



# **Felony Caseflow Management in Bernalillo County, New Mexico**

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## **PREFACE**

This report was prepared under a February 2009 agreement between the National Center for State Courts (NCSC) and the Bernalillo County for a study of felony case processing in the Second Judicial District Court of New Mexico. The findings are based on interviews, observations, published reports, and felony case processing data provided by the District Court and the Bernalillo County District Attorney's Office. Limitations of time and budget prevented NCSC from inspecting individual case files on which such data were based. Moreover, the case processing data reflect a "snapshot in time" of criminal justice practices, which can and should change in response to economic and social factors, changes in statutes and court rules, and adoption of best practices as recommended here.

The members of the NCSC project team wish to express their gratitude and appreciation for all of the assistance and gracious hospitality we received from everyone that they worked with in Bernalillo County. In particular, we want to express thanks for the advice and guidance given us by Second Judicial District Court Chief Judges William Lang and Ted Baca, Criminal Division Presiding Judge Albert "Pat" Murdoch, Bernalillo County Manager Thaddeus Lucero, and other members of the executive leadership team for this project; and Juanita Duran and Mark Pickle of the Second District Court and Destry Hunt of Bernalillo County Government for assistance with the myriad details of completing the project.

# HIGHLIGHTS OF FINDINGS AND RECOMMENDATIONS

## 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.

## 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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\* 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.

## 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.

## 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.



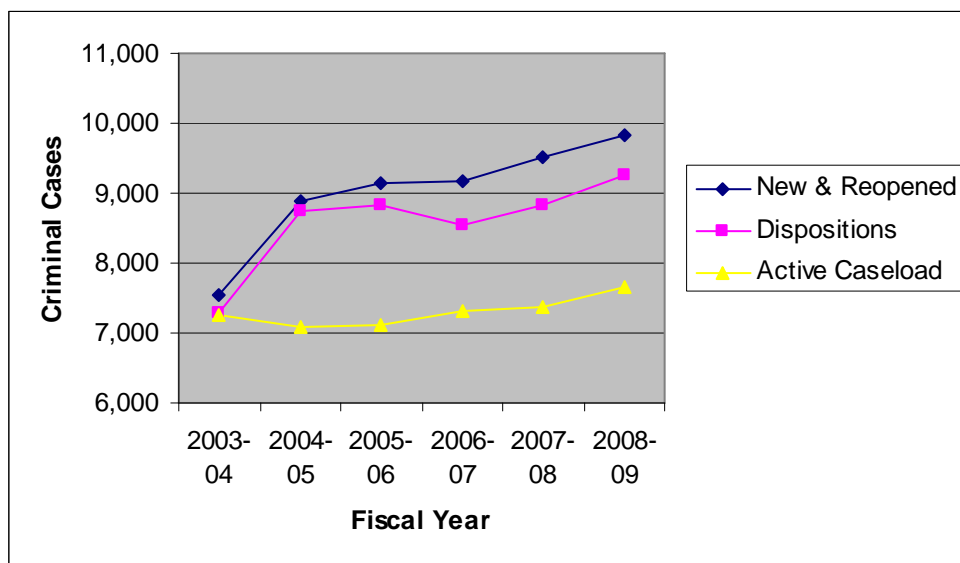
# Chapter I. What the Numbers Show about Felony Case Processing Times in Bernalillo County

## A. Introduction

Primary responsibility for felony case processing in Albuquerque and Bernalillo County is in the Criminal Division of the Second Judicial District Court. The Criminal Division has ten judges, including the Presiding Judge. The criminal caseload of the Court far exceeds that of the other 12 judicial districts in New Mexico, amounting to more than one-third of the statewide total.

**1. Filings and Dispositions.** From fiscal year 2003-04 to fiscal year 2004-05, the number of new criminal cases filed or reopened increased by almost 18%. Yet the Court was able to increase its dispositions by 20%, so that the active pending caseload at the end of June 2005 was actually lower than it had been a year before. For fiscal years 2005-06 and 2006-07, the growth in new or reopened cases was slower, as Figure 1 illustrates, and the Court was able to prevent any substantial growth in its active pending caseload.

**Figure 1. Second District Court Trends in Criminal Cases Filed or Reopened versus Cases Disposed, FY 2003-04 through FY 2008-09**

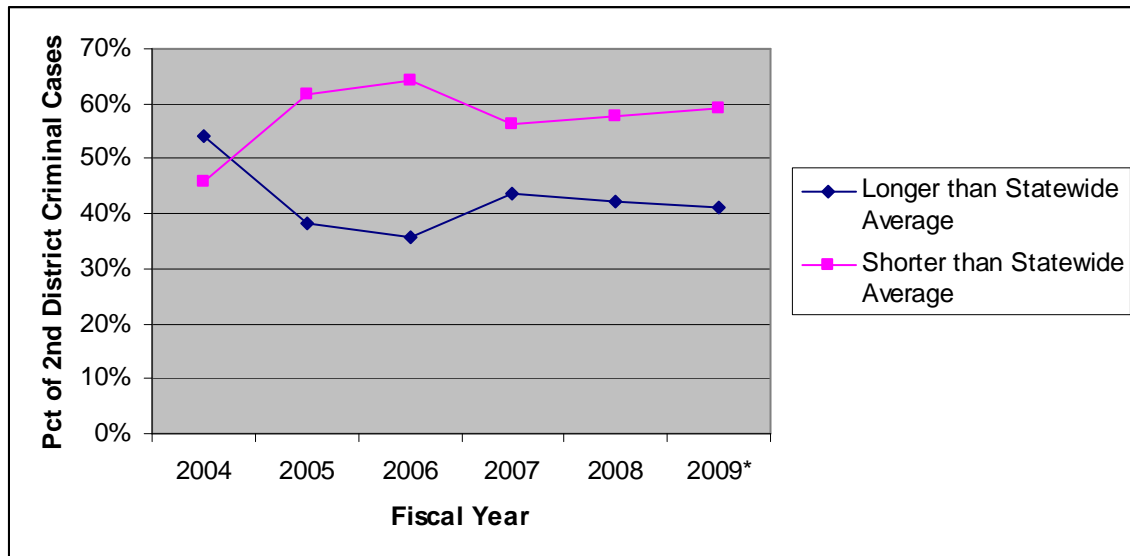


In fiscal years 2007-08 and 2008-09, however, increases in the number of new filings and reopened cases were more substantial, by 22% over fiscal year 2007-08. The criminal division judges were again able to increase the number of cases that they disposed. As a result, despite the greater effort by the Court, the active pending caseload was larger at the end of June 2009 than it had been just a year or two earlier.

