BJA Criminal Courts Technical Assistance Project: TA Report No. 5-148

Criminal Caseflow Practices and Provision of Indigent Defense Services in the 23rd Circuit and District Courts in Madison County (Huntsville), Alabama

Problem Definition Visit Report

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INTRODUCTION

A. Study Background

In April 2009, Callie T. Dietz, the Administrative Director of Courts for the Alabama Administrative Office of Courts (AOC) made an initial request for technical assistance to the Bureau of Justice Assistance (BJA)/U.S. Department of Justice-sponsored Criminal Courts Technical Assistance Project (CCTAP) at American University in Washington, D.C. for selected trial courts in Alabama. Following a consultation with the AOC through Eric Anderson and Cary McMillan of the AOC’s Case & Jury Management Team, circuits that might benefit from such assistance were identified.

As a result, in June 2010, Presiding Judge Karen K. Hall, Presiding Judge of the 23rd Circuit Court in Madison County (Huntsville), Alabama submitted a request for technical assistance to the Bureau of Justice Assistance (BJA)/U.S. Department of Justice-sponsored Criminal Courts Technical Assistance Project (CCTAP) at American University in Washington, D.C. The focus of Judge Hall’s request was for a review of the criminal case process in light of the circuit’s high criminal caseload, increasing costs for indigent defense services, and increasing difficulty in keeping pace with the ever increasing caseload. To determine the nature and focus of technical assistance needed to respond adequately to Judge Hall’s request, the CCTAP conducted a “problem definition” visit to Madison County on August 25-27, 2010. The CCTAP assigned two consultants to conduct this visit: Richard B. Hoffman, an experienced court administrator and consultant, and Judge John T. Parnham (Ret.), formerly Chief Judge of the First Circuit Court in Pensacola, Florida, both of whom have been actively involved with the CCTAP’s caseflow management initiatives.

The following report summarizes the observations resulting from this visit and review of pertinent information relevant to the criminal caseflow process in Madison County, recommendations for follow-up technical assistance services by the CCTAP, and the discussions at the March 2, 2011 meeting of the new Criminal Justice Coordinating Council that had been formed to improve coordination among criminal the criminal justice components in Madison County and to make the caseflow process more efficient.

B. Study Approach And Site Schedule

In addition to determining the nature and focus of technical assistance needed to address the issues raised in Judge Hall’s request, the “problem definition” visit was also designed to develop a preliminary snapshot of the case process in the 23rd Judicial Circuit and District courts, obtain case processing-relevant information available as well as identify additional information that was needed to be compiled and issues that needed to be addressed in order to adequately respond to Judge Hall’s request for technical assistance.

During the site visit, the consultants and AOC representatives Eric Anderson and Cary McMillan met with the following individuals:
During the site visit, the consultants also reviewed statistical data provided by the court to the Alabama Administrative Office of the Courts (AOC) and statistical reports produced by the AOC for Madison County. Court Administrator Bullard, who is located in the office of Circuit Clerk Smith, provided a copy of the 2009 Annual Report for the 23rd Judicial Circuit, which she had prepared. The court also provided a copy of the judges’ calendar week schedules for 2010.

This memorandum serves as the report of the consultants’ observations and recommendations resulting from the visit and provides a brief summary of the existing situation in the 23rd Judicial District relevant to case processing, the subsequent tasks that need to be addressed to respond adequately to Judge Hall’s technical assistance request, and a suggested action plan with which the CCTAP is prepared to assist in implementing.
II. ANALYSIS OF THE EXISTING SITUATION

A. Background

The 23rd Judicial Circuit Court is a single-county court of general jurisdiction that has a total of six judges. A seventh judge is to assume the bench next January 2011. There are four judges in the District Court, the court of limited jurisdiction in which criminal proceedings commence. The courts’ jurisdiction covers Madison County, of which Huntsville is the county seat. The courts are largely self-administered by the judges, who are subject to the statewide supervision of the Chief Justice of the Alabama Supreme Court and the Administrative Director of Courts. An elected Circuit Clerk, in whose office the Court Administrator is located, also provides assistance to the courts.

For many years, the court’s ability to dispose of its caseload efficiently has ostensibly been limited by the absence of either contract attorneys or an indigent defense office, and the use instead of attorneys appointed individually by the judges to represent indigent defendants. Other factors relating to criminal case processing practices, however, may likely play a role in the increasing delays and backlog that have developed, as further discussed in this report.

Until this year, the Circuit Court had maintained a clearance rate in criminal cases that exceeded 100 percent. Clearance rates refer to the extent to which a court disposes of cases in equal quantity to the cases being filed: thus, if the clearance rate is 100 percent, the court is disposing of exactly as many cases as are filed in the specified period, e.g., one year. In 2009 for the first time, the total number of criminal case filings exceeded dispositions. Pressure on the sitting judges had already increased, however, owing to several special factors:

- One active Circuit judge retired and another was named to take his place, necessitating a transition;
- One active Circuit judge who had been only hearing family cases now will have a mixed docket, including criminal cases; and
- One active Circuit judge restricted his caseload during the year to only civil cases, requiring another judge to assume his active criminal caseload.
Despite these special limiting factors, two of the active Circuit Court judges were able to exceed 100 percent clearance.

