

ESTIMATING THE POTENTIAL IMPACT OF BETTER CRIMINAL CASEFLOW MANAGEMENT ON THE JAIL POPULATION IN BERNALILLO COUNTY, NEW MEXICO

**Report to Ramon Rustin, Chief of
Corrections, Bernalillo County**

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**David C. Steelman, Esq.
Anthony Kim**

**Daniel J. Hall, Vice President
Court Consulting Services
707 Seventeenth Street, Suite 2900
Denver, CO 80202-3429
(303) 293-3063**

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Estimating the Potential Impact of Better Criminal Caseflow Management on the Jail Population in Bernalillo County, New Mexico

I. Introduction and Overview

In 2006, the design capacity of the Bernalillo County Metropolitan Detention Center (MDC) – the county jail – was increased to 2,236 inmates. By 2010, the average daily population of the MDC was 2,483, or 111% of its rated capacity. At times the daily MDC population would reach 118% of capacity. In a 2012 strategic plan, criminal justice officials wrote the following: ¹

This level of jail crowding at the MDC affects every aspect of institutional life, from the provision of basic services such as food and bathroom access to programming, recreation, and education. It stretches existing medical and mental health resources and, at the same time, produces more mental health and medical crises.

Despite many efforts in recent years to address jail crowding, Bernalillo County is now being sued in the US District Court for the District of New Mexico to force a reduction in the jail population. This report has been prepared by the National Center for State Courts (NCSC) at the request of the Bernalillo County Chief of Corrections.

The central theme of this report is that Bernalillo County, the 2nd Judicial District Court of New Mexico, and their criminal justice partners can help to address jail crowding through management steps that reduce and avoid unnecessary delay. Model Time Standards for criminal cases suggest that felony cases should be disposed more quickly than they now are in Bernalillo County. While few courts actually reach the model standards, national data for trial courts in large urban counties show that they can and do process felony cases faster than is done in Bernalillo County.

Improvements in the management of criminal case progress from initiation to conclusion by the District Court and its criminal justice partners would reduce times to disposition and would consequently reduce the average length of stay for criminal defendants detained pending adjudication. As Section IV of this report shows, NCSC estimates that improvements in felony caseflow management before adjudication and in management of probation violations after sentencing might reduce the average MDC jail population in Bernalillo County by as much as about 210-250 inmates.

Whether improvements can be made in criminal caseflow management in Bernalillo County depends in part on personnel resources in the District Court's Criminal Division, the Bernalillo County District Attorney's Office, and the 2nd District Public Defender's Office, including how

¹ *New Mexico 2nd Judicial District Criminal Justice Strategic Plan* (January 2012), p. 2, <http://www.bernco.gov/upload/images/commission/dist5/Bernalillo%20County%20Criminal%20Justice%20Strategic%20Plan.pdf>.

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well current staff resources are used. As Section V of this report indicates, NCSC estimates that improving criminal caseflow management in the 2nd Judicial District might have the same effect as if there were at least one more judge, as well as two or three more prosecutors, two or three more public defenders, and a comparable number of additional support staff members, available in these organizations to work on criminal cases.

II. NCSC 2009 Report on Criminal Caseflow Management

In 2009, Bernalillo County engaged NCSC to study criminal felony case processing, with particular attention to felony cases in the Second Judicial District Court of New Mexico, which is the general-jurisdiction trial court serving the County. In a report dated November 2009,² NCSC presented its findings on what available data show about felony case processing times from arrest and incarceration through pretrial release and probable cause determination in the limited-jurisdiction Metropolitan Court and District Attorney case presentation to a grand jury to the initiation and conclusion of District Court case processing. Based on those findings, the NCSC report then offered recommendations for improvement in the form of a “Comprehensive Felony Caseflow Management Improvement Program.”

A. Caseflow Management and Jail Crowding. The recommendations offered in the 2009 NCSC report are based on the work of many court leaders, consultants and researchers since the 1970’s to understand delay in criminal and civil court proceedings and develop demonstrably successful ways to reduce and avoid unnecessary delay. Among the best practices for criminal cases that are reflected in the 2009 NCSC recommendations are the following:³

- Court system measurement of case processing against statewide time expectations running from arrest or initial court appearance;
- Expeditious transmission of digital and other evidence by law enforcement to the prosecutor;
- Early prosecutor screening of cases and provision of an early “discovery package” to defense counsel at or soon after initial appearance;

² David Steelman, Gordon Griller, Joseph Farina, and Jane Macoubrie, *Felony Caseflow Management in Bernalillo County, New Mexico* (Denver, CO: NCSC, Court Consulting Services Division, November 2009). For highlights of the findings and recommendations in that report, see Appendix A.

³ See David Steelman, with John Goerdts and James McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium* (Williamsburg, VA: National Center for State Courts, 2004 edition), especially pp. 1-19 and 32-38, available online at <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=1498>; also available at <http://www.justpal.org/LinkClick.aspx?fileticket=K0zY2upe4OM%3D&tabid=103&mid=449>; or <http://www.yourhonor.com/pdfs/PDP10/Caseflow.pdf>.

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- Prompt determination of defendant eligibility for representation at public expense and early contact by and indigent defense attorney with the defendant;
- Early and continuous court control of case progress, beginning at the initial court appearance, including an early District Court event soon after initial appearance for experienced prosecutors and defenders to assess felony cases for referral to diversion programs, referral to problem-solving court programs, early negotiated disposition, referral for prosecution as misdemeanors, or immediate felony arraignment on prosecutor charges by information rather than indictment;
- Early exchange of discoverable information, and early hearing and ruling on suppression motions;
- Court provision of meaningful pretrial court events, allowing lawyers to avoid unnecessary wasted time, and at which lawyers are prepared and able to resolve cases by negotiation for which resolution by trial is not required;
- Court scheduling of cases for trial in a manner that assures the integrity and credibility of trial dates, so that lawyers are prompted to prepare their cases early; and
- Assuring the timely completion of court proceedings after disposition, most notably probation violations.

Successful implementation of such steps as these is not easy, since it involves ongoing leadership and commitment by the leaders of the court, the prosecution, the public and private defense bar, law enforcement, and corrections. All of these have direct relevance for the reduction of jail crowding in Bernalillo County. To the extent that the 2nd Judicial District Court and its criminal justice partners are able to reduce unnecessary delay in the criminal court process, a predictable and necessary byproduct is the reduction of the average length of stay at MDC for criminal defendants who are detained pending adjudication of felony prosecutions and probation violations.

B. Action to Date on NCSC Recommendations. Following the submission of the NCSC report, NCSC project team members attended a “shirtsleeves” session with 2nd District Court Criminal Division judges in March 2010 to consider the NCSC findings and recommendations. In that session, consensus was reached among the attending judges on steps to improve caseflow management in the Criminal Division:⁴

- Exercise District Court control over the pace of litigation from bind over (7 court initiatives identified).

⁴ See Appendix B for minutes of that meeting prepared by NCSC and subsequently shared with the Court and the County.

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- Have all judges operate in a united fashion as a Criminal Division to assure meaningful pretrial court events to promote prompt case preparation by lawyers (3 court initiatives identified).
- Reduce the number of times the court has to touch a case, by streamlining procedures, developing special/consolidated calendars, and developing a back-up judge program to avoid continuing numerous trials because individual calendars are overset (3 court initiatives identified).
- Limit the number of postponements in criminal cases (2 court initiatives identified).
- Continue and expand the use of settlement conferences in criminal cases, using both retired *pro tempore* judges and sitting Criminal Division judges (2 court initiatives identified).

After the conclusion of this session in 2010, the NCSC project team has had only intermittent communications with Court and County representatives about the possibility of assessing the cost impact of implementing the NCSC recommendations. We understand that the County provided funding for *pro tempore* (“pro tem”) judges to sit in a part-time capacity to hold criminal settlement conferences and hear probation violations on dockets heard in courtrooms provided by the County at MDC. It is not clear to NCSC what further recommendations in the 2009 report may have been implemented by the Court acting either by itself or in collaboration with the District Attorney, the Public Defender, MDC, or law enforcement agencies.

III. Assessment of Bernalillo County Criminal Case Processing Based on Data Gathered after Completion of the 2009 NCSC Study

To go beyond the information available for the assessment reported in 2009, NCSC could do no more within the limited time available for the preparation of this short report than to conduct a very brief analysis of data about criminal case processing in Bernalillo County that had already been gathered by others after the NCSC study was completed in 2009:

- A sample of 2nd District Court criminal cases identified from MDC data for pretrial releases from MDC in 2009;
- A sample of 2nd District Court from a set of all felony cases identified by the New Mexico Administrative Office of the Courts (AOC) as having been disposed in 2010; and
- MDC records of 2nd Judicial District Court criminal cases with probation violation hearings held at MDC in 2012.

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Results of the NCSC analysis are presented in the sections below. To help provide a context for thinking about what the NCSC analysis shows about criminal cases in Bernalillo County, it is helpful first to consider the most recent consensus about how long it should take for criminal cases to be disposed, as well as the most recent national information available about how long felony cases take to be disposed in large urban counties.

A. National Performance Criteria and Benchmarks. In 2011, “Model Time Standards” for cases in state trial courts were developed by a national committee of court leaders with the assistance of NCSC and approved by the Conference of Chief Justices (CCJ), the Conference of State Court Administrators (COSCA), the National Association for Court Management (NACM), and the American Bar Association (ABA) House of Delegates. Table shows the model time standards for criminal cases, comparing them to prior national standards promulgated by the COSCA and ABA. As the table indicates, the standards suggest that virtually all felony cases should be disposed within one year after arrest, recognizing that a small percentage (such as murder cases) would often require more time.