**2. Comparison with Statewide Averages.** It is informative to compare criminal case data for Bernalillo County with statewide data for all district courts in New Mexico. The court administrator in the Second Judicial District maintains such a comparison for times from the filing of new cases in District Court to disposition, that time for reopened cases, and for the age of pending criminal cases.

**a. Disposition Time for New Cases.** In fiscal year 2003-04, the average time from District Court filing to disposition for new cases in Bernalillo County was nine months (271 days), compared to a statewide average of about seven months (207 days). As Figure 2 shows, more than half (54%) of all Bernalillo County cases disposed that year took longer than the statewide average.

**Figure 2. Time from District Court Filing to Disposition (in Days) for New Criminal Cases with One Judge: Percent of Second Judicial District Cases Longer and Shorter than Statewide Average<sup>1</sup>**



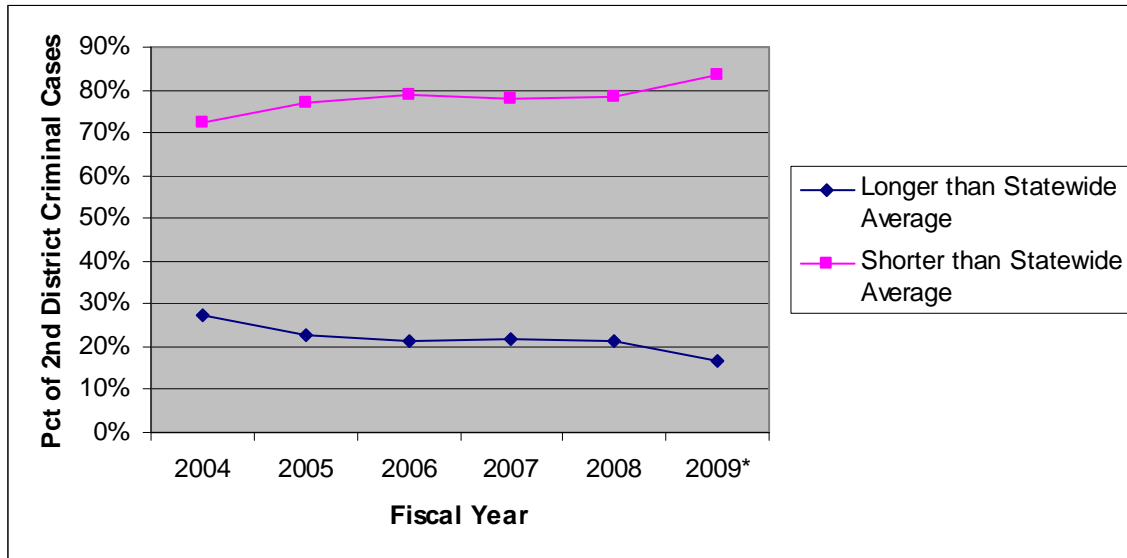
\* Note: Percentages for FY 2009 are for the period only from July 1, 2008, through February 28, 2009.

<sup>1</sup> Source: Court Administrator, Second Judicial District.

In fiscal years 2004-05 and 2005-06, the Court’s timeliness for criminal cases improved, so that over 60% of disposed cases each year took less than the statewide average. In subsequent fiscal years, the Court has continued to dispose of more than half its criminal cases in less time than the statewide average, although it has not been able to sustain the results it achieved in fiscal years 2004-05 and 2005-06. See Table A-1 in Appendix A for more details.

**b. Disposition Time for Reopened Cases.** If cases have been inactive and are reopened, their overall time to disposition is not as long as it is for newly-filed cases. From fiscal year 2003-04 to fiscal year 2008-09, the Court’s average time to disposition for such cases has been shorted from over four months (127 days) to less than two-and-one-half months (71 days). As Figure 3 illustrates, the percentage of cases disposed in a shorter time than the statewide average (99 days) has grown from about 73% to just over 83%. See Table A-2 in Appendix A for more details.

**Figure 3. Time from District Court Filing to Disposition (in Days) for Reopened Criminal Cases with One Judge: Percent of Second Judicial District Cases Longer and Shorter than Statewide Average<sup>2</sup>**



\* Note: Percentages for FY 2009 are for the period only from July 1, 2008, through February 28, 2009.

<sup>2</sup> Source: Court Administrator, Second Judicial District.

**c. Age of Active Pending Cases.** As Figure 1 above indicates, the Court’s criminal case dispositions since fiscal year 2004-05 have lagged behind new filings and reopened cases. Table 1 shows the predictable results: even though the total number of pending cases dropped in fiscal year 2007-08 to a level lower than fiscal year 2003-04, the total at the end of February 2009 was 19.7% higher than it was at the end of fiscal year 2003-04.

**Table 1. Trends in Total Pending Criminal Cases with One Judge, Second Judicial District and Statewide<sup>3</sup>**

<b>Fiscal Year</b>	<b>Total Pending Cases</b>
2004	5,581
2005	6,296
2006	5,898
2007	6,035
2008	5,462
2009*	6,683

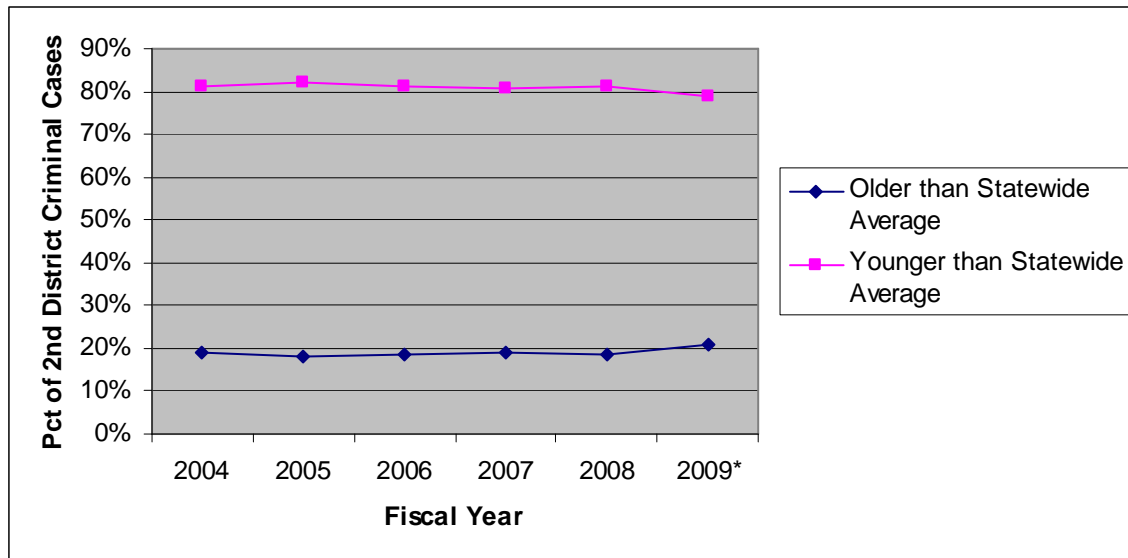
\* Note: The total for FY 2009 is as of February 28, 2009.