As noted above, in August 2010, technical assistance was requested from BJA’s CCTAP Project by Judge Karen K. Hall, the current Presiding Judge of the 23rd Judicial Circuit Court, to (1) review the criminal case process in the 23rd Judicial Circuit and, specifically, (2) identify areas for potential improvements and efficiencies and (3) determine the resources needed to process the burgeoning caseload and to provide adequate indigent defense services.

B. The Current Criminal Process

The standard criminal case processing track in Madison County, Alabama, begins with issuance of a warrant by Lee Leggett, an officer employed by the Circuit Clerk. Bond is set by provision of the warrant. Those arrested within the City of Huntsville are brought before a similarly-designated magistrate, Randy Ferguson, by whom bond is then set. For arrestees who are unable to make bond, an initial appearance is conducted. Additionally, those who cannot make bond have a formal court appearance called a *felony examination* within a few days after arrest but within 30 days. At this “status conference,” the District Judge reads the charges, explains their consequences, and accepts an Affidavit of Substantial Hardship. Counsel is then appointed by the judge and applications for bond review are heard. There are no set panels for appointment of
counsel in criminal indigency cases and each judge appoints counsel in his or her own discretion. There are no contract defense attorneys or public defender, and counsel is appointed on an indigency basis in approximately 80 percent of the cases.

Misdemeanors are set for trial before the District Judges on a random assignment rotation basis by the Clerk’s Office, which prepares the calendars for each judge. Misdemeanors appear on Arraignment Calendars after thirty days from arrest. Trial is usually set later by notice and generally occurs within three to six months from the case appearing on the Arraignment Docket. For felony cases, a preliminary hearing may be demanded within 30 days of arrest. Preliminary hearings are conducted by District Judges and are relatively frequent: the District Attorney generally provides available discovery at the hearing but the hearing itself remains a major source of further discovery for defense counsel.

Felonies are then brought before the grand jury by the District Attorney’s office. Some cases are sifted out by the grand jury—a ratio of 500 true bills to 100 not indicted was reported from a recent term. Cases may take from four to eight months or more to proceed to the grand jury. When indicted, they are assigned randomly to one of the Circuit Judges hearing criminal cases. It is expected that the additional Circuit Judge to begin service in January 2011 will hear only criminal cases. Each Circuit Judge sets his or her own criminal calendar—a task normally managed on the judge’s behalf by each judge’s Judicial Assistant.

Most Circuit Judges call their criminal calendars late in the week prior to a Jury Trial Week—usually on Wednesday or Thursday. At this call, the judge determines whether the case is ready and whether it will plead out. If ready, it will be set for trial the following week, regardless of whether it will actually require a jury. If it is not reached then, it will be put over to the next jury trial week or, in some chambers, specially set for a date certain. During these calls, much time is expended rounding up lawyers present in the courthouse but doing business in other courtrooms or in the hallways. Many cases do not plead out at the call—as only then do counsel often review their file—but many plead out on the day of trial. There appears to be little contact between prosecutors and defense counsel until this call occurs late in the week before trial. Judges believe more cases could be completed more rapidly if a retired judge with a court reporter were available immediately on call days to take pleas. The judges also would like a roving court reporter to back up regular reporters as well as serve the judge taking pleas.

A court calendar is prepared annually that schedules the judges’ time among civil and criminal jury weeks, nonjury dockets, domestic relations, and service as presiding judge. Judges hold between 12 and 15 criminal jury weeks annually.

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1 As discussed infra, however, although the need for a court reporter for the taking of pleas was frequently raised by judges, it appears this is unnecessary, given the shortage of reporters and the ability to employ a recording device, in accordance with Ala. Code § 15-15-20.1 et seq.

Table 1. Madison County (23rd Cir.) Criminal Case Filings and Dispositions

<table>
<thead>
<tr>
<th></th>
<th>Filings</th>
<th>Change</th>
<th>%Change</th>
<th>Dispositions</th>
<th>Change</th>
<th>%Change</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2009: Criminal</strong></td>
<td>10,738</td>
<td>1,639</td>
<td>18%</td>
<td>10,441</td>
<td>1,089</td>
<td>12%</td>
</tr>
<tr>
<td><em>Felony</em></td>
<td>4,536</td>
<td>769</td>
<td>20%</td>
<td>4,639</td>
<td>433</td>
<td>10%</td>
</tr>
<tr>
<td><em>Other</em></td>
<td>6,202</td>
<td>870</td>
<td>16%</td>
<td>5,802</td>
<td>656</td>
<td>13%</td>
</tr>
<tr>
<td><strong>2008: Criminal</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Felony</em></td>
<td>3,767</td>
<td></td>
<td></td>
<td>4,206</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Other</em></td>
<td>5,332</td>
<td></td>
<td></td>
<td>5,146</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Table 2. Madison County (23rd Cir.)—Pending Criminal Caseload, August 2010