Table 1. Model Time Standards for State Trial Court Criminal Cases⁵

Case Type	COSCA Standard 1983	ABA Standard 1992	Model Standard 2011
<i>Felony</i>	100% within 180 days	90% within 120 days 98% within 180 days 100% within 365 days	75% within 90 days 90% within 180 days 98% within 365 days
<i>Misdemeanor</i>	100% within 90 days	90% within 30 days 100% within 90 days	75% within 60 days 90% within 90 days 98% within 180 days

If these time standards reflect a consensus about what criminal times to disposition should be, what do we know about what trial courts are actually able to achieve? Since 1988, the US Justice Department’s Bureau of Justice Statistics has reported on how long it takes for the cases of felony defendants to proceed from arrest to disposition in the 75 largest counties in the country. The most recent data, for felonies disposed in 2006, were published in 2010. As Table

⁵ Source: Richard Van Duizend, David Steelman and Lee Suskin (Reporters), *Model Time Standards for State Trial Courts* (Williamsburg, VA: National Center for State Courts, 2011), p. 3, available online at <http://ncsc.contentdm.oclc.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=1836>. Like the earlier COSCA and ABA standards, the Model Time Standards measure case-processing time for criminal cases from the date of arrest.

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2 shows, the longest times from arrest to disposition were for violent felony offenses (such as murder, rape, robbery and assault). Although the performance by courts in some large urban counties may have approached the national standards, the overall results were that 88% of all felonies were disposed within a year after arrest.

Table 2. Time from Arrest to Adjudication for Felony Defendants in Large Urban Counties, by Most Serious Charge, 2006⁶

Most Serious Arrest Charge	Median Time	<u>Cumulative Percent of Cases Disposed Within --</u>			
		30 Days	90 Days	180 Days	365 Days
Violent Offense	139 days	16%	37%	60%	83%
Property Offense	85 days	26%	52%	74%	90%
Drug Offense	75 days	32%	55%	75%	90%
Public-Order Offense	92 days	24%	49%	72%	89%
All Offenses	92 days	26%	49%	71%	88%

B. Processing Times in 2009 Pretrial Release Cases and Felonies Disposed in 2010. In the preparation of this report, NCSC took two small random samples of criminal cases:

1. Cases from an MDC data set for 665 Bernalillo County criminal defendants granted pretrial release from the Detention Center in 2009;⁷ and
2. Cases from an AOC data set of 6,335 felony cases disposed by the 2nd Judicial District Court in Fiscal Year 2010.⁸

For all the docket numbers in each set of sample cases, NCSC then recorded publically-available online data posted by the Judicial Information Division (JID) of the New Mexico Administrative

⁶ Source: Thomas H. Cohen and Tracey Kyckelhahn, *Felony Defendants in Large Urban Counties, 2006* (Washington, DC: Bureau of Justice Statistics, NCJ- 228944, Revised July 15, 2010), Table 10, <http://bjs.ojp.usdoj.gov/content/pub/pdf/fdluc06.pdf>. Dr. Cohen has indicated to NCSC that comparable 2008 data should be available in a BJS report to be published in late 2013.

⁷ The data set was provided by Destry Hunt, MDC Policy and Planning Administrator, to David Steelman, NCSC, in an electronic message dated January 11, 2013.

⁸ This data set was provided by Steve Prisoc, New Mexico AOC Judicial Information Division Director, to David Steelman, NCSC, in an electronic message dated August 17, 2010.

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Office of the Courts (AOC) on times to disposition and the number of specific court events per case.⁹

From our analysis of the data gathered for each sample, NCSC has calculated times from the date of initial charges against defendants to case filing in the District Court, as well as times from District Court filing to disposition.¹⁰ Table 3 shows the results of the NCSC analysis.

Table 3. Elapsed Time in Days from Original Charge Date to Filing Date and from Filing Date to Disposition for 2nd District Court Sample Criminal Cases

Sample Description	Median	Average	75%	90%	98%
<i>2009 MDC Releases (N = 158)¹¹</i>					
• Charge to Dist Ct Filing	25	89	115	266	471
• Dist Ct Filing to Disposition	275	360	493	774	996
• Charge to Dist Ct Disposition	352	441	594	873	1,207
<i>2010 Felony Dispositions (N = 153)¹²</i>					
• Charge to Dist Ct Filing	102	202	240	353	536
• Dist Ct Filing to Disposition	279	390	498	778	1,601
• Charge to Dist Ct Disposition	445	592	654	940	2,434

As a practical matter, the defendants in the sample of “2009 MDC release” cases were likely to have been charged with less serious offenses than those in the sample of “2010 Felony Disposition” cases. Also, as a matter of definition, they were not detained at MDC pending adjudication unless they failed to appear at a subsequent court event, had been arrested on a bench warrant, and then had not again been released from custody. The defendants in the “2010 Felony Dispositions” sample were typically charged with more serious offenses, and they

⁹ See Judicial Branch of New Mexico, “Online Case Lookup,” <https://caselookup.nmcourts.gov/caselookup/app>.

¹⁰ For comparison with the data on which the findings and recommendations in the NCSC 2009 report were based, see *Felony Caseflow Management in Bernalillo County, New Mexico*, *supra* note 2, pp. 8-15.

¹¹ Source: NCSC analysis of criminal case random sample identified from a data set of 665 cases, as provided by Destry Hunt, MDC Policy and Planning Administrator, to David Steelman, NCSC, in an electronic message dated January 11, 2013, for a margin of error of ± 7% at a 95% confidence level. See Herbert Arkin and Raymond R. Colton, *Tables for Statisticians* (2nd edition) (New York: Barnes & Noble, 1963), pp. 22-23.

¹² Source: NCSC analysis of random sample of 6,335 Bernalillo County felony cases disposed in FY 2010, as provided by Steve Prisoc, New Mexico AOC Judicial Information Division Director, to David Steelman, NCSC, in an electronic message dated August 17, 2010, for a margin of error of ± 7.8% at a 95% confidence level. See Arkin and Colton, *supra*, pp. 22-23.

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were less likely to have been initially released from MDC, although a number were subsequently released on bond.

To gain perspective on the results from analysis of these two samples, it is helpful to compare them to the Model Time Standards and to the 2006 times from arrest to adjudication for felony defendants in trial courts serving large urban counties. As Table 4 shows, the NCSC analysis of these sample cases suggests that criminal case processing performance in Bernalillo County is falls far short of the expectations reflected in the Model Time Standards, and that is also much poorer than the results achieved for felony cases by large urban trial courts in 2006.

Table 4. 2009 and 2010 Sample Case Times from Bernalillo County Initial Charge Date to 2nd District Court Disposition Date, as Compared to Model Time Standards and to 2006 Times from Arrest to Adjudication for Felony Defendants in Large Urban Counties¹³

Description	Median Time	Cumulative Percent of Cases Disposed Within --		
		90 Days	180 Days	365 Days
<i>Comparable National Data</i>				
Model Time Standards	--	75%	90%	98%
Large Urban Felonies, 2006	92 days	49%	71%	88%
<i>Bernalillo County Data</i>				
MDC Release Sample, 2009	352 days	5%	18%	53%
Felony Disposition Sample, 2010	445 days	2%	10%	39%

C. Court Events in 2009 Pretrial Release Cases and Felonies Disposed in 2010. For felony cases under the jurisdiction of the New Mexico District Courts, rules of procedure¹⁴ provide that probable cause is determined by a limited-jurisdiction court (in Bernalillo County, the Metropolitan Court), after which a defendant is arraigned in District Court after the prosecution has filed an indictment or information. Before trial and sentencing, there may be one or more hearings on motions and a court-scheduled pretrial conference. In the simplest circumstances, the rules thus contemplate that a case may proceed in District Court from arraignment to trial and sentencing with no more than a total of 3-5 scheduled court events. Of course, there may

¹³ Sources: see notes for Tables 1, 2 and 3 above.

¹⁴ See NM Crim. Proc. Rule 5-901.

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be more than one motion hearing in a case, and there may be other events such as hearings on whether a defendant is competent to stand trial.

Yet in New Mexico as in most American trial courts, fewer than five percent of all cases are disposed by trial. Moreover, the sentencing in a case disposed by a negotiated plea of guilty is most often done in the same hearing as when the Court receives the plea. As a result, cases with more than five scheduled court events often involve the scheduling, continuance, and rescheduling of those events.

In a court where the grant of continuances and the rescheduling of court events becomes the norm, more cases may be set for hearing on any given day than the Court can reach, and prosecutors or defenders with heavy caseloads may not have their cases prepared on the scheduled date for a court event. If the Court then resolves the immediate problem this presents by granting a continuance request and scheduling a case to a later date, the judge and the lawyers may make it through the day's dockets at the cost of having more hearings per case than are required.

The purpose of caseflow management practices like those recommended for Bernalillo County in the 2009 NCSC report is to address such problems as this. In courts that are successful in that they manage the progress of their cases well, attention is given to the reasons for such delays, so that negotiated outcomes are reached sooner in each case, with fewer scheduled court events per case, less wasted time for judges, lawyers and other case participants, and shorter times to disposition for defendants detained in county jail or released from jail pending adjudication.

To explore the extent to which criminal proceedings in the 2nd District Court may be subject to this problem, NCSC counted the number of court events per case in the "2009 Release" sample and "2010 Felony Disposition" sample. Table 5 shows that there was an average of a little over seven court events per case in each sample, with 20 or more in some cases.