The average age of criminal cases pending in Bernalillo has remained stable. For fiscal year 2003-2004, it was about eight months (243 days), compared to a statewide average of ten months (305 days). In subsequent years the average age has gone as high as 248 days (FY 2005-06) and as low as 225 days (FY 2006-07); and as of the end of February 2009 it was 242 days. See Table A-3 in Appendix A.

Figure 4 shows the percent of Bernalillo County pending criminal cases older than the statewide average and younger than the statewide average. Throughout the period from fiscal year 2003-04 through February 2009 in fiscal year 2008-09, about 80% of the active criminal cases in Bernalillo County have been pending for a period of time shorter than the statewide average. Although the percent older than the statewide average hovered between 18% and 19% through the end of fiscal year 2007-08, it was up to 21% as of the end of February 2009. See Table A-3. It is too soon to determine if this is part of any trend toward having a larger and older pool of active pending cases.

<sup>3</sup> Source: Court Administrator, Second Judicial District.

**Figure 4. Average Age from District Court Filing to Disposition (in Days) for Active Pending Criminal Cases with One Judge: Percent of Second Judicial District Cases Longer and Shorter than Statewide Average<sup>4</sup>**



\* Note: Percentages for FY 2009 are for the period only from July 1, 2008, through February 28, 2009.

Faced with demand far exceeding current capacity, the Court is concerned that steps must be taken to streamline criminal case processing. Working with the District Attorney’s Office, the Public Defender’s Office, law enforcement, and its other criminal justice partners, the Court must explore the extent to which improvements in criminal caseflow management can help to control the size and age of active cases pending adjudication.

As part of the effort to determine what steps are desirable to improve criminal caseflow management, it is important to learn more about the current movement of criminal cases, and how that compares to the New Mexico time expectations for felony cases presented in section B. In the sections after that, data are shown for

- Booking trends in the Metro Detention Center (section C);
- Time from initial appearance in Metro Court to District Court filing (section D);
- Time from District Court filing to disposition for a sample of criminal cases disposed (a) by plea or other nontrial means, and (b) by jury trial, in the time period from July 1, 2008, through June 30, 2009 (section E).

<sup>4</sup> Source: Ibid.

## **B. New Mexico Case Processing Time Expectations**

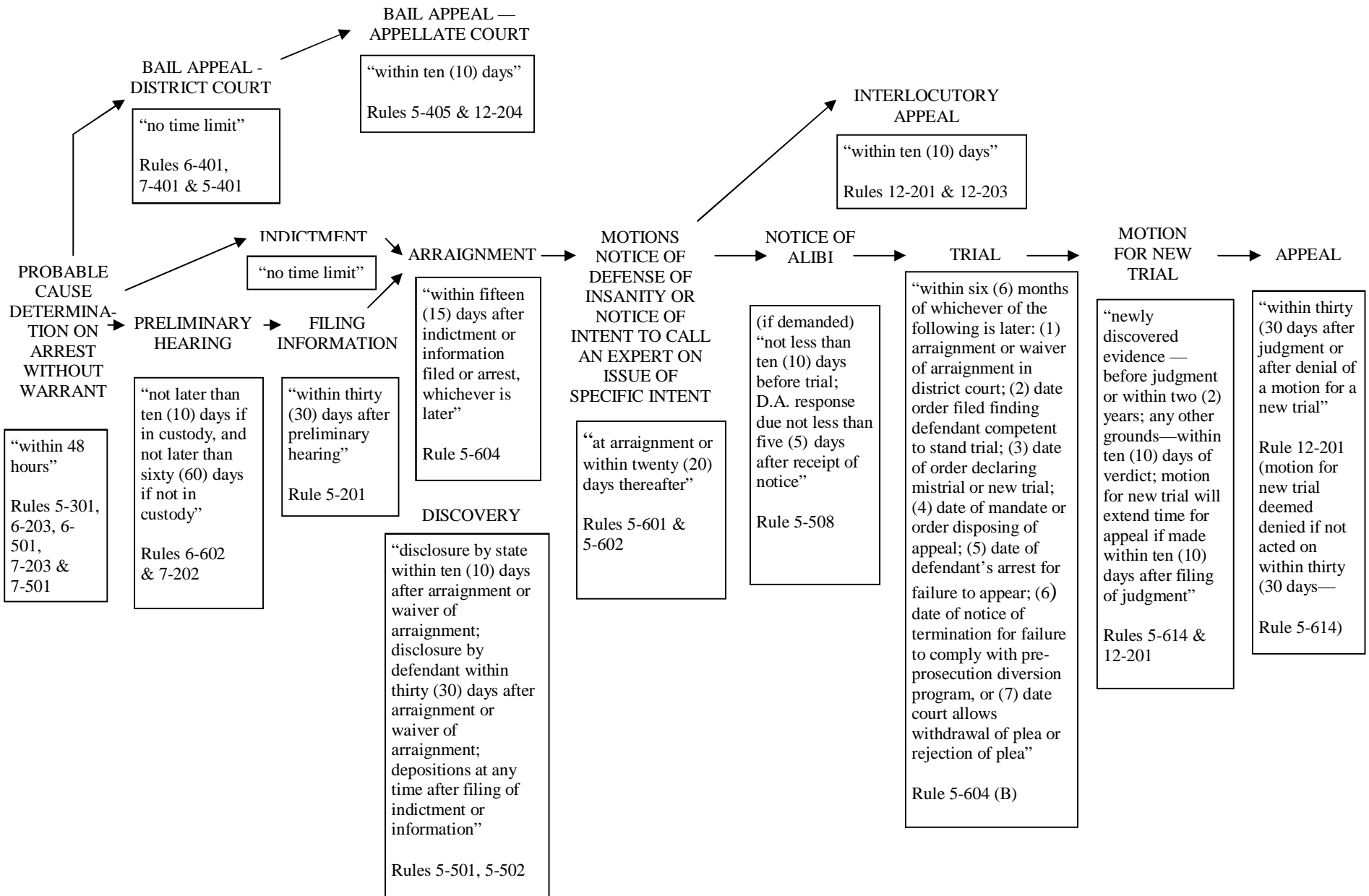
New Mexico Rules of Criminal Procedure provide incrementally for the length of time that a felony criminal case should typically take from arrest and initial appearance in a limited-jurisdiction court (the Metropolitan Court in Bernalillo County) through filing and disposition in district court (in Bernalillo County, the Second Judicial District Court). Based on Criminal Rule 5-901, Figure 5 shows the general time sequence for a typical felony case in New Mexico, showing a total expected elapsed time of seven to nine months. This is not inconsistent with the New Mexico statewide average elapsed time (207 days) from district-court filing to disposition. See Table A-1 in Appendix A.