<table>
<thead>
<tr>
<th></th>
<th>9 Months or Less</th>
<th>12 Months or Less</th>
<th>More Than 12</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Circuit Criminal</strong></td>
<td>4,012</td>
<td>4,651</td>
<td>1,026</td>
</tr>
<tr>
<td><em>Capital</em></td>
<td>4</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td><em>Felony</em></td>
<td>1,866</td>
<td>2,210</td>
<td>502</td>
</tr>
<tr>
<td><em>Other</em></td>
<td>2,142</td>
<td>2,433</td>
<td>519</td>
</tr>
<tr>
<td><strong>District Criminal</strong></td>
<td>1,878</td>
<td>2,070</td>
<td>1,502</td>
</tr>
<tr>
<td><em>Criminal</em></td>
<td>4,012</td>
<td>4,651</td>
<td>1,026</td>
</tr>
</tbody>
</table>

Source: Alabama Administrative Office of the Courts

The above statistics indicate that the courts are slowly being caught up in the rising tide of caseload. More cases are filed and not all categories are being disposed of at the same rate at which they are being received. The comparatively low percentage of cases completed at the District Court level within one year confirms that these presumably easier cases are being held up by a process that does not affirmatively seek to dispose of simple cases quickly so as to free up court time to focus as much time as needed on the smaller number of complex cases.

C. Observations On The Current Process

The current criminal case process in Madison County is rear-loaded, that is, little of significance occurs during the great part of the life of the case to move a case toward disposition. While some judges and a few prosecutors appear to engage in some screening to weed out easier cases earlier, their efforts are apparently exceptions to the general practice. Moreover, defense counsel clearly perceive no gain for their clients or themselves in trying to speed up the processing of a case. Since the lawyers bill by the hour for their appearances, the opposite incentive—to keep the case going—operates. Some other problems presented by the current criminal process include the following:

- Criminal case filings have gradually risen over the years, so that now both courts are beginning to fall behind in their ability to keep pace with them;
- There is no panel system to qualify counsel for appointment in the 80 percent of criminal cases that involve indigent defendants—and the present ability of each

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2 Pending time is calculated from the filing of the case in the Clerk’s Office.

judge to appoint independently has resulted in a few lawyers receiving huge amounts of income from this work;

- Each judge handles his or her caseload in a somewhat different manner—without using much that could be described as caseflow management—and cases take a long time to proceed from initiation to disposition in the court as a whole.
- The immense number of cases set on the Circuit Judges’ calendars soon after arraignment means that few will be reached soon; therefore, the court is liberal in granting continuances. This practice runs counter to all standard principles of good caseflow management, which emphasize that any court appearance should be a meaningful one, be scheduled at a time when the parties are prepared, and that there should be the expectation that cases so scheduled will be heard.
- Defendants whose cases are delayed expect that this practice improves their prospects for more favorable dispositions as their cases age—this works against the interests of the system, as compared with other jurisdictions, where early informed evaluation of the likely outcomes of cases and the local going rate for sentencing promotes efficiency through earlier case disposition.
- Already overscheduled Circuit Court sessions and some District Court courtrooms become backed up with routine matters such as the taking of pleas that the judges and staff recognize could well be handled by retired judges if some technical issues, including the need for a court reporter, are resolved.

Because there is no pretrial services agency, judges receive little information about defendants on which to base release decisions, leading to jail overcrowding. In effect, bail bondsmen determine release prospects. Court reporters also weigh in politically at the state level, resisting efforts to waive the requirement that a reporter record any plea taken. The only counter pressure—to the bondsmen—is the sheriff’s interest in easing jail overcrowding.

Although there is available court data on the caseload in the 23rd Circuit, there is significant need for better communication of and coordination of the use of available information. For example, there reportedly is no effective interface between the Court’s information system and the jail system maintained by the Sheriff. This makes it extremely cumbersome for the Court to maintain effective review of the number and identity of jail cases, that is, cases involving incarcerated defendants, which are given preference in scheduling because of the defendant’s incarcerated status and the need to reduce jail overcrowding. It was also suggested to us that some communication and collaboration with the Administrative Office of the Courts is needed to obtain court data from that office for use in the planned integrated information system.

Each judge operates his or her own courtroom independently, virtually as a separate court. After a time when one judge heard only, and virtually all, family cases, and another was only hearing civil cases, the Circuit Judges have determined that shortly all six judges will hear civil, criminal, and family matters. The added seventh judge will hear only criminal cases. The prospect of dividing the court into civil, criminal, and family divisions appears to be controversial and might not now make much difference. At present, almost all of the judges will ostensibly be able to devote significant time to criminal cases. Unless the basic scheduling and case management process is revised, creating court divisions would likely make little difference in productivity.