Table 5. Court Events per Case in 2009 and 2010 Samples of Bernalillo County Criminal Cases¹⁵

Court Events per Case	2009 Release Cases (N=158)	2010 Felony Dispositions (N=153)
Maximum	32	26
Average	7.04	7.32
Median	6	6

¹⁵ Sources: See notes for Table 3 above.

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If one would expect from the rules of procedure that there would typically be a total of only 3-5 District Court events in a case, to what extent was the average number in the 2nd District Court so much higher because scheduled hearings were continued or rescheduled? Table 6 shows information on the frequency of different kinds of scheduled court events in the two samples.

**Table 6. Incidence of Specific Court Events in 2009 and 2010 Samples of
Bernalillo County Criminal Cases¹⁶**

Type of Court Hearing or Event	2009 Release Sample (N = 158)			2010 Felony Disposition Sample (N = 153)		
	Pct of Cases That Have This Event	Average per Case with This Event	Max in One Case	Pct of Cases That Have This Event	Average per Case with This Event	Max in One Case
Arraignment (includes Amended or Repeated Arraignments)	93.0%	1.29	7	94.8%	1.44	6
Bond Forfeiture Hearing	5.7%	1.67	4	4.6%	1.00	1
Docket Call	17.1%	3.70	14	15.0%	3.09	10
Status Conference	11.4%	2.11	7	5.9%	1.89	5
Motion Hearing	53.2%	1.62	8	51.6%	1.77	9
Other Hearing	6.3%	2.10	5	10.5%	1.75	5
Pretrial Conference	74.7%	1.89	8	77.1%	2.51	14
Guilty Plea Hearing	74.7%	2.20	13	71.2%	1.92	9
Scheduled Date for Jury Trial	13.3%	1.76	6	22.9%	1.83	6
Sentencing Hearing	22.2%	2.26	6	29.4%	1.58	4
Continuance/Extension of Time	13.3%	1.86	5	43.1%	2.38	7
Post-Sentence Hearing*	38.6%	2.77	15	45.8%	2.39	8
-- Post-Sentence PV Hearing*	24.7%	2.10	6	21.6%	1.61	4

* Totals for "Post-Sentence Hearings" include all Probation Violation ("PV") Hearings as well as any others.

As the table indicates, the only event that was almost certain to occur was the arraignment of a defendant on an indictment or information. In fact, it was not unusual (16.5% of "2009 Release" sample cases and 26.8% of "2010 Felony Disposition" sample cases) for there to be an amended or otherwise repeated arraignment, and a defendant in one case was arraigned seven times.

¹⁶ Sources: Ibid.

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The most common other events before trial are pretrial conferences and guilty plea hearings, which occurred in about three-fourths of all cases in each NCSC sample. In fact, it was more likely than not in the sample cases that there would be more than one such event in a case, including 14 pretrial conferences in one of the 2010 sample disposed felony cases and 13 guilty plea hearings in one of the 2009 sample release cases.

Only a small portion of the cases were actually listed for jury trial (13.3% of the 2009 release sample and 22.9% of the 2010 disposed felony sample). If they were listed once for trial, however, they might often be listed for a second or subsequent date. Continuance motions and motions or petitions for extension of time happened in three times as many of the felony disposition sample as in the release sample. If such motions were filed in a case, they were typically filed more than once; and NCSC found no case in which any such motion was denied.

D. Cases on 2012 Probation Violation Dockets. Post-sentence events were not infrequent in either the 2009 release sample or the 2010 disposed felony sample, consisting largely of hearings on alleged probation violations. To look more closely at probation violations, NCSC studied MDC data on probation violation hearings held in 2012 by county-funded *pro tempore* judges in a courtroom at the MDC facility. NCSC analyzed the entire data set of 1,440 cases, looking at the number of days a defendant was in jail before the PV hearing in each case, the number of times that PV hearings had been reset (rescheduled to a subsequent date), and the kinds of dispositions in the PV hearings.

MDC records on over half (52%) of the cases with PV hearings do not show the basis for an alleged probation violation. Of those in which it was recorded, 89% were technical violations, 9% were based on new charges, and 3% were absconders.

The MDC records for PV cases are for those in which the alleged probation violators were arrested and jailed awaiting a court hearing. Table 7 below shows how long probationers charged with violations had to wait before a PV hearing was held. As the median figure in Table 7 indicates, at least half of the defendants were in custody for longer than a month before a PV hearing. In one extreme circumstance, MDC records suggest that one probationer originally convicted for DUI was held for longer than three years before the resolution of the alleged violation, having participated during that time in the “Casa de Amigos” Program.

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Table 7. Defendant Days in Custody before Probation Violation (“PV”) Hearing, 2012 (N=1,440)¹⁷

Description	Days
Maximum	1,225
Average	49.66
Median	31

The MDC records analyzed by NCSC also show that 42% of the PV hearings had previously been reset (continued and rescheduled to a later date). The number of PV hearings per case is shown in Table 8, which indicates that at least half of the cases had three or more PV hearings.

Table 8. PV Hearings per Case, 2012 (N=1,440)¹⁸

Description	Hearings/Case
Maximum	9
Average	1.77
Median	3

A final matter of note from the NCSC analysis of these records has to do with the outcomes of the PV hearings. As is shown in Table 9 below, about one in six probationers (17.5%) had their probation terms reinstated at the conclusion of 2012 PV hearings, while a small number (2.9%) were discharged from probation altogether. In more than a fourth of them (28.7%), on the other hand, probation was terminated and sentences to jail (MDC) or state prison (DOC) were put into effect. The most common outcome (42.4%), however, was for the matter to be reset to a later date.

¹⁷ Source: NCSC analysis of Bernalillo County criminal cases heard at MDC on the 2nd Judicial District Court probation violation (PV) dockets in 2012, as provided by Destry Hunt, MDC Policy and Planning Administrator, to David Steelman, NCSC, in an electronic message dated January 11, 2013.

¹⁸ Source: Ibid.

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Table 9. Dispositions in PV Hearings, 2012 (N=1,440)¹⁹

Disposition	Percent
Discharged	2.9%
Reinstated	17.5%
Sentenced -- DOC	6.8%
Sentenced -- MDC	21.9%
Reset to Later Date	42.4%
Other	8.5%

E. Findings from NCSC Analysis. The analysis reported above in this section confirms the findings by NCSC in its 2009 report and reaffirms the relevance of the recommendations made there. NCSC is not unmindful of the real and very difficult operational concerns facing the 2nd District Court's Criminal Division and its criminal justice partners.

Yet there is ample evidence that many other trial courts have successfully addressed such difficult issues through the effective application of caseflow management principles and techniques.²⁰ For that reason, the successful adoption and consistent application of the comprehensive caseflow management improvement program recommended in the 2009 NCSC report (see Appendix A for a summary) can reasonably be expected to have a demonstrable positive impact by reducing unnecessary delay, reducing jail crowding, and reducing unnecessary wasted time for criminal case participants in Bernalillo County. The potential implications of this for both jail crowding and staffing needs are considered in Sections IV and V below.

¹⁹ Source: Ibid.

²⁰ See, for example, William Hewitt, Geoff Gallas, and Barry Mahoney, *Courts That Succeed: Six Profiles of Successful Courts*. (Williamsburg, VA: National Center for State Courts, 1990), available online at <http://cdm16501.contentdm.oclc.org/cdm/singleitem/collection/ctadmin/id/10/rec/3>.

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IV. Estimating Potential Impact of Improved District Court Caseflow Management on County Jail Population

The recommendations offered by NCSC in the 2009 report were suggestions for addressing and managing the various problems, such as discovery exchange, identification of the need for conflict counsel, and prosecution plea offers that pose problems not only for the 2nd Judicial District, but also for general-jurisdiction trial courts hearing felony matters in any jurisdiction. Through the provision of ways for a trial court to exercise early and continuous control over the progress of felony cases from arrest to conclusion, they represent ways to alleviate the need for a court to hold multiple docket calls and status conferences, to reduce the need for a court to decide motions for continuance or extension of time, and to reduce the incidence of multiple pretrial conferences and guilty plea hearings.

A. Brief Statement of Foundation for Estimates. Consistent and aggressive application of management practices for criminal cases need not and should not be focused solely on cases with defendants in custody. By addressing these problems for the many cases with defendants on pretrial release pending adjudication, caseflow management frees up more time for judges and lawyers to deal with cases in which defendants are in custody pending either the initial adjudication of criminal charges or the resolution of alleged probation violations, thereby in both circumstances reducing jail crowding.

Application of proven caseflow management principles and techniques does not involve the expectation that all continuances or all multiple pretrial conferences must be eliminated. Obviously, this may not always be practical in the day-to-day world, nor would it serve the interests of justice in particular cases. Yet if most judges and lawyers apply those principles and techniques in most cases, the desired overall result of prompt and affordable justice can be achieved with much greater consistency.

The fact that it might be both impractical and potentially undesirable for all redundancy in scheduled court hearings and all continuance or extension requests to be eliminated does not mean that there can or should be no reduction of redundancy in scheduled court hearings and no reduction in continuance or extension requests. As the following calculations show,²¹ NCSC concludes that reducing the average number of scheduled court events in the 2nd District Court by just one event could have a significant impact on the average jail population at MDC.

²¹ These calculations are based on the analysis of data on (a) Bernalillo felony cases disposed in FY 2010, and (b) cases with PV hearings in 2012. By definition, defendants in the “2009 Release” cases were not detained pending adjudication, so that NCSC does not use that data set in estimating potential reductions in the MDC jail population, even if some defendants were arrested on bench warrants after their release from custody.

