - case differentiation in terms of the nature of the case and its complexity and custodial status of the defendant
  - control of the case process from arrest to sentence based on the time and event standards adopted
  - court monitoring compliance with the standards through regular reports
  - policies to assure that events occur when scheduled
  - a strict continuance policy, providing for the granting of continuances for cause, stated in writing and submitted in advance of the hearing, with elimination of routine consent continuances
  - provision of back up judges for unavoidable assignment conflicts

- **Improvements in the operations of collateral agencies that affect case disposition,** including:
  - police witness coordination
  - timely police report preparation
  - timely preparation of lab reports, including development of
appropriate prioritized schedules for their preparation, particularly regarding DNA reports

developing and monitoring discovery production

Developing a comprehensive plan for achieving national adjudication process standards in Cook County will also require addressing individual docket management problems as well as systemic problems involving interagency policies and practices. Problems relating to docket management can be adequately addressed through court initiative. Problems entailing systemic issues, however, should most likely be addressed by the CCCJC under the initiative of the Presiding Judge of the Criminal Court.

An advantage of developing and implementing a strategic plan to achieve these standards rather than piecemeal implementation is that all participants in the criminal justice process will become stakeholders in the resulting process and the efforts to make it work. Designing a plan will also enable the system to build in goals and milestones by which progress toward the implementation of the standards may be measured.

One of the first sets of national standards which many courts reference as a framework for further refinement in their local jurisdictions are those adopted by the Conference of State Court Administrators (COSCA), the Conference of Chief Justices (CCJ), and the American Bar Association (ABA), summarized in Figure 8 below.

Figure 9. Case Disposition Time Standards Adopted by the Conference of State Court Administrators (COSCA), the Conference of Chief Justices (CCJ), and the American Bar Association (ABA)*

<table>
<thead>
<tr>
<th>Case Type</th>
<th>COSCA &amp; CCJ</th>
<th>ABA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal (time from arrest to trial or disposition)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Felony</td>
<td>180 days</td>
<td>90% in 120 days</td>
</tr>
<tr>
<td></td>
<td></td>
<td>98% in 180 days</td>
</tr>
<tr>
<td></td>
<td></td>
<td>100% in 12 months</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>90 days</td>
<td>90% in 30 days</td>
</tr>
</tbody>
</table>

* COSCA adopted their standards in 1983; CCJ and ABA adopted theirs in 1984.

Further refinement of the information system capabilities (See Recommendation No. 6 below) will make it possible to determine how the court performs in terms of disposing of 90%, 95%, 98% and 100% of the caseload, as these percentage figures are now used in the applicable time to disposition standards. These percentage figures will disclose how well the court performs in disposing of the vast bulk of its cases, leaving only a small number of complex cases that are likely always to take extended periods to reach disposition.
RECOMMENDATION NO. 5: Use the National Commission-developed Trial Courts Performance Standards and Measurement System Forms to monitor and report on progress towards case processing goals and other court improvement initiatives.

An eight-year effort over 1987-95 by a national commission of judges and judicial system practitioners, assisted by staff of the National Center for State Courts and with U.S. Department of Justice sponsorship, developed a framework and process for adoption by individual jurisdictions of performance goals for trial courts and measuring progress towards them over time. The performance standards address five aspects of a general jurisdiction trial court’s mission: access to justice; expedition and timeliness; equality, fairness and integrity; and public trust and confidence. The materials published and available on a special page of the NCSC website (http://www.ncsconline.org/D_Research/tcps/index.html), include, in addition to the standards, a planning manual for adoption and implementation of performance goals, an implementation manual, and measurement guidelines and forms.

It is strongly encouraged that the Criminal Division use these materials to track and report on performance in its DCM program and other delay reduction or case processing improvement efforts. They also can be used to track and document progress towards Strategic Plan goals in the five areas covered by the standards.

RECOMMENDATION NO. 6: Initiate immediately a process to develop and implement the compilation of timely, accurate, and system-relevant data on the adjudication process by the Court, the Clerk’s Office, State’s Attorney and Public Defender Offices, and the DOC, using consistent definitions.

The information system required by the Cook County justice system must provide basic elements of data collection and reporting that enable the Court’s leadership to have the information necessary to make decisions about adjudication system policies and processes. Backlog and delay should be constantly monitored. The time between critical stages in the process must be continuously reported and analyzed. The Presiding Judge of the Criminal Court, the State’s Attorney and the Public Defender need the same reports on a regular basis showing the impact of changes made to control delay at each stage of the proceedings.

Definitions and measures used to assess performance should be consistent and uniform among all agencies involved. Persons entering data should be specifically trained for this purpose. A very urgent priority in this regard is the need to develop summary forms for use by courtroom clerks to record specific information relating to activities and outcomes for each case heard (e.g., court action, reason for continuance, etc.) and aggregate information (e.g., types of matters heard and ruled on, etc.) on the activities in each courtroom daily, signed by the judge, assistant state’s attorney and courtroom clerk.

To a large extent, the effectiveness and efficiency of a court depends on how information systems inform the Court’s and other justice system senior and operational staffs’ decision-making processes. Operational, transaction-oriented systems, typically
the clerk’s automated docket, were not designed to support trial judges’ and senior court and other agency managers’ decisions-making. Nor were they created to give the chosen judicial supervisory personnel such as the Presiding Judge and other supervising judges the information needed to monitor the courts processes. An executive management information system [EMIS] can be designed to assist rational decision making, effective use of precious resources and problem identification, inducing action and providing the supporting data to convince affected personnel to change deeply rooted behavior. It draws upon operational and other information systems to pool data and extract them in meaningful ways.

Ultimately, the MIS must provide accurate, timely, reliable and cost-effective data. Of at least equal significance is the need for clearly defined, generally accepted key performance measures [KPMs]. We have referenced various national standards from which key performance measures could be derived. They are only a beginning. The devil is truly in both the big picture indicators, time from arrest to disposition and in the details, such as the time between the arraignment and the first trial setting. Key performance measures involve both policy and operational analysis. Both are best grown from within the justice system rather than imposed from without.

Commitment to use the EMIS to improve the effectiveness and efficiency of all interrelated justice system agencies is critical to enable those involved to move beyond information which has been called “nothing more than data viewed in perspective, to insight, which is information viewed in perspective”. The Cook County Criminal Justice System is a dynamic system, fraught with difficulties stemming from and expanding an ever more complex caseload, and with demands for services not traditionally part of court and systemic responsibilities. Drug courts, mental health courts, exploding communicable disease populations require anticipation of problems instead of crisis management.

The May 2003 MIS master plan is an extraordinary document, obviously the result of a major collaborative effort. Some tasks in implementing the master plan might include:

1. Developing survey instruments and interview guidelines to help identify the key performance measures for trial and supervisory judges, other CJS policy and senior management personnel. Focus groups might be used to illuminate the survey- and interview-derived data.

2. Identifying the key data sources for key performance measures.

3. Organizing the data to facilitate monitoring in easy to use, easily customized reports.

4. Developing the technical (hardware/software) information and if a data warehouse concept is adopted, developing the architecture and writing data summaries and reduction programs to migrate data from operational databases to the warehouse.
(5) Developing prototype software and applications to, for example, provide exception reports, view data in progressively greater detail, forecast trends, and allow monitoring of agency operations.

The next stages of development would best be done by a blend of in-house court, clerk, jail, prosecution, defense, and other agency staff. They would include information system professionals and management analysts from each affected agency. Since the creation and modification of these data systems is ongoing, each agency MUST have the staff to keep refining the system and keeping it up to date as data needs shift and technology improves. Data needs are a moving target. Outside consultants who bring valuable lessons learned in other jurisdictions should be employed in the coming efforts to create the new system and brought back periodically on an as-needed basis.

While the Illinois Criminal Justice System is developing a statewide integrated justice information system, progress has to date been slow. This is not surprising and is quite comparable to experience in many other states: these systems are complex and despite strong federal support for their development, only a few have already begun operating. Examination of some systems elsewhere is desirable because some are totally integrated while others provide a “data warehousing” function that serves to extract data, subject to many protections of both agency and individual privacy, from the systems run by the individual agencies.

VII. NEXT STEPS AND TIMETABLE

A. November 1, 2005 – February 28, 2006

The CCCJCC should fix responsibilities for implementing a plan to improve the adjudication process in Cook County. Even with judges exercising managerial control over the progress of their caseloads, systemic barriers to improving the speed of disposition remain. These issues are critical ones for the CCCJCC to address, and include:

- Identifying work that needs to be done to implement the program.

- Identifying the principal actors that need to be involved in each task of the program. In most cases, more than one of the principal actors will need to be involved in addressing each of the task areas covered by the recommendations.

- Appointing task groups drawn from the principal actors to propose processes that will correct problems identified in the report. In each instance, the task group should be composed of persons with authority to implement change and should report directly to the CCCJCC on their progress.
• Meeting monthly until satisfied that all of the problems identified in the report and in subsequent discussions have been optimally resolved.

• Monitoring changes that are made and providing for further action to adjust and maintain progress.

The BJA-American University Criminal Courts Technical Assistance Project that undertook the present study will provide follow-on assistance to these task force efforts, which assistance may include: (1) hosted site visits of Cook County judicial system representatives to jurisdictions where “best practices” can be observed in operation; (2) training workshops on certain topics; and (3) the provision of consultant resource persons.

B. November - December 2005

• Training for criminal court judges, court staff, assistant state’s attorneys, assistant public defenders, and private bar representatives on the principles of differentiated case management. Separate training sessions of 1-2 days duration for judges, attorneys and court and clerk’s office staff will be conducted by representatives of the CCTAP project.

C. November 2005 – April 14, 2006

• Development of timeframes, forms and procedures for DCM tracks, for processing of criminal cases in the Cook County Criminal Division. Facilitation of the process to be provided, as requested, by the CCTAP project.

• Consultants from the CCTAP project to assist court and judicial system agency information specialists with development of system-relevant management reports.

• Court to design a Strategic Planning process, with assistance from CCTAP-provided consultants with the objective of launching the planning process in January 2006.

D. April 17, 2006

• Target date for implementing the DCM program in the Criminal Division of the Circuit Court.
E. May 1, 2006

• Adoption of five-year Strategic Plan for the Criminal Division of the Circuit Court.

F. January 2006 – December 2006

• Quarterly visits by CCTAP study team representatives to participate in review and assessment of progress on implementation of study team recommendations and judicial system improvement goals.

VIII. CONCLUSION

Many positive developments have occurred in the Cook County criminal justice system since we conducted our initial study in 1989. The diligent efforts of Cook County justice system and general government officials to implement the recommendations of that report – which addressed a wide array of issues and agency operations – have provided a framework for the systemic improvements and initiatives in place today that have without doubt curtailed the growth of the jail population to a level it would otherwise have reached. At the same time, there is room and opportunity for additional improvements.

The present study has focused primarily on the Criminal Division of the Circuit Court and the degree to which its policies and practices impact the jail population. Unlike the broad spectrum of issues and recommendations that were the subject of the 1989 report, the issues that have emerged from the present study are well defined and focused, and center upon three fairly clear identified needs: (1) a substantially expanded pretrial release capability and alternatives to incarceration; (2) much greater court control and management of the case process; and (3) system(s) for compiling and reporting complete, accurate, relevant, and current information on the Court’s caseload that will both permit and promote its efficient management and just disposition.

Addressing these needs will require an interagency effort at multiple levels, building upon the already established mechanisms for interagency collaboration that have made possible many of the initiatives that have been introduced. It should be noted, however, that action has already begun on a number of the tasks necessary to address these needs. The Presiding Judge of the Criminal Division, the State’s Attorney and the Public Defender have been meeting monthly since January 2005 to review the 500 oldest pending cases and develop disposition plans. In addition, for over a year, the Criminal Division Presiding Judge and his staff have also been working with the Circuit Court Clerk’s Office to develop a series of routine management reports for use by the Presiding Judge and supervising judges to monitor and manage the pending caseload. Recently, representatives of the Criminal Division, the State’s Attorney’s Office and the Public
Defender have been meeting with Clerk of Court staff to address data needs and develop uniform definitions of data elements. The steadily increasing “clearance rates” for the felony caseload and the expeditious disposition of a large volume of cases -- in the midst of rising jury trial demands and increasing mandatory sentencing provisions which often militate against early pleas -- is indicative of the effectiveness of the Court’s increasing case management efforts. The impressive experience of the drug court and mental health courts should provide a foundation for, and a firm confidence in, the potential impact which sound, well developed, alternative release and disposition programs can have for the jail population as well as the community.

We hope that the analysis and observations presented in this report, together with the commitment of the Criminal Courts Technical Assistance Project to provide technical assistance for implementation efforts through the end of 2006, will enable the Cook County criminal justice system – Circuit Court and justice agencies – to rapidly undertake the initiatives required to assist Cook County to fulfill its obligations under Duran – for the benefit of the community at large and to the individuals in its custodial care.
APPENDIX A

SELECTED AMERICAN BAR ASSOCIATION (ABA) STANDARDS (EXCERPTS)

ABA Standards on Pretrial Release

ABA Standards on Discovery

ABA Standards on Speedy Trial and Timely Resolution of Criminal Cases

ABA Standards Relating to Trial Courts: Standard 2.50 – Caseflow Management and Delay Reduction -General Principles
PART I. GENERAL PRINCIPLES

Standard 10-1.1 Purposes of the pretrial release decision

The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference. The judge or judicial officer decides whether to release a defendant on personal recognizance or unsecured appearance bond, release a defendant on a condition or combination of conditions, temporarily detain a defendant, or detain a defendant according to procedures outlined in these Standards. The law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support. These Standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings.

Standard 10-1.2. Release under least restrictive conditions; diversion and other alternative release options

In deciding pretrial release, the judicial officer should assign the least restrictive condition(s) of release that will reasonably ensure a defendant’s attendance at court proceedings and protect the community, victims, witnesses or any other person. Such conditions may include participation in drug treatment, diversion programs or other pre-adjudication alternatives. The court should have a wide array of programs or options available to promote pretrial release on conditions that ensure appearance and protect the safety of the community, victims and witnesses pending trial and should have the capacity to develop release options appropriate to the risks and special needs posed by defendants, if released to the community. When no conditions of release are sufficient to accomplish the aims of pretrial release, defendants may be detained through specific procedures.

Standards 10-1.3. Use of citations and summonses

The principle of release under least restrictive conditions favors use of citations by police or summons by judicial officers in lieu of arrest at stages prior to first judicial appearance in cases involving minor offenses. In determining whether an offense is minor, consideration should be given to whether the alleged crime involved the use or threatened use of force or violence, possession of a weapon, or violation of a court order protecting the safety of persons or property.

Standard 10-1.4. Conditions of release

(a) Consistent with these Standards, each jurisdiction should adopt procedures designed to promote the release of defendants on their own recognizance or, when necessary, unsecured bond. Additional conditions should be imposed on release only when the need is demonstrated by the facts of the individual case reasonably to ensure appearance at court proceedings, to protect the community, victims, witnesses or any other person and to maintain the integrity of the judicial process. Whenever possible, methods for providing the appropriate judicial officer with
reliable information relevant to the release decision should be developed, preferably through a pretrial services agency or function, as described in Standard 10-1.9.

(b) When release on personal recognizance is not appropriate reasonably to ensure the defendant’s appearance at court and to prevent the commission of criminal offenses that threaten the safety of the community or any person, constitutionally permissible non-financial conditions of release should be employed consistent with Standard 10-5.2.

(c) Release on financial conditions should be used only when no other conditions will ensure appearance. When financial conditions are imposed, the court should first consider releasing the defendant on an unsecured bond. If unsecured bond is not deemed a sufficient condition of release, and the court still seeks to impose monetary conditions, bail should be set at the lowest level necessary to ensure the defendant’s appearance and with regard to a defendant’s financial ability to post bond.

(d) Financial conditions should not be employed to respond to concerns for public safety.

(e) The judicial officer should not impose a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant’s inability to pay.

(f) Consistent with the processes provided in these Standards, compensated sureties should be abolished. When financial bail is imposed, the defendant should be released on the deposit of cash or securities with the court of not more than ten percent of the amount of the bail, to be returned at the conclusion of the case.

Standard 10-1.5. Pretrial release decision may include diversion and other adjudication alternatives supported by treatment programs

In addition to employing release conditions outlined in Standard 10-1.4, jurisdictions should develop diversion and alternative adjudication options, including drug, mental health and other treatment courts or other approaches to monitoring defendants during pretrial release.

Standard 10-1.6. Detention as an exception to policy favoring release

These Standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings. They establish specific criteria and procedures for effecting the pretrial detention of certain defendants after the court determines that these defendants pose a substantial risk of flight, or threat to the safety of the community, victims or witnesses or to the integrity of the justice process. The status of detained defendants should be monitored and their eligibility for release should be reviewed throughout the adjudication period. The cases of detained defendants should be given priority in scheduling for trial.

Standard 10-1.7. Consideration of the nature of the charge in determining release options

Although the charge itself may be a predicate to pretrial detention proceedings, the judicial officer should exercise care not to give inordinate weight to the nature of the present charge in evaluating factors for the pretrial release decision except when, coupled with other specified
factors, the charge itself may cause the initiation of a pretrial detention hearing pursuant to the provisions of Standard 10-5.9.

**Standard 10-1.8. Pretrial release decision should not be influenced by publicity or public opinion**

The judicial officer should not be influenced by publicity surrounding a case or attempt to placate public opinion in making a pretrial release decision.

**Standard 10-1.9. Implication of policy favoring release for supervision in the community**

The policy favoring pretrial release and selective use of pretrial detention is inextricably tied to explicit recognition of the need to supervise safely large numbers of defendants in the community pending adjudication of their cases. To be effective, these policies require sufficient informational and supervisory resources.

**Standard 10-1.10. The role of the pretrial services agency**

Every jurisdiction should establish a pretrial services agency or program to collect and present the necessary information, present risk assessments, and, consistent with court policy, make release recommendations required by the judicial officer in making release decisions, including the defendant’s eligibility for diversion, treatment or other alternative adjudication programs, such as drug or other treatment courts. Pretrial services should also monitor, supervise, and assist defendants released prior to trial, and to review the status and release eligibility of detained defendants for the court on an ongoing basis.

The pretrial services agency should:

(a) conduct pre-first appearance inquiries;

(b) present accurate information to the judicial officer relating to the risk defendants may pose of failing to appear in court or of threatening the safety of the community or any other person and, consistent with court policy, develop release recommendations responding to risk;

(c) develop and provide appropriate and effective supervision for all persons released pending adjudication who are assigned supervision as a condition of release;

(d) develop clear policy for operating or contracting for the operation of appropriate facilities for the custody, care or supervision of persons released and manage a range of release options, including but not limited to, residential half-way houses, addict and alcoholic treatment centers, and counseling services, sufficient to respond to the risks and problems associated with released defendants in coordination with existing court, corrections and community resources;

(e) monitor the compliance of released defendants with the requirements of assigned release conditions and develop relationships with alternative programs such as drug and domestic violence courts or mental health support systems;

(f) promptly inform the court of all apparent violations of pretrial release conditions or arrests of persons released pending trial, including those directly supervised by pretrial services as well as those released under other forms of conditional release, and recommend appropriate
modifications of release conditions according to approved court policy. The pretrial services agency should avoid supervising defendants who are government informants, when activities of these defendants may place them in conflict with conditions of release or compromise the safety and integrity of the pretrial services professional;

(g) supervise and coordinate the services of other agencies, individuals or organizations that serve as custodians for released defendants, and advise the court as to their appropriateness, availability, reliability and capacity according to approved court policy relating to pretrial release conditions;

(h) review the status of detained defendants on an ongoing basis for any changes in eligibility for release options and facilitate their release as soon as feasible and appropriate;

(i) develop and operate an accurate information management system to support prompt identification, information collection and presentation, risk assessment, release conditions selection, compliance monitoring and detention review functions essential to an effective pretrial services agency;

(j) assist persons released prior to trial in securing any necessary employment, medical, drug, mental or other health treatment, legal or other needed social services that would increase the chances of successful compliance with conditions of pretrial release;

(k) remind persons released before trial of their court dates and assist them in attending court; and

(l) have the means to assist persons who cannot communicate in written or spoken English.