As discussed further in this report, case management practices in the court are outdated and inadequate; the court has not set case processing goals; and there is little ability to specify who is accountable for what or the nature of performance expected of the court and the agencies involved in the judicial process. It should be noted that time standards for trial courts have been adopted by the Alabama Supreme Court and that caseload information and statistics are readily available to the judges and staff through the AlacourtPlus system. This information is available to the court administrator from the AOC’s Court & Jury Management Team.

D. Previous Improvement Efforts

The major previous program to dispose of eligible cases earlier was the Pre-Indictment Resolution Docket (PIRD) (offering the opportunity for “pleas on information”) which was used on a trial basis approximately one year previous to the site visit. The program may have failed to produce the results anticipated because of insufficient preparation and planning on the part of all those involved. Reportedly, the prosecutors limited the number of cases, while defense counsel did not adequately review their cases, and judges’ staff involved found the process difficult to manage.

Although the District Attorney has indicated that a major focus on early case screening is unlikely to occur because of limited available staff, he appears interested in reexamining the PIRD program to determine whether it can be better designed to serve the intended purpose of securing earlier pleas. The Circuit Clerk also supports disposition of more criminal cases earlier, especially when these are at the District Court level, i.e., pre-indictment.

Properly planned, the Pre-Indictment Resolution Program can likely be made to operate effectively. The following steps are suggested to precede its re-introduction into the criminal case process, which can be further addressed through follow-up CCTAP assistance:

- **Organization of a regularly-scheduled Criminal Justice Coordinating Council for Madison County.** The operation of the justice system in the Circuit will benefit from organization of a Criminal Justice Coordinating Council, initiated and chaired by the Presiding Judge of the Circuit Court, and including the District Attorney, the Circuit Clerk, the Sheriff, the chair of the criminal defense bar association and the chair of the indigent defense commission. This group will provide a useful and regularly-scheduled forum for discussion of important issues facing the justice system in Madison County. Some of these officials have already been meeting together, especially with regard to developing a criminal justice information integration project.

- **Major screening review of pending cases at entry by the District Attorney’s Office.** For the process to function effectively, the District Attorney should select a start date to conduct screening of cases upon receipt. This will avoid the need to go back and look at cases already further along in the process. But only through this early screening will the appropriate cases be discovered at a time early enough to result in savings to all participants.
• **Provision of discovery to defense counsel at the earliest possible time.** This will enable defense counsel to be ready to discuss pleas intelligently with prosecutors. It will also diminish the perceived need of defense counsel to employ prolonged preliminary hearings for this purpose.

• **Sponsorship of the court.** The Circuit Court should take the leadership role in working closely with the other participants in setting up calendars to implement this process. The District Judges should also be involved, in that provision should be made for them to handle the calendars in the first instance and to enable them to take pleas or, alternatively, make special provision for the pleas to be recorded specially. The need for a court reporter was frequently raised by judges, but it appears this is unnecessary, given the shortage of reporters and the ability to employ a recording device, in accordance with Ala. Code § 15-15-20.1 *et seq.*
III. RECOMMENDATIONS FOR FOLLOW-UP TECHNICAL ASSISTANCE

It is recommended that the follow up CCTAP services focus on working with local judicial system officials to develop a plan to implement a system of caseflow management that can draw on accepted caseflow management principles and practices to improve both the timeframe and efficiency of the criminal case process in the 23rd Judicial Circuit. There are a range of institutions and practices that are found in the most effective court systems in the U.S. and elsewhere which can provide a foundation for this effort. Some of these include:

- Integrated information system to provide needed information for judges, lawyers, and staff;
- Both prosecutors and defense counsel are identified at the earliest point possible in a case, so that cases which can readily be disposed of at an early date are reviewed and appropriately treated;
- Caseflow management practices—including continuance control, early screening, not scheduling trial dates too far in advance, and meaningful in-court events—assure most efficient use of scarce courtroom resources, including judge time;
- A pretrial services office gathers information for judges to use in determining bail or release conditions;
- If the system does not have a public defender office, appointed counsel are selected from a panel or panels established for felony, misdemeanor, and lesser violations, respectively, or a smaller group of attorneys are retained on contract and regularly assigned to designated judges or courtrooms, and some assessment is made when a lawyer applies to be either a contract attorney or on a panel of his or her training and experience; and
- The Prosecutor assigns a senior prosecutor to screen all cases as these arrive in the office, so that likely diversion cases can be identified as soon as possible and cases likely to be candidates for early disposition of some kind—whether no papering, *nolle prosequi,* or plea—can be split off from cases that will have to proceed through the system.