If a defendant is not in custody following initial appearance, a preliminary hearing must be held within 60 days if not waived, and a district attorney prosecuting by information must then file it within 30 days after a finding of probable cause. As Figure 5 indicates, however, the rules provide no time limit on the filing of an indictment if a district attorney's office chooses to use such a charging document for a defendant who is not in custody. This allows for a great deal of potential elasticity in the total amount of time from arrest and initial appearance to the return of an indictment by a grand jury, and then to the filing of that indictment by a district attorney's office. Upon the filing of an indictment, a district court then has fifteen days within which to arraign the defendant.

What Figure 5 does not show is the potential impact of extensions of time that are allowed under the rules. Rule 5-604 (B) provides, with specific exceptions, that trial is to commence within six months after district court arraignment is held or waived. Subsequent sections of Rule 5-604 provide as follows for extension of time to trial:

- C. Extensions of time in district court.** For good cause shown, the time for commencement of trial may be extended by the district court provided that the aggregate of all extensions granted by the district court may not exceed six (6) months.
- D. Extension of time by Supreme Court.** For good cause shown, the time for commencement of trial may be extended by the Supreme Court or a justice thereof.

**Figure 5. Time Sequence for Typical Felony Case in New Mexico  
(N.M. Criminal Procedure Rule 5-901)**



For all practical purposes, the effect of these criminal rule provisions relating to extensions of time is to provide an 18-month time standard, commencing at district court filing, for felony cases in New Mexico.<sup>5</sup>

**C. Time from Initial Appearance to District Court Filing**

The Second Judicial District Court’s case information system does not collect information on elapsed times from arrest and first appearance to felony filing in the District Court. In April 2009, the NCSC project team consequently asked the Bernalillo County District Attorney’s Office for data on times from arrest to indictment for the first 500 cases opened in fiscal year 2008-09. For more detailed attention to aspects of felony case processing before filing in the District Court, see Chapter II.

**1. Types of Cases in Sample.** The District Attorney’s Office provided data for 512 cases that it opened from July 1, 2008, through July 21, 2008.<sup>6</sup> Table 2 shows the kinds of cases that were opened. About 4% were very serious cases – those involving charges of capital murder, other criminal homicide, or rape and other violent sex offenses. Two-thirds were other violent felonies, felony property offenses, and felony drug offenses.

**Table 2. Charge Types in Felony Case Sample from DA’s Office (N = 512)**

Number of Cases and Frequency by Charge Type								
Capital Offense	Criminal Homicide	Rape/ Sexual Offense	Other Violent Felony	Felony Property Offense	Felony Drug Offense	Other Miscellaneous Felony	Felony DWI	Total
4	1	16	118	107	117	133	16	512
1%	0%	3%	23%	21%	23%	26%	3%	100%

**2. Days between Law Enforcement Arrest and Opening of Case by District Attorney’s Office.** A typical criminal case is initiated by law enforcement officers who may bring an arrested defendant to the Bernalillo County Metropolitan Detention Center

<sup>5</sup> See the outline of New Mexico case processing time standards in National Center for State Courts, Knowledge and Information Services, “Case Processing Time Standards in State Courts, 2007” (February 2009), Appendix B (available online at <http://www.ncsc.org>), which reports that a mandatory New Mexico time standard under a Supreme Court rule with a 1990 effective date calls for 100% of all cases to be tried within 18 months.

<sup>6</sup> Limitations of time and budget prevented NCSC from inspecting individual case files on which the data from the DA’s Office were based to determine the reasons for elapsed times in specific cases.



before filing a complaint and associated documents with the Office of the District Attorney (DA). When the DA’s Office receives the complaint, it opens a file and creates a “case” for criminal prosecution.

Table 3 indicates that the average (mean) elapsed time from arrest to the opening of a sample case was three days, and that at least half of the cases were opened in two days or fewer. Only 14 cases in the sample (3.7%) took longer than five days, and the longest elapsed time was 50 days.

**Table 3. Days from Arrest to Opening of Case by DA’s Office, for Sample Cases Opened after Arrest (N = 372)**

Mean	Median	Longest
3	2	50

In a handful of sample cases, a defendant was not arrested until *after* a case had been opened by the DA’s office. As Table 4 shows, as much as four months might elapse before an arrest was made.

**Table 4. Days from Arrest to Opening of Case by DA’s Office, for Sample Cases Opened before Arrest (N = 5)**

Mean	Median	Longest
73	82	120

**3. Elapsed Times after Cases were opened by the DA’s Office.** Of the 512 sample cases opened by the DA’s Office in early July 2008, there were 112 for which an indictment had been returned by April 2009, and for which records showed an indictment date. As Table 5 shows, the average (mean) time from case opening to indictment was about four months (121 days), and one case took almost nine months for the filing of an indictment.

**Table 5. Days from Date Opened to Indictment Date, for Cases with Indictments and a Reported Indictment Date (N = 112)**

Mean	Median	Longest
121	129	264

While 408 of the sample cases went to indictment, the balance (104 cases, or 20.2% of the total) were closed without indictment. Times to closure for these cases were almost identical to those for cases in which there were indictments. The average (mean) time to non-indictment disposition for these cases was also about four months (123 days) as Table 6 shows; and the longest time was just short of nine months (263 days). The close similarity of the elapsed times for cases with indictment dates and those closed without indictment suggests that cases were often not disposed until they went to the grand jury unit of the DA’s Office.