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B. What If There Been Fewer Hearings in 2010 Disposed Felony Cases? As Table 5 above shows, NCSC found an average of 7.32 scheduled court events in our sample of Bernalillo County felony cases disposed in FY 2010. If improved caseflow management resulted in having the average number of scheduled court events reduced by one to 6.32, NCSC estimates that the average daily jail population at MDC would be reduced by **185 inmates**. Table 10 shows the ten-step process by which NCSC has made this estimate.

Table 10. NCSC Calculations to Estimate Impact on MDC Jail Population of Having One Fewer Hearing per Case in Disposed Bernalillo County Felonies, FY 2010

Description	Number
1. Total 2nd Judicial District felony cases disposed, FY 2010 ²²	6,335
2. Total elapsed days, District Court filing date to disposition date for disposed felony cases, 2010 ²²	2,333,214
3. Average number of court hearings in NCSC sample (N=153 cases)	7.32
4. Average number of court hearings in NCSC sample minus one	6.32
5. Estimate of total hearings in all felony cases disposed, 2010, if average number of hearings per case were reduced by one ²³	40,037
6. Estimate of total elapsed days, District Court filing date to disposition date for disposed felony cases, 2010, if average number of hearings per case were reduced by one ²⁴	2,233,754
7. Estimate of total days saved (Item No. 2 minus Item No. 6)	99,460
8. Percent of all defendants booked at MDC and not granted pretrial release, FY 2010 ²⁵	68%
9. Estimated total jail bed days if 68% of defendants booked at MDC in FY 2010 were held in jail pending adjudication (68% of Item No. 8 total days)	67,633
10. Estimate of FTE inmate reduction in MDC average daily jail population (Total days in Item No. 9 divided by 365)	185.3

²² Source: Data provided by Steve Prisoc, New Mexico AOC Judicial Information Division Director, to David Steelman, NCSC, in an electronic message dated August 17, 2010.

²³ This figure is based on the estimated number of total hearings in the NCSC sample if the average per case were reduced by one, a total that was then used to estimate the total number of hearings for all 6,335 cases disposed in FY 2010.

²⁴ This figure is based on the estimated number of total elapsed days in the NCSC sample if the average number of hearings per case were reduced by one, a total that was then used to estimate the total number of hearings for all 6,335 cases disposed in FY 2010.

²⁵ Source: Bernalillo County, *Metro Detention Center Fiscal Year Report 2010* (January 2011), page 2.

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C. What If There Been Fewer Rescheduled Hearings on the 2012 PV Dockets?

As we note in Section III. D above, MDC records show that 42% of the 2012 PV hearings had previously been reset, and that resets coincidentally made up 42% of the dispositions in PV hearings. As Table 8 above indicates, at least half of the cases had three or more PV hearings. Moreover, Table 7 shows that at least half of the PV defendants were in custody for a month or longer while a PV hearing was pending. Improved management of PV case processing, so that the number of PV resets might be reduced, thus presents a clear opportunity for reduction of jail crowding.

If improved caseflow management resulted in having fewer PV resets, NCSC estimates that the average daily jail population at MDC would be reduced. Table 11 shows the process by which NCSC has estimated that the average daily jail population would be reduced by 67 inmates if the number of PV hearing resets were reduced to no more than one per case, or by 28 inmates if the PV resets were reduced to no more than two per case.

If PV resets were reduced altogether, such calculations as those here in Table 11 would yield an estimate by NCSC that the average daily jail population at MDC would be reduced by the FTE equivalent of 109.3 inmates. Yet NCSC dismisses that option because any effort to eliminate resets altogether might be both impractical and not in the interest of justice.

NCSC is also mindful that a practice of allowing more than one PV hearing reset might undermine the integrity of PV hearing dates in terms of whether the lawyers in a case would be prepared enough to make the scheduled hearings meaningful. Yet NCSC also understands that the defendants involved in PV proceedings, while under custody, may be participating in court-ordered treatment programs during the pendency of PV proceedings. Table 11 thus includes the prospect that allowing a second PV reset might in appropriate cases serve the interests of justice.

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Table 11. NCSC Calculations to Estimate Impact on MDC Jail Population of Having Fewer PV Hearings Reset per Case, 2012²⁶

Description	Number
1. Grand total of days probationers were in custody awaiting PV hearings	71,505
2. Total custody days for cases with no more than one PV hearing reset	47,248
a. Days saved if there had been no more than one PV hearing reset per case (Days in Item No. 1 minus days in Item No. 3)	24,257
b. Estimated FTE inmate reduction in MDC average daily jail population (Days in Item No. 2a divided by 365)	66.5
3. Total custody days for cases with no more than two PV hearings reset	61,163
a. Days saved if there had been no more than two PV hearings reset per case (Days in Item No. 1 minus days in Item No. 2)	10,352
b. Estimated FTE inmate reduction in MDC average daily jail population (Days in Item No. 3a divided by 365)	28.4

V. Estimating Potential Impact of Improved Caseflow Management on Staffing Needs for the Court and Its Criminal Justice Partners

Whether improvements can be made in criminal caseflow management in Bernalillo County depends in part on the level and use of personnel resources in the District Court's Criminal Division, the Bernalillo County District Attorney's Office, and the 2nd District Public Defender's Office. NCSC understands that those organizations have been reluctant to adopt and implement the comprehensive caseflow management improvement program recommended in the 2009 NCSC report because they believe they do not have enough personnel to do so.

A. Adequacy of Current Staffing Levels in Bernalillo County. It has been reported to NCSC that this belief among the leaders of those local organizations is based on a statewide workload and staffing needs study completed in 2007 for courts, prosecutors and public defenders, which concluded that the levels of judges, lawyers and support personnel in those organizations were inadequate. In fact, that study was done by NCSC, with the participation of researchers from the National District Attorneys' Association (NDAA) for prosecutors, under the direction of the

²⁶ Source: NCSC analysis of Bernalillo County criminal cases heard at MDC on the 2nd Judicial District Court probation violation (PV) dockets in 2012, as provided by Destry Hunt, MDC Policy and Planning Administrator, to David Steelman, NCSC, in an electronic message dated January 11, 2013.

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lead author of the report presented here.²⁷ It was done with the application of the best available workload assessment methodology at the time, at a cost to the State of New Mexico that would have been prohibitive if it had included an assessment of the efficiency and effectiveness of operations and caseflow management by courts, prosecutors and public defenders.

In fact, the very absence of that component in the 2007 New Mexico study has prompted NCSC since 2007 to explore ways that the methodology for conducting such studies could be enriched in a cost-effective way to include resource needs calculations based on a more credible analysis of the current state of operations and caseflow management. Since the 2007 New Mexico workload study, there has been a critical development that bears on the relationship between (a) how well (in terms of effectiveness and efficiency) courts and their justice partners currently manage and apply their available personnel and other resources, and (b) what further resources they may need to accomplish their mission.

This has been the development of case management information systems and related performance measures that provide a level of detailed information allowing for an assessment of operations and caseflow management with the aid of dramatically-improved automated case information. In New Mexico, the AOC's Judicial Information Division (JID) has worked with district courts to enhance their automation, providing tools for convenient access to accurate case information by court personnel and the public. Data analysis based on AOC's "online case lookup" program, such as that reflected in this report, could not have been done in 2007 without a level of labor-intensive manual case review so high that it may have more than doubled the \$350,000 budget required for the 2007 NCSC workload assessment.

B. Efficiency, Timeliness and Quality. In the late 1990's, the 2nd Judicial District Court was one of nine state criminal trial courts participating in a national-scope study of felony case processing by researchers from NCSC and NDAA, funded by the National Institute of Justice and the State Justice Institute. The researchers found that timeliness and quality in felony case processing are not in conflict. Moreover, they found that prosecutors and defense attorneys in faster courts are able to make better use of their time than in slower courts:²⁸

²⁷ See David Steelman, et al., *A Workload Assessment Study for the New Mexico Trial Court Judiciary, New Mexico District Attorneys' Offices and New Mexico Public Defender Department* (Denver, CO: National Center for State Courts, Court Consulting Services Division, June 2007).

²⁸ Brian Ostrom and Roger Hanson, *Efficiency, Timeliness and Quality: A New Perspective from Nine State Criminal Trial Courts* (Williamsburg, VA: NCSC, 1999), p. 105, <http://www.ncjrs.gov/pdffiles1/nij/181942.pdf>, and http://www.ncsconline.org/WC/Publications/Res_CasMan_EfficiencyPub.pdf.

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The current research demonstrates that the relative importance of resources varies inversely with timeliness. The faster the system, the less the perceived importance of resources. Moreover, the faster courts do not necessarily have more resources than the slower courts, in accordance with the legal culture notion. Resources are important from the attorneys' perspective, but they are not that important in expeditious courts. We believe this relationship exists because in the expeditious courts, the attorneys have learned how to be more efficient.

What features were present in the courts in that study that were more expeditious? In each of the faster courts, there was greater court control of the progress of cases than in the slower courts. They found that the better-performing courts employ a set of policies and procedures including the following:²⁹

- Judges are committed to early and continuous judicial control over case scheduling, including firm trial and hearing dates;
- The courts are serious about following case processing time standards or goals; and
- There is a regular process through which the court, prosecutors, and defense attorneys communicate and coordinate their activities to address case management issues and problems.

In other words, the researchers found that adoption and implementation of key caseflow management principles can have a clear effect on the level of resource concerns for courts and their justice partners.