Research in caseflow management since the 1970s has confirmed that courts in which the judges take control of cases early and effectively produce the best qualitative and quantitative results. The box below lists what have been described as the ten key elements of good caseflow management:

<table>
<thead>
<tr>
<th>ESSENTIAL ELEMENTS OF CASEFLOW MANAGEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Leadership</td>
</tr>
<tr>
<td>2. Goals</td>
</tr>
<tr>
<td>3. Information</td>
</tr>
<tr>
<td>4. Communications</td>
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Based on these elements, and the other precepts of modern court management, the consultants’ initial assessment is that there are several general areas in which the follow up technical assistance would benefit the court. These are:

_Criminal Caseflow Practices and Provision of Indigent Defense Services in the 23rd Circuit and District Courts in Madison County (Huntsville), Alabama. Problem Definition Visit Report. (BJA CCTAP Assignment No. 5-148). March 30, 2011._
(1) Development of a comprehensive caseflow management plan, using DCM (Differentiated Case Management) principles, with appropriate policies and practices, to promote the efficient caseflow process in the future—in Madison County, this should include re-introduction of the Pre-Indictment Resolution Docket;
(2) Assistance in developing a system for appointing counsel earlier and arranging the case management process to provide an earlier opportunity for prosecution and defense to discuss cases;
(3) Assistance in setting definite time limits for completion of required discovery in criminal cases;
(4) Determining the frequency and most common reasons for the granting of continuances in order to regulate their occurrence and adopt a written continuance policy to be applied uniformly by all judges;
(5) Developing mechanisms to encourage early screening by prosecutors as well as by judges at each stage of a criminal case, i.e., in both District and Circuit Court;
(6) Assistance with organizing a criminal justice coordinating council for the 23rd Circuit to provide a forum for on-going discussion and coordination of the various component processes and agencies comprising the criminal justice system; and
(7) Guidance in considering retaining contract attorneys to represent indigent defendants or organizing a public defender office to represent jailed defendants in District Court and until indictment in felony cases, with appointed counsel being named after indictment.

Each of these areas for follow up technical assistance is further discussed below.

RECOMMENDATION 1: Develop a comprehensive caseflow management plan, with appropriate policies and practices, to promote the efficient caseflow process in the future. In Madison County, this should include re-introduction of the Pre-Indictment Resolution Docket. The court should assume responsibility for managing a case after arraignment once it has been docketed. Cases should be set for conferencing, with a trial date set at the final pre-trial conference for those cases which then appear to warrant a trial.

The Court should take the lead in bringing the District Attorney’s Office, the Clerk’s Office, and defense counsel together to develop a comprehensive caseflow management plan for the Circuit. The plan should describe how cases will be processed, including the key events to occur in the criminal case process and the anticipated timeframes and requisite activities between events. The plan should draw on the elements of effective criminal caseflow management practices\(^3\) assembled by Maureen Solomon for the BJA/AU Criminal Courts Technical Assistance Project, and adopted by many local courts, summarized as follows:

- **Early Availability of Arrest Report**
  The law enforcement agency assures rapid transmission of the arrest report to the prosecutor, possibly requiring that the report be submitted by the conclusion of the officer’s shift.

- **Early Attachment of Counsel and Prompt Client Interviews**
  Defense counsel is notified of assignment to a case promptly and interviews the client prior to his or her court appearance.

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appearance.

- **Realistic Charging**
  Experienced prosecutors screen cases early and usually charge only what they are confident can be proved should the case go to trial.

- **Early Exchange of Information Between Prosecution and Defense**
  Basic information, including the arrest report and available discovery, is exchanged early, preferably prior to preliminary hearing (in felonies) but no later than arraignment. Decisions about case disposition can be made only when the lawyers have the necessary information. In some courts, a significant number of dispositions occur at first appearance or at arraignment.

- **Emphasis on Early Disposition**
  An “early disposition climate” is created by a process which focuses judge and lawyer attention to the case at the earliest possible time, requires counsel to meet with the client as soon as possible, creates a structured opportunity for serious negotiation between the lawyers, and incorporates meaningful judicial participation throughout.

- **Case Screening by Prosecution, Defense, and Judge**
  Beginning with the initial charging decision and continuing through the early stages of the case, the prosecutor’s, defense counsel’s, and judge’s experience is used to assess case complexity and the most likely case outcome based on the charge, evidence, and other case characteristics. This assessment is facilitated by a judicial conference within 30 days of arraignment. Early case differentiation will assist in the identification of cases that can be disposed of early. At the same time, the court will be able to flag more complicated cases which may need special attention and a longer disposition timetable.

- **Early, Realistic Disposition Offers that are Unlikely to Improve Substantially Over Time**
  Timely disposition depends on early and accurate case evaluation by the prosecutor, coupled with early realistic plea offers based on what the prosecutor believes could be proven at trial. In many courts, a major disincentive for early disposition exists because the defense knows that the prosecutor’s offer will improve significantly solely due to the passage of time.