**Table 6. Days from Date Opened to Date Closed, for Cases Closed with No Indictment (N = 104)**

Mean	Median	Longest
123	124	263

By April 2009, only a small number of the July 2008 cases (37, or 7.2% of the total) had been closed by April 2009 *after* indictment. Table 7 shows that the average time from indictment to disposition was 120 days, with the longest time being 230 days.

**Table 7. Days from Indictment Date to Date Closed, for Cases Closed after Indictment (N = 37)**

Mean	Median	Longest
120	128	230

The remaining cases opened by the DA’s Office in the first half of July 2008 had indictments but were as yet not disposed. Not surprisingly, all of these cases were between eight and nine months old, as Table 8 illustrates.

**Table 8. Days from Date Opened by DA’s Office to Current Date, for Indicted Cases without Date Closed (N = 371)**

Mean	Median	Longest
262	263	272

**4. Manner and Reasons for Dispositions.** There was only one case in the sample for which the report of the DA’s Office showed that a grand jury had returned a “no bill.” The most common reasons for disposition, as Table 9 shows, were that the DA’s Office declined to prosecute (70 cases); that pleas were negotiated (40 cases with guilty pleas and 15 cases dismissed as part of a plea agreement); and that the DA’s office entered a nolle prosequi (20 cases).

**Table 9. Manner of Dispositions for Closed Cases (N = 154)**

Court Dismissed	Dismissed per Plea Agreement	Guilty Plea	No Contest	Nolle Pros	Pled Guilty to Lesser Charge	Prosecution Declined	No Bill	None Given or Nor Closed
3	15	40	2	20	3	70	1	358

The sample case report from in the DA’s Office also gave reasons in some cases for why they had been dismissed. Table 10 shows that insufficient evidence (33%) and uncooperative victims (17%) accounted for half of the sample case dismissals.

**Table 10. Disposition Reasons Given for Dismissals (N = 94)**

Conduct Not Criminal	Convicted in Another Case	Essential Witness Unavailable	Insufficient Evidence	Law Enforcement Agency Uncooperative	Unlawful Search and Seizure	Victim Uncooperative	Other Reasons
1	1	3	31	5	2	16	35
1%	1%	3%	33%	5%	2%	17%	37%

**D. Time from District Court Filing to Disposition**

If a grand jury returns an indictment in a case, then the DA’s Office files the case in the District Court. New Mexico rules provide that the Court must then arraign the defendant within 15 days. The NCSC project team requested data from the District Court on elapsed times to disposition in the Criminal Division. (See Appendix B.) The data provided by the Court for cases disposed between March 1, 2008, and April 30, 2009, are analyzed here.<sup>7</sup>

<sup>7</sup> Limitations of time and budget prevented NCSC from inspecting individual case files on which the data from the District Court were based to determine the reasons for elapsed times in specific cases.

**1. Overall Days to Nontrial and Jury Trial Disposition.** From the data provided by the Court, overall times to disposition were calculated for cases disposed by guilty plea or other nontrial means and for cases disposed by jury trial. Table 11 presents the overall results.

**Table 11. Days from District Court Filing to Nontrial Disposition (N = 1,586 cases) and to Jury Trial Disposition (N = 124 cases)**

Description	Nontrial Dispositions	Jury Trial Dispositions
Mean	174.4	595.7
Median	170	542
90 <sup>th</sup> Percentile	303	1,061.5
Maximum	884	1,639

As the table shows, the average (mean) time from filing in District Court to nontrial disposition was just under six months. Yet, as the 90<sup>th</sup> percentile figure indicates, 10% of the cases took 10 months (303 days) or more, and the longest nontrial disposition in the sample took 29 months (884 days).

Cases that actually went to jury trial took much longer. The average time was 19 ½ months (596 days). Although half the jury trial cases were disposed in less than 18 months (median of 542 days), 10% took 35 months (1,061.5 days) or more. The longest time to disposition by jury trial was almost 4 ½ years (1,639 days).

Table 12 shows the distribution of nontrial disposition times by case type. Of the total, 56.5% were disposed in 180 days or less after filing in District Court, and 85.4% were disposed within 270 days. Together, felony property cases and felony drug cases made up 1,418 (90%) of all the sample cases with nontrial dispositions.

**Table 12. Days from District Court Filing to Nontrial Disposition, by Case Type  
(N = 1,573)**

Case Type	90 Days or Less	91-180 Days	181-270 Days	271-365 Days	366-730 Days	Over 731 Days	Totals
Felony undesignated	0	1	0	0	0	0	1
Felony drug	80	205	152	65	23	2	527
Felony first degree	1	2	0	3	0	0	6
Felony homicide	1	1	0	0	0	0	2
Felony miscellaneous	9	9	3	0	0	0	21
Felony property	140	341	268	118	23	1	891
Felony sexual offense	4	13	12	6	3	0	38
Felony vehicular homicide	0	1	0	0	0	0	1
Misdemeanor DWI	3	0	0	0	0	0	3
Misdemeanor	70	7	4	1	1	0	83
<b>Totals</b>	<b>308</b>	<b>580</b>	<b>439</b>	<b>193</b>	<b>50</b>	<b>3</b>	<b>1,573</b>
<b>Percent</b>	<b>19.6%</b>	<b>36.9%</b>	<b>27.9%</b>	<b>12.3%</b>	<b>3.2%</b>	<b>0.2%</b>	<b>100.0%</b>

The distribution of elapsed times from filing in District Court to jury trial disposition in sample cases is shown in Table 13. None were tried in less than three months, and only 25% were tried within twelve months. Most common were felony crimes against the person; felony crimes against property; and felony sexual offenses. Cases with charges of felony sexual offenses were the most likely of all case types to take more than two years to go to trial.