PART II. Release By Law Enforcement Officer Acting Without An Arrest Warrant

Standard 10-2.1. Policy favoring issuance of citations

It should be the policy of every law enforcement agency to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law. This policy should be implemented by statutes of statewide applicability.

Standard 10-2.2. Mandatory issuance of citation for minor offenses

(a) Except as provided in paragraph (c), a police officer who has grounds to arrest a person for a minor offense should be required to issue a citation in lieu of taking the accused to the police station or to court. In determining whether an offense is minor, the police officer should consider whether the alleged crime involved the use or threatened use of force or violence, possession of a weapon, or violation of a court order protecting the safety of persons or property.

(b) Except as provided in paragraph (c), when a person in custody has been taken to a police station and a decision has been made to charge the person with a minor offense, the responsible officer should be required to issue a citation in lieu of continued custody.

(c) The defendant may be detained when an otherwise lawful arrest or detention is necessary to ensure the safety of any person or the community, or when the accused:

(i) is subject to lawful arrest and fails to identify himself or herself satisfactorily;
(ii) refuses to sign the citation after the officer explains to the accused that the citation does not constitute an admission of guilt and represents only the accuser’s promise to appear;

(iii) has no ties to the jurisdiction reasonably sufficient to ensure the accuser’s appearance in court and there is a substantial likelihood that the accused will refuse to respond to a citation;

(iv) previously has failed to appear in response to a citation, summons, or other legal process for an offense;

(v) is not in compliance with release conditions in another case or subject to a court order or is on probation or parole; or

(vi) poses a substantial likelihood of continuing the criminal conduct if not arrested.

(d) When an officer fails to issue a citation for a minor offense, but instead takes a suspect into custody, the law enforcement agency should be required to indicate the reasons in writing.

(e) Notwithstanding the issuance of a citation, a law enforcement officer should be authorized to transport or arrange transportation for a cited person to an appropriate facility if the person appears mentally or physically unable to care for himself or herself.

Standard 10-2.3. Permissive authority to issue citations in all cases

Each law enforcement agency should promulgate regulations designed to increase the use of citations to the greatest degree consistent with public safety. Except when arrest or continued custody is necessary, the regulations should require such inquiry as is practicable into the accuser’s place and length of residence, family relationships, references, present and past employment, criminal record, and any other facts relevant to appearance in response to a citation.

Standard 10-2.4. Lawful searches

When an officer makes a lawful arrest, the defendant’s subsequent release on citation should not affect the lawfulness of any search incident to the arrest

PART III. Issuance of Summons in Lieu of Arrest

Standard 10-3.1. Authority to issue summons

All judicial officers should be given statutory authority to issue a summons rather than an arrest warrant in all cases in which a complaint, information, or indictment is filed or returned against a person not already in custody. Judicial officers should liberally utilize this authority unless a warrant is necessary to prevent flight, to ensure the safety of the defendant, any other person or the community, to prevent commission of future crimes or to subject a defendant to the jurisdiction of the court when the defendant's whereabouts are unknown. If a judicial officer issues a summons rather than an arrest warrant in connection with an offense, absent exigent circumstances, no law enforcement officer may arrest the accused for that offense without obtaining a warrant.
Standard 10-3.2. Mandatory issuance of summons

A summons rather than an arrest warrant should be mandatory in all cases involving minor offenses unless the judicial officer finds that:

(a) the accused is subject to lawful arrest and fails to identify himself or herself satisfactorily;

(b) the whereabouts of the accused are unknown and the issuance of an arrest warrant is necessary to subject the accused to the jurisdiction of the court;

(c) an otherwise lawful arrest or detention is necessary to ensure the safety of any other person or the community;

(d) the accused has no ties to the community reasonably sufficient to ensure appearance and there is a substantial likelihood that the accused will refuse to respond to a summons;

(e) the accused previously has failed to appear without just cause in response to a citation, summons, or other legal process;

(f) the accused is not in compliance with release conditions in another case or is subject to a court order or is on probation or parole; or

(g) the accused poses a substantial likelihood of continuing the criminal conduct if not arrested.

Standard 10-3.3. Application for an arrest warrant or summons

(a) Time permitting, in those cases in which the judicial officer has discretion to issue a summons instead of an arrest warrant, the judicial officer should consider:

(i) the accuser’s ties to the community, including factors such as age, residence, employment and family relationships, reasonably sufficient to ensure appearance;

(ii) the nature of the alleged offense and potential penalty;

(iii) the accuser’s past history of response to legal process;

(iv) the accuser’s past criminal record;

(v) whether the case involves a juvenile or adult offense; and

(vi) whether the accused is in compliance with release conditions in another case or subject to a court order or on probation or parole.

(b) The judicial officer ordinarily should issue a summons in lieu of an arrest warrant when the prosecutor so requests.

(c) In any case in which the judicial officer issues a warrant, the judicial officer should state the reasons in writing or on the record for failing to issue a summons.
PART IV. Release by Judicial Officer at First Appearance or Arraignment

Standard 10-4.1. Prompt first appearance

(a) Arrests should not be timed to cause or extend unnecessary pretrial detention.

(b) Unless the defendant is released on citation or in some other lawful manner, the defendant should be taken before a judicial officer without unnecessary delay. The defendant should be presented at the next judicial session within [six hours] after arrest. In jurisdictions where this is not possible, the defendant should in no instance be held by police longer than 24 hours without appearing before a judicial officer. Judicial officers should be readily available to conduct first appearances within the time limits established by this Standard.

Where a crime of violence is implicated, an assessment of the risk posed by the defendant to the victim(s) and community should be completed prior to the first appearance; but a defendant's first appearance should not ordinarily be delayed in order to conduct in-custody interrogation or other in-custody investigation. A defendant who is not promptly presented should be entitled to immediate release under appropriate conditions unless pretrial detention is ordered as provided in Standards 10-5.8 through 10-5.10.

Standard 10-4.2. Investigation prior to first appearance: development of background information to support release or detention determination

(a) In all cases in which the defendant is in custody and charged with a criminal offense, an investigation to provide information relating to pretrial release should be conducted by pretrial services or the judicial officer prior to or contemporaneous with a defendant's first appearance.

(b) Pretrial services should advise the defendant that:

(i) the pretrial services interview is voluntary;

(ii) the pretrial services interview is intended solely to assist in determining an appropriate pretrial release option for the defendant;

(iii) any responsive information provided by the defendant during the pretrial services interview will not be used in the current or a substantially-related case either to adjudicate guilt or to arrive at a sentencing decision; but

(iv) the voluntary information provided by the defendant during the pretrial services interview may be used in prosecution for perjury or for purposes of impeachment.

(c) Release may not be denied solely because the defendant has refused the pretrial services interview.

(d) The pretrial services interview should include advising the defendant that penalties may be imposed for providing false information.

(e) The pretrial services interview of the defendant should carefully exclude questions relating to the events or the details of the current charge.
(f) The pretrial services investigation should include factors related to assessing the defendant's risk of flight or of threat to the safety of the community or any person, or to the integrity of the judicial process. Information relating to these factors and the defendant's suitability for release under conditions should be gathered systematically and considered by the judicial officer in making the pretrial release decision at first appearance and at subsequent stages when pretrial release is considered.

(g) The pretrial services investigation should focus on assembling reliable and objective information relevant to determining pretrial release and should be organized according to an explicit, objective and consistent policy for evaluating risk and identifying appropriate release options. The information gathered in the pre-first appearance investigation should be demonstrably related to the purposes of the pretrial release decision and should include factors shown to be related to risk of flight or of threat to the safety of any person or the community and to selection of appropriate release conditions, and may include such factors as:

   (i) the nature and circumstances of the charge when relevant to determining release conditions, consistent with subsection (e) above;

   (ii) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;

   (iii) whether at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense;

   (iv) the availability of persons who agree to assist the defendant in attending court at the proper time and other information relevant to successful supervision in the community;

   (v) any facts justifying a concern that a defendant will fail to attend court or pose a threat to the safety of any person or the community; and

   (vi) factors that may make the defendant eligible and an appropriate subject for conditional release and supervision options, including participation in medical, drug, mental health or other treatment, diversion or alternative adjudication release options.

(h) The presentation of the pretrial services information to the judicial officer should link assessments of risk of flight and of public safety threat during pretrial release to appropriate release options designed to respond to the specific risk and supervision needs identified. The identification of release options by pretrial services for the consideration of the judicial officer should be based on detailed agency guidelines developed in consultation with the judiciary to assist in pretrial release decisions. Suggested release options should be supported by objective, consistently applied criteria contained in the guidelines. The results of the pretrial services investigation and recommendation of release options should be promptly transmitted to relevant first-appearance participants before the hearing, including information relevant to alternative release options, conditional release treatment and supervision programs, or eligibility for pretrial detention, so that appropriate actions may be taken in a timely fashion.

Standard 10-4.3. Nature of first appearance

(a) The first appearance before a judicial officer should take place in such physical surroundings as are appropriate to the administration of justice. Each case should receive
individual treatment, and decisions should be based on the particular facts of the case and
information relevant to the purposes of the pretrial release decision as established by law and
court procedure. The proceedings should be conducted in clear and easily understandable
language calculated to advise defendants effectively of their rights and the actions to be taken
against them. The first appearance should be conducted in such a way that other interested
persons may attend or observe the proceedings

(b) At the defendant's first appearance, the judicial officer should provide the defendant with
a copy of the charging document and inform the defendant of the charge and the maximum
possible penalty on conviction, including any mandatory minimum or enhanced sentence
provision that may apply. The judicial officer should advise the defendant that the defendant:

   (i) is not required to say anything, and that anything the defendant says may be used
       against him or her;

   (ii) if represented by counsel who is present, may communicate with his or her attorney
       at the time of the hearing;

   (iii) has a right to counsel in future proceedings, and that if the defendant cannot afford a
       lawyer, one will be appointed;

   (iv) if not a citizen, may be adversely affected by collateral consequences of the current
       charge, such as deportation;

   (v) if a juvenile being treated as an adult, has the right, where applicable, to the
       presence of a parent or guardian;

   (vi) if necessary, has the right to an interpreter to be present at proceedings; and

   (vii) where applicable, has a right to a preliminary examination or hearing.

(c) Unless the defendant is released at the first appearance, if the defendant is not
represented, counsel should be appointed immediately. The next judicial proceeding should occur
promptly, but not until the defendant and defense counsel have had an adequate opportunity to
confer, unless the defendant has intelligently waived the right to be represented by counsel.

(d) The defendant should be provided an opportunity to communicate with family or friends
for the purposes of facilitating pretrial release or representation by counsel.

(e) A record should be made of the proceedings at first appearance. The defendant also
should be advised of the nature and approximate schedule of all further proceedings to be taken
in the case.

(f) The judicial officer should decide pretrial release in accordance with the general principles
identified in these Standards.

(g) If, at the first appearance, the prosecutor requests the pretrial detention of a defendant
under Standards 10-5.8 through 10-5.10, a judicial officer should be authorized, after a finding of
probable cause to believe that a defendant has committed an offense as alleged in the charging
document, to order temporary pretrial detention following procedures under Standard 10-5.7 or to
conduct a pretrial detention hearing under Standard 10-5.10.
PART V. The Release and Detention Decisions

Standard 10-5.1. Release on defendant's own recognizance

(a) It should be presumed that defendants are entitled to release on personal recognizance on condition that they attend all required court proceedings and they do not commit any criminal offense. This presumption may be rebutted by evidence that there is a substantial risk of nonappearance or need for additional conditions as provided in Standard 10-5.2, or by evidence that the defendant should be detained under Standards 10-5.8, 10-5.9 and 10-5.10 or conditionally released pending diversion or participation in an alternative adjudication program as permitted under Standard 10-1.5.

(b) In determining whether there is a substantial risk of nonappearance or threat to the community or any person or to the integrity of the judicial process if the defendant is released, the judicial officer should consider the pretrial services assessment of the defendant's risk of willful failure to appear in court or risk of threat to the safety of the community or any person, victim or witness. This may include such factors as:

(i) the nature and circumstances of the offense when relevant to determining release conditions;

(ii) the defendant's character, physical and mental condition, family ties, employment status and history, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;

(iii) whether at the time of the current offense or arrest, the person was on probation, parole, or other release pending trial, sentencing, appeal, or completion of sentence for an offense;

(iv) availability of persons who agree to assist the defendant in attending court at the proper time and other information relevant to successful supervision in the community;

(v) any facts justifying a concern that the defendant will violate the law if released without restrictions; and

(vi) factors that may make the defendant eligible and an appropriate subject for conditional release and supervision options, including participation in medical, drug, mental health or other treatment, diversion or alternative adjudication release options.

(c) In the event the judicial officer determines that release on personal recognizance is unwarranted, the officer should include in the record a statement, written or oral, of the reasons for this decision.

Standard 10-5.2. Conditions of release

(a) If a defendant is not released on personal recognizance or detained pretrial, the court should impose conditional release, including, in all cases, a condition that the defendant attend all court proceedings as ordered and not commit any criminal offense. In addition, the court should impose the least restrictive of release conditions necessary reasonably to ensure the defendant's
appearance in court, protect the safety of the community or any person, and to safeguard the integrity of the judicial process. The court may:

(i) release the defendant to the supervision of a pretrial services agency, or require the defendant to report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(ii) release the defendant into the custody or care of some other qualified organization or person responsible for supervising the defendant and assisting the defendant in making all court appearances. Such supervisor should be expected to maintain close contact with the defendant, to assist the defendant in making arrangements to appear in court, and, when appropriate, accompany the defendant to court. The supervisor should not be required to be financially responsible for the defendant nor to forfeit money in the event the defendant fails to appear in court. The supervisor should promptly report a defendant's failure to comply with release conditions to the pretrial services agency or inform the court;

(iii) impose reasonable restrictions on the activities, movements, associations, and residences of the defendant, including curfew, stay away orders, or prohibitions against the defendant going to certain geographical areas or premises;

(iv) prohibit the defendant from possessing any dangerous weapons and order the defendant to immediately turn over all firearms and other dangerous weapons in defendant's possession or control to an agency or responsible third party designated by the court; and prohibit the defendant from engaging in certain described activities, or using intoxicating liquors or certain drugs;

(v) conditionally release the defendant pending diversion or participation in an alternative adjudication program, such as drug, mental health or other treatment courts;

(vi) require the defendant to be released on electronic monitoring, be evaluated for substance abuse treatment, undergo regular drug testing, be screened for eligibility for drug court or other drug treatment program, undergo mental health or physical health screening for treatment, participate in appropriate treatment or supervision programs, be placed under house arrest or subject to other release options or conditions as may be necessary reasonably to ensure attendance in court, prevent risk of crime and protect the community or any person during the pretrial period;

(vii) require the defendant to post financial conditions as outlined under Standard 10-5.3, execute an agreement to forfeit, upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to ensure the appearance of the defendant, and order the defendant to provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial officer may require;

(viii) require the defendant to return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(ix) impose any other reasonable restriction designed to ensure the defendant's appearance, to protect the safety of the community or any person, and to prevent intimidation of witnesses or interference with the orderly administration of justice.

(b) After reasonable notice to the defendant and a hearing, when requested and appropriate, the judicial officer may at any time amend the order to impose additional or different conditions of release.
Standard 10-5.3. Release on financial conditions

(a) Financial conditions other than unsecured bond should be imposed only when no other less restrictive condition of release will reasonably ensure the defendant's appearance in court. The judicial officer should not impose a financial condition that results in the pretrial detention of the defendant solely due to an inability to pay.

(b) Financial conditions of release should not be set to prevent future criminal conduct during the pretrial period or to protect the safety of the community or any person.

(c) Financial conditions should not be set to punish or frighten the defendant or to placate public opinion.

(d) On finding that a financial condition of release should be set, the judicial officer should require the first of the following alternatives thought sufficient to provide reasonable assurance of the defendant's reappearance:

   (i) the execution of an unsecured bond in an amount specified by the judicial officer, either signed by other persons or not;

   (ii) the execution of an unsecured bond in an amount specified by the judicial officer, accompanied by the deposit of cash or securities equal to ten percent of the face amount of the bond. The full deposit should be returned at the conclusion of the proceedings, provided the defendant has not defaulted in the performance of the conditions of the bond; or

   (iii) the execution of a bond secured by the deposit of the full amount in cash or other property or by the obligation of qualified, uncompensated sureties.

(e) Financial conditions should be the result of an individualized decision taking into account the special circumstances of each defendant, the defendant's ability to meet the financial conditions and the defendant's flight risk, and should never be set by reference to a predetermined schedule of amounts fixed according to the nature of the charge.

(f) Financial conditions should be distinguished from the practice of allowing a defendant charged with a traffic or other minor offense to post a sum of money to be forfeited in lieu of any court appearance. This is in the nature of a stipulated fine and, where permitted, may be employed according to a predetermined schedule.

(g) In appropriate circumstances when the judicial officer is satisfied that such an arrangement will ensure the appearance of the defendant, third parties should be permitted to fulfill these financial conditions.

Standard 10-5.4. Release order provisions

In a release order, the judicial officer should:

(a) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the defendant's conduct; and
(b) advise the person of:

(i) the consequences of violating a condition of release, including the immediate issuance of a warrant for the defendant's arrest and possible criminal penalties;

(ii) the prohibitions against threats, force, or intimidation of witnesses, jurors and officers of the court, obstruction of criminal investigations and retaliation against a witness, victim or informant; and

(iii) the prohibition against any criminal conduct during pretrial release.

Standard 10-5.5. Willful failure to appear or to comply with conditions

The judicial officer may order a prosecution for contempt if the person has willfully failed to appear in court or otherwise willfully violated a condition of pretrial release. Willful failure to appear in court without just cause after pretrial release should be made a criminal offense.

Standard 10-5.6. Sanctions for violations of conditions of release, including revocation of release

(a) A person who has been released on conditions and who has violated a condition of release, including willfully failing to appear in court, should be subject to a warrant for arrest, modification of release conditions, revocation of release, or an order of detention, or prosecution on available criminal charges.

(b) A proceeding for revocation of a release order may be initiated by a judicial officer, the prosecutor, or a representative of the pretrial services agency. A judicial officer may issue a warrant for the arrest of a person charged with violating a release condition. Once apprehended, the person should be brought before a judicial officer. To the extent practicable, a defendant charged with willfully violating the condition of release should be brought before the judicial officer whose order is alleged to have been violated. The judicial officer should review the conditions of release previously ordered and set new or additional conditions.

(c) The judicial officer may enter an order of revocation and detention, if, after notice and a hearing, the judicial officer finds that there is:

(i) probable cause to believe that the person has committed a new crime while on release; or

(ii) clear and convincing evidence that the person has violated any other conditions of release; and

(iii) clear and convincing evidence, under the factors set forth in Standard 10-5.8, that there is no condition or combinations of conditions that the defendant is likely to abide by that would reasonably ensure the defendant's appearance in court and protect the safety of the community or any person.

(d) When a defendant has been charged with a new offense or violations of any conditions of release, he may be temporarily detained pending hearing after notice of the charges for a period of not more than [five calendar days] under this Standard.
Standard 10-5.7. Bases for temporary pretrial detention for defendants on release in another case

(a) The judicial officer may order the temporary detention of a defendant released in another case upon a showing of probable cause that the defendant has committed a new offense as alleged in the charging document if the judicial officer determines that the defendant:

(i) is and was at the time the alleged offense was committed:

(A) on release pending trial for a serious offense;

(B) on release pending imposition or execution of sentence, appeal of sentence or conviction, for any offense; or

(C) on probation or parole for any offense; and

(ii) may flee or pose a danger to the community or to any person.

(b) Unless a continuance is requested by the defense attorney, the judicial officer may order the detention of the defendant for a period of not more than three calendar days, and direct the attorney for the government to notify the appropriate court, probation or parole official, or Federal, State or local law enforcement official to determine whether revocation proceedings on the first offense should be initiated or a detained lodged.

(c) At the end of the period of temporary detention, the defendant should have a hearing on the release or detention of the defendant on the new charged offense. If such a hearing is not conducted within five calendar days, the defendant should be released on appropriate conditions pending trial.