Conversely, this study (in which judges, prosecutors and public defenders from Bernalillo County participated about 15 years ago) suggests that the current judges, prosecutors and public defenders from Bernalillo County may be wrong when they assert that they cannot implement the caseflow management improvement recommendations in the 2009 NCSC report because they have inadequate staff resources. Rather, their perceptions of the inadequacy of staffing levels may be magnified because the management of felony case progress in the 2nd Judicial District needs improvement. If felony caseflow management were improved, personnel resource needs would be a less salient consideration.

C. Caseflow Management and the Cost of Wasted Time. In the past decade, budget concerns for states have led to efforts by leaders of state and county government to consider ways with the leaders of courts and court-related agencies to seek better ways to deal with the cost of providing government services. In 2001, for example, the Board of County Commissioners of

²⁹ *ibid.*, pp. 105-106.

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Orange County, Florida, appointed a special Jail Oversight Commission (JOC) to investigate problems of jail crowding. When the County found that the implementation of JOC recommendations for the development of pre-booking diversion and other corrections-based solutions was not sufficient to achieve a full and lasting solution to the problem of jail crowding, the County and the 9th Judicial Circuit Court of Florida requested technical assistance from NCSC. In a 2003 report, the NCSC consultant wrote³⁰

While it is not the sole cause of Orange County's jail crowding, the "local legal culture" (the shared expectations of judges, prosecutors, and defense attorneys about the pace of litigation for felony criminal cases) in Orange County is now a key barrier to the effective implementation of any efforts to reduce jail crowding. Because of the local culture, it appears that criminal cases that might be disposed early in the process are not concluded until much later, which means that criminal defendants spend much more time in jail than necessary while they await the conclusion of their cases by trial or plea. Until the Judiciary, the State Attorney's Office, and the Public Defender's Office change their practices and expectations, it will not be possible to reduce or avoid growing operating costs for the Orange County Jail.

As part of the NCSC recommendations, the consultant urged that focus should be given to the critical problem of creating "meaningful pretrial conferences" – that is, pretrial conferences that would not be repeatedly rescheduled because of problems with discovery, prosecution plea offers that were not realistic in the eyes of the defense, and a lack of early engagement with cases by public defenders. For a variety of structural reasons, however, including ongoing antagonism between the elected State Attorney and the elected Public Defender, the judges, prosecutors and public defenders in the 9th Circuit did not put this and other NCSC recommendations into effect.

That led the Chief Judge of the 9th Circuit to request a second NCSC study of the continuing lack of meaningful pretrial conferences. The Chief Judge and the NCSC consultant agreed that it would be highly valuable to show that current criminal case processing practices not only caused delay and jail crowding, but that they also created demonstrable and measurable waste for the Court, the State Attorney's Office, the Public Defender's Office, County Corrections, and local law enforcement agencies. Using information on personnel costs and time demands of court events, NCSC showed in a 2010 report³¹ that continual setting and resetting of pretrial conference and trial dates cost the Court and its justice partners about \$4.2 million worth of

³⁰ David Steelman, *Improving Criminal Case Processing to Reduce Jail Crowding in Orange County, Florida* (Denver, CO: National Center for State Courts, Court Consulting Services Division, December 2003), iv.

³¹ David Steelman and Jonathan Meadows, *Ten Steps to Achieve More Meaningful Criminal Pretrial Conferences in the Ninth Judicial Circuit of Florida* (Denver, CO: National Center for State Courts, Court Consulting Services Division, 2010).

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wasted personnel time each year in Orange County, while in Osceola County (the other county served by the 9th Circuit), the wasted time cost about \$3.1 million in personnel expenses each year. From its analysis, NCSC concluded that that having more meaningful court events, as reflected by the absence of any cases with any more than two scheduled pretrial conferences or trial dates, would save so much time for the judges, lawyers and others that it would be the same as having the full-time equivalent of about 60 additional judges, lawyers, police officers, corrections officers, and support people without adding anyone to the payrolls of the court or its justice partners. (For more details, see Appendix C.)

D. Caseflow Management and Staffing Levels in Bernalillo County. For the preparation of this report, it has not been possible for NCSC to replicate the methodology for the estimates of cost and personnel made in the 2010 NCSC report for the 9th Judicial Circuit of Florida. The statewide data from the 2007 NCSC workload assessment for New Mexico are no longer available for Bernalillo County, and they would be outdated if they were. The amount of time available for NCSC to prepare this report is not sufficient to allow the scope of information gathering that would be required on the time demands of court events, the personnel costs for key case participants, or such cost outlays as those for prisoner transport from MDC to a courtroom in downtown Albuquerque or for prosecutors and defenders from their downtown offices to MDC.

Yet the unavailability of such details cannot defeat an assertion based on simple arithmetic that caseflow management improvements resulting in earlier dispositions with fewer scheduled court events would reduce wasted time for judges, lawyers, police, corrections, support staff and other case participants. The time constraints preventing NCSC from making a calculated estimate of the scope and magnitude of wasted time and its potential reduction simply means that we cannot paint as dramatic a picture for Bernalillo County as is shown in Appendix C for the 9th Circuit of Florida.

Instead, NCSC is forced by current circumstances to make a rougher estimate of the impact of improved felony case management on the available personnel resources of the Court, the District Attorney, the Public Defender, and other case participants. Such a rough estimate is presented below in Table 12. This estimate lacks the detail and specificity of an estimate like that displayed in Appendix C. Yet it does show how changes in caseflow management might affect case participants. On the basis of the calculations reflected in Table 12, NCSC estimates that improving criminal caseflow management in the 2nd Judicial District might have the same effect as if there were at least one more judge, as well as two or three more prosecutors, two or three more public defenders, and a comparable number of additional support staff members, available in these organizations to work on criminal cases.

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Table 12. Rough Estimate of Improved Caseflow Management Impact on the Personnel Resources of the 2nd District Court and Court-Related Agencies

Reduction in Scheduled Events for --	Impact on Time Demand per Case
<i>2009 Release Cases</i> ³²	
<ul style="list-style-type: none"> • Average of One Fewer Event per Case: 	-14.21%
<i>2010 Felony Dispositions</i> ³³	
<ul style="list-style-type: none"> • Average of One Fewer Event per Case: 	-13.66%
<i>2012 PV Cases</i> ³⁴	
<ul style="list-style-type: none"> • No More than Two PV Resets: 	-18.4%
<ul style="list-style-type: none"> • No More than One PV Reset: 	-34.1%

VI. Conclusion

Because criminal case processing practices in this and other trial courts have a direct impact on the number of defendants detained pending adjudication and their average length of stay in a county jail, changing the duration of the criminal case process from initiation to conclusion necessarily affects the county jail population. From the NCSC assessment of criminal case processing in the 2nd Judicial District Court, we conclude that the Court and its criminal justice partners not only ***should*** shorten times from arrest to disposition, but that there are demonstrably successful ways by which they ***can*** do so, and as a result that they ***must*** do so in order to accomplish their mission in service to the people of New Mexico.

NCSC acknowledges that there are many limitations to what is presented in this report. Not the least of these is that data from a small sample of past events has been used to estimate the potential future impact of adopting and applying such caseflow management principles and practices as those recommended for Bernalillo County in NCSC's 2009 report.

Yet this is not the first time that the analytical approach in this report has been applied to problems of felony case management and jail crowding in a jurisdiction served by a felony trial court and its criminal justice partners. There is ample evidence that successful management of felony cases results in the reduction of delay. Because the average length of stay for county jail

³² Source: see note 11 above.

³³ Source: see note 12 above.

³⁴ Source: see note 17 above.

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inmates not released from custody pending felony adjudication is a direct byproduct of times to felony disposition, one can hardly argue that the reduction of felony delay will not reduce time spent in custody pending adjudication.

Moreover, there is a growing body of evidence that improved felony case management provides for better use time by judges, lawyers and other case participants by reducing the incidence of multiple settings for pretrial conferences, trials, and probation violation hearings. To the extent that there are fewer court appearances required per case, the judges, lawyers and other felony case participants have more time to attend to other important out-of-the-courtroom work in cases. This in turn means that the need for more personnel or other resources, while still critical, is a less salient concern for all the participants in the felony court process.

NCSC stands ready to provide further assistance to Bernalillo County, the 2nd District Court, and other court-related agencies in the matter of felony case processing. NCSC is aware that the County has been awarded a grant from the State Justice Institute for an analysis of the cost consequences of implementing the recommendations in the 2009 NCSC report. In order for such a cost analysis to be done, it would be necessary to determine with specificity what changes have been made in criminal case practices since the submission of that NCSC report. This would undoubtedly require communications with and assistance from the New Mexico Administrative Office of the Courts, whose representatives have informed NCSC that they are ready and willing to assist with the provision of data on Bernalillo County cases. NCSC awaits further word from court and county officials on whether further steps of this nature should be undertaken.

APPENDIX A.

**HIGHLIGHTS OF FINDINGS AND RECOMMENDATIONS IN
NCSC 2009 REPORT ON FELONY CASE PROCESSING IN
BERNALILLO COUNTY³⁵**

³⁵ Source: David Steelman, Gordon Griller, Joseph Farina, and Jane Macoubrie, *Felony Caseflow Management in Bernalillo County, New Mexico* (Denver, CO: NCSC, Court Consulting Services Division, November 2009).