- **Cases Always Assigned a Future Date Certain for a Specific Purpose**
  Realistic, enforced deadlines are used to create the essential “expectation of timeliness” that stimulates timely preparation and disposition. If a disposition is not entered at arraignment, a future action date for a specific purpose⁴ (such as a case management conference or motions hearing) is assigned before the parties leave. Consultation with the prosecution and defense in setting the date helps assure compliance.

  Note that the firm future action dates need not be trial dates. In fact, setting future trial dates which everyone acknowledges are a fiction is detrimental to the creation of an “early disposition climate”. Motions deadlines, case management conference dates, and other meaningful events satisfy the requirement for always setting a “future action date” deadline. By assuring that the sum of all future action deadlines adds up to, or is less than, the outside time limit for disposition (i.e., the speedy trial limit), the court essentially gives early notice of the approximate trial date if one is needed and assures that the time limit will be met.

- **Every Proceeding Used as an Opportunity to Dispose of the Case or Move It Toward Disposition**
  Each scheduled appearance has a purpose directly related to making progress toward disposition. In other words, it is a “meaningful event”. Conferences or status hearings held solely for the purpose of inquiring about counsel’s progress or setting a date for another conference are avoided. When the defendant and lawyers are present, it should be for activities that can lead to disposition.

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⁴ The likelihood of appropriate attorney preparation is enhanced by the knowledge of what the court expects to accomplish at the next appearance.

Trial Dates Scheduled Only if Needed

Trial dates are assigned only for those cases likely to require a trial after other hearings have been completed and efforts to reach an alternative disposition appear to have failed. This approach produces several positive results. First, it assures early trial date availability for those cases that need a trial by not filling the calendar with cases that ultimately will reach a non-trial disposition. Second, the availability of early open dates on the trial calendar provides the defendant and counsel a high degree of certainty that the case will proceed as scheduled and will not be continued due to over-scheduling.

It is also recommended that serious consideration be given to developing a Differentiated Case Management (DCM) system which is premised on the recognition that all cases are not alike in terms of the time and judicial system resources needed for their disposition. Developing a DCM system in Madison County would entail designing several case processing tracks to which cases could be assigned, based on the degree of their complexity and judicial supervision required. Ideally, the active pending cases could then be assigned to appropriate case processing tracks, with one of the tracks (or subtracks) constituting the cases of pretrial jail detainees.

Employment of Differentiated Case Management has the potential of saving the court costs in the following areas: prisoner transportation, jail, juror, police/witness, and indigent defense days, number of processing events (including cost of issuing and delivering notices, motions, court appearances, grand jury presentations, etc.), and judge “down time.”

**Recommendation 2:** Appoint counsel earlier and arrange the case management process to provide an earlier opportunity for prosecution and defense to discuss cases.

Neither the prosecutor nor the defense counsel is present when a defendant is first brought before a magistrate in Madison County. At the felony examination, which may not occur for several days, counsel may be appointed but there is no opportunity for counsel to confer promptly with the prosecutor to seek early disposition of the case. Cases should be screened by prosecutors at the time the cases first arrive in the District Attorney’s Office. It has been suggested in Madison County that either contract attorneys be retained or a Public Defender Office be organized to represent all incarcerated defendants at the first court appearance. Other courts have recognized the value of having a prosecutor and a stand-in defense attorney being present at this initial hearing, because, in addition to appointing counsel, the court may set bond in the presence of counsel, and the prosecutor and defender may confer and likely resolve, or lay the foundation for subsequent prompt resolution, many simple cases that otherwise linger for months.

Currently, the parties do not confer in any routine way early in the process so there is no readily available means to close cases in which facts are clear, the defendant’s criminal record is slim or non-existent, and a non-custodial sentence is likely. Not only is the court’s ability to complete work on a relatively simple case diminished by this failure to confer, but the life of the defendant

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6 See, for example, Thomas A. Henderson, Janice Munsterman, and Robert W. Tobin, *Differentiated Case Management: Final Report*. U.S. Department of Justice, Office of Justice Programs (1990) at p. 3. The authors were careful in drawing cost-benefit conclusions because the expenses that were directly attributable to DCM were difficult to determine. Nonetheless, the study did show that DCM reduced the time to disposition and the total number of aged cases in the system for two of the counties studied.

(as well as other concerned parties)—even if released on recognizance or bond—is left suspended in an uncertain state until disposition.

Some other cases are not quite as readily disposed of and may require a relatively small amount of effort on the part of counsel on both sides to prepare the case for disposition. Because these cases are likely to be relatively uncomplicated, it will be possible for counsel to review the evidence, consult witnesses, and then confer with each other. Again, trial may be unlikely, mainly because of the straightforward nature of the case rather than the particular offense charged. Murder cases, of course, require serious attention by court and counsel; nevertheless, a plea will often result because the facts of the case itself are not complex even though the potential sentence is severe.