Standard 10-5.8. Grounds for pretrial detention

(a) If, in cases meeting the eligibility criteria specified in Standard 10-5.9 below, after a hearing and the presentment of an indictment or a showing of probable cause in the charged offense, the government proves by clear and convincing evidence that no condition or combination of conditions of release will reasonably ensure the defendant's appearance in court or protect the safety of the community or any person, the judicial officer should order the detention of the defendant before trial.

(b) In considering whether there are any conditions or combinations of conditions that would reasonably ensure the defendant's appearance in court and protect the safety of the community and of any person, the judicial officer should take into account such factors as:

(i) the nature and circumstances of the offense charged;

(ii) the nature and seriousness of the danger to any person or the community, if any, that would be posed by the defendant's release;

(iii) the weight of the evidence;

(iv) the person's character, physical and mental condition, family ties, employment status and history, financial resources, length of residence in the community, including the
likelihood that the defendant would leave the jurisdiction, community ties, history relating to drug or alcohol abuse, criminal history, and record of appearance at court proceedings;

(v) whether at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense;

(vi) the availability of appropriate third party custodians who agree to assist the defendant in attending court at the proper time and other information relevant to successful supervision in the community;

(vii) any facts justifying a concern that a defendant will present a serious risk of flight or of obstruction, or of danger to the community or the safety of any person.

(c) In cases charging capital crimes or offenses punishable by life imprisonment without parole, where probable cause has been found, there should be a rebuttable presumption that the defendant should be detained on the ground that no condition or combination of conditions of release will reasonably ensure the safety of the community or any person or the defendant's appearance in court. In the event the defendant presents information by proffer or otherwise to rebut the presumption, the grounds for detention must be found to exist by clear and convincing evidence.

Standard 10-5.9. Eligibility for pretrial detention and initiation of the detention hearing

(a) The judicial officer should hold a hearing to determine whether any condition or combination of conditions will reasonably ensure the defendant's appearance in court and protect the safety of the community or any person. The judicial officer may not order the detention of a defendant before trial except:

(i) upon motion of the prosecutor in a case that involves:

(A) a crime of violence or dangerous crime; or

(B) a defendant charged with a serious offense on release pending trial for a serious offense, or on release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence; or on probation or parole for a serious offense involving a crime of violence, a dangerous crime; or

(ii) upon motion of the prosecutor or the judicial officer's own initiative, in a case that involves:

(A) a substantial risk that a defendant charged with a serious offense will fail to appear in court or flee the jurisdiction; or

(B) a substantial risk that a defendant charged in any case will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate a prospective witness or juror.

(b) If the judicial officer finds that probable cause exists, except for a defendant held under temporary detention, the hearing should be held immediately upon the defendant's first appearance before the judicial officer unless the defendant or the prosecutor seeks a continuance. Except for good cause shown, a continuance on motion of the defendant or the
prosecutor should not exceed [five working days]. Pending the hearing, the defendant may be detained.

(c) A motion to initiate pretrial detention proceedings may be filed at any time regardless of a defendant's pretrial release status.

Standard 10-5.10. Procedures governing pretrial detention hearings: judicial orders for detention and appellate review

(a) At any pretrial detention hearing, defendants should have the right to:

   (i) be present and be represented by counsel and, if financially unable to obtain counsel, to have counsel appointed;

   (ii) testify and present witnesses on his or her own behalf;

   (iii) confront and cross-examine prosecution witnesses; and,

   (iv) present information by proffer or otherwise.

(b) The defendant may be detained pending completion of the pretrial detention hearing.

(c) The duty of the prosecution to release to the defense exculpatory evidence reasonably within its custody or control should apply at the pretrial detention hearing.

(d) At any pretrial detention hearing, the rules governing admissibility of evidence in criminal trials should not apply. The court should receive all relevant evidence. All evidence should be recorded. The testimony of a defendant should not be admissible in any other criminal proceedings against the defendant in the case in chief, other than a prosecution for perjury based upon that testimony or for the purpose of impeachment in any subsequent proceedings.

(e) In pretrial detention proceedings under Standard 10-5.8 or 10-5.9, where there is no indictment, the prosecutor should establish probable cause to believe that the defendant committed the predicate offense.

(f) In pretrial detention proceedings, the prosecutor should bear the burden of establishing by clear and convincing evidence that no condition or combination of conditions of release will reasonably ensure the defendant's appearance in court and protect the safety of the community or any person.

(g) A judicial order for pretrial detention should be subject to the following limitations and requirements.

   (i) Unless the defendant consents, no order for pretrial detention should be entered by the court except on the conclusion of a full pretrial detention hearing as provided for within these Standards.

   (ii) If, on conclusion of a pretrial detention hearing, the court determines by clear and convincing evidence that no condition or combination of conditions will reasonably ensure the appearance of the person as required, and the safety of any other person and the community pursuant to the criteria established within these Standards, the judicial officer should state the reasons for pretrial detention on the record at the conclusion of the hearing or in written findings.
of fact within [three days]. The order should be based solely upon evidence provided for the pretrial detention hearing. The court's statement on the record or in written findings of fact should include the reasons for concluding that the safety of the community or of any person, the integrity of the judicial process, and the presence of the defendant cannot be reasonably ensured by setting any conditions of release or by accelerating the date of trial.

(iii) The court's order for pretrial detention should include the date by which the detention must be considered de novo, in most cases not exceeding [90 days]. A defendant may not be detained after that date without a pretrial detention hearing to consider extending pretrial detention an additional [90 days] following procedures under Standards 10-5.8, 10-5.9 and this Standard. If a pretrial detention hearing to consider extending detention of the defendant is not held on or before that date, the defendant who is held beyond the time of the detention order should be released immediately under reasonable conditions that best minimize the risk of flight and danger to the community.

(iv) Nothing in these Standards should be construed as modifying or limiting the presumption of innocence.

(h) A pretrial detention order should be immediately appealable by either the prosecution or the defense and should receive expedited appellate review. If the detention decision is made by a judicial officer other than a trial court judge, the appeals should be de novo. Appeals from decisions of trial court judges to appellate judges should be reviewed under an abuse of discretion standard.

Standard 10-5.11. Requirement for accelerated trial for detained defendants

Every jurisdiction should establish, by statute or court rule, accelerated time limitations within which detained defendants should be tried consistent with the sound administration of justice. These accelerated time limitations should be shorter than current speedy trial time limitations applicable to defendants on pretrial release. The failure to try a detained defendant within such accelerated time limitations should result in the defendant's immediate release from detention under reasonable conditions that best minimize the risk of flight and danger to the community pending trial, unless the delay is attributable to or agreed to by the defendant.

Standard 10-5.12. Re-examination of the release or detention decision: status reports regarding pretrial detainees.

(a) Upon motion by the defense, prosecution or by request of the pretrial services agency supervising released defendants alleging changed or additional circumstances, the court should promptly reexamine its release decision including any conditions placed upon release or its decision authorizing pretrial detention under Standards 10-5.8 through 10-5.10. The judicial officer may, after notice and hearing when appropriate, at any time add or remove restrictive conditions of release, short of ordering pretrial detention, to ensure court attendance and prevent criminal law violation by the defendant.

(b) The pretrial services agency, prosecutor, jail staff or other appropriate justice agency should be required to report to the court as to each defendant, other than one detained under Standards 10-5.8, 10-5.9 and 10-5.10, who has failed to obtain release within [24 hours] after entry of a release order under Standard 10-5.4 and to advise the court of the status of the case and of the reasons why a defendant has not been released.
(c) For pretrial detainees subject to pretrial detention orders, the prosecutor, pretrial services agency, defender, jail staff, or other appropriate agency should file a report with the court regarding the status of the defendant's case and detention regarding the confinement of defendants who have been held more than [90 days] without a court order in violation of Standards 10-5.10(g)(iii) and 10-5.11.

Standard 10-5.13. Trial

The fact that a defendant has been detained pending trial should not be allowed to prejudice the defendant at the time of trial or sentencing. The court should ensure that the trial jury is unaware of the defendant's detention.

Standard 10-5.14. Credit for pre-adjudication detention

Every convicted defendant should be given credit, against both a maximum and minimum term or a determinate sentence, for all time spent in custody as a result of the criminal charge for which a sentence of imprisonment is imposed.

Standard 10-5.15. Temporary release of a detained defendant for compelling necessity

Upon a showing by defense counsel of compelling necessity, including for matters related to preparation of the defendant's case, a judicial officer who entered an order of pretrial detention under Standards 10-5.8 through 10-5.10 may permit the temporary release of a pretrial detained person to the custody of a law enforcement or other court officer, subject to appropriate conditions of temporary release.

Standard 10-5.16. Circumstances of confinement of defendants detained pending adjudication

Defendants detained pending adjudication should be confined in facilities separate from convicted persons awaiting sentencing or serving sentences or held in custody pending appeal. The rights and privileges of defendants detained pending adjudication should not be more restricted than those of convicted defendants who are imprisoned. Detained defendants should be provided with adequate means to assist in their own defense. This requirement includes but is not limited to reasonable telephone rates and unmonitored telephone access to their attorneys, a law library, and a place where they can have unmonitored meetings with their attorneys and review discovery.

PART VI. Notice to Victims of Crime

Standard 10-6.1. Judicial Assurance of Notice to Victims

As part of the pretrial release process, the judicial officer should direct the appropriate office or agency to provide victim(s) of the crime with notice of any crime charged, any conditions imposed on the defendant including those related to possession or purchase of firearms, and methods of seeking enforcement of release conditions.
PART I. GENERAL PRINCIPLES

Standard 11.1.1 Objectives of pretrial procedures

(a) Procedures prior to trial should, consistent with the constitutional rights of the defendant:

   (i) promote a fair and expeditious disposition of the charges, whether by diversion, plea, or trial;
   
   (ii) provide the defendant with sufficient information to make an informed plea;
   
   (iii) permit thorough preparation for trial and minimize surprise at trial;
   
   (iv) reduce interruptions and complications during trial and avoid unnecessary and repetitious trials by identifying and resolving prior to trial any procedural, collateral, or constitutional issues;
   
   (v) minimize the procedural and substantive inequities among similarly situated defendants;
   
   (vi) effect economies in time, money, judicial resources, and professional skills by minimizing paperwork, avoiding repetitious assertions of issues, and reducing the number of separate hearing; and

   (vii) minimize the burden upon victims and witnesses.

(b) These needs can be served by:

   (i) full and free exchange of appropriate discovery;
   
   (ii) simpler and more efficient procedures; and
   
   (iii) procedural pressures for expediting the processing of cases.

Standard 11-1.2 Applicability

These standards should be applied in all criminal cases. Discovery procedures may be more limited than those described in these standards in cases involving minor offenses, provided the procedures are sufficient to permit the party adequately to investigate and prepare the case.

Standard 11-1.3 Definition of "statement"

(a) when used in these standards, a "written statement" of a person shall include:

   (i) any statement in writing that is made, signed or adopted by that person; and
(ii) the substance of a statement of any kind made by that person that is embodied or summarized in any writing or recording, whether or not specifically signed or adopted by that person. The term is intended to include statements contained in police or investigative reports, but does not include attorney work product.

(b) When used in these standards, an "oral statement" of a person shall mean the substance of any statement of any kind by that person, whether or not reflected in any existing writing or recording.

PART II. DISCOVERY OBLIGATIONS OF THE PROSECUTION AND DEFENSE

Standard 11-2.1 Prosecutorial disclosure

(a) The prosecution should, within a specified and reasonable time prior to trial, disclose to the defense the following information and material and permit inspection, copying, testing, and photographing of disclosed documents or tangible objects:

(i) All written and all oral statements of the defendant or of any codefendant that are within the possession or control of the prosecution and that relate to the subject matter of the offense charged, and any documents relating to the acquisition of such statements.

(ii) The names and addresses of all persons known to the prosecution to have information concerning the offense charged, together with all written statements of any such person that are within the possession or control of the prosecution and that relate to the subject matter of the offense charged. The prosecution should also identify the persons it intends to call as witnesses at trial.

(iii) The relationship, if any, between the prosecution and any witness it intends to call at trial, including the nature and circumstances of any agreement, understanding or representation between the prosecution and the witness that constitutes an inducement for the cooperation or testimony of the witness.

(iv) Any reports or written statements of experts made in connection with the case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons and of scientific tests, experiments or comparisons. With respect to each expert whom the prosecution intends to call as a witness at trial, the prosecutor should also furnish to the defense a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert’s opinion, and the underlying basis of that opinion.

(v) Any tangible objects, including books, papers, documents, photographs, buildings, places, or any other objects, which pertain to the case or which were obtained for or belong to the defendant. The prosecution should also identify which of these tangible objects it intends to offer as evidence at trial.

(vi) Any record of prior criminal convictions, pending charges, or probationary status of the defendant or of any codefendant, and in so far as known to the prosecution, any record of convictions, pending charges, or probationary status that may be used to impeach any witness to be called by either party at trial.

(vii) Any material, documents, or information relating to lineups, showups, and picture or voice identifications in relation to the case.
(viii) Any material or information within the prosecutor’s possession or control which tends
to negate the guilt of the defendant as to the offense charged or which would tend to reduce the
punishment of the defendant.

(b) If the prosecution intends to use character, reputation, or other act of evidence, the
prosecution should notify the defense of that intention and of the substance of the evidence to be
used.

(c) If the defendant’s conversations or premises have been subjected to electronic surveillance
(including wiretapping) in connection with the investigation or prosecution of the case, the
prosecution should inform the defense of that fact.

(d) If any tangible object which the object which the prosecutor intends to offer at trial was
obtained through a search and seizure, the prosecution should disclose to the defense any
information, documents, or other material relating to the acquisition of such objects.

Standard 11-2.2 Defense disclosure

(a) The defense should, within a specified and reasonable time prior to trial, disclose to the
prosecution the following information and material and permit inspection, copying, testing, and
photographing of disclosed documents and tangible objects:

(i) The names and addresses of all witnesses (other than the defendant) whom the
defense intends to call at trial, together with all written statements of any such witness that are
within the possession or control of the defense and that relate to the subject matter of the
testimony of the witness. Disclosure of the identity and statements of a person who will be called
for the sole purpose of impeaching a prosecution witness should not be required until after the
prosecution witness has testified at trial.

(ii) Any reports or written statements made in connection with the case by experts whom
the defense intends to call at trial, including the results of physical or mental examinations and of
scientific tests, experiments, or comparisons that the defendant intends to offer as evidence at
trial. For each such expert witness, the defense should also furnish to the prosecution a
curriculum vitae and a written description of the substance of the proposed testimony of the
expert, the expert’s opinion, and the underlying basis of that opinion.

(iii) Any tangible objects, including books, papers, documents, photographs, buildings,
places, or any other objects, which the defense intends to introduce as evidence at trial.

(b) If the defense intends to use character, reputation, or other act evidence not relating to the
defendant, the defense should notify the prosecution of that intention and of the substance of the
evidence to be used.

(c) If the defense intends to rely upon a defense of alibi or insanity, the defense should notify the
prosecution of that intent and of the names of the witnesses who may be called in support of that
defense.

Standard 11-2.3 The person of the defendant

(a) After the initiation of judicial proceedings, the defendant should be required, upon the
prosecution’s request, to appear within a time specified for the purpose of permitting the
prosecution to obtain fingerprints, photographs, handwriting exemplars, or voice exemplars from
the defendant, or for the purpose of having the defendant appear, move, or speak for
identification in a lineup or try on clothing or other articles. Whenever the personal appearance of the defendant is required for the foregoing purposes, reasonable notice of the time and place of such appearance should be given by the prosecuting attorney to the defendant and the defendant’s counsel.

(b) Upon motion by the prosecution, with reasonable notice to the defendant and defendant’s counsel, the court should, upon an appropriate showing, order the defendant to appear for the following purposes:

   (i) to permit the taking of specimens of blood, urine, saliva, breath, hair, nails, and material under the nails;

   (ii) to permit the taking of samples of other materials of the body;

   (iii) to submit to a reasonable physical or medical inspection of the body; or

   (iv) to participate in other reasonable and appropriate procedures.

(c) The motion and order pursuant to paragraph (b) above should specify the following information where appropriate: the authorized procedure, the scope of the defendant’s participation, the name or job title of the person who is to conduct the procedure, and the time, duration, place, and other conditions under which the procedure is to be conducted.

(d) The court should issue the order sought pursuant to paragraph (b) above if it finds that:

   (i) the appearance of the defendant for the procedure specified may be material to the determination of the issues in the case; and

   (ii) the procedure is reasonable and will be conducted in a manner which does not involve an unreasonable intrusion of the body or an unreasonable affront to the dignity of the individual; and

   (iii) the request is reasonable.

(e) Defense counsel may be present at any of the foregoing procedures unless, with respect to a psychiatric examination, it is otherwise ordered by the court.

PART III. SPECIAL DISCOVERY PROCEDURES

Standard 11-3.1 Obtaining nontestimonial information from third parties

(a) Upon motion by either party, if the court finds that there is good cause to believe that the evidence sought may be material to the determination of the issues in the case, the court should, in advance of trial, issue compulsory process for the following purposes:

   (i) To obtain documents and other tangible objects in the possession of persons not parties to the case.

   (ii) To allow the entry upon property owned or controlled by persons not parties to the case. Such process should be issued if the court finds that the party requesting entry has met the standard that the government would be required to meet to obtain access to the property at issue.
(iii) To obtain from a third party fingerprints, photographs, handwriting exemplars, or voice exemplars, or to compel a third party to appear, move or speak for identification in a lineup, to try on clothing or other articles, to permit the taking of specimens of blood, urine, saliva, breath, hair, nails, or other materials of the body, to submit to a reasonable physical or medical inspection of the body, or to participate in other reasonable and appropriate procedures. Such process should be issued if the court finds that:

1. the procedure is reasonable and will be conducted in a manner which does not involve an unreasonable intrusion of the body or an unreasonable affront to the dignity of the individual; and

2. the request is reasonable.

(b) The motion and the order should specify the following information where appropriate: the authorized procedure; the scope of participation of the third party; the name or job title of the person who is to conduct the procedure; and the time, duration, place and other conditions under which the procedure is to be conducted.

(c) A person whose interests would be affected by the compulsory process sought should have the right and a reasonable opportunity to move to quash the process on the ground that compliance would subject the person to an undue burden, or would require that disclosure of material that is privileged or otherwise protected from disclosure, or would otherwise be unreasonable.

Standard 11-3.2 Preservation of evidence and testing or evaluation by experts

(a) If either party intends to destroy or transfer out of its possession any objects or information otherwise discoverable under these standards, the party should give notice to the other party sufficiently in advance to afford that party an opportunity to object or take other appropriate action.

(b) Upon motion, either party should be permitted to conduct evaluations or tests of physical evidence in the possession or control of the other party which is subject to disclosure. The motion should specify the nature of the test or evaluation to be conducted, the names and qualifications of the experts designated to conduct evaluations or tests, and the material upon which such tests will be conducted. The court may make such orders as are necessary to make the material to be tested or examined available to the designated expert.

(i) The court should condition its order so as to preserve the integrity of the material to be tested or evaluated.

(ii) If the material is contraband material or a controlled substance, the entity having custody of the material may elect to have a representative present during the testing of the material.

PART IV. TIMING AND MANNER OF DISCLOSURE

Standard 11-4.1 Timely performance of disclosure

(a) Each jurisdiction should develop time limits within which discovery should be performed. The time limits should be such that discovery is initiated as early as practicable in the process. The time limit for completion of discovery should be sufficiently early in the process that each party has sufficient time to use the disclosed information adequately to prepare for trial.
Standard 11-4.2 Manner of performing disclosure

Disclosure may be accomplished in any manner mutually agreeable to the parties. Absent agreement, the party having the burden of production should:

(a) notify opposing counsel that material and information, described in general terms, may be inspected, obtained, tested, copied, or photographed during specified reasonable times; and

(b) make available to opposing counsel at the time specified such material and information and suitable facilities or other arrangements for inspection, testing, copying, and photographing of such material and information.

Standard 11-4.3 Obligation to obtain discoverable material

(a) The obligations of the prosecuting attorney and of the defense attorney under these standards extend to material and information in the possession or control of members of the attorney’s staff and of any others who either regularly report to or, with reference to the particular case, have reported to the attorney’s office.