**Table 13. Days from District Court Filing to Jury Trial Disposition, by Case Type**

Case Type	91-180 Days	181-270 Days	271-365 Days	366-730 Days	Over 731 Days	Totals
Felony drug	0	1	5	11	1	18
Felony domestic violence	0	2	1	1	0	4
Felony DWI	0	1	1	4	2	8
Felony first degree	0	0	1	8	7	16
Felony miscellaneous	0	0	0	1	0	1
Felony crimes against person	1	0	6	16	5	28
Felony crimes against property	1	2	5	13	4	25
Felony public safety	0	1	0	1	0	2
Felony sexual offenses	0	0	2	8	11	21
Misdemeanor	0	1	0	0	0	1
<b>Totals</b>	<b>2</b>	<b>8</b>	<b>21</b>	<b>63</b>	<b>30</b>	<b>124</b>
<b>Percent</b>	<b>1.6%</b>	<b>6.5%</b>	<b>16.9%</b>	<b>50.8%</b>	<b>24.2%</b>	<b>100.0%</b>

**2. Impact of Failures to Appear.** During the interviews by NCSC project team members with the judges of the Criminal Division, several observed that defendants' failures to appear often led to court issuance of bench warrants and were a common reason for longer times from District Court filing to disposition. Sample data from the Court bear out this observation. Among the sample cases, two-thirds (1,072 of 1,601 with nontrial dispositions, and 83 of 124 disposed by jury trial) had at least one bench warrant issued.

Table 14 shows how soon after filing the District Court issued a bench warrant for defendants with an initial failure to appear. Nine out of ten failures to appear in cases with nontrial dispositions came within 17 days after filing, indicating that most bench warrants were issued at the time of arraignment in the District Court. Although the average (mean) time for nontrial cases was a week, it was three weeks in cases that ultimately went to jury trial. In ten percent of the jury cases with failures to appear, the issuance of a bench warrant came 48 days or more after filing in District Court.

**Table 14. Days from District Court Filing to First Bench Warrant in Cases with Nontrial Dispositions (N = 1,072 cases) and in Cases with Jury Trial Dispositions (N = 83 cases)**

Description	Nontrial Disposition	Jury Trial Disposition
Mean	6.83	21.57
Median	0	0
90 <sup>th</sup> Percentile	17	48
Maximum	726	314

**E. Conclusion**

If one were to measure elapsed time from felony arrest in Bernalillo County to felony disposition in the District Court, it is currently necessary to inspect data from both the DA’s Office and the Court. For the typical elapsed time, the most reliable estimates can be derived by adding the following together:

- Mean time from arrest to the opening of a case in the DA’s Office;
- Mean time from case opening in the DA’s Office to indictment; and
- Mean time from filing to disposition in District Court.

Table 15 presents an estimate of typical overall times to nontrial disposition and jury trial disposition. For cases with nontrial dispositions, it is about 9.8 months (298 days). For jury trial cases, it is just under two years (720 days).

**Table 15. Average (Mean) Days from Arrest to District Court Nontrial Disposition and from Arrest to Disposition in Cases with Jury Trial Dispositions**

Description	Nontrial Disposition	Jury Trial Disposition
Arrest to DA Opening	3	3
DA Opening to Indictment	121	121
District Court Filing to Disposition	174	596
<b>Totals</b>	298	720

**Specific Recommendations on Criminal Case Information.** For a citizen – whether it is the victim in a criminal case, the defendant, a witness, or a person reading a newspaper, criminal proceedings begin at arrest and are believed to be under the control of the courts. Citizens in Bernalillo County may not necessarily understand why there may be any lack of continuity from first appearance in Metropolitan Court and proceedings in District Court; that matters may be outside court control; or that the courts may not have means to quickly determine the status of any given case. Management of felony case progress in Bernalillo County can benefit from the availability of improved case information.

To provide data for this report, it was necessary for the NCSC project team to request information from the DA’s Office and the Court about case processing times. Monitoring and management of felony case progress calls for there to be better information routinely available to court leaders.

*Recommendation 1: District Court monitoring of felony case processing times in Bernalillo County should begin at arrest and should include the date of initial appearance and determination of probable cause.*

*Recommendation 2: Such case information as scheduled pretrial court events, scheduled trial dates, and continuances should routinely be made available from individual Criminal Division judges’ chambers to the District Court’s central case information system to support monitoring and management of criminal caseflow by the District Court Chief Judge, Criminal Division Presiding Judge, and Court Administrator.*

*Recommendation 3: Among any other measures of court performance<sup>8</sup> that the District Court may employ, the Criminal Division should continue monitoring clearance rates (dispositions as a percentage of new filings and reopened cases) 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.*

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<sup>8</sup> See the ten core court performance measures developed by NCSC and court leaders and presented as “CourTools – Trial Court Performance Measures” (© NCSC 2005), available on line at [http://www.ncsc.org/D\\_Research/CourTools/temp\\_courttools.htm](http://www.ncsc.org/D_Research/CourTools/temp_courttools.htm). The four measures of caseflow management court performance recommended here are CourTools Measures 2-5.



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## **Chapter II.**

# **Understanding the Numbers: Felony Case Processing in Bernalillo County**

### **A. Introduction**

When a person is arrested on felony charges in Bernalillo County, he or she is booked in the county detention center before being presented in the limited-jurisdiction trial court for consideration of pretrial release and determination of probable cause. If probable cause is found to hold the defendant for felony prosecution, then prosecutors prepare the case for presentation to a grand jury. If the grand jury returns an indictment, prosecutors then file charges in the general-jurisdiction trial court. In this chapter, the NCSC project team describes felony case processing before and after indictment and offers recommendations for specific improvements. The specific recommendations in this chapter contribute to the comprehensive felony caseflow management improvement program suggested in Chapter IV.

### **B. Arrest, Incarceration, and Police Reports**

Arrests in Bernalillo County (population 640,000) are generated principally by the two largest law enforcement agencies serving the community; the Albuquerque Police Department (APD) which accounts for roughly 60 percent, and the Bernalillo County Sheriff (BCS) generating an additional 20-25 percent. Other smaller law enforcement agencies (i.e. state police, state probation and parole department) account for the remainder. See Table 16.

**1. Arrest and Booking.** Over 40,000 adults are booked annually in the County's newly constructed Metropolitan Detention Center (MDC) located 18 miles from the center of Albuquerque.<sup>9</sup> It is ranked 39<sup>th</sup> in size in the US; it is considered a mega-jail

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<sup>9</sup> The MDC has been operated by Bernalillo County Government since 2007. Prior to 2007, it was managed under a joint powers agreement between the City of Albuquerque and the County.