Truly complicated cases, in contrast, will likely become apparent to counsel, especially when scrutinized. These cases may involve multiple defendants and a wide range of procedural matters that will necessitate extensive and possible exhaustive discovery in order for counsel to be adequately prepared either to negotiate pleas or proceed through motions to eventual trial. The court may well find itself focusing in these instances on simplifying the process to the greatest extent possible by requiring counsel to trim lengthy witness lists and clearly specify defenses at an early stage, striving to avoid surprise at later stages on the part of either side.

The recommended DCM system, with its multiple case processing tracks, each with different events and timeframes tailored to the case processing needs of the cases assigned, can provide a framework for providing individualized attention to the cases filed to address these issues and more efficiently utilize available judicial system resources.

**RECOMMENDATION 3:** Set definite time limits for completion of required discovery in criminal cases.

The caseflow management process should define the time between hearings/case events so that the time allowed is long enough for lawyer and court preparation but short enough to assure prompt attention to the case. While discovery is normally provided by the District Attorney’s Office in Madison County at the preliminary hearing, this is not always done. Some reports may not have reached the prosecutor by that date and others, such as laboratory reports, may not arrive until a significant further time span has passed. The practice should be standardized to the extent possible.

**RECOMMENDATION 4:** Determine the frequency and most common reasons for the granting of continuances in order to regulate their occurrence and adopt a written continuance policy to be applied uniformly by all judges.

A strict continuance policy is a key element to achieving effective caseflow management. Allowing lawyers to stipulate to continuances undercuts the entire effort to move cases expeditiously to resolution. As a result, use of “short scheduling” – e.g., for cases meriting a continuance, resetting them to a close future date that permits the time needed and no more -- in the granting of continuances will produce the best results for the court and counsel. Counsel will become oriented and accustomed to seeking only the actual extra time needed for any designated
task rather than asking for an automatic 30, 60, or 90 days, when in reality, only 15 or 20 days are truly required.

For the same reason, requests for continuances should be required to be in writing. First, it will impress on counsel that the granting of continuances is a matter within the court’s sound discretion, not of right. Second, it will enable the court’s administrators to keep account of how many continuances are granted, the reasons for granting them, and the impact of continuances on the court’s success in expeditiously disposing of its caseload.

**RECOMMENDATION 5:** Encourage early screening by prosecutors as well as by judges at each stage of a criminal case, i.e., in both District and Circuit Court.

Most courts have found that one of the best prosecutor office practices is for a senior prosecutor to screen a case when it is received. In Madison County, the District Attorney’s Office contends it lacks sufficient personnel to conduct early thorough screening. Nevertheless, the office does screen its cases to some extent at several points during the caseflow process. The first screening separates out cases that will likely be diverted. There are later screenings when cases are assigned and docketed. In place of these screenings, the office should consider having one comprehensive screening conducted at the very start of the process by a senior prosecutor. Courts across the country have found that this early screening is the most effective means of removing -- as soon as possible -- those cases that clearly should not be prosecuted fully for various reasons. In some jurisdictions, the prosecutor requires the charging police officer to appear personally so that the prosecutor may assess the strength of the case as related directly by the most knowledgeable participant.

**RECOMMENDATION 6:** Organize a criminal justice coordinating council for the 23rd Circuit.

Although, as mentioned earlier, some of the major units of the criminal justice system in Madison County have met with some regularity—the District Attorney, the Sheriff, the Circuit Clerk—to consider common challenges, such as the need for an integrated information system, there should be a regular established meeting of actors in the justice system to address mutual or individual concerns. The need for agreement among these components in dealing with county and state officials on issues such as provision of adequate facilities, which clearly is a real problem for the Circuit Court, should impel the Court to assume a leadership role by having the Presiding Judge convene this group.

This is a propitious time for the 23rd Circuit Court administration to address these matters on a cooperative level. There is a concern and general agreement that change is necessary. The District Attorney is relatively new in his current position, as is the Presiding Judge, and the experienced Circuit Clerk and the Sheriff are accustomed to meeting to consider these common problems. This is a good time for these major components of the system to confer about setting goals for the justice system in the circuit as a whole. The new Council could address largely technical but thorny and long-lasting problems such as the need for having judges available to take pleas, including the use of a court reporter. This multifaceted problem involves use of retired judges, provision of adequate facilities (including those needed for visiting judges), and

*Criminal Caseflow Practices and Provision of Indigent Defense Services in the 23rd Circuit and District Courts in Madison County (Huntsville), Alabama. Problem Definition Visit Report. (BJA CCTAP Assignment No. 5-148).* March 30, 2011.
resolution of the need for a court reporter for this kind of routine proceeding. In the same way
the issue of providing reporters for visiting judges can be addressed. To the extent that the
system acquires discretion over use of reporters, use of alternative technologies should be
explored, especially for routine matters such as the taking of pleas.