(b) The prosecutor should make reasonable efforts to ensure that material and information relevant to the defendant and the offense charged is provided by investigative personnel to the prosecutor’s office.

(c) If the prosecution is aware that information which would be discoverable if in the possession of the prosecution is in the possession or control of a government agency not reporting directly to the prosecution, the prosecution should disclose the fact of the existence of such information to the defense.

(d) Upon a party’s request for, and designation of, material or information which would be discoverable if in the possession or control of the other party and which is in the possession or control of others, the party from whom the material is requested should use diligent good faith efforts to cause such material to be made available to the opposing party. If the party’s efforts are unsuccessful and such material or others are subject to the jurisdiction of the court, the court should issue suitable subpoenas or orders to cause such material to be made available to the party making the request.

(e) Upon a showing that items not covered in the foregoing standards are material to the preparation of the case, the court may order disclosure of the specified material or information.

PART V. DEPOSITIONS

Standard 11-5.1 Depositions to perpetuate testimony
(a) After an indictment of information upon which a defendant is to be tried is filed, upon motion of the defense or the prosecution, the court may order a deposition taken to perpetuate the testimony of a prospective material witness if the court finds that there is reason to believe that the witness will be unable to be present and to testify at trial because of serious illness or other comparably serious reason, and that it is necessary to take the witness's deposition to prevent a failure of justice. The motion should be verified or the grounds for the motion supported by the affidavit.

(b) In the order for the deposition, the court may also require that any designated books, papers, documents, or tangible objects, not privileged, be produced at the time and place of the deposition.

(c) The court should make provision for the defendant to be present at the taking of the deposition and should make such other provisions as are necessary to preserve the defendant’s right to confrontation of witnesses.

(d) A deposition so taken and any evidentiary material produced at such deposition may be introduced in evidence at trial, subject to applicable rules of evidence. However, no deposition taken under this section should be used or read in evidence when the attendance of the deposed witness can be procured, except for the purpose of contradicting or impeaching the testimony of the deponent.

Standard 11-5.2 Discovery depositions

(a) On motion of either the prosecution or the defense, the court should order the taking of a deposition upon oral examination of any person other than the defendant, concerning information relevant to the offense charged, but only upon a showing that:

(i) the name of the person sought to be deposed has been disclosed to the movant by the opposing party through the exchange of names and addresses of witnesses or has been discovered during the movant’s investigation of the case; and.

(ii) no writing, summarizing the relevant knowledge of the person sought to be deposed, adequate to prevent surprise at trial, has been furnished to the movant; and

(iii) the movant has taken reasonable steps to obtain a voluntary oral or written statement from the witness, but the witness has refused to cooperate in giving a voluntary statement; and

(iv) the taking of a deposition is necessary in the interests of justice.

(b) The defendant may not be present at the deposition unless the court orders otherwise for good cause shown.

(c) The procedure for taking a discovery deposition, including the scope of the examination, should be in accordance with express rules to be written for depositions in criminal proceedings.

(d) Unless otherwise stipulated by the parties, a discovery deposition should be admissible at a trial or hearing only for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(e) A person whose deposition is sought should have the right to move to quash on the ground that compliance would subject the person to an undue burden, or would require the disclosure of
material that is privileged or otherwise protected from disclosure, or would otherwise be unreasonable.

PART VI. GENERAL PROVISIONS GOVERNING DISCOVERY

Standard 11-6.1 Restrictions on disclosure

(a) Disclosure should not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the prosecuting attorney or the defense attorney, or members of the attorney's legal staff.

(b) Disclosure of an informant's identity should not be required where such identity is a prosecution secret and where a failure to disclose will not infringe the constitutional rights of the defendant. Disclosure should not be denied of the identity of witnesses to be produced at a hearing or trial.

(c) Disclosure should not be required where it involves a substantial risk of grave prejudice to national security and where a failure to disclose will not infringe the constitutional rights of the defendant. Disclosure should not be denied regarding witnesses or material to be produced at a hearing or trial.

(d) Disclosure should not be required from the defense of any communications of the defendant, or of any other materials which are protected from disclosure by the state or federal constitutions, statutes or other law.

(e) The court should have the authority to deny, delay, or otherwise condition disclosure authorized by these standards if it finds that there is substantial risk to any person of physical harm, intimidation, or bribery resulting from such disclosure which outweighs any usefulness of the disclosure.

Standard 11-6.2 Failure of a party to use disclosed material at trial

The fact that a party has indicated during the discovery process an intention to offer specified evidence or to call a specified witness is not admissible in evidence at a hearing or trial.

Standard 11-6.3 Investigations not to be impeded

Neither the counsel for the parties nor other prosecution or defense personnel should advise persons (other than the defendant) who have relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor should they otherwise impede opposing counsel's investigation of the case.

Standard 11-6.4 Custody of materials

Any materials furnished to an attorney pursuant to these standards should be used only for the purposes of preparation and trial of the case, and should be subject to such other terms and conditions as the court may provide.

Standard 11-6.5 Protective orders

Upon a showing of cause, the court may at any time order that specified disclosures be restricted, conditioned upon compliance with protective measures, or deferred, or make such other order as
is appropriate, provided that all material and information to which a party is entitled is disclosed in sufficient time to permit counsel to make beneficial use of the disclosure.

**Standard 11-6.6 Excision**

When some parts of material or information are discoverable under these standards and other parts are not discoverable, the discoverable parts should be disclosed. The disclosing party should give notice that nondiscoverable parts have been withheld and the nondiscoverable parts should be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal.

**Standard 11-6.7 In camera proceedings**

Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosures, or any portion of such showing, to be made in camera. A record should be made of both in court and in camera proceedings. Upon the entry of an order granting relief following a showing in camera, all confidential portions of the in camera portion of the showing should be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal.

**PART VII. SANCTIONS**

**Standard 11-7.1 Sanctions**

(a) If an applicable discovery rule or an order issued pursuant thereto is not promptly implemented, the court should do one or more of the following:

   (i) order the noncomplying party to permit the discovery of the material and information not previously disclosed;

   (ii) grant a continuance;

   (iii) prohibit the party from calling a witness or introducing into evidence the material not disclosed, subject to the defendant’s right to present a defense and provided that the exclusion does not work an injustice either to the prosecution or the defense; and/or

   (iv) enter such other order as it deems just under the circumstances.

(b) The court may subject counsel to appropriate sanctions, including a finding of contempt, upon a finding that counsel willfully violated a discovery rule or order.
ABA Criminal Justice Section – Criminal Justice Standards

Speedy Trial

PART I. GENERAL PRINCIPLES

Standard 12-1.1 Purposes of the Standards on Speedy Trial and Timely Resolution of Criminal Cases

(a) The Standards on Speedy Trial and Timely Resolution of Criminal Cases have three main purposes: (1) to effectuate the right of the accused to a speedy trial; (2) to further the interests of the public, including victims and witnesses, in the fair, accurate, and timely resolution of criminal cases; and (3) to ensure the effective utilization of resources.

(b) These standards should be read in conjunction with other ABA Standards of Criminal Justice, and with recognition that fairness and accuracy are essential components of the criminal justice process. The standards are not intended to emphasize speedy disposition of cases to the detriment of the interests of the parties and the public, including victims and witnesses, in the fair, accurate and timely resolution of cases. In implementing these standards in individual cases and in developing policies for overall management of caseloads, jurisdictions should seek to ensure that both prosecutors and defense counsel have adequate opportunity to investigate their cases, consult with witnesses, review documents, make appropriate motions, and conduct other essential aspects of case preparation.

Standard 12-1.2 Importance of establishing both speedy trial rules and standards for timely resolution of criminal cases

(a) The right of an accused to a speedy trial is fundamental. It should be effectuated and protected by rule or statute that:
   (i) sets specific limits on the time within which either the defendant must be brought to trial or the case must be resolved through a non-trial disposition;
   (ii) provides guidelines for computing the time within which the trial must be commenced or the case otherwise resolved; and
   (iii) establishes appropriate consequences in the event that the accused’s right to a speedy trial is denied.

(b) The public, including victims and witnesses has an interest in the timely resolution of criminal cases. From the commencement of a criminal case to its conclusion, any elapsed time other than reasonably needed for preparation and court events should be minimized. The public’s interest should be expressed in formally adopted policies and standards that:
   (i) establish goals for the timely resolution of criminal cases from commencement to disposition and for specific stages, taking into account the seriousness and complexity of different types of cases;
   (ii) require monitoring of the performance of the courts and other organizational entities with respect to the goals; and
   (iii) provide for public dissemination of data concerning organizational performance in relation to the goals.

Standard 12-1.3 Case differentiation

In establishing statutes or rules for speedy trial and goals and practices for timely resolution of criminal cases, jurisdictions should:
(a) take account of the relative seriousness and complexity of different types of cases; and
(b) distinguish between defendants in detention and defendants on pretrial release. The time limits concerning speedy trial for detained defendants should ordinarily be shorter than the limits applicable to defendants on pretrial release.
Standard 12-1.4     Systems approach

(a) These standards approach the issues of speedy trial and timely case resolution from a systemic perspective, recognizing that many different institutions, agencies, and individuals play key roles in criminal cases. In order for the purposes of the standards to be achieved, the interests and perspectives of the following should be taken into account:
   (i) defendants;
   (ii) the public, including victims and witnesses;
   (iii) courts;
   (iv) prosecutors and defense counsel; and
   (v) law enforcement agencies, officials responsible for local detention facilities, pretrial services agencies, probation departments, and other organizations involved in or affected by the prosecution and adjudication of criminal cases.
(b) Jurisdictions should provide adequate resources to the institutions and agencies involved in criminal justice processes, in order to enable the purposes of these standards to be achieved.

Standard 12-1.5     Caseflow systems that will enable timely resolution of all criminal cases

These standards focus on the timely resolution of all criminal cases, including the large proportion of cases not resolved by trial. In order to utilize limited resources effectively, jurisdictions should design caseflow systems that enable an early assessment of the complexity and prospects for non-trial resolution of cases, and seek to facilitate the early resolution of cases not likely to be tried. Such caseflow systems should ensure that many cases are resolved rapidly, that trial continuances are minimized, that case scheduling functions with a high degree of certainty and predictability concerning case scheduling, and that the jurisdiction’s speedy trial requirements and standards for timely resolution can be met.

PART II. DEFENDANT’S RIGHT TO A SPEEDY TRIAL

Standard 12-2.1     Speedy trial time limits

(a) A defendant’s right to a speedy trial should be formally recognized and protected by rule or by statute that establishes outside limits on the amount of time that may elapse from the date of a specific event until the commencement of the trial or other disposition of the case. The time limits should be expressed in days or months.
(b) The presumptive speedy trial time limit for persons held in pretrial detention should be [90] days from the date of the defendant’s first appearance in court after the filing of a charging instrument. The presumptive limit for persons who are on pretrial release should be [180] days from the date of the defendant’s first appearance in court after either either the filing of any charging instrument or the issuance of a citation or summons. Shorter presumptive speedy trial time limits should be set for persons charged with minor offenses.
(c) Certain periods of time should be excluded from the computation of time allowed under the rule or statute, as set forth below in Standard 12-2.3.
(d) Provision should be made for the court to determine, on motion of the prosecution or the defense or on its own motion, that a case is of such complexity that the presumptive speedy trial time limit should be extended in order to enable the parties to make adequate preparations for pretrial proceedings or for the trial itself. The court should give substantial weight to a motion for extension of the speedy trial limit on these grounds that is made, with good cause shown, by either the prosecution or the defense. In the event that a determination of complexity is made, the judge should establish a revised time limit and should state on the record the reasons for extending the time. A motion to extend the speedy trial time limit because of the complexity of the case should be made as soon as practicable.
Standard 12-2.2  Commencement and setting of speedy trial time limit

The speedy trial time limit should commence, without demand by the defendant, from the date of
the defendant’s first appearance in court after either a charge is filed or a citation or summons is
issued, except that:

(a) If the charge is dismissed and thereafter the defendant is charged with the same offense or
one arising out of the same criminal episode, or if a superseding charging instrument is filed by
the prosecution in place of the original charge, then:
    (i) the court should set a new speedy trial limit as set forth in Standard 12-2.1 or a shorter
period. The new limit should commence at the defendant’s first appearance before the court on
the new charge; and
    (ii) in setting the new limit, the court should consider:
        (A) the degree to which the new charge is different from the
        original charge;
        (B) in the case of a superseding charging instrument, the extent to which the
        superseding instrument alleges offenses or material facts that were known to the prosecution at
        the time the original charge was filed;
        (C) the period of time that has elapsed between the defendant’s appearance on
        the first charge and the defendant’s appearance on the second charge;
        (D) the reason for the dismissal or the filing of the superseding instrument;
        provided, however, that if the court finds that the charge was dismissed to avoid the effect of the
        speedy trial time limit, the new charge should ordinarily be dismissed with prejudice;
        (E) any other factor which, in the interests of justice, affects the time in which the
        defendant should be tried on the new charge;
(b) If the defendant is to be tried again following a mistrial, then a new reasonable speedy trial
    time limit should be set. The new speedy trial time limit period generally should be shorter than
that applicable to the original charge and should commence from the date of the mistrial.
(c) If the defendant is to be tried again following a successful appeal or collateral attack on the
    conviction, then the speedy trial time limit should be that set forth in Standard 12-2.1 and should
commence running from the date the order occasioning the retrial becomes final.

Standard 12-2.3  Excluded periods

The following periods should be excluded in computing allowable time under the speedy trial rule
or statute:

(a) The following periods should be excluded in computing allowable time under the speedy trial
rule or statute:
    (i) time that elapses during other proceedings in the case against the defendant, including
but not limited to an examination and hearing on competency, a period during which the
defendant is incompetent to stand trial, and any interlocutory appeals;
    (ii) time that elapses during a period when the defendant is on trial or engaged in
proceedings in a different case in the same or a different court and was therefore physically
unavailable;
    (iii) time that elapses as a result of a continuance of the trial date granted at the request
or with the consent of the defendant or the defendant’s counsel. A defendant who has waived the
right to counsel and is proceeding pro se should not be deemed to have consented to a
continuance unless the defendant has been advised by the court of the right to a speedy trial and
the effect of the defendant’s consent;
    (iv) time that elapses during any delay caused by the defendant’s failure to appear for
scheduled court proceedings;
    (v) time when the defendant is joined for trial with a codefendant as to whom the speedy
trial time limit has not run, if the court finds that, for reasons stated on the record, the interests of
justice served by the joinder outweigh the defendant’s right to have the trial held within the
originally prescribed time limits; and
(vi) other reasonable periods of time when circumstances warrant exclusion of the time upon good cause shown or upon a determination by the court that the interests of justice served by excluding a period of time from the speedy trial time limit outweigh the defendant’s right to have the trial held within the originally prescribed time limits. No period of delay resulting from a continuance granted by the court in accordance with this paragraph should be excludable unless the court sets forth, in the record of the case, its reasons for finding that the interests of justice served by the granting of the continuance outweigh the defendant’s right to have the trial held within the originally prescribed time limits.

(b) Time required for the consideration and disposition of pretrial motions should not be automatically excluded in computing allowable time under the speedy trial rule or statute. Such time may be excluded by the court upon request or on its own motion pursuant to Standard 12-2.3(a)(vi).

(c) If the court sets a case for trial on a date that is outside the speedy trial time limit, and the defendant is on notice of the scheduled date, the defendant’s failure to object to the trial date on speedy trial grounds should be deemed consent to an extension of the time allowed under the speedy trial rule or statute to the scheduled date. Time that elapses during such an extended period should be excluded in computing time under the speedy trial rule or statute.

Standard 12-2.4 Special procedures applicable to persons serving terms of imprisonment

To protect the right to speedy trial of a person serving a term of imprisonment either within or without the jurisdiction, it should be provided by rule or statute that:
(a) if the prosecuting attorney knows that a person charged with a criminal offense is serving a term of imprisonment in a penal institution of that or another jurisdiction, the prosecuting attorney should promptly:
   (i) undertake to obtain the presence of the prisoner for trial; or
   (ii) cause a detainer to be filed with the official having custody of the prisoner and request the official to so advise the prisoner and to advise the prisoner of the prisoner’s right to demand trial;
(b) if an official having custody of such a prisoner receives a detainer, the official should promptly advise the prisoner of the charge and of the prisoner’s right to demand trial. If at any time thereafter the prisoner informs such official that the prisoner does demand trial, the official shall cause a certificate to that effect to be sent promptly to the prosecuting attorney who caused the detainer to be filed;
(c) upon receipt of such certificate, the prosecuting attorney should promptly seek to obtain the presence of the prisoner for trial; and
(d) when the official having custody of the prisoner receives from the prosecuting attorney a properly supported request for temporary custody of such prisoner for trial, the prisoner should be made available to that prosecuting attorney (subject, in cases of interjurisdictional transfer, to the traditional right of the executive to refuse transfer and the right of the prisoner to contest the legality of the delivery).

Standard 12-2.5 Computation of time for persons serving terms of imprisonment

The time for purposes of the right to a speedy trial in the case of a prisoner whose presence has been obtained while the prisoner is serving a term of imprisonment should commence running from the time the prisoner’s presence for trial has been obtained. If the prosecuting attorney has unreasonably delayed causing a detainer to be filed with the custodial official or delayed seeking to obtain the prisoner’s presence for trial in lieu of filing a detainer or upon receipt of a certificate of demand, such periods of unreasonable delay should also be counted in ascertaining whether the time has run.

Standard 12-2.6 Implementation of speedy trial time limits
In adopting a rule or statute that establishes speedy trial time limits, jurisdictions should provide that:
(a) an indictment, information, or other formal charging instrument should be filed within [30] days after the defendant’s first appearance in court after either an arrest or issuance of a citation or summons, so that defendants receive prompt notice of the charges on which they will be held to answer and have adequate opportunity to prepare for pretrial motions and for trial within the speedy trial time limit period;
(b) at the time of the defendant’s first appearance in court after either the filing of a charging instrument or the issuance of a citation or summons, the court should advise the defendant of the right to a speedy trial and of the presumptive speedy trial time limit, and should inform the defendant that the granting of a continuance requested or consented to by the defense will have the effect of lengthening the speedy trial time limit period; and
(c) at any time that action is taken that has the effect of extending the time otherwise allowed under the speedy trial rule or statute, the court should set forth its reasons on the record and should confirm, with the prosecution and the defense, the date by which a trial must be held or the case otherwise resolved. The new date should be noted on the record.

**Standard 12-2.7. Effects of exceeding the speedy trial time limit period**

(a) If a defendant who is in pretrial detention is not brought to trial and the case is not otherwise resolved before the expiration of time allowed under the speedy trial rule or statute, as extended by periods excluded in accordance with Standard 12-2.3 or extended by the court pursuant to Standard 12-2.1(d), the court should:
   (i) order that the defendant be released from detention under conditions set in accordance with the ABA Criminal Justice Standards on Pretrial Release that best minimize the risk of flight and the risk of danger to the community or any person, and set the trial to begin on a date within the speedy trial time limit period for defendants on pretrial release, provided, however, that
   (ii) if no condition or combination of conditions of release will reasonably protect the safety of the community or any person:
      (A) the court should not order the defendant’s release, and should set the trial to begin as expeditiously as possible, receiving the highest possible priority on the court’s trial docket and in any event to begin within [15] days, unless the defendant requests a longer period not to exceed [45] days; and
      (B) if the trial does not begin within the time set pursuant to subdivision (A), the court should order that the defendant be released from detention under conditions that, to whatever extent reasonably possible, minimize the risk of flight and the risk of danger to the community or any person, and reset the defendant’s trial to begin on a date within the speedy trial time limit period for defendants on pretrial release.
(b) If a defendant who is on pretrial release is not brought to trial or the case is not otherwise resolved before the expiration of the time allowed under the speedy trial rule or statute, as extended by periods excluded in accordance with Standard 12-2.3 or extended by the court pursuant to Standard 12-2.1(d), the court should ordinarily dismiss the charges with prejudice, provided, however, that:
   (i) after affording the parties an opportunity to be heard, the court may in the interests of justice extend the time limit for a period not to exceed [30] days beyond the date on which the expiration of time is determined by the court, unless the defendant requests a longer period not to exceed [75] days.
   (ii) In determining whether and for what period to order such an extension, the court should consider the totality of the circumstances, including:
      (A) the gravity of the offense;
      (B) the reasons for the failure to bring the defendant to trial within the previously-established time limit;
      (C) the extent to which the prosecution or the defense is responsible for the delay; and
(D) the extent of the prejudice to the interests of the defense, the prosecution, or the public that may result from the extension of time or the dismissal of the charges.