**Table 16. Defendants Booked at Bernalillo County Metropolitan Detention Center, FY 2006-FY 2009 <sup>a</sup>**

FY 2006	Defendants Booked	Bookings by Law Enforcement Agency <sup>b</sup>							
		APD	BSO	NSP	FED	BND	PRO/PAR	UNMPD	OTH
Total	38,823	22,647	9,387	774	62	184	1,827	297	3,645
Avg/Month	3,235	1,887	782	65	5	15	152	25	304
	Pct by Agency	58.3%	24.2%	2.0%	0.2%	0.5%	4.7%	0.8%	9.4%

FY 2007	Defendants Booked	Bookings by Law Enforcement Agency <sup>b</sup>							
		APD	BSO	NSP	FED	BND	PRO/PAR	UNMPD	OTH
Total	41,255	24,883	9,492	816	89	276	2,160	215	3,324
Avg/Month	3,438	2,074	791	68	7	23	180	18	277
	Pct by Agency	60.3%	23.0%	2.0%	0.2%	0.7%	5.2%	0.5%	8.1%

FY 2008	Defendants Booked	Bookings by Law Enforcement Agency <sup>b</sup>							
		APD	BSO	NSP	FED	BND	PRO/PAR	UNMPD	OTH
Total	41,597	24,865	10,624	829	39	196	2,385	246	2,413
Avg/Month	3,466	2,072	885	69	3	16	199	21	201
	Pct by Agency	59.8%	25.5%	2.0%	0.1%	0.5%	5.7%	0.6%	5.8%

FY 2009 (thru Feb 2009)	Defendants Booked	Bookings by Law Enforcement Agency <sup>b</sup>							
		APD	BSO	NSP	FED	BND	PRO/PAR	UNMPD	OTH
Total	26,488	16,191	6,476	596	40	57	1,461	140	1,527
Avg/Month	3,311	2,024	810	75	5	7	183	18	191
	Pct by Agency	61.1%	24.4%	2.3%	0.2%	0.2%	5.5%	0.5%	5.8%

<sup>a</sup> Source: Bernalillo County Metropolitan Detention Center.

<sup>b</sup> **KEY:** **APD** = Albuquerque Police Department      **BSO** = Sheriff's Office      **NSP** = State Police      **FED** = Federal agencies  
**BND** = Bonding Agencies      **PRO/PAR** = Probation & Parole      **UNMPD** = University of NM Police Department  
**OTH** = Other agencies, such as American Indian Tribal Police, Airport Police, Albuquerque Public School Security, New Mexico Open Space Rangers, Forest Service, and Department of Transportation/Public Safety.

among the 3,300 jails in the United States; and it is staffed by 546 security and civilian employees.<sup>10</sup> Roughly 60 percent of the arrestees are brought immediately to the MDC, and 40 percent are transported in groups from law enforcement sub-stations or holding facilities. Although the MDC is modern and professionally operated by County Corrections, it has encountered a series of capacity and overcrowding problems since its opening in 2003. The Detention Center houses adults arrested on misdemeanor and/or felony charges who are awaiting case disposition (pretrial status), and those who have been sentenced (post-trial). Over the years, the number of felons in each category has risen significantly. Among those incarcerated, more than 50 per cent are pretrial felony detainees. In January 2009, this amounted to 1,391 out of 2,675 inmates. The average length of stay for non-released felons held on serious original charges before final disposition is 240-280 days.<sup>11</sup>

While internal booking and jail management systems are digitized and state-of-the-art, there is little electronic records interchange with the courts. Stand-alone, separate electronic case management systems exist in law enforcement,<sup>12</sup> District Court, Metro Court, and the state run Probation and Parole Department. Consequently, paper records and files are the medium of exchange and there is significant redundant data entry.

One of the common consequences of disparate electronic criminal justice case management systems National Center studies have found is a propensity for confusion regarding in-custody jail inmate status. The result can be an inmate who becomes “lost”

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<sup>10</sup> Some criticisms of MDC operations are that the MDC is understaffed; temporary or part-time employees who fill permanent positions lack the training and skills necessary for their jobs, especially regarding records management (turnover in staff positions is alleged to be high due to the remote location of the MDC and low salaries); responses to inquires for information from private citizens and bail bonding companies do not get prompt attention as do requests from court officials; too many inmates are sitting in jail on open cases, bench warrants or indictments without a next appearance date (a more effective monitoring system to promote timely court action should be developed); and MDC managers and higher level officials are much more helpful and responsive than rank and file employees (“considerate attitude does not filter down”).

<sup>11</sup> A federal court consent decree resulting from a class action lawsuit on behalf of the inmates (McClendon vs. Bernalillo County) commenced in 1995 over conditions at a downtown Albuquerque jail owned by the County governs pretrial overcrowding, mental health and disability treatment and housing conditions at the new Detention Center as well. A continual concern by County officials pertains to managing the MDC to avoid violating the consent decree. (The original design capacity for the MDC is 2200 inmates). When MDC reaches limits close to the consent decree, inmates are transported by MDC to Santa Fe holding facilities. A series of programs have been instituted by the County to limit jail overcrowding.

<sup>12</sup> APD and BCS share a new Tiburon (proprietary law enforcement case management system). Although the BCS has hardware and licenses for the system, there is no funding for data transfer from their old system and interfaces with the APD database.

in the system or may be held longer than necessary. Since trial courts are ultimately responsible for prompt and timely adjudication processes, some courts have developed protocols to monitor the status of jail inmates, especially those incarcerated beyond normal time periods. An example is the Superior Court of Georgia in Fulton County (Atlanta), which confronts a variety of separate criminal justice computer systems and serving a community of 700,000 residents similar in size to Bernalillo County.<sup>13</sup> It has found it necessary to create a four-person jail monitoring group (Judicial Administrative Expedition Unit) to track and audit criminal caseflow for defendants in custody at the Fulton County Jail, including those awaiting indictment and other court hearings. The unit also collaborates and coordinates with various local and state criminal justice agencies to promote the overall expeditious movement of cases for jail inmates.

The number of felons moving from pretrial to sentenced status average 300 inmates per month. However, significant delays appear to exist in processing judgment and sentencing orders and their arrival at the MDC. It routinely takes 30 days from the time of sentencing to the delivery of an order. A pilot electronic sentencing order project is now underway.

**Specific Recommendations on Arrest and Booking.** Based in the NCSC project team's assessment of case processing at this stage, the following three recommendations are offered.