The system is in need of some mechanism for adopting changes with full respect for sometimes
conflicting interests and demands. Change will, by its very nature, call upon the actors to modify
their historical practices. As a mechanism both to initiate and support necessary improvements
in the criminal process in Madison County, it will be vital to establish a council for criminal
justice agencies to build a foundation for justice system improvement and provide a vehicle to
put change into practice. Other jurisdictions have used councils to coordinate activities and
address issues in a collegial setting. The councils vary in their memberships and purposes, but
all are aimed toward seeking just and efficient coordination of the various independent offices
and officials in the jurisdiction. The councils provide an opportunity for those wishing to bring
about change to lead discussion and persuade agencies to come together and harmoniously adopt
new ways of doing things. In Huntsville, a court led council that would embrace the essential
criminal justice court agencies would give the court with its inherent powers the forum for
leading and effecting change. It is also recognized that some court problems do result from “a
failure of communication.” Criminal justice coordination councils meeting frequently allow
participants to communicate in a forum with others in attendance.

**RECOMMENDATION 7:** Consider retaining contract attorneys or initiating a public defender office
for use in representing jailed defendants. At a minimum, organize a panel system for appointment
of counsel in a more coordinated manner allowing for appropriate supervision.

Some jurisdictions without a public indigent defense office have moved in the direction of
retaining contract attorneys to provide representation for indigent defendants. This approach
offers the advantages of having experienced counsel assigned to each judge or court. While
assigned-counsel systems are common in Alabama and may operate effectively, especially in
areas of sparser population, such systems do, however, require structure in order to ensure fair
assignment and effective supervision. If the assigned counsel system is maintained, counsel in
the 23rd Circuit should be assigned through a panel system, with separate panels for felonies,
misdemeanors, and capital cases. Lawyers should have to demonstrate some level of trial
experience to gain membership on the misdemeanor panel, with promotion to the other panels
based on proven competence. If counsel are appointed separately for felony cases that begin in
District Court and then proceed to Circuit Court, there will be more interest on the part of the
first lawyer to resolve the case rather than keep it going. An interim step would be to employ
attorneys under contract to represent indigent defendants before a particular judge or court or
having a new Public Defender Office organized to represent jailed defendants in District Court
and until indictment in felony cases. This would provide better representation at this important
stage of cases, reserving appointed counsel for those cases that proceed on to Circuit Court and
likely trial under new caseflow management practices. Alternatively, contract attorneys could be
hired and assigned to each courtroom or judge to handle all indigent defense cases, with
appropriate provision made for appointments in conflict situations.

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7 See note 1 supra.

*Criminal Caseflow Practices and Provision of Indigent Defense Services in the 23rd Circuit and District Courts
in Madison County (Huntsville), Alabama. Problem Definition Visit Report. (BJA CCTAP Assignment No. 5-
IV. SUMMARY AND NEXT STEPS

The results of this problem definition visit indicate that developing an efficient criminal case management system in the 23rd Circuit is a necessary step in bringing about the efficient use of court resources and those of the other criminal justice agencies involved in the caseflow process. Regardless of the efficiencies any one agency institutes, without a well functioning court system which promotes timely and efficient case disposition, these efforts will have little effect. If those involved in the process must prepare several times for a court hearing because it is continued at the last minute, the time of everyone in the system entailed in preparing for these hearings that do not occur at the last minute is wasted and make no contribution to moving the cases forward toward disposition. These dysfunctions affect the court as well as all others involved in the process.

The recommended approach for addressing these issues outlined in this report calls for all of the parties to work together to:

(a) develop a criminal caseflow process, built on DCM principles, which will require the major agencies involved to agree collegially on the appropriate steps and timeframe for disposing of the range of case types filed in a manner that promotes the time required to ensure justice but not unnecessary delay; and

(b) concurrently develop an efficient system for managing the criminal caseload that (i) provides for the time and activity necessary to dispose of each case fairly; and (ii) creates expectations for both local justice system officials and the public as to how the criminal justice system in Madison County will function; and

(c) organize a Criminal Justice Coordinating Council, with the court taking the lead through its Presiding Judge, to create a meaningful forum for addressing dysfunctions in the criminal case process as they occur and promoting ongoing coordination among the agencies involved.

If the 23rd Judicial Circuit officials concur with the strategy outlined in this report, the CCTAP is prepared to work with them to implement the actions outlined above.

On March 2, 2011, Judge John Parnham and Richard B. Hoffman, Esq., the two consultants assigned to provide this assistance to Madison County, presented their findings to both the judges of the Madison County courts and the initial meeting of the new Criminal Justice Coordinating Council during a visit to the court on March 2, 2011. The Council meeting, at which Chief Judge Hall presided, included among the attendees several judges, the Sheriff, the District Attorney, the Chief of Police of Huntsville, the Circuit Clerk, and defense counsel who are members of the County Indigent Defense Commission. The Council agreed to form subcommittees to proceed on proposing improvements to deal with reconceiving the pre-indictment resolution docket, revamping the indigent defense structure, and improving the communications among the justice system components through information technology improvements.