(iii) If the court sets an extended period of time pursuant to this paragraph but the trial does not commence within the extended period, the charges should be dismissed with prejudice.

(c) In making a determination concerning actions taken with respect to detention, dismissal, or fixing a date for the commencement of trial pursuant to this standard, the court should set forth, on the record, the reasons for its ruling.

(d) Dismissal of the charge(s) with prejudice pursuant to this standard should forever bar prosecution for the offenses charged and for any other offense required to be joined with that offense.

PART III. STANDARDS FOR TIMELY RESOLUTION OF CRIMINAL CASES

Standard 12-3.1 The public's interest in timely case resolution

The interest of the public, including victims and witnesses, in timely resolution of criminal cases is different from the defendant's right to a speedy trial. This interest should be recognized through formal adoption of policies and standards that are designed to achieve timely disposition of criminal cases regardless of whether the defendant demands a speedy trial. Reasons for developing effective policies and standards aimed at timely resolution of criminal cases include:

(a) preserving the means of proving the charge(s) against the defendant;
(b) maximizing the deterrent effects of prosecution and conviction;
(c) increasing the likelihood that rehabilitative purposes of a sentence imposed if the defendant is convicted will be achieved;
(d) minimizing the length of the periods of anxiety for victims, witnesses and defendants, and their families;
(e) avoiding extended periods of pretrial freedom for defendants who pose risks of public safety or risks of flight;
(f) reducing repetitious handling and review of files by police officers, prosecutors, defense counsel, judges, court staff, and others involved in cases;
(g) reducing costs for jail operation (and avoiding or minimizing the costs of new jail construction) as the length of pretrial detention is minimized for defendants held in custody;
(h) reducing the caseload pressures on pretrial services agencies, as the length of time on supervised release is minimized for released defendants;
(i) better utilizing limited resources, and enhancing the opportunity for all of the institutions, agencies, and practitioners involved in criminal case processing to address high priority cases and issues; and
(j) increasing public trust and confidence in the justice system.

Standard 12-3.2 Goals for timely case resolution

(a) Each jurisdiction should develop and adopt goals and policies that provide a framework for assuring that all criminal cases are resolved within a time period that is appropriate for the seriousness and complexity of the case.
(b) Each jurisdiction should establish goals for timely resolution of cases that address (i) the period from the commencement of the case (by arrest, issuance of citation, or direct filing of indictment or information) to disposition; and (ii) the time periods between major case events. In establishing these goals, jurisdictions should take account of the seriousness and complexity of cases of different types.
(c) Goals for timely resolution of criminal cases should be developed collaboratively, with involvement of all of the institutions and agencies that have roles in criminal case processing in the jurisdiction, and with the participation of members of the public. Leaders of all of the institutions and agencies involved should participate in the process, should support the standards that are developed, and should seek to establish policies and procedures within their own organizations that will help achieve the standards. The jurisdiction’s goals for timely resolution
should address at least the following time periods:
   (i) arrest to first appearance;
   (ii) citation to first appearance;
   (iii) first appearance to filing of an indictment, information or other formal charging
document in the court in which the charge is to be adjudicated;
   (iv) first appearance or filing of the formal charging document to completion of pretrial
processes (i.e., completion of all discovery, motions, pretrial conferences, and plea, dismissal, or
other disposition in cases that will not go to trial);
   (v) completion of pretrial processes to commencement of trial or to non-trial disposition of
the case;
   (vi) verdict or plea of guilty to imposition of sentence; and
   (vii) arrest or issuance of citation to disposition, defined for this purpose as plea of guilty,
entry into a diversion program, dismissal, or commencement of trial.
(d) Goals for timely resolution of criminal cases are intended to provide guidance for judges,
counsel, court staff, officials in criminal justice agencies, defendants, witnesses, general
government, and the public concerning the scheduling of criminal cases and management of
criminal caseloads. The establishment of such goals should not create any rights for defendants
or others.

Standard 12-3.3. Monitoring and accountability

(a) Each jurisdiction should establish procedures to monitor the performance of the system (and
of each of the organizational entities that have responsibility for particular aspects of case
processing) in relation to the goals for timely case resolution. Feedback should be provided to the
leaders of the courts, the prosecutor’s office, the defense bar, law enforcement agencies, other
criminal justice agencies, and general government.
(b) Information about the performance of the system in relation to the goals for timely case
resolution should be made available to the public on a regular basis.

Standard 12-3.4. Consistency of timely resolution standards with other
justice system policy objectives

In adopting and implementing standards for timely resolution of criminal cases, jurisdictions
should ensure that the standards and the policies used to implement them are consistent with the
public's interests in the fair and effective prosecution and defense of criminal cases. The system
should be structured to enable expeditious resolution of minor cases and of cases that are not
complex, while allowing sufficient time for those that will involve relatively complex pretrial
processes or extensive trial preparation.

PART IV. ORGANIZING JUSTICE SYSTEM RESOURCES TO ACHIEVE TIMELY
RESOLUTION OF CRIMINAL CASES

Standard 12-4.1 Operational goals to guide criminal caseflow

Each jurisdiction should develop and adopt operational goals, for the system as a whole and for
the organizational entities involved in the processing of criminal cases, to guide overall caseflow
management and case scheduling and to help assure fairness and due process of law. Goals
should be established in at least the following areas:
   (a) timely resolution of cases, as described in Standard 12-3.2;
   (b) firmness/reliability of case scheduling, focused on establishing an expectation that
court events will take place when scheduled; and
   (c) timeliness, accuracy, and completeness of the information entered into court records
and into automated management information systems that support case scheduling and caseflow
management.
Standard 12-4.2 Caseflow management practices and procedures

Each jurisdiction should develop caseflow management practices and procedures that will enable it to meet case processing time standards and speedy trial requirements. The policies and procedures should be set forth in an overall plan for the jurisdiction. Portions of the plan that are directly relevant to the operations of a court or other organizational entity involved in criminal case processing should be incorporated into operations manuals or similar guides for use by practitioners.

Standard 12-4.3 Jurisdictional plans for effective criminal caseflow management: essential elements

Elements of a plan for effective overall criminal caseflow management in a local jurisdiction should include:

(a) rapid preparation and transmission, to the prosecutor, of good quality police incident/arrest reports;
(b) rapid retrieval of prior record information about the arrested person, using speedy and reliable identification and record retrieval technology;
(c) rapid preparation of pretrial investigation reports on arrested defendants by a pretrial services agency, and utilization of these reports by judicial officers in promptly setting release conditions for arrested persons;
(d) rapid turnaround of forensic laboratory test results, especially for the testing of suspected drugs seized pursuant to an arrest;
(e) effective early case screening and realistic charging by prosecutors;
(f) early appointment of defense counsel for eligible defendants; for other cases, court procedures that ensure prompt participation by counsel for the defendant;
(g) early provision of discovery, consistent with the provisions governing discovery set forth in the ABA Criminal Justice Standards on Discovery;
(h) early discussions between the prosecutor and the defense counsel concerning possible non-trial disposition of the case;
(i) early case scheduling conference conducted by the assigned judicial officer to:
   (1) review the status of discovery and negotiations concerning possible non-trial disposition;
   (2) schedule motions; and
   (3) make any orders needed;
(j) case scheduling practices that use techniques of differentiated case management to facilitate expeditious disposition of simple cases, enable rapid identification of cases likely to require more attorney time and judge attention, and make good use of limited courtroom and lawyer preparation time;
(k) case timetables addressing the time periods allowed for completion of discovery, filing of motions, and other case events that are set at an early stage of the case by the judge in consultation with the prosecutor and defense counsel;
(l) early filing and disposition of motions, including motions requiring evidentiary hearings;
(m) close monitoring of the size and age of pending caseloads, by the court and the prosecutor’s office, to ensure that case processing times in individual cases do not exceed the requirements of the speedy trial rule and that case processing time standards are being met for the overall caseload;
(o) a policy of granting continuances of trials and other court events only upon a showing of good cause and only for so long as is necessary, taking into account not only the request of the prosecution or defense, but also the public interest in prompt disposition of the cases;
(p) procedures enabling resolution of all charges pending against a defendant, whether in the same case or in different cases and whether in the same court or a different court of the state, provided that defense counsel and the prosecutor(s) who filed the charges agree to the consolidation of the cases; and
(q) elimination of existing case backlogs (i.e., cases pending longer than the established case
processing time standards), following a backlog reduction plan developed collaboratively by the court, the prosecutor’s office, the defense bar, and law enforcement and other criminal justice agencies involved in and affected by criminal case processing.

**Standard 12-4.4 Acquisition and use of information for case processing**

Jurisdictions should seek to use modern information technology to enable the courts and all of the other organizations involved in the criminal caseflow process to rapidly gather, store, disseminate, and retrieve information about cases, and should structure the flow of information to:

(a) enable the prosecution and defense to obtain reliable information about the charge, the evidence, and the defendant as rapidly as possible for purposes of case preparation, negotiation, and trial; and

(b) enable the court to have reliable information upon which to make decisions concerning the pretrial custody or release status of the defendant at the time of initial appearance and, thereafter, to make informed decisions concerning possible diversion, sentence, or other disposition.

**Standard 12-4.5 Court responsibility for management of calendars and caseloads**

(a) Control over the trial calendar, and over all other calendars on which a case may be placed, should be vested in the court. The court should exercise responsibility for case scheduling and for the expeditious resolution of all cases beginning at the time of first appearance, taking account of information relevant to case scheduling that may be provided by both the prosecutor and defense counsel. Continuances should be granted only by a judicial officer, on the record. The court should grant a continuance only upon a showing of good cause and only for so long as is necessary. In ruling on requests for continuances, the court should take into account not only the request or consent of the prosecution or defense, but also the public interest in timely resolution of cases. If a ruling on the request for a continuance will have the effect of extending the time within which the defendant must be brought to trial, the judge should state on the record the new speedy trial time limit date and should seek confirmation of this date by the prosecution and the defense.

(b) The court should establish mechanisms and procedures to promote the resolution of all cases within the time periods established by applicable management goals and without exceeding the time limits of the speedy trial rule or statute. Reports on the age and status of pending cases should be prepared regularly for the chief judge of the court and made available to leaders of other organizational entities involved in criminal case processing.
ABA Standards Relating to Trial Courts:

Standard 2.50 -- Caseflow Management and Delay Reduction
STANDARDS RELATING TO

Trial Courts
As Amended
1976 and 1987
American Bar Association
Judicial Administration Division
Committee on Standards of Judicial Administration

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# Table of Contents

Introduction: Procedure and Administration in the Trial Court 1

2.00 Fair and Effective Procedure: General Principle 3
   2.01 Procedure in Adjudication of Punishable Offenses 11
   2.02 Procedure in Civil Cases 13

2.10 Right of Jury Trial 20
   2.11 Juror Qualifications 27
   2.12 Procedure in Impaneling the Jury 29
   2.13 Jury Instructions 33

2.20 Assistance of Counsel 36
   2.21 Eligibility to be provided with Counsel 41
   2.22 Systems for Providing Counsel to Needy Persons 43
   2.23 Conduct of Cases Where Litigants Appear Without Counsel 45

2.30 Efficient Trial Court Administration: General Principle 48
   2.31 Responsibilities of Judges and Lawyers 49
   2.32 Disqualification of Judges 51
   2.33 Responsibilities of the Presiding Judge 53
   2.34 Divisional and Associate Presiding Judges 56
   2.35 Assignment of Judges 56
   2.36 Committees and Meetings of the Court 58
   2.37 Cooperation Between Courts 60

2.40 Trial Court Staff Services 61
   2.41 Trial Court Administrative Services 66
   2.42 Court Reporting Services 67
   2.43 Public Information 71
   2.44 Persons Having Business at Court 74
   2.45 Interpreters 75
   2.46 Courthouse Security 76
   2.47 Mobilization in Mass Arrest Situations 79
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.50</td>
<td>Caseflow Management and Delay Reduction: General Principle</td>
<td>83</td>
</tr>
<tr>
<td>2.51</td>
<td>Case Management</td>
<td>85</td>
</tr>
<tr>
<td>2.52</td>
<td>Standards of Timely Disposition</td>
<td>91</td>
</tr>
<tr>
<td>2.53</td>
<td>Matters Submitted to the Judge</td>
<td>95</td>
</tr>
<tr>
<td>2.54</td>
<td>Court Delay Reduction Program</td>
<td>96</td>
</tr>
<tr>
<td>2.55</td>
<td>Firm Enforcement</td>
<td>100</td>
</tr>
<tr>
<td>2.60</td>
<td>Administration of Jury Selection and Use</td>
<td>102</td>
</tr>
<tr>
<td>2.61</td>
<td>Juror Selection Procedure</td>
<td>103</td>
</tr>
<tr>
<td>2.62</td>
<td>Excuses From Jury Service</td>
<td>106</td>
</tr>
<tr>
<td>2.63</td>
<td>Duration of Jury Duty</td>
<td>107</td>
</tr>
<tr>
<td>2.64</td>
<td>Use of Jurors' Service</td>
<td>108</td>
</tr>
<tr>
<td>2.70</td>
<td>Specialized Procedures</td>
<td>113</td>
</tr>
<tr>
<td>2.71</td>
<td>Proceedings Concerning Family Relationships</td>
<td>114</td>
</tr>
<tr>
<td>2.72</td>
<td>Proceedings Concerning Involuntary Care and Treatment</td>
<td>120</td>
</tr>
<tr>
<td>2.73</td>
<td>Probate Jurisdiction and Procedure</td>
<td>126</td>
</tr>
<tr>
<td>2.74</td>
<td>Procedure in Civil Cases of Intermediate Amount</td>
<td>128</td>
</tr>
<tr>
<td>2.75</td>
<td>Procedure in Small Claims</td>
<td>134</td>
</tr>
<tr>
<td>2.76</td>
<td>Procedure in Traffic Violation Cases</td>
<td>137</td>
</tr>
<tr>
<td>2.77</td>
<td>Disposition of Police-Case Intoxicated</td>
<td>138</td>
</tr>
<tr>
<td>2.78</td>
<td>Procedure in Juvenile Matters</td>
<td>140</td>
</tr>
<tr>
<td>2.79</td>
<td>Managing Potentially Disruptive Cases</td>
<td>140</td>
</tr>
</tbody>
</table>
2.50 Caseflow Management and Delay Reduction: General Principle.

From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery and court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.

Commentary

Justice delayed is justice denied. Delay devalues judgments, creates anxiety in litigants, and results in loss of deterioration of the evidence upon which rights are determined. Accumulated delay produces backlogs that waste court resources, needlessly increase lawyer fees, and create confusion and conflict in allocating judges' time.

The public expects and deserves prompt and affordable justice. Delay signals a failure of justice and subjects the court system to public criticism and a loss of confidence in its fairness and utility as a public institution. As the steward of public trust in our legal system, the court system is obliged to dispose of court business without delay. To do less is to compromise justice.

Eradicating delay depends on adherence to this one axiom: The court must take the initiative to eliminate the causes of delay. Since the American Bar Association enunciated this conclusion in its 1976 Trial Court Standards, a sizeable body of research has established that the leading cause of delay has been the failure of judges to maintain control over the pace of litigation. The American Bar Association here reiterates its...
policy that the courts must assume control over the docket and establish a schedule that ensures timely dispositions.

A timely disposition is defined as the elapsed time a case needs for consideration by the court. Research shows that the large majority of cases require little preparation for trial in the form of pleadings, motions, and discovery; cases which require considerable preparation by attorneys form a small minority of civil and criminal dockets. As a matter of principle, a case should be pending in court in proportion to the elapsed time the attorneys reasonably need for its preparation. In keeping with this concept of proportionality, delay is declared to be any elapsed time beyond that necessary to prepare and conclude a particular case.

Delay is not inevitable. Timeliness demands that each court system must have in place either a delay prevention system or, until the calendar is current, a delay reduction program. The premise underlying this concept is that the court and the judge possess the requisite authority to achieve and maintain a current docket. Whereas achieving a current docket may entail removing some statutory and regulatory impediments, no trial court or judge as part of the judicial branch so lacks authority as to not be able to begin reducing docket delay.

Ultimately, the key to success will be a driving spirit committing the court or judge to a delay-free docket coupled with acceptance of the concept that management of the court is the ultimate responsibility not of the lawyers, but of its judges.

References:


Delay involves extra motion activity, needless status conferences, useless discovery, and false trial starts, all of which waste judge time and lawyers fees without benefiting litigants. See id.; Consolli and Planet, *Controlling the Caseflow—Kentucky Style*, 21 THE JUDGES’ JOURNAL 8, 55 (Fall, 1982) [hereinafter Kentucky Study].
Standards with Commentary


CONNOLLY et al., JUDICIAL CONTROLS AND THE CIVIL LITIGATIVE PROCESS: DISCOVERY at 31 (1978) (the typical federal case going to trial involved only five discovery requests, only 10 percent of federal cases involved any more than ten discovery requests); CONNOLLY et al., JUDICIAL CONTROLS AND THE CIVIL LITIGATIVE PROCESS: MOTIONS, at 70 (1979) (federal cases averaged two motions and fewer motions than federal cases). The results of these studies comport with the findings of other such studies, e.g., Trubek et al., CIVIL LITIGATION RESEARCH PROJECT FINAL REPORT, Part A at II-58-59 (1983).

2.51 Case Management. Essential elements which the trial court should use to manage its cases are:

A. Court supervision and control of the movement of all cases from the time of filing of the first document invoking court jurisdiction through final disposition.

B. Promulgation and monitoring of time standards for the overall disposition of cases.

C. By rules, conferences or other techniques, establishment of times for conclusion of the critical steps in the litigation process, including the discovery phase.
proscriptions in filing an answer and/or responses to legitimate discovery, failing to assure that counsel conduct important discovery promptly, permitting counsel to place a case off-calendar or dictate when a case is ready for trial, or depending on the prosecutor to calendar trials. All such practices improperly delegate to counsel supervisory control over the pace of the case to the detriment of the litigants' needs for a timely case disposition. Whether made the prime responsibility of the judge or of a competent court staff, every case must be supervised throughout its life with no unreasonable interruption in its procedural development tolerated.

B. Time Standards

Goal setting is a precondition to achievement of management results. Courts should adopt the standards of timely disposition in Section 2.52 as the model against which the state of the docket can be compared. By setting goals that are feasible and reasonable, the court will have announced the policy that the procedural needs of the case and the time used to exercise these procedural rights must be proportionate. Moreover, these standards permit the court to measure the extent to which the docket is in a condition of delay and backlog.

C. Interval Standards

A case is divisible into identifiable phases bounded by critical events which can be subjected to deadlines. For example, civil pleadings can be defined by the filing of the complaint or petition (or the application to invoke the court's jurisdiction) and the last responsive pleading, and state rulemakers have set time deadlines for the filing of intermediate pleadings. Except for a few states and the U.S. courts, courts do not set time standards for major phases of civil or criminal cases. Setting an overall standard for disposition provides in-
D. Procedures for early identification of cases that may be protracted, and for giving them special administrative attention where appropriate.
E. Adoption of a trial setting policy which schedules a sufficient number of cases to ensure efficient use of judge time while minimizing resettings caused by overscheduling.
F. Commencement of trials on the original date scheduled with adequate advance notice.
G. A firm, consistent policy for minimizing continuances.

Commentary

The pathology of delay has been the subject of considerable scholarship. A consensus has emerged that a docket can be current only when a judge supervises the scheduling and progress of all steps of the case with systematic case management.

As the linchpin of its operation, the judge must be vested with the power and assume the responsibility to press the attorneys and litigants into resolving the case in no more than the time needed for full consideration by the court. Effective case management has been found to contain the following seven fundamental elements, inattention to any one of which can nullify the benefits derived from application of the others:

A. Court Supervision

Once a litigant invokes the jurisdiction of the judicial system, the court has the responsibility of pressing the attorneys and litigants to prepare the case for adjudication without delay. The court’s loss of control over the litigation invariably leads to procedural inactivity. This loss of court control can take many forms, such as failing to take charge of the case upon the filing of service of process by allowing the complaint to be filed at a later date, allowing counsel to waive the time
sufficient management control over cases; each court should consider the timeliness of its litigation according to interval time standards.