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Chapter I. What the Numbers Show about Felony Case Processing Times

Highlights of Findings:

- District Court's pending inventory was about 20% higher on 2/28/09 than on 6/30/04.
- For felony cases with indictments, elapsed time from arrest to indictment averages about 4 months.*
- Since fiscal year 2004-05, the District Court has disposed of more than half its criminal cases in less time than the statewide average.
- District Court elapsed time from filing to nontrial disposition averages almost 6 months.*
- District Court elapsed time from filing to jury trial disposition averages almost 20 months.*
- About 60-70% of cases have failures to appear and bench warrants.

Highlights of Recommendations:

- District Court monitoring of felony case processing times should begin at arrest and should include the date of initial appearance and determination of probable cause. Scheduled court events and continuances should routinely be made available from judges' chambers to the District Court's central case information system. The Court should continue monitoring felony clearance rates and should routinely monitor how many cases were older than applicable time standards at disposition; how many active pending cases are currently approaching or older than applicable time standards; and how frequently does the trial in a case actually commence on the first-scheduled trial date.

* Limitations of time and budget prevented NCSC from inspecting individual case files on which the data from the Bernalillo County District Attorney's Office and Second Judicial District Court were based to determine the reasons for elapsed times in specific cases.

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Chapter II. Understanding the Numbers

Highlights of Findings:

- Average length of stay in pretrial detention for serious felons is about 8-9 months.
- Even with electronic records, exchange of information between Metro Center, District Court and other criminal justice partners is largely by paper.
- Initial arrest reports from APD routinely take 30-90 days to be transmitted, and there is a dramatic difference of perspective between APD and other criminal justice partners.
- APD has increased its sworn officers, but it has a shortage of non-sworn staff.
- Sixty-four percent of those booked at MDC are released from jail shortly after initial appearance in Metro Court. Most are charged with minor violations.
- Virtually all felony cases in Bernalillo County are prosecuted by indictment.
- Cases are assigned to individual judges at or soon after arraignment. The exercise of peremptory removal supports at least an appearance of “judge shopping,” and some judges may have significantly fewer active assigned cases, with their approach to dealing with cases being seen as a burden on their colleagues.
- Rule 5-501 provides that unless the Court orders a shorter time, the DA must disclose discoverable evidence to the defendant within 10 days after arraignment or waiver of arraignment. The DA’s Office understands this to mean that there is no entitlement to discovery before indictment.
- Continuing problems in the transmission of police reports and other discoverable information from the APD to the DA’s Office are seen as a source of discovery delay.
- Rule 5-604 provides that a trial must typically commence within six months after arraignment, providing that a case can be dismissed with prejudice if trial is not started within time limits. It appears that this sanction is seldom applied, however. Since almost two-thirds of all cases had at least one bench warrant, it is likely that time extensions are often granted because a defendant had failed to appear.

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Chapter II. Understanding the Numbers (continued)

Highlights of Recommendations:

- There should be a coordinated, sustained effort toward integrating and sharing electronic data among the various digitized case management systems in the county.
- The District Court should explore the possibility of assuming responsibility for felony inmate jail monitoring from the County.
- The APD Records Department should be reorganized and staffed more appropriately. Electronic field automation incident reporting should be integrated with Records Department business practices and paper records from other sources.
- Compatibility between BCSO and APD electronic computer report writing systems should be sought. The DA's Office and the Public Defender's Office should adjust business processes and introduce software as necessary to promote efficient electronic receipt of law enforcement reports and discoverable information.
- Serious consideration should be given to ways that more cases can be resolved before indictment.
- A probation violation calendar should be established by the District Court and overseen by a specially-assigned PV judge, who need not be the sentencing judge.
- The DA's Office should consider having many more felonies prosecuted by information rather than by indictment. An ad hoc committee led by the Chief Judge and composed of knowledgeable and high-level prosecutors and defense lawyers should be created to explore earlier discovery exchange geared toward prosecutions by information and early pleas at or before District Court arraignment.
- Consistent with its authority under Rule 5-501 to order earlier discovery, the District Court should encourage the DA's Office to disclose discoverable information before indictment to allow an experienced attorney from the Public Defender's Office to review a case before indictment and engage in discussions with a prosecutor about a possible plea or the most suitable way to proceed on felony charges.
- After communication with the District Attorney's Office and the Public Defender's Office, the District Court should consider the introduction of a plea cutoff policy to promote earlier pleas and greater certainty of trial dates. (See Appendix E for more details.)
- The Criminal Division should adopt a policy limiting unnecessary continuances, reflecting best practices for the management of criminal cases and the need to provide credible trial dates. (See Appendix D for a model continuance policy.) This policy should be applied with reasonable consistency by all the judges of the Criminal Division.

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Chapter III. Comprehensive Caseflow Management Improvement Program

Based on their assessment of felony case-processing situation in Bernalillo County, the NCSC project team members offer an overall program for felony caseflow management improvement with the following features:

- There should be consensus and commitment to caseflow management among Criminal Division judges.
- The DA's Office should work with law enforcement on early provision of reports and early discovery exchange.
- Defense counsel must have early contact with clients and be conversant with cases at the first pretrial conference.
- There should be established criteria for success in timely case processing.
- Information technology improvements are needed to provide efficient information exchange and effective case status monitoring.
- The District Court and each of its criminal justice partners should take steps to exercise active caseflow management.
- There should be consensus about priorities and implementation steps.

APPENDIX B.

**CONSENSUS REACHED BY CRIMINAL DIVISION JUDGES
ATTENDING “SHIRTSLEEVES” SESSION IN MARCH 2010
TO DISCUSS NCSC 2009 REPORT ON FELONY CASE
PROCESSING IN BERNALILLO COUNTY³⁶**

³⁶ Source: Second Judicial District Court, Bernalillo County, New Mexico, “Workshop on Reducing Felony Case Delay” (Friday, March 19, 2010), minutes prepared for the Court and the County by David Steelman and Gordon Griller, NCSC.

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CONSENSUS REACHED BY CRIMINAL DIVISION JUDGES ATTENDING “SHIRTSLEEVES” SESSION IN MARCH 2010 TO DISCUSS NCSC 2009 REPORT ON FELONY CASE PROCESSING IN BERNALILLO COUNTY

Judges Present: Pat Murdoch, Charles Brown, Kenneth Martinez, Ross Sanchez, Denise Barela-Shepherd, and Reed Sheppard

NCSC Staff Present: David Steelman, Gordy Griller

A wide ranging discussion took place regarding the recommendations in the recent National Center for State Courts’ Felony Caseflow Management Study of the Criminal Division. Three flip charts were developed during the workshop and left with Judge Murdoch for reference by the court’s leadership and Criminal Division judges, including (a) a listing of proven principles of sound criminal caseflow management, (a) a “reverse telescope” diagram comparing common civil and criminal case disposition points,³⁷ and (c) a list of priorities regarding all NCSC recommendations ranked in terms of their impact (how significant each would be in reducing delay in criminal cases) and feasibility (how difficult or easy each would be to implement). Overall consensus and agreement among the workshop judges included the following desired initiatives and action plans under the general topics discussed.

1. Early and Continuous Control

Objective: Control the pace of litigation from bind over.

Initiatives:

- ✓ Expand EPP program to include more cases;
- ✓ Add a second EPP judge;
- ✓ Process more cases through information / preliminary hearing;
- ✓ Develop a duty judge to screen PD and DA cases early in the process;
- ✓ Insure police report is provided to the defense with the target notice;
- ✓ Promulgate local criteria (standards) for timely case processing;
- ✓ Promote changes via Judge Murdoch and the justice system partners.

³⁷ The *reverse telescope* depicts major “fallout” or disposition points in the movement of cases from arrest (criminal) or filing (civil) to trial. Research substantiates that in every court, the vast majority of cases never reach trial. They are pled or settled somewhere along the process, usually at a court imposed meaningful event which requires the parties to prepare and discuss, in earnest, the merits of the case. Where these court created opportunities and incentives for early case resolution are significant and consequential, effective bargaining and admissions promote resolution. This is the *Doctrine of Judicial Responsibility*; essentially meaning that the overall pace of litigation and specific points for disposition must be left to a judge as an impartial decision-maker never to the adversaries who have vested interests in the case.

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2. Prepared Lawyers Settle Cases; the Court Must Assure Preparation³⁸

Objective: Prompt lawyer preparedness by developing meaningful events and operating in a united fashion as a Criminal Division.

Initiatives: ✓ Draft new criminal rules using the Federal Rules as a guide;
✓ Impose stricter discovery deadlines and exchanges by local rule;³⁹
✓ Develop a strong pretrial scheduling order used by all judges;⁴⁰

3. Identify and Eliminate Inefficiencies in the Process

Objective: Reduce the number of times the court has to touch a case. This can be done by streamlining procedures, developing special/consolidated calendars, and developing a back-up judge program to avoid continuing numerous trials because individual calendars are overset.⁴¹

Initiatives: ✓ Create a consolidated PV docket during motion weeks;⁴²
✓ Ensure all charges against a defendant are set before the same judge;⁴³
✓ Create a system of “back-up” judges that curtails disqualifications.⁴⁴

4. Develop a Uniformly Applied Continuance Policy

Objective: Limit the number of postponements by being reasonably arbitrary.

Initiatives: ✓ Adopt a firm, universally followed, written continuance policy;

³⁸ In criminal matters, lawyer preparation is a key element since over 95 percent of all cases settle prior to trial. It is important to remember the following truths: Lawyers settle cases, not judges. Lawyers settle cases when they are prepared. (Unprepared lawyers shouldn't settle cases). Lawyers prepare for significant events. Significant events are set and upheld by the court. By creating and maintaining expectations that events will occur when scheduled; a culture of predictability will result. Wasted resources are reduced and time is better spent by all.