D. Protracted Complex Cases

Most cases on a court docket involve a modest investment of lawyer and judge time and can be managed presumptively because of their procedural homogeneity. Every court has pending cases, however, with complex substantive and procedural issues which generate considerable filing activity and consume substantial amounts of judge and lawyer time.

These complex cases often require special handling by the court. Once such a complex case is identified from its pleadings, a case management plan must be tailored by a judge to apply close and continuous supervision over its procedural progress and development. Their diversity and the demands on judge time to manage them effectively suggest the need to consider individual calendaring of these complex cases.

Management of complex cases involves the judge learning about the issues and exerting control over the trial preparation by the attorneys. To discharge those duties, conferences with the attorneys may be conducted in complex cases to schedule and focus discovery, to streamline the evidentiary presentation at trial, and to facilitate the lawyers’ efforts to reach settlement. Such conferences should be scheduled presumptively only for identifiable groups of cases in which the aggregate costs in terms of judge and lawyer time invested yields a net saving in which a more timely and affordable outcome results.

Ultimately, the judge must choose a case management plan for each case that best achieves proportionality among its procedural needs, its stakes, its case processing time, and its cost in terms of judge and lawyer time. Along these lines, recent research suggests there is merit to combining early and continuous judicial control over the timing and content of the discovery process and ongoing attempts to facilitate settle-
COURTS MUST BE SENSITIVE TO SITUATIONS OR KINDS OF CASES WHERE THE COURT MIGHT EXPEDITE MATTERS BY FOCUSING DISCOVERY AND/OR SETTLEMENT DISCUSSIONS.

E. Trial Settings

Calendarizing trials is a complex but manageable task. Setting too few cases for trial over a given period of time runs the risk of last-minute settlements leaving the judge with considerable down time. Setting too many cases for trial runs the risk of losing the confidence of lawyers in the firmness of the trial date due to court-initiated resetting or an overly permissive attorney-initiated resetting policy. No single calendaring system exactly strikes the balance between these extremes because trial dynamics differ from court to court, but experts believe that an occasional dark courtroom due to understaffing is preferable to rolling over masses of trials due to overstaffing. Because the factors affecting trial rates change over time, a continuous study of trial rates, length, and dynamics is required to apply the appropriate mix of trial settings to a calendaring system designed specially for each court.

F. Trial Dates

The trial should commence on the first date scheduled. Unpredictable trial dates breed last-minute continuances and settlements. When the court creates pervasive doubt about the firmness of trial dates, counsel tend to defer trial preparation and then seek a continuance when pressed for trial. With sufficient notice of a trial date and the beginning of the trial on the first day set, counsel learn that the court means business, resulting in earlier settlements or pleas without an increase in the trial rate.

Settlements on the day of trial materially increase the cost of operating the court and wreak havoc with its calendaring system. Adoption of a policy of imposing jury and subpoena
costs on lawyers who announce a settlement on or just prior to the first day of trial is reported to be an effective deterrent against last-minute settlements.

**G. Continuances**

The backbone of a current docket is holding court matters, particularly trials, on the date when first set so that counsel expect that the court means what it says. Even the most effective calendar cannot eliminate all continuances, but continuances can be kept to a minimum by adhering to the firm enforcement standards in Section 2.53. Ultimately, a delay-free pace of litigation will reduce the demand for continuances by making counsel realize the inevitability of trial being held on the originally scheduled date, and that trial can only be avoided by negotiating a settlement.

**References:**

See authorities cited in references, supra § 2.50.

The Kansas Judiciary is the first state to have adopted overall time frames for civil and criminal case dispositions. Schwartz, *Delay: How Kansas (At) Making It Disappear*, 23 The Judges' Journal 22 (Winter, 1984). The U.S. Judicial Conference has established that civil cases pending longer than three years are to be deemed a judicial emergency and requires U.S. District Court judges to explain why such cases are still pending on their docket. *Reports of the Judicial Conference of the United States*, September 1961, p. 62–63.

**Kentucky Rules of Civil Procedure** 88–97 (1982). Many speedy trial statutes set standards for the intervals from arrest to first appearance and from first appearance to trial. See, *e.g.*, 18 U.S.C. § 3161 et seq. With the exception of pleading deadlines, only Kentucky sets such standards for civil cases.


Research by Professor Wayne Brazil of the Hastings Law School on
overstating of cases, Wayne D. Hazeltine, Settling Civil Suits (1983) is available from ABA.

Action Commission research into the Vermont Civil Delay Reduction program suggests that certainty in the trial date facilitates counsel reaching a settlement well before the trial date.

2.52 Standards of Timely Disposition. The following time standard should be adopted and compliance monitored:

A. General Civil—90% of all civil cases should be settled, tried or otherwise concluded within 12 months of the date of case filing; 98% within 18 months of such filing; and the remainder within 24 months of such filing except for individual cases in which the Court determines exceptional circumstances exist and for which a continuing review should occur.

B. Summary Civil—Proceedings using summary hearing procedures, as in small claims, landlord-tenant and replevin actions, should be concluded within 30 days from filing.

C. Domestic Relations—90% of all domestic relations matters should be settled, tried or otherwise concluded within 3 months of the date of case filing; 98% within 6 months and 100% within 1 year.

D. Criminal—

FELONY—90% of all felony cases should be adjudicated or otherwise concluded within 120 days from the date of arrest; 98% within 180 days and 100% within one year.

MISDEMEANOR—90% of all misdemeanors, infractions and other non-felony cases should be adjudicated or otherwise concluded within 30 days from the date of arrest or citation and 100% within 90 days.

PERSONS IN PRETRIAL CUSTODY—Persons detained should have a determination of custodial status or
bail set within 24 hours of arrest. Persons incarcerated before trial should be afforded priority for trial.

JUVENILE—Juvenile cases should be heard within the following time limits:

1. Detention and shelter hearings—not more than twenty-four hours following admission to any detention or shelter facility;

2. Adjudicatory or transfer (waiver) hearings—
   a. Concerning a juvenile in a detention or shelter facility: not later than fifteen days following admission to such facility;
   b. Concerning a juvenile who is not in a detention or shelter facility: not later than thirty days following the filing of the petition;

3. Disposition hearings—Not later than fifteen days following the adjudicatory hearing. The court may grant additional time in exceptional cases that require more complex evaluation. (ABA Standards Relating to Juvenile Justice: Court Org. and Adm. 3.3)

Commentary

These standards are goals that courts can and should reach and maintain. The adoption of standards of timely disposition provides the court system with ultimate and measurable objectives towards which planning must be directed. Expressly rejected is the notion that factors such as the complexity of the docket excuses a jurisdiction from seeking compliance with the standards. The formulation process was based on research which demonstrates that the typical civil case involves a total of about ten filings or court proceedings and consumes approximately eighteen hours of each attorney's time on a per case basis. Typical criminal matters were assumed to involve less procedural activity and no more of an investment of at-
Putting into operation the general principle of delay reduction in Section 2.50 means that elapsed time should be proportionate to procedural activity. The standards are designed to strike a balance between allowing enough time for the litigants to exercise their procedural rights and barring delay due to neglect. Maintaining these standards eliminates the necessity of legislation giving priority to hearing specified types of cases. Such legislation complicates calendaring and can result in discrimination between cases where real urgency is the same.

The standards have been achieved in courts of all sizes that are adequately staffed and well managed. Achieving them in other courts will require adoption of the Court Delay Reduction Program in Section 2.54. The administration of a system of time standards must, however, avoid becoming entirely mechanical. Judges have a duty to ensure justice is served by giving due consideration to matters having merit and taking sufficient time to develop complex issues. To do otherwise impairs the quality of justice.

The standards are expressed in terms that cover the whole docket, while other standards set a time only for the median or typical case. Not only is a median difficult to attain as a management objective, but the median time does not cover the one-half of all cases subject to most delay problems. These standards recognize that cases on a docket are not homogeneous, but instead reflect a few complex cases mixed in with a sizeable majority of relatively simple cases. Courts need standards which govern all cases, and the incremental time standards recognize the differing procedural complexity of case loads. Thus, General Civil, Domestic Relations, Felony, and Misdemeanor cases are subject to time standards set for 90 percent, 98 percent, and 100 percent of the cases in each category. The remaining case categories were subjected to one time standard in recognition of the summary nature of the proceedings or a public policy calling for prompt adjudication without exception.
The specific times express a balance among several factors: facilitating vigorous enforcement of the criminal law while protecting individuals from prolonged pretrial detention; promptly resolving legal uncertainty in cases involving personal status while affording litigants adequate opportunity to reach negotiated settlement and adequate time to prepare for trial. The times reflect the varying weight of these considerations but should not be viewed as outside limits since many federal and state courts are resolving cases in less time. While the new civil standard of twelve months may appear to relax the former six-month standard, it actually tightens that standard by eliminating its broad exception in former Section 2.52(a)(3)(iii).

The standard set for domestic relations cases will conflict with some divorce statutes requiring either a cooling off period prior to the court taking up the matter or an extended period or delay prior to the court acquiring jurisdiction to enter a final divorce decree. The wisdom of such statutes is the subject of some controversy, as there is a school of thought that delay in resolving custody and support disputes can increase tension between the spouses and harm the well-being of the children. Where a jurisdiction has established mediation and conciliation as preconditions to the issuance of a final decree, their invocation should be early enough after the filing of the case to enable compliance with the standard. A stipulation of conciliation should not exempt the case from the standard.

References:

Trebek et al., Civil Litigation Research Final Report at II-56-59, II-68 (University of Wisconsin: 1983).

While few state Annual Reports report time statistics, it is apparent that some individual courts have achieved these standards. For example, Georgia reports several jurisdictions with median disposition times of well under one year. A study of the 1982 Management Statistics for the United States Courts reveals that several districts
maintain a five-month median pace for their civil cases.

Plantet et al., Screening and Tracking Civil Cases: Managing Diverse Caseloads in the District of Columbia, 2 JUSTICE SYSTEM JOURNAL 338 (Winter, 1983).


2.53 Matters Submitted to the Judge. Matters under submission to a judge or judicial officer should be promptly determined. Short deadlines should be set for party presentation of briefs and affidavits and for production of transcripts. Decisions where possible should be made from the bench or within a few days of submission; except in extraordinarily complicated cases, a decision should be rendered not later than 30 days after submission.

Commentary

Judges who are not consistently prompt in their decisions cannot expect attorneys to be prompt in their preparation. Lawyers should not be forced to protest delay in the decision of a submitted matter, and yet decisional delay is a major cause of docket delay. The thirty-day standard reflects a balance between the time needed for deliberation and necessary dispatch in decisionmaking. The American Arbitration Association Rules set a similar standard of timeliness for decision by arbitration.

Case management can reduce some aspects of decisional delay. Deadlines should be set for the submission of briefs, affidavits, and transcripts in forming a judicial decision. Once received by the court, the matter should be decided, if possible, on the papers and without a hearing. If a hearing is necessary, the court should set it promptly and be prepared to decide the matter from the bench or within a few days of
In an event, no decision should be rendered more than thirty days after submission except in extremely complex cases or under extraordinary circumstances. Where decisional delay persists, the presiding judge should take corrective action.

References:

Unless otherwise agreed to by the parties or provided by law, the arbitrator is under a duty to render a decision within 30 days of the close of the hearing. AMERICAN ARBITRATOR ASSOCIATION, CONSTRUCTION INDUSTRIAL ARBITRATION RULE 41 AND COMMERCIAL ARBITRATION RULE 41. CONNOLLY AND LEMMA, JUDICIAL CONTROL AND THE CIVIL LITIGATIVE PROCESS: MOTION (Federal Judicial Center: 1979).

The U.S. Judicial Conference has adopted the policy that matters held under submission for longer than 60 days must be explained periodically by the responsible judge to the applicable judicial council. U.S. Judicial Conference Resolution, September, 1961.

2.54 Court Delay Reduction Program. Each court should have a program to reduce and prevent delay.

A. Essential ingredients of the program are:
   1. A strong continuing judicial commitment to delay reduction, expressed in written goals and objectives to guide court operations.
   2. A published case management plan detailing the delay reduction techniques, ultimate time standards and a transition program for reaching those standards where there is a backlog problem.
   3. A system to furnish prompt and reliable information concerning the status of cases and case processing.

B. The program would be enhanced by:
   1. Bar support and lawyer cooperation.
   2. Adequate resources.
   3. Utilization of special expertise.
4. Consideration of alternative methods of dispute resolution which should facilitate an earlier termination of actions.

C. Where unacceptable delay exists, there should be a published transition program designed to achieve these time standards. The transition program should include:

1. Assessment of the current caseload including backlog identification.
2. Analysis of productivity.
3. A conscious effort to use internal resources.
4. Utilization of special expertise.
5. Revision of rules and practices to implement the transition program.
6. A scheduled termination of the transition program with interim goals ultimately resulting in full implementation of Section 2.52 time standards.

Commentary

Maintaining a current docket is neither self-actualizing nor self-sustaining. Just like any complex endeavor, delay reduction and prevention requires commitment, planning, and perseverance, each of which is an essential ingredient of success. Without a lasting and purposeful commitment, the court system will fail to implement a durable delay prevention program because segments of the court system will work at cross-purposes and institutional inaction will lead to a reversion back to inefficient and unproductive practices. Commitment is maintained by accountability, and periodic reports (monthly or even weekly) should show the progress that individual courts and judges are making towards reducing delay. A plan and information are also essential. Without a comprehensive published plan, the court system will fail to neutralize the myriad causes of delay. Without information about the age and number of cases, neither a detailed plan setting forth objectives
nor a test of compliance with the standards can be effected by the court.

Delay prevention can be assisted by other ingredients. The cooperation of lawyers and the support of the bar can help, but the absence of bar or lawyer support should not frustrate the implementation of a delay prevention program. Because technological changes may enhance the productivity of the judges and court staff, consideration should be given to such innovations as telephone conferencing, videotaped depositions and trials, electronic recording and transcriptions of court proceedings, word processing, and computer applications to jury management, calendaring, and statistical reporting. Besides technology, adequate resources in the form of judgeships, support staff, and facilities will help the court achieve its objectives, and the court system should strive to persuade the other branches of government to accept and implement a uniform staffing formula for each such resource.

Inadequate resources does not mean some elements of the plan cannot be implemented. Only common sense is needed to design an effective program, but special expertise can be useful in developing a case management plan.

Most courts have some form of case backlog, that is, more cases pending than the court is able to close out over a given period of time. With a backlog, a court will be unable to maintain the standards of Section 2.52. Reaching those standards can only be achieved by closing out more cases than are filed. This process of reducing backlogs has been studied, and certain ingredients have been identified as essential to its success.

Change must be incremental to be effective and durable. Interim goals of timeliness that are achievable but reasonable should be adopted; these interim goals should ultimately lead to adoption of the Section 2.52 standards. The transition program should be designed after measuring the size and age of the backlog and the productivity of the court given its availability resources. The program should attempt to maximize
use of internal court resources by delegating management tasks, but additional short-term judicial resources such as the use of pro-tem judges may be needed to increase productivity to a level that permits dispositions to exceed filings until the backlog is erased. Alternative methods of court-annexed dispute resolution may facilitate earlier terminations of actions by reducing backlog while conserving judge time.

Securing special expertise at the state and national level will ensure the delay reduction plan is achievable and can provide an objective evaluation of sensitive issues like the utilization and adequacy of resources. Effective program implementation can be prevented by rules and practices; the applicable state or local rulemaking authority must cooperate by making changes needed to permit the program to operate.

References:


See generally, Tomorrow is Here: How Technology Can Serve Justice, 22 The Judges' Journal, No. 3 (Summer, 1983); Shuart and Olson, Audio and Video Technologies in the Court: Will Their Time Ever Come?, 8 The Justice System Journal 287 (1983).

Such expertise is available from the National Center for State Courts, one of whose missions is to assist state courts achieve current dockets.

Ryan et al., Analyzing Court Delay-Reduction Programs: Why Some Succeed, 65 JUDICATURE 58 (1981). The authors identify several factors believed to contribute to successful introduction of delay reduction programs. See Demos, Speedy Trial Judges, 23 The Judges Journal 38 (Fall, 1983).

2.55 Firm Enforcement. The court should firmly and uniformly enforce its caseload management and delay reduction procedures.

A. Continuance of a hearing or trial should be granted only by a judge for good cause shown. Extension of time for compliance with deadlines not involving a court hearing should be permitted only on a showing to the court that the extension will not interrupt the scheduled movement of the case.

B. Requests for continuances and extensions, and their disposition, should be recorded in the file of the case. Where continuances and extensions are requested with excessive frequency or insubstantial grounds, the court should adopt one or a combination of the following procedures:

1. Cross-referencing all requests for continuances and extensions by the name of the lawyer requesting them.

2. Requiring that requests for continuances and stipulations for extensions be endorsed in writing by the litigants as well as the lawyer.

3. Summoning lawyers who persistently request continuances and extensions to warn them of the possibility of sanctions and to encourage them to make necessary adjustment in management of their practice. Where such measures fail, restrictions may properly be imposed on the number of cases in which the lawyer may participate at any one time.

C. Where a judge is persistently and unreasonably indulgent in granting continuances or extensions, the presiding judge should take appropriate corrective action.

Commentary

The importance attached to the firm enforcement of deadlines is emphasized by the specific guidance set forth in this standard. The section recognizes that firm enforcement of
deadlines and settings breaks the cycle in which lawyers expect continuances to be granted, leading them not to be prepared for trial or hearings and in turn leading to further expectations of continuances.

Demand for continuances can be reduced by sound calendaring (see Standard 2.51.E.) and requiring that good cause be the only basis for continuing a trial or hearing. A lawyer has established good cause when the underlying eventuality is unforeseen, is not due to lack of preparation, is relevant, is brought to the court’s attention in a timely manner, and does not prejudice the adversary. Deadlines not involving a court hearing may be extended as long as later deadlines are unaffected by the extension. Good cause must be shown where such an extension would delay the outcome of the case.

Changing lawyer practices with regard to extensions of deadlines may require the measures set forth in Subsection B. One such measure which recognizes that extensions are often solely for the benefit of lawyers requires the client to sign the request. Another recognizes that lawyers often accept cases without considering the demand that their case inventory will place on them at a later date. Computerized case monitoring can yield information needed to detect patterns of abuse. Monetary sanctions, such as the assessment of the expense of court appearances, should be considered by the court as deterrents to requests for continuances; defaults and disbarment should be considered as reasonable sanctions for the egregious failure to meet court deadlines. Restrictions on the number of cases a lawyer may take is viewed as a stopgap measure courts should undertake when specific lawyers prove incapable of making court appearances due to the size of their practice.

Adopting a firm approach towards compliance with time standards may require a change in judicial habits. Leniency begets delay, and a judge who overindulges counsel in extending deadlines and continuing trials will undermine the integ-
The Environmental Context of Criminal Justice in Cook County: Commentary

By Judge Charles Edelstein

Criminal justice systems in America are series of highly inter-related agencies that operate within a wider societal context. Income distribution patterns, social and economic mobility, family structure, racial and ethnic relations, housing options, neighborhood integrity, educational and occupational opportunities, political practices, community history real and perceived and the underlying mix of values all impact upon the operation of criminal justice systems. Cook County is no exception, a fact well known to the Cook County criminal justice community.

At the August 25, 2004 meeting of the Chicago Criminal Justice Coordinating Council there was broad agreement, if not consensus, that persistent, endemic poverty was the major contributor to the woes of the Cook County criminal justice system, Dr. James Garbarino who lived and worked in Chicago for many years would agree.

Dr. Garbarino, former head of the Erik Erikson Institute, Professor of Psychology at the University of Chicago and a world-renowned expert on the effects of poverty on families on families and communities, has written widely1, addressed expert and lay audiences worldwide, visited many refugee camps, in Asia, the Middle East, South America and elsewhere. Yet his speeches often describe living and working in Chicago and comparing them with his experiences in the camps.

“Men are marginalized” he asserts. They have no work, endure a deep sense of shame, which is aggravated by the success of their wives and children in filling their traditional roles. When the aid workers leave at the end of the day, many of the men abuse their wives and children. Moreover, most in the camps are so poor they struggle to survive while suffering the indignity of living on handouts.

Living lives subject to physical and emotional abuse coupled with dependence, poverty and lack of access to adequate medical care and other services create a breeding ground for chronic stress. Chronic stress is very different acute stress. A pair of everyday examples may be helpful. While driving to Midway on a surface street, a traffic light is out and the driver next to you cuts you off to get into your faster moving lane. He screams at you and then your body responds in the age-old ways of fight or flight. Your heartbeat soars, your adrenalin kicks in and then an hour or so later after you have gone through security slowly returns to normal. Chronic stress is very different. Your husband returns home after yet another fruitless day of looking for decent work, hanging out with other unemployed fathers/husbands and you, anticipating an

1 Troubled Youth, Troubled Families; No Place to be a Child, Growing Up in a War Zone; Raising Children in a Socially Toxic Environment; Lost Boys; Children and Families in the Social Environment; What Children Can Tell Us. For an up close and personal account of life in poverty in an urban ghetto see Amazing Grace, Jonathon Kozol, and see Chapter 4 “Other People’s Children: North Lawndale and the South Side of Chicago in Savage Inequalities – Children in America’s Schools.
evening of emotional or physical abuse laced with alcohol or drugs suffer stress reactions. The difference is it happens almost every day and the effects take a terrible toll.

Chronic stress does not bode well for good parenting. Parenting requires patience. A long drive with a screaming four old, dealing with a child who is afraid to walk to school after yet another classmate is attacked takes a lot of patience. Living with three children in a two room apartment where the heating is irregular, food is starches as the money runs out, when the rare visit to a doctor or emergency room means sitting in a crowded waiting room for hours and coping with the intermittent fear of violence takes a lot of patience especially for parents of young children.

According to Dr. Garberino parts of Cook County are much like refugee camps. The men are marginalized and often violent. Many Chicago kids learn to dive into the bathtub when loud gun shot noise rings out. The way to school is sometimes torturous and dangerous. Until recently, the murder and assault rate was higher in some areas of Cook County than in Ireland at the height of the troubles.

In his writings and speeches, Dr. Garabino cites studies conducted by Dr. A. J. Sameroff and his associates, which look at the influence of common risk factors on a child’s ability to thrive.

Dr. Sameroff and his associates have identified eight factors, which can significantly impair a child’s life chances.2

Persistent poverty, being a disadvantaged minority, poor parenting styles, and being a member of a single parent family are four of the more significant risk factors. Poor parenting styles can be especially significant particularly in a society in which supportive extended families are disappearing. In one study, children from poor, disadvantaged homes were observed before, during and after receiving inoculations in a county hospital’s clinic. Those children largely from single family homes, whose attending parents were controlling and punitive cried longer and more loudly before, during and after the inoculations compared with children whose attending parent was non-punitive and supporting. The child’s ability to cope with life’s inevitable challenges suffers when parents cannot effectively parent.

The Annie E. Casey Foundation, has for many years, published profiles of indicators of children’s welfare in the United States. Called “Kids Count” and available online at: www.aecf.org. See Appendix --- for abstracts on education, employment, income and poverty and living arrangements. These factors include some of the risk factors identified by Dr. Sameroff. Chicago has shown some progress in the data drawn from the census. From the 1990 census to the 2000 census children living below the poverty line declined from 33.9% to 28.5%. Unfortunately over 40% of black children lived below the property line in 2000.

Children living in a single parent household dropped from 34.7% to 32.2%. The teens that were high school drop outs edged lower from 17.1% to 15.6%. The percentage of children living in high-poverty neighborhoods declined from an astounding 53.4% to 50.0% From 1990 to

In 2000, the percentage of children who live in households with NO employed parent dropped slightly but still was over 20%. In all cases black children fared worse than white.

Children who were below 200% of the poverty level numbered 404,000 out of a total of almost 760,000. In other words, the majority of children under 18 in Chicago in the year 2000 lived in homes with marginal incomes. If the national trends for the poor 2000 reflect the situation in Chicago, things have not improved with the possible exception of a lower infant mortality rate.

80.3% of white children lived in homes with married parents while only 30.6% of black children did. This is NOT to say that children living in other arrangements necessarily fared better. But in terms of income: the married families with children had a median income of $51,504 and those living with in a single-mother household had a $19,070 income.

The presence of risk factors, especially the four noted above can contribute to reduced intelligence and functioning. Dr. Sameroff and associates gave intelligence tests to four year olds. Those with no risk factors scored 117, with one, 116 with two 114 with three 98 and those with four risk factors, scored 92. Clearly, risk accumulates.

The pervasive presence of multiple risk factors within the context of environmental factors such as, overcrowded and dilapidate slum housing, dangerous neighborhoods and failing schools and even lead based paints leading to brain damage become a recipe for failure. Dr. Garbarino’s recent book “Raising Children in a Socially Toxic Environment” sets the stage for a recent study of life lived on the wrong side of the tracks. The abstract of the lead article in the February/March edition of the Journal of the American Psychological Association’s American Psychologist “The Environment of Childhood Poverty sums up the criminogenic nature of urban life.

“Poor children confront widespread environmental inequalities. Compared with their economically advantaged counterparts, they are exposed to more family turmoil, violence, separation from families, instability, and chaotic households. Poor children experience less social support, and their parents are less responsive and more authoritarian. Low-income children are read to relatively less frequently, watch more TV, and have less access to books and computers. Low-income parents are less involved in their children’s school activities. The air and water pollution poor children consume are more polluted. Their homes are more crowded, noisier, and of lower quality. Low-income neighborhoods are more dangerous, offer poorer municipal services, and suffer greater physical deterioration. Predominantly, low-income schools and day care are inferior. The accumulation of multiple environmental risk exposure may be an especially pathogenic aspect of childhood poverty.” By Gary W. Evans, Cornell University. P 77. [Funded by the National Institute of Child Health and Human Development, the W.T Grant Foundation, the MacArthur Foundation Network on Socio-economic Status and Health and Cornell University.

Remember, according to the Casey Foundation, one-half of Chicago’s children live in neighborhoods much like the ones Dr. Evans describes. Living in a neighborhood that children know is seen by others as impoverished, dangerous, cannot help but tarnish the self image of some of them. Despite some recent improvement the life of children in Cook County noted above, still such stereotypes, often largely racial prevail:

“Racial Profiling Writ Large
What makes for a ‘bad neighborhood’? In most people’s minds it’s broken windows, graffiti, abandoned cars, and other signs of decay—and, according to a new study, the mere presence of minorities. A team of researchers studying different neighborhoods in Chicago, found that people were much more likely to deem a neighborhood disorderly if it was heavily black or Latino—regardless of objective signs of disorder. This bias was exhibited even by minorities. Latinos, for instance, were more likely than whites to associate disorder with the presence of black residents in a neighborhood, and black participants in the study were just as likely as whites to associate a higher percentage of black residents with a higher degree of decay. This suggests that not just over racism but society-wide cultural stereotypes are at work.3

The bottom line, as we are fond of saying is this: Traditionally, schools assumed that most children entering school were sufficiently socialized so that they could effectively interact with their peers without much adult supervision. Children were expected to view adults as both authority figures and sources of support and guidance. Sufficient attention span to learn was also expected of most children starting school. If these are absent, the role of the teacher is reduced to keeping order, with little left over energy or time to teach. Children in such classes, especially with those with overstressed, unsupportive parents have a difficult time learning, especially reading. The failure to learn to read can readily lead to dropping out of school.

An example of the cumulative impact of these factors can be seen in juvenile detention centers. In many states, juvenile detention facilities have a branch of public school within their walls. In one, detainees reading levels were evaluated. Most read at the 3rd grade level though the median age was 14. The inability to read meant embarrassment and failure. This lead to skipping school, especially middle school. And many had effectively dropped out or been expelled. The journey from the school to the streets is short and marks another step on the road to criminal court.

Young black males who read at a 3rd grade level, and have dropped out of school are essentially unemployable. Four per cent of white, adult males may be unemployed, while in many places in America, over quarter of young black males are unemployed. Of those who have jobs, often work for low pay, without fringe benefits, doing boring, repetitive work with little chance of advancement. These are low status jobs and are seen that way by their peers.

After a few criminal justice contacts, most without few, if any, state provided efforts at rehabilitation, job readiness, training and placement, the ex-convict has few options. Typically many survive on a combination of day labor or other intermittent work, street hustles and help from a aunt, mother, grandmother or girl friend. Without changing this formula persistent recidivism is inevitable.

At the August 25, 2004 meeting of the Cook County Criminal Justice Coordinating Council, Presiding Judge Paul P. Biebel, Jr distributed the lead editorial from an editorial of the Chicago Tribune. It reads in part,

“…. Illinois’ disturbing recidivism rate of 54 percent – more than half of those released today will be back in prison within three years… A variety of studies released in the last 25 years have shown most Treatment programs generally have modest success with a 10 to 15 percent reduction in the chance of re-offending. But coupled with other

interventions that have been proven to be even more effective, such as drug courts and GED programs, even modest success still makes financial – not to mention social – sense. And as researchers become more sophisticated about precisely which interventions work and when they work best, recidivism is bound to drop further.

Arguing for an all-out attack on recidivism isn’t about going soft on crime. It’s about trying to reshape lives…Illinois knows how to build prisons. This state is less successful at repairing convicts’ lives and discouraging future offenses….”
APPENDIX C

Resumes of the Study Team:

Charles Edelstein
Ernest Friesen
Richard Hoffman
Caroline S. Cooper
Joseph A. Trotter, Jr.
Charles D. Edelstein

Present Occupation: Senior Court Management Consultant County and Acting Circuit Judge (Ret.)

Most Recent Past Occupation: Assistant Court Administrator, Eleventh Judicial Circuit of Florida.

EDUCATION:
- Mediation Certification Training Duke University, Private Adjudication Center, Durham NC, 1998
- The Institute for Court Management, Denver, Colorado; Executive Development Program, Certification, 1972
- University of Florida, School of Law, Gainesville, FL. J.D. 1963.
- Rutgers University School of Law, Newark, N. J. 1960-1961.

SUMMARY OF FULL-TIME POSITIONS HELD IN CHRONOLOGICAL ORDER

March 1998 to date
Senior Court Management Consultant
Representative clients, Projects: Eleventh Judicial Circuit of Florida, Office of the Inspector General, Miami Maricopa County AZ Public Defender's Office, Montgomery County MD Circuit Court Family Division

July 1993-February 1998
Assistant Court Administrator, Eleventh Judicial Circuit of Florida

January, 1992
General Master, Family Division, Eleventh Judicial Circuit of Florida

June, 993

June, 1990
Consultant to the Chief Judge, Circuit Judge,

January, 1992
[Senior Status] Eleventh Judicial Circuit of Florida

1989-1990
Director of the Trial Program, University of Miami School of Law, Miami, FL.

August, 1979
County Court and Acting Circuit Court Judge of
February, 1987 the Eleventh Judicial Circuit, Miami, FL.

August, 1977 Assistant Professor, Community Service Division
August, 1979 (Criminal Justice and Health Administration)
Florida Atlantic University, Boca Raton, FL

August, 1975 Director of the Judicial Administration Program,
August, 1977 University of Southern August, California, Los Angeles, CA.

August, 1970 Associate Professor of Criminal Justice, Miami-
August, 1975 Dade Community College, Miami, FL.

Summer, 1973 Assistant Dean, The Institute for Management (on
leave), Denver, CO.

January, 1970 Director, Automated Case Disposition Reporting
June, 1971 Project for Florida Criminal Justice Planning
Agency, Tallahassee/Miami, FL.

April, 1965 Assistant State Attorney, Miami, FL
February, 1970

September, 1964 Law Clerk, Edelstein & Edelstein, Attorneys at
April, 1965 Law, Asbury Park, N.J.
August, 1963 Research Aide Judge Charles A. Carroll Third
August, 1964 District Court of Appeal, Miami, FL.

EMPLOYMENT HISTORY IN DETAIL BY CATEGORY:

**Judicial**


Law Practice


Teaching

University of Miami School of Law, Miami, Florida. Adjunct Professor, Juvenile Law Seminar. 1989 - date; Director of the Trial Program. 1988-1989; Adjunct Professor, Trial Program 1984 -1988; Adjunct Professor, Trial Advocacy Program for Foreign Lawyers. 1985 - 1987.

University of Southern California, Los Angeles, California. Adjunct Professor, Criminal and Juvenile Courts, Judicial Administration Program, University of Southern California, 1978 date. Delinquency Control Institute, Lecturer, American Constitutional Government, the Role of the Court. 1978 - date. United States Air Force Security Officers Program Lecturer. 1982 -1986.

University of Southern California, Director, Judicial Administration Program. 1975-1977.


University of Miami Paralegal Program. Lecturer, Advanced Criminal Procedure. 1984.


Florida Atlantic University, Boca Raton, Florida. Assistant Professor, Criminal Procedure, Narcotics and Dangerous Drugs, Criminal Justice and the Community, Legal Aspects of Health Care Delivery, Seminar in Judicial Administration. 1977 - 1979.

Miami-Dade Community College, Miami, Florida. Associate Professor of Criminal Justice, Substantive and Procedural Criminal Law, Narcotics and Dangerous Drugs, Introduction to Criminal Justice, Psychology for Criminal Justice Personnel,


Florida International University. Adjunct Professor of Health Administration. 1972 – 1973


University of Miami, School of Law, Project Director and Instructor, Law student Intern Program. 1971-1972.

Consulting:


Circuit Court for Montgomery County Maryland, Family Division Study, under contract with the American University Justice Programs Office, September 1997 - May 1998

Circuit Court, Upper Marlboro, Maryland, Family Division Study, under contract with the American University Justice Programs Office, April-May, 1998

Clark County Nevada, Eight Judicial District Court, Family Division Study with Dan L. Wiley and Associates, summer, 1997.


Court of Common Pleas of Allegheny County Pa, Case Assignment and Case-flow Management Study under contract with the American University Justice Programs Office, funded by the U.S. Department of Justice. October-Nov. 1995.


Jail Overcrowding/Judicial Caseload Overload, for LaCrosse, Wisconsin under contract with the U.S. Department of Justice, National Institute for Corrections. May-June, 1993


Assessment of Felony Case Processing In Cook County, and its Impact on Jail Crowding. (Chicago), Illinois April-November 1989.

Case Assignment Study, District Court, Mineola, N.Y. Spring, 1989, under contract with EMT [a non-profit, federally funded project]


Jail Overcrowding and Pre-trial Detention Project, (Project Director), Dade County, Florida. 1978 - 1979.

Feasibility study, Graduate Program in Court Administration for the Office of the Vice President, Florida International University, 1977.

Evaluation of Dade County Corrections and Rehabilitation Department Correctional Officer Training Program, 1977.


Consultant to the Dade County Pretrial Intervention Program, 1972.

Study of the Los Angeles Dependency Justice System for the Consultant to the Dade County Pretrial Release Program, 1972

**Boards/Committees:**


Supreme Court of Florida, Technology Commission, 1995 to date.

Family Division of the Circuit Court, Eleventh Judicial Circuit, 1993


Executive Committee, Kids Voting, (a joint project of the Dade County School Board, Dade County Department of Elections.) Summer 1991-93.


Victims Rights Committee of the Florida Bar Association.1990 to date.
Juvenile Law & Family Law Committees, Dade County Bar Association. October 1991 to date.


National Pretrial Reporting Program, Washington, D.C.; Advisory Board. 1989 to date.


Battered Spouse Committee of Dade County Chapter of the Florida Association of Women Lawyers, (co-chairperson), Miami, Florida. 1984-1986.


Committees at the University of Southern California: Public Policy Research Institute, Justice Committee, Legal Studies, 1975-1977.

Federal District Court, California Bar Association Joint Local Rules Revision Committee, 1977.


Committee on Criminal Justice Training and Education, Governor's Council on Criminal Justice, Tallahassee, Florida. 19871974.

Domestic Violence Unit, Advisory Board, Dade County State Attorney’s Office, Miami, Florida. 1979.


Applicant Interview Panel, Miami Beach Police Department, 1970-1975

Other Editing/Research:


The Journal of Experimental Politics; Reviewer, 1982.

**Publications:**


Case Tracking: The Court Crier, Fall, 1977.


Florida Criminal Law, author. Metropolitan Dade County, 1972, co-author.


**Conference Papers/Workshops:**


Civil Case-flow Management, for the Conference of County Court Judges, 1984.


Citizens Participation in Criminal Justice, American Society of Public Administration Conference, 1977, Atlanta, Georgia.


Rational Planning Systems, National Court Planners Conference, 1977, Cleveland, Ohio.


**Honors/Awards:**

Metropolitan Dade County Annual Victims Service Award, 1987.

Workman Circle Man of the Year, 1984.


Ford Fellowship - Institute for Court Management Executive Development Program, 1972.

Tuition Fellowship, University of Florida School of Law, 1963.


**Professional Associations:**

Florida Bar Association, Dade County Bar Association, Florida Association of Women Lawyers, American Judicature Society, National Association for Court Administration.

**States Admitted to Practice:**

Florida (1963); New Jersey (1965).
ERNEST C. FRIESEN
3636 Dupont Street
San Diego, California 92106
(619) 224-7044

Ernest C. Friesen
Born, October 11, 1928
Married to Corieta Gibson, July 12, 1952, Four Children

Employment

Visiting Scholar, National Center for State Courts  1987-1980
Professor, California Western School of Law, 1980 - present
Dean, California Western School of Law  1980 - 1986
Dean and Professor Whittier College School of Law  1975- 1980
Professor of Judicial Administration, Senior Fulbright Scholar, University of Birmingham, Birmingham, England 1974- 1975
Executive Director, Institute for Court Management  1970- 1974
Director, Administrative Office of the United States Courts  1968- 1970
Assistant Attorney General, United States Department of Justice  1966- 1968
Assistant Deputy Attorney General, United States Department of Justice  1965- 1966
Dean National College of State Trial Judges (Now the National Judicial College)  1964- 1965
Staff Director, Joint Committee for the Effective Administration of Justice  1961- 1963
Associate and Assistant Professor, University of Cincinnati School of Law  1958- 1961
Trial Attorney, Tax Division, United States Department of Justice  1956-1958
Associate, Burke and Burke, New York City  1956-1956

Military Service

First and Second Lieutenant, U.S.M.C., Captain and Major U.S.M.C.R.

Education

Columbia University School of Law  JD  1955
Harlan Fiske Stone Scholar

University of Kansas  AB  1950
Major in Philosophy

Hutchinson (Kansas) High School
Publications

Books:

Managing the Courts, Bobbs Merrill, 1971, with Edward and Nesta Gallas.

Monographs:

Arrest to Trial in Forty-Five Days, The Whittier Justice Institute, 1978
Justice in Felony Cases, A Prescription to Control Delay

Articles:


Included in Other Publications:

World Book, Articles on Law and Courts

Recognition and Awards:

Elected to the American Law Institute, 1963.
Leadership Award, National Conference of State Trial Judges, 1964.
Award of Merit, National Association of Trial Court Administrators, 1984.
Service Award, San Diego Bar Association, 1986.
RICHARD B. HOFFMAN

2925 28th Street N.W.    Telephone: 202-667-6481
Washington, D.C. 20008    Fax: 202-234-2552
E-mail: rhoffman@erols.com

PROFESSIONAL EXPERIENCE

National Center for State Courts, Arlington VA 2002-2004

International Programs Division
Principal Court Management Consultant and Program Director

Following more than a year of independent consulting that included work in Russia, Georgia, Macedonia, Bulgaria, and the Philippines, joined the National Center for State Courts as a principal programs director in charge of Rule of Law projects in Mexico and Kosovo. Also perform on-site work on a number of projects including providing case-flow management assessments for a USAID-funded project in Mexico; planning a national court administrative office and improved case management in Bangladesh for a World Bank-funded project; and an ADB-funded project to Strengthen the Independence of the Judiciary in the Philippines, with involvement focused on judicial independence and accountability, as well as physical assets management.