³⁹ The Chief Judge should, under Rule 5-501, order early discovery before indictment.

⁴⁰ Use as a guide the pretrial scheduling order used by former Taos County District Judge Peggy Nelson.

⁴¹ All courts must overset trial calendars since cases which languish in the system often settle immediately prior to trial. To promote settlement and “harden” the trial docket, trial date certainty must be a part of the local legal culture. Where a judge has more cases than he/she can try on a particular day, overflow cases must be placed as soon as possible (desirably the same day) with another available trial judge. When there is certainty of trial on the date scheduled, lawyer and defendant gamesmanship is reduced and increasing numbers of cases settle earlier.

⁴² Develop a Hearing Officer position to be funded by Bernalillo County.

⁴³ Inefficiencies are caused under the current system when defendants with various charges arising out of different events at different times are assigned to different judges.

⁴⁴ Court and NCSC will encourage the New Mexico Supreme Court to adopt a rule that once a case is set for trial before a specific judge and that judge cannot try it, a reassignment to another judge for trial shall not be subject to a disqualification motion. Should a state rule be unattainable, the Criminal Division may wish to explore a “strike system” whereby lawyers are required to immediately exercise all disqualification motions at the time of reassignment.

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✓Track and analyze continuances by reason, requesting party, and judge.

5. Continue and Expand Settlement Conferences

Objective: Use both pro tem (retired) judges and sitting Criminal Division judges.

Initiatives: ✓Request additional pro tem judge help and funding from the County;
✓Augment pro tem judges with Criminal Division judges.

APPENDIX C.

**IMPACT OF CRIMINAL CASE PROCESSING PRACTICES ON
RESOURCE AVAILABILITY IN THE NINTH JUDICIAL
CIRCUIT OF FLORIDA⁴⁵**

⁴⁵ This is a summary of the report by David Steelman and Jonathan Meadows, *Ten Steps to Achieve More Meaningful Criminal Pretrial Conferences in the Ninth Judicial Circuit of Florida* (Denver, CO: NCSC, Court Consulting Services Division, 2010).

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APPENDIX C. IMPACT OF CRIMINAL CASE PROCESSING PRACTICES ON RESOURCE AVAILABILITY IN THE NINTH JUDICIAL CIRCUIT OF FLORIDA

With 65 judges, the Ninth Judicial Circuit Court of Florida is a trial court of general jurisdiction serving about 1.3 million residents of Orange and Osceola Counties in Central Florida. At the Orange County Courthouse in downtown Orlando and the Osceola County Courthouse in downtown Kissimmee, the judges hear criminal, civil, domestic and traffic cases. In Orlando, they hear juvenile dependency and delinquency cases at the Thomas S. Kirk Juvenile Justice Center. There are also three satellite courtrooms in Apopka, Ocoee and Winter Park, where judges hear misdemeanor and traffic cases. Three courtrooms are located at the Orange County Jail Booking and Release Center for first appearances, arraignments, and violation-of-probation hearings.

In November 2009, the Court engaged the National Center for State Courts (NCSC) to evaluate the processing of criminal and juvenile delinquency cases in both Orange and Osceola Counties. The evaluation was to give particular attention to how pretrial conferences in such cases might be made more meaningful. The NCSC review of case processing would include not only the Court, but also the State Attorney's Office and the Public Defender's Office, with an eye to determining how efficiencies might be achieved by streamlining the process.

Summary of Findings and Conclusions

Key stakeholders in the Ninth Judicial Circuit of Florida perceive that delays in criminal case processing result from pretrial conferences that are not as meaningful as they should be, so that pretrial conferences and trial dates must often be rescheduled. A court event is “meaningful” when the activities for which it was scheduled actually occur as planned, and when substantial progress is made toward the disposition of the matter before the court.

This is a time when there are severe budget problems for the State of Florida and for county governments. In such an environment, delay and rescheduling of court events are not just a burden on victims and other citizens participating in criminal cases. In fact, they also cause significant wasted time for judges, prosecutors, defense attorneys, law enforcement officers, support staff, and other organizations in the court process. In a time of tight resources for courts and other public agencies, such waste is costly.

A. Cost of Time Lost by Not Having Meaningful Court Events

Using information provided by the Court and court-related organizations, the cost of such wasted time has been estimated by the National Center for State Courts. In Orange County, not having meaningful court dates for pretrial conferences and trials in felony, misdemeanor, and juvenile delinquency cases costs the Court and its justice partners about \$4.2 million worth of wasted personnel time each year. In Osceola County, the wasted time costs about \$3.1 million

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in personnel expenses each year. See Figures C.1 and C.2 below for summaries of the cost impact of wasted personnel time on the Court, the State Attorney’s Office (SAO), the Office of the Public Defender (PD), the Clerk’s Office, County Corrections, and law enforcement departments for felony and misdemeanor cases in each of the two counties. For a summary of wasted time in juvenile delinquency cases in each county, see Figure C.3.

Figure C.1. Estimated Total Annual Cost of Time Lost Because of Non-Meaningful Felony Pretrial Conference Dates and Trial Dates in Ninth Judicial Circuit

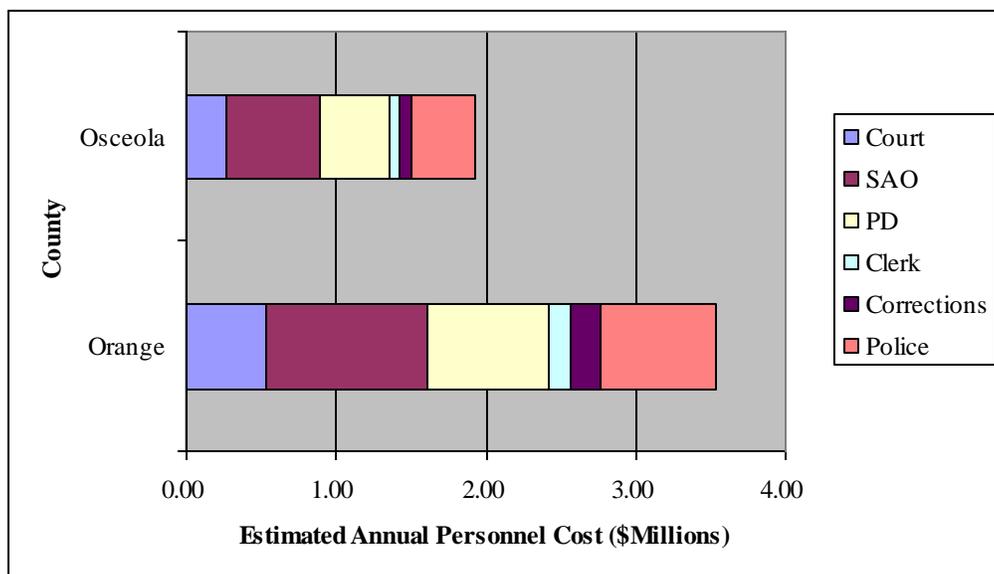
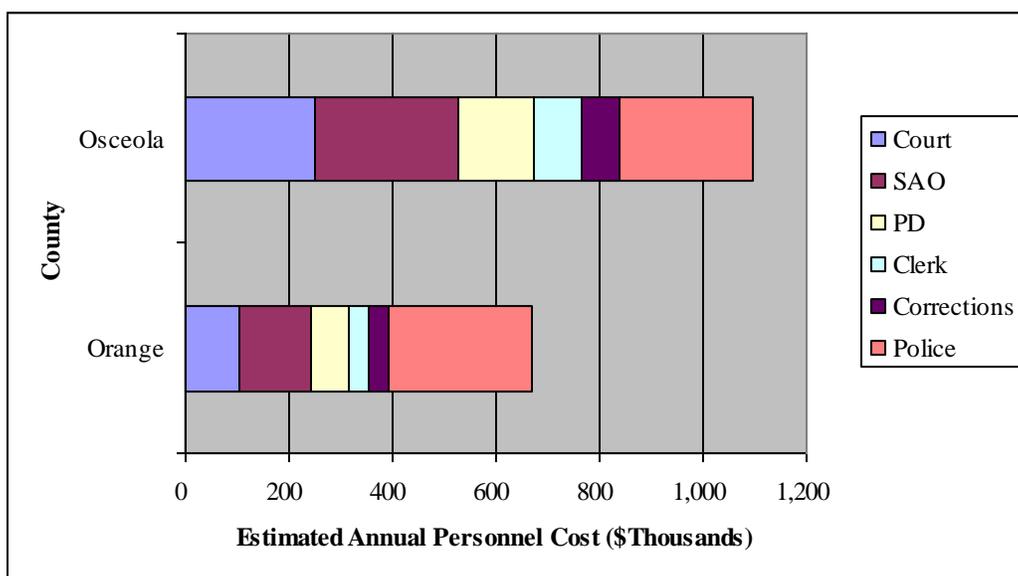
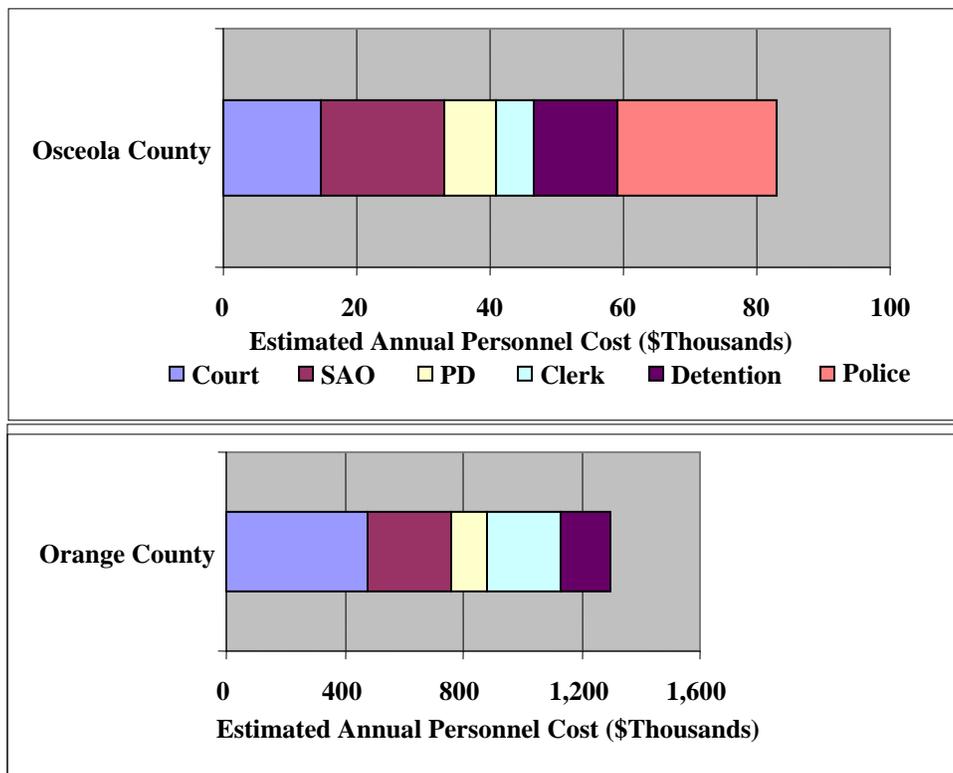