The Justice Management Institute, Washington, DC
Director, Washington Office and Senior Associate 1997-2002


Justice Strategies, Washington, DC 1997
(affiliated with Court Management Associates, Lawrenceville, NJ)
Providing assistance to courts and justice systems, including court assessments conducted for the World Bank and U.S. Agency for International Development in Republics of Georgia and Armenia, and assistance to U.S. AID in developing a court administration/judicial training program in Macedonia and to Asia Foundation for improving justice system operations in Sri Lanka.


**Senior Counsel, Office of Program Assessment**

Negotiated and directed management reviews of 18 federal courts in continuing program singled out by General Accounting Office for effectively assessing Issues. Resolved $10 million procurement dispute that had delayed phone system installation in major federal courthouse for 12 years.

**Senior Long Range Planning Counsel, Long Range Planning Office**

Directed preparation of projections of workload and caseload in federal courts for the next 30 years using both historical-experience and straight-line methods Coordinated inclusion in long range plan of projections of courthouse needs of federal courts over next 30 years and directed survey of senior judges and judges eligible for senior status to determine estimated workload contributions in planning for future workload

Initiated use of strategic planning in federal courts by
- Authoring three chapters of first Long Range Plan for the Federal Courts that provided standards now used to assess budget and program proposals
- Developing and delivering series of workshops which trained more than 100 federal court managers in strategic planning
- Co-edited two planning manuals that generated plans in 10 districts.

**District of Columbia Court of Appeals, Washington, DC. Clerk of the Court**

Responsibilities included administration of all non-chambers personnel and direction of case management, budget, personnel, information systems, procurement, facilities, library, training, and security functions:

Revamped procedures and set up teams that reversed trend by cutting appeal case delay for first time in seven years.

Spearheaded development and implementation of two automated data processing system networks which reduced printing costs by 10 percent by transmitting opinions electronically and provided increased access to case status reports

Reduced transcript preparation time by 12 percent by simplifying process, reporter manual, and court rules by winning cooperation of trial court leadership.
Managed six 1 1/2-day conferences of 600 lawyers and judges.

Helped ensure passage of five budget requests by testifying before Senate and House Appropriations subcommittees and D.C. Council and preparing chief judges' testimony.

**Chief Deputy Clerk**

Speeded decision of motions and cases by reorganizing law clerks and adding staff attorneys to establish central legal staff.  
Boosted staff morale and accountability by developing performance evaluation system for court and helping to redraft court system personnel manual.  
Improved court's ability to process cases more efficiently and fairly by drafting new set of appellate rules as secretary to rules committee.

**United States Department of Justice, Washington, D.C.**

**Trial Attorney**, Executive Office for U.S. Trustees  
Assured preservation of debtor's cattle herd by representing U.S. Trustee in Bankruptcy Court.

Sought to protect debtors' rights in bankruptcy by preparing draft of Supreme Court brief for *us. v. Security Industrial Bank*, 459 U.S. 70 (1982)

**Attorney-Advisor**, Office for Improvements in Administration of Justice  
Spurred recognition of clearer view of what functions courts should be performing by directing preparation and writing sections of first draft of *Report of the Council on the Role of Courts*.

**National Center for State Courts, Williamsburg, VA**

**Senior Staff Attorney**, Boston, New York, and Washington offices  
Launched implementation of unified Vermont state court system by study and report providing step-by-step process.  
Generated consensus criminal justice standards and goals for New Hampshire courts, through county and state-level meetings of justice system leaders.  
Enabled New York State Legislature to review judicial budgets, set court fees and fines, and address town and village justice court operations with manual, options papers, and reports.  
Edited survey report of U.S. state court planning and served as deputy director of national project to implement strategic planning in state courts.


**EDUCATION**

J.D., Harvard University  
B.S., Cornell University, industrial & labor relations  
Fellow, Institute for Court Management

**PROFESSIONAL ORGANIZATIONS AND AFFILIATIONS**

American Bar Association:  
Member, Select Appellate Delay Reduction Committee  
Council of Appellate Staff Attorneys, National Chair  
George Washington American Inn of Court, vice-president, 2000  
Institute for Court Management, Advisory Council  
National Conference of Appellate Court Clerks, Treasurer  
Association of the Bar of the City of New York: outlined plan for court merger as member of Committee on Courts of Superior Jurisdiction  
Bar admissions: New York, Massachusetts, District of Columbia; U.S. Supreme Court; other federal courts: D.C. and Second Circuits, N.Y. (S. & E. Dists.), Mass., D.C., and Texas (N. D.)

Certified for selection as federal court circuit executive by U.S. Board of Certification

**AWARDS**

First prize in paper competition, *The Last Frontier Optimizing Court Management Despite Legal Academe*, Third Nat'l Symposium on Court management, Atlanta, Ga., August 2000  
Administrative Office Sustained Superior Performance Award and two Group A wards

**SELECTED PUBLICATIONS**


Improving Case-flow Management in the Fulton County Superior Court (with Barry Mahoney), The Justice Management Institute, January 2000.


Report of the Lithuania Court Assessment Team (with Frank Q. Nebeker and Jesse Casaus), February 1993, ABA Central and East European Legal Initiative

Beyond the Team: Renegotiating the Judge-Administrator Partnership, 15 JUSTICE SYSTEM JOURNAL 652 (1991)

The D.C. Court of Appeals: A Practical Guide to the New Rules (with Richard Nettler), 9 DISTRICT LAWYER no. 5 (1985)

The Bureaucratic Spectre, 66 JUDICATURE 60 (1982), appeared in part as Can the courts resist the perils of growth? in 1982 COURT MANAGEMENT JOURNAL

Court Financing: An Overview and Assessment, 7 JUSTICE SYSTEM JOURNAL 6 (1982), in special issue, Court Finances in an Age of Scarcity, which I edited

Is There a Future for the J.P. 's? paper presented at annual meeting of Law and Society Association, 1981

The Administrative Role of Chief Justices and Supreme Courts (with Robert W. Tobin), monograph, 1980, National Center for State Courts, appeared in part as How Justice System Leaders Resolve Issues, 3 STATE COURT JOURNAL 3 (Fall 1979)

SELECTED TEACHING AND CONSULTING PROJECTS

Evaluator, Urban Case-flow Management Improvement Project in five major urban trial courts, Institute for Court Management, 1991

Consultant, Illinois Appellate Automation Review, Natl. Center for State Courts, 1986 Consulting team leader, Use of Staff Attorneys in Illinois Supreme Court,
1989 Visiting lecturer, alternative dispute resolution, George Washington University
National Law Center, 1997
Visiting faculty, Institute for Court Management, Trial Court Consolidation,
Appellate Court Administration, Court Financing, Court Executive
Development Program, 1979-1994
Adjunct assistant professor, Adelphi University, Graduate School of Business
Administration, Garden City, N.Y., judicial administration, 1975-1976
Videotape: Panelist in American Judicature Society program on ethics for non
judicial court personnel, *Justice at First Hand* (1994)
Peer reviewer, drug court research and case-flow management research, 1999 and 2000,
National Institute of Justice

INTERNATIONAL PROJECTS
Consultant on National Center for State Courts USAID project in
Mexico to conduct strategic planning and to develop pilot court program to
increase orality and improve procedures in state trial courts, Mexico City, Nayarit,
2003
Consultant for World Bank project to improve case processing in High Court of
Bangladesh and to develop a national courts office, Dhaka, 2002, 2003
Consultant for Asian Development Bank project to strengthen the
judiciary through judicial independence and accountability, as well
as improved physical assets management, in Philippines, Manila,
Baguio, and Cebu, 2002
Consultant for East-West Management Institute to assist Bulgaria in
improving case management and organize a national courts
administrative office, Sofia, 2002
Consultant for World Bank project to improve legal and judicial system in
Republic of Georgia, Tbilisi, 2001, 2002
Consultant to U.S. Agency for International Development for development of court
administration/judicial training program in Macedonia, Skopje, 2001
Consultant to The Asia Foundation to design judicial improvement project in Sri
Lanka, Colombo, 2001
Consultant to assess courts and courts administrative office of Republic of Armenia
for World Bank, Yerevan, 1999
Consultant on strategic planning assistance to Council of Justice, Republic of
Georgia, for World Bank, Tbilisi, 1998
Presenter and consultant for seminar on principles of judicial administration and
independence, Council of Justice, Republic of Georgia, Tbilisi, 1997
Consulting reviewer on case-flow management in Latin America for National Center
for State Courts, 1997-1998
Legal Specialist, ABA Court Assessment Team for Judicial System of Republic of
Lithuania, including on-site visit and drafting of report, 1992
Panelist on court administration, ABA Seminar for Judges of Bosnian Constitutional
Court, Washington, D.C., 1995, and commentator on proposed statutes, 1996
1997
Interviewed officials of Lord Chancellor's Office, London, and Scottish Courts
EDUCATION:
B.A. Smith College, Northampton, Mass. (American Studies)
M.A. Howard University, Washington D.C. (History)
J.D. Washington College of Law, American University, Washington D.C.

Other: Postgraduate courses in philosophy, French and secondary school counseling at Trinity College, (Hartford, Conn); University of Hartford; University of Maryland; and University of Virginia

Member: Maryland Bar, District of Columbia Bar, U.S. District Coutts for the 4th, 5th and 11th Circuits

PROFESSIONAL EXPERIENCE:

1987 – Present: Research Professor and Associate Director, Justice Programs Office, School of Public Affairs, American University
Responsible for conducting a wide range of interdisciplinary technical assistance, training, and research activities relating to justice system improvement, many of which are undertaken through cooperative agreements with the U.S. Department of Justice, State Justice Institute, or other federal, state and local government units. In addition to contract management, responsibilities have included: directing the Bureau of Justice Assistance (BJA) Drug Court Clearinghouse, conducting the BJA Demonstration Project to Implement Civil and Criminal Differentiated Case Management, coordinating the SJI-funded Court Emergency Preparedness Planning Technical Assistance Project, and planning and coordinating the SJI-funded National Symposium on the Implementation and Operation of Drug Courts.

1982 – 1987: Partner, Trotter and Cooper, Attorneys at Law, Bethesda, Maryland
Handled all aspects of varied civil (wills and estates, domestic relations, commercial matters, etc.), criminal and juvenile law practice.

1981-1987 (part–time): Assistant Public Defender for Prince George’s and Montgomery Counties, Maryland
Handled regular assignment of preliminary hearing, misdemeanor, juvenile, and dependency case dockets for public defender offices.

1979-1982: Senior Staff Attorney, Institute for Advanced Studies in Justice, Washington College of Law, American University
Served as staff attorney on a wide range of justice system technical assistance and training projects; prepared numerous publications on justice system operations for dissemination to practitioners in the field.

1972-1979: Senior Research Associate, Institute for Advanced Studies in Justice, Washington College of Law, American University
Prepared various research and technical assistance materials dealing with court improvement
issues.

Responsible for managing small court systems consultant firm, including proposal development and research tasks related to judicial system projects

September –December 1969: Research Associate, Committee on the Administration of Justice, Washington D.C.
Assisted with research and writing of report series analyzing District of Columbia Courts

February 1966- August 1969: Secondary School faculty, District of Columbia Board of Education:
   February 1966- June 1969: Dunbar High School (Social Studies)
   Summer 1966: Langley Junior High School (French)
   Summer 1967, 1968: Cardozo High School (Social Studies)

SPECIAL AWARDS:

National Association of Trial Court Administrators, 1979
   - For outstanding contribution to education and training program of annual conference
Bethesda-Chevy Chase YMCA, 1980
   - For outstanding service to the community
National Association of State Judicial Educators, 1980
   - For outstanding contribution to development of judicial education in the U.S.
Law Enforcement Assistance Administration, 1982
   - Recognition of outstanding performance and dedication in providing technical assistance to state, county and municipal courts: 1972-1982
National Conference of Metropolitan Courts. 1990
   - Certificate of appreciation for exemplary service to the National Conference of Metropolitan Courts and to the field of judicial administration and the twenty-sixth annual conference program
School of Public Affairs, American University, 1996.
   - Recognition Award for Outstanding Service to the University Community
National Association of Detoxification Acupuncture (NADA), 1999
   - Recognition of outstanding service, vision and leadership
New York Association of Drug Court Professionals, 2001
   - Special recognition award in appreciation of outstanding service and contribution to the Association
Michigan Association of Drug Court Professionals, February 2005
   - Special recognition for consistent and generous support for development of drug treatment courts in Michigan
National Association of Drug Court Professionals, June 2005
   - Stanley M. Goldstein Award for preeminent contribution to the Drug Court Field

PERSONAL

Married to Howard S. Cooper
Children: Jennifer, David and Sarah


Caroline S. Cooper and Joel Bennett. Assessment of the Operations of the Hinds County, Mississippi Drug Court Program. School of Public Affairs, American University. April 2003.


Caroline S. Cooper. *Analysis of Continuance Requests and Recommendations to Establish a Baseline for Assessing the Impact of the Civil DCM System in the Baltimore City Circuit Court*. March 1996.

Caroline S. Cooper. *Survey of Baltimore City Attorneys re Issues to be Addressed by the Prospective Civil DCM System*. August 1994.


Suzanne Alliegro, Beverly Bright, John Chacko, Caroline Cooper, George Gish, David Lawrence, Jim Rutigliano and Linda Torkelsen. "Beyond Delay Reduction: Using Differentiated Case Management". *The Court Manager*, Winter, Spring and Summer, 1993. (three article series)


**SELECTED RECENT PRESENTATIONS**


Middle Eastern-Mediterranean Summer Institute on Drug Use. Pavia, Italy. May 2002.


Resume

JOSEPH A. TROTTER, JR.

EDUCATION

J.D. Washington College of Law, American University, Washington, D.C., 1972
B.S.F.S. School of Foreign Service, Georgetown University, Washington, D.C., 1964

EXPERIENCE

The American University
School of Public Affairs
Washington, D.C.
June 1989 -- Present

Research Professor and Director, Justice Programs Office. Mr. Trotter directs the Justice Programs Office of the School of Public Affairs at The American University. In this capacity he is primarily responsible for the development and implementation of an interdisciplinary program of technical assistance, professional training and research on criminal justice, judicial administration and judicial system interagency issues. He also serves as the Principal Investigator/Project Director of the national-scope Courts Technical Assistance Program which The American University conducts under cooperative agreements with the Bureau of Justice Assistance of the U.S. Department of Justice and the State Justice Institute. The office provides on-site professional technical assistance and training services to state and local courts, prosecutor offices, public defender agencies, departments of correction, and law enforcement agencies.

EMT Group, Inc.
Washington, D.C.
January 1989 -- June 1989

Project Director. Mr. Trotter directed the Washington office of this Sacramento, California - based management consulting firm and served as the Director of the national-scope Adjudication Technical Assistance Project (a court system-oriented technical assistance and training project), which was conducted by EMT under a cooperative agreement with Bureau of Justice Assistance (BJA), U.S. Department of Justice, prior to BJA’s award of the project to The American University.

U.S. Department of Justice
National Institute of Corrections
Boulder, CO
January 1982 – Present
Consultant. Mr. Trotter serves as consultant for the National Institute of Corrections Jail Center in the area of jail overcrowding, working on-site with local jurisdictions (sheriffs, jail administrators, judges and prosecutors) in determining causes of overcrowding and means to alleviate this problem.

Trotter & Cooper
Bethesda, MD
August 1982 -- Present

Attorney. As a partner in a general practice law in the Washington, D.C. area, Mr. Trotter represent clients in a wide range of civil, criminal and juvenile court matters. From 1982-86 Mr. Trotter also served as an assistant public defender in the Prince George’s County and Montgomery County, Maryland, Circuits. Mr. Trotter has taken a leave of absence from his firm to direct the American University Courts Technical Assistance Program.

The American University
Washington College of Law
Institute for Advanced Studies in Justice
Washington, D.C.
January 1971 -- July 1982

Mr. Trotter supervised a multi-project interdisciplinary research staff. He developed curriculum for educational and training endeavors. He represented the Institute, Law School and University in negotiations before federal and state government and private sector research sponsors. He developed Institute research and publication schedules, budgets, and specific proposals for justice projects, and served as principal investigator for the Criminal Courts Technical Assistance Project of the Institute. He also develop the curriculum for and taught a graduate level seminar on “Critical Issues in Judicial Administration” in the University’s College of Public and International Affairs (1981-1983).

Director, Courts Technical Assistance Project. July 1972 -- May 1982. Mr. Trotter administered a $4 million Department of Justice-funded program to improve functioning of the criminal justice system nationwide through assistance to state courts. He directed national program staff and expert consultants in research and publication efforts, training and technical assistance for state trial and appellate courts, prosecutors’ offices, defender organizations, and state and local government planning agencies. He provided direct technical assistance and training to criminal justice system components described above. He planned and implemented national scope studies on the judicial process and intergovernmental relations at the request of the Law Enforcement Assistance
Administration. He maintained liaison with federal and state judicial conferences and national court service and professional organizations.

Senior Staff Associate. February 1971 -- July 1972. Mr. Trotter served as assistant to the Director and supervised and conducted criminal justice research.

National Committee for Children and Youth
Washington, D.C.
1967 – 1971

Deputy Project Director. Mr. Trotter was responsible for program planning, development and documentation of youth-oriented rehabilitation programs receiving federal government support; provided technical assistance to local boards of trade, National Alliance of Business chapters, mayors’ offices, civic groups, and criminal justice agencies regarding development and implementation of youthful offender rehabilitation programs.

Agency for International Development
U.S. Department of State
Washington, D.C.
1965 – 1967

Foreign Service Reserve Officer. Mr. Trotter served in South Vietnam as a liaison officer between the U.S. Mission and third-county civilian technical advisory teams providing assistance to the South Vietnamese Government.

George Washington University
Office of Sponsored Research
Washington, D.C.
1964 – 1965

Junior Analyst, FIELS Project. Mr. Trotter was responsible for research and writing of public health-oriented foreign area studies; served as liaison for senior analysts to U.S., foreign government, and international organization information sources for socio-economic data on foreign countries.

U.S. Department of Health, Education & Welfare
Office of the Secretary
International Surveys Staff
Washington, D.C.
1963 – 1964

Student Intern. Mr. Trotter maintained an international reference library of socio-economic information; provided research assistance to staff analysts; conducted
independent research; acted as liaison with foreign embassies and other U.S. agencies for information exchange in the social sciences field.

HONORS AND AWARDS

Appointed Co-editor of the 1995 revision of the seventh edition of The Improvement of the Administration of Justice, the central publication of the Judicial Administration Division of the American Bar Association (1995-1996).

Member of the Standing Committee on National Standards for Judicial Education of the National Association of State Judicial Educators, 1992 - Present.


Member of various national Advisory Committees dealing with indigent defense services, jail overcrowding, court delay reduction, judicial education, correctional system reform, and court-community relations, 1972 - Present.


Program Chairman, Judicial Administration Division Program, 1983 Annual Meeting of the American Bar Association.

Executive Committee of the JAD Lawyer’s Conference, 1982 - 1986.

Distinguished Service Award from the Law Enforcement Assistance Administration, U.S. Department of Justice, for contributions to state court reform, 1982.

Distinguished Service Award from the National Association of State Judicial Educators for contributions to judicial education, 1981.

Knights of Columbus Scholarship to Georgetown University School of Foreign Service, 1960-1964.

PROFESSIONAL MEMBERSHIPS

Maryland Court of Appeals
US Court of Military Appeals
US Courts of Appeals for the 4th, 5th and 11th Circuits
US District Court for the District of Maryland
American Bar Association, Judicial Administration Division
American Judicature Society
National Association of State Judicial Educators
National Association for Court Management
National District Attorneys Association
National Legal Aid and Defender Association

PUBLICATIONS


Management Audit of the Kalamazoo County Sheriff’s Department. Jerry V. Wilson, Nate Caldwell, Joseph A. Trotter, Jr., Esq., Caroline S. Cooper, Esq. Honorable Gary R. Haines, and Honorable James R. Metts. The American University, September 1996.


Drug Case Management Treatment and Intervention Strategies in State and Local Courts, Vol. II. Caroline S. Cooper and Joseph A. Trotter, Jr.. American University, September 1994.