Figure C.2. Estimated Total Annual Cost of Time Lost Because of Non-Meaningful Misdemeanor Pretrial Conference Dates and Trial Dates in Ninth Judicial Circuit



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Figure C.3. Estimated Total Annual Cost of Time Lost Because of Non-Meaningful Delinquency Pretrial Conference Dates and Trial Dates in Ninth Judicial Circuit



B. Results of Having More Meaningful Court Events

It is important to understand that it is neither possible nor desirable to eliminate all rescheduling of pretrial conference and trial dates. In individual cases, the grant of a continuance and the rescheduling of a court event is a necessary and appropriate step to assure that justice is done.

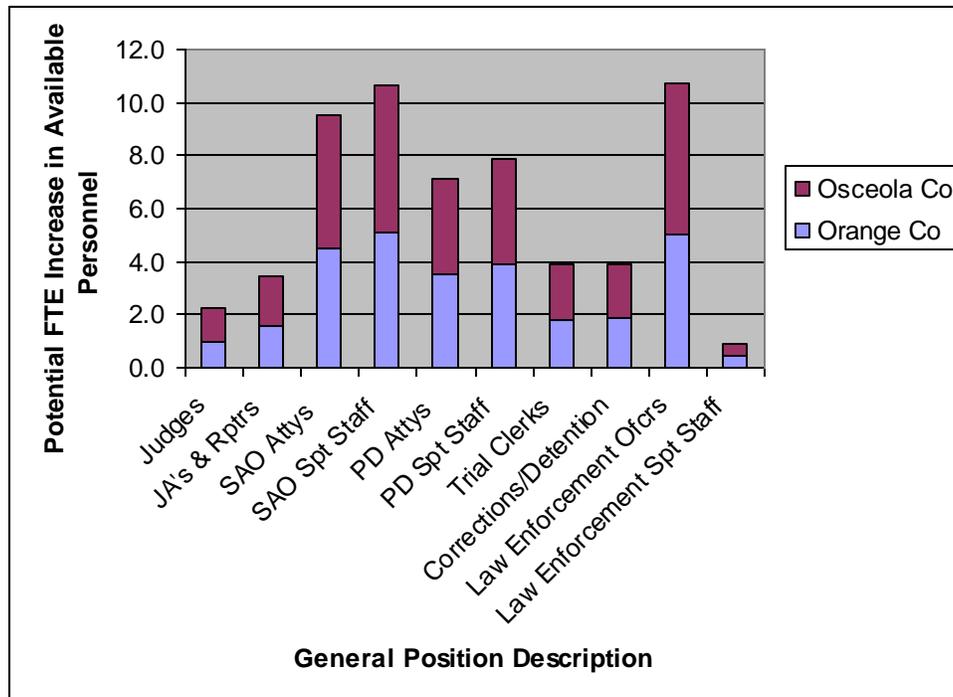
This is not to say, however, that any court event can be rescheduled without a negative impact on justice and cost to the public. To assure the provision of justice in a prompt and affordable manner, it is critical that pretrial conference dates and scheduled trial dates be credible and meaningful. This is accomplished by a court through the effective exercise of early and continuous control of case progress, so that unnecessary delays and wasted time can be minimized.

If scheduled pretrial conference dates and trial settings were more meaningful, so that there were fewer cases rescheduled, it is important to see what the results would be. The impact can be viewed most productively in terms of time savings for judges, lawyers and others. The data results in Chapter IV of the full NCSC report show that having more meaningful court events, as reflected by the absence of any cases with any more than two scheduled pretrial conferences

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or trial dates, would save so much time for the judges, lawyers and others that it would be the same as having the full-time equivalent⁴⁶ of about 60 additional people without adding anyone to the payroll! For a summary of the impact of having more meaningful pretrial conference dates and trial dates, see Figure C.4.

Figure C.4. Potential Yearly Full-Time Equivalent (FTE)⁴⁷ Increase in Available Personnel from Having More Meaningful Court Events in Ninth Circuit Criminal and Delinquency Cases



As Figure C.4 illustrates, the reduction of wasted time would yield the equivalent of having two more judges, about ten more line prosecutors and ten more assistant public defenders, four more courtroom clerks, four more corrections and juvenile detention officers, ten more law enforcement officers, and more support staff for the Court, SAO, the PD and law enforcement agencies.

⁴⁶ "Full-time equivalent" ("FTE") is a measure of the number of employees that an organization may have or need, taking into account the possibility that it may have part-time employees. It can also be used, as it is in this report, to measure the extent of personnel time savings that would result from avoidance of wasted time from increases in productivity. FTE is determined by dividing working hours (excluding overtime) for all current or needed employees by the standard hours in a full-time work year. See <http://www.iaglimited.info/results/reports/archive/html06/glossary.shtml>.

⁴⁷ Ibid.

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Ten Steps to Promote More Meaningful Court Events

Based on the findings summarized above, NCSC offers ten recommendations for improvement. In brief, they are the following:

- *Actively apply a court management policy to avoid unnecessary delay and waste of personnel resources*
- *Consistently apply a criminal case management policy to reduce unnecessary continuances*
- *Expand pre-booking diversion opportunities*
- *Use differentiated case management (DCM) as a tool for early and continuous court control of case progress*
- *Give early and continuous case management attention to discovery requirements*
- *Consider early judicial settlement conferences*
- *Consider adoption of a plea cut-off policy*
- *Schedule criminal court events for more efficient use of law enforcement witnesses*
- *Provide additional judicial resources for felony cases in Osceola County*
- *Measure performance and include results in published annual reports*

APPENDIX D.

**ABOUT THE PRINCIPAL AUTHOR OF THIS NCSC
REPORT**

Estimating the Potential Impact of Better Criminal Caseflow Management on the Jail Population in Bernalillo County, New Mexico

DAVID C. STEELMAN

Principal Court Management Consultant

National Center for State Courts

phone 603.647.4143 | fax 603.647.4143 | cell 603.391.2374

dsteelman@ncsc.org

DAVID C. STEELMAN has been with the National Center for State Courts since 1974. In over 35 years with the National Center, he has worked with courts in about 40 states and a dozen foreign countries, in such areas as court organization; court performance measurement; trial and appellate court caseflow management; drug courts; family and juvenile courts; management of court reporting services; and management of traffic courts. He was a reporter for the *Model Time Standards for State Courts* (Approved August 2011 by Conference of Chief Justices, Conference of State Court Administrators, National Association of Court Management, and American Bar Association House of Delegates), which includes time standards that he drafted for involuntary civil commitment cases. His book entitled, *Caseflow Management: The Heart of Court Management in the New Millennium* (2000, 2004), was for years the National Center's most in-demand publication. He also wrote the *Court Business Process Enhancement Guide* (COSCA/NACM Joint Technology Committee, 2003), and he was co-author of *Traffic Court Procedure and Administration* (2d ed., American Bar Association, 1983).

Mr. Steelman has done prior work with the courts of New Mexico and Bernalillo County. He was the project director for a statewide workload assessment in 2006-2007 to determine the need for judgeships, prosecution lawyers and staff, and public defender lawyers and staff. After that, he was the project director for a 2009 assessment of felony case processing in the 2nd Judicial District.

In April-May 2004, Mr. Steelman was a visiting scholar at the Research Institute on Judicial Systems at the University of Bologna in Italy. From September 1987 through August 1992, he was the director of the National Center's Northeastern Regional Office. From 1977 through 1983, he was an adjunct professor in the Evening Division of Boston College. He graduated Phi Beta Kappa from the University of New Hampshire, being a Ford Foundation Teaching Fellow, earning both BA and MA degrees there. After being awarded a Bronze Star as a US Army officer in Vietnam, he received his law degree from the Boston University School of Law. He is admitted to the practice of law in Massachusetts and New Hampshire, having done legal work for the Maine Municipal Association and New Hampshire Legal Assistance before joining the National Center.