*Recommendation 4: A coordinated, sustained effort toward integrating and sharing electronic data among the various digitized case management systems would considerably reduce delay and redundant data entry among criminal justice agencies in the county.<sup>14</sup> It is understood that city, county and state agencies have worked to do so in the past without noticeable success. A confounding factor certainly has been the fact that law enforcement and justice entities in the county are funded by different governments. However, separate funding authorities at the local level are not usual occurrences*

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<sup>13</sup> Comparisons between Fulton and Bernalillo counties are limited at best. Population density, geographic size, crime patterns, court structure/jurisdiction, and ethnic and racial backgrounds of residents differ dramatically. Population size and independent computer systems tracking the same in-custody inmates, however, are somewhat analogous.

<sup>14</sup> Reducing redundancy would have a direct and positive impact on productivity, accuracy (data entry errors) and efficiency in the overall justice system within the county. Entering the same data at multiple entry points by different criminal justice agencies often slows the caseflow process and populates criminal history records with incomplete, inaccurate and inconsistent information.

*throughout the United States. It certainly makes coordination and cooperation more difficult, but not impossible.<sup>15</sup>*

*Recommendation 5: MDC management should review their training processes for MDC rank and file staff, especially those entering data and those responsible for monitoring the length of stay of inmates to improve data entry accuracy and ensure no inmates “get lost in the system.” Information on inmates languishing in jail should have established, clearly defined action plan protocols triggering high-level court and judicial intercession together with remedies. All pretrial in-custody cases should have a next appearance date, nothing should be “off calendar.”*

*Recommendation 6: The Court should explore the possibility of assuming responsibility and staffing, along with the funding, for felony inmate jail monitoring from the County. Direct involvement by the Court in auditing and overseeing the movement of in-custody felons through the adjudication process would likely have a greater affect on promoting streamlined system change as well as prompting more timely disposition for languishing cases than continuing to locate that function with County Corrections. This suggestion is not based upon reducing jail overcrowding, but on reducing trial court delay.*

**2. Police Reports.** Another continual, troublesome delay point in the felony caseflow process is the time lag in getting police reports to the prosecutor’s office. Initial arrest reports routinely take 30 to 90 days from the time of submittal to APD Records until completion. Numerous criminal justice officials interviewed assessed these delays to be both serious and prolonged, so much so that the NCSC project team expressly revisited the Albuquerque Police Department (APD) to talk with the Chief of Police and upper-level management to gather more specific information regarding possible causes and remedies.<sup>16</sup> Since the 1980’s, under a joint agreement with the Bernalillo County Sheriff’s Office (BCSO), APD has processed all arrest and investigative records for both

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<sup>15</sup> It was noted that some 10 years ago a Metro Justice Information Coordinating Council was created and funded out of the County Manager’s Office, but was disbanded.

<sup>16</sup>This two-day visit by NCSC team member Gordy Griller with Janet Cornell took place in August 2009.

departments. In exchange, the Sheriff's Office oversees and processes all outstanding warrants.<sup>17</sup>

There appear to be multiple reasons for the delays. One likely source is the dramatic staff reductions and hiring freezes occurring over the past few years in non-sworn personnel at the APD Records Department. These reductions are largely attributed to unprecedented City budget cuts occasioned by the continuing national recession and, concurrently, a forcefully pursued APD policy to increase the number of sworn officers to 1100 by the end of CY2008 which has diverted money for civilian employees to officer positions.<sup>18</sup> Resultantly, a severe 50 percent decrease in the number of records processing personnel has taken place. Complicating this staff shortage is a high turnover rate among civilian data entry operators in the Records Department; exacerbated further by the use of temporary employees as a stopgap, inexpensive coverage mechanism.<sup>19</sup>

A second underlying factor contributing to the delay in police reports, NCSC consultants conclude, is APD's heavy concentration toward upgrading front-end information systems directed at apprehension and crime prevention necessary to support large-scale increases in patrol officers. Over the last several years, APD developed a Technology Strategic Plan that called for widespread enhancement of all electronic information systems within the Department. Tiburon, a well-respected law enforcement private software vendor, was selected as the contractor. Among the priority systems upgraded were those supporting patrol and field services to assist the growth in sworn officers, namely a mobile reporting system (digitized data flow from patrol cars) called *Copperfire*® that is compatible with Tiburon and a new computer-aided dispatch system. Simultaneously, a widespread hardware upgrade took place modernizing all in-car hardware, including over 450 laptops and 150 police vehicle printers. Internet services were enhanced, too, allowing the public to request or file a police report online and to

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<sup>17</sup> Currently, BCSO has 72,000 outstanding misdemeanor warrants and 150,000 outstanding felony warrants.

<sup>18</sup> The national average of sworn police officers to population in cities 250,000 people or greater is 2.8 per 1000 residents (International Chiefs of Police). APD reached 1146 personnel in training and/or patrolling city streets in late 2008; a ratio of 2.2 sworn officers per 1000 residents. Albuquerque population is estimated to be 518,271.

<sup>19</sup> Where there is little staff permanency, numerous small problems ranging from such things as re-training confusions to uncertainty and delays in fixing equipment breakdowns can easily compound and enlarge creating more delay in producing reports.

access neighborhood crime information in real time through a nationwide software service dubbed, “*Crimereports.com*.” As a result, police report processing suffered.

APD is banking on *Copperfire*® to modernize and revamp their arrest report processing. There is no doubt that *Copperfire*® is one of the better client / SQL server approaches available in the public safety marketplace today. It is a customized report writing and forms generation solution for first responders – both police and fire. It is also capable of generating statistics and records management protocols when programmed effectively. A critical issue, however, is that the specific forms and their designs used by a police agency must be specially programmed; essentially written uniquely for each contracting law enforcement agency. This development cycle is time consuming and should a form or process be added or changed, it requires further systems work.

Another problem inherent in automating incident field reports is the numerous follow-up reports and data, much of it in paper format that must be appended either manually or electronically to the initial digitized document. Also, it is important that prosecution and defense agencies have compatible software and systems to fully utilize *Copperfire*® generated data. This, unfortunately, may not be currently the case in Bernalillo County.

Third, incompatible computer systems between BCSO and APD have resulted in time consuming, manual conversion procedures. Specifically, BCSO deputies and detectives complete police reports in electronic form on the current BCSO system, print them out and give them to the APD Records Department to be re-entered into the APD electronic system.<sup>20</sup> Data transfer and interface software is not currently available between BCSO and APD electronic police report writing systems.

Fourth, re-engineering of APD’s police report procedures and processes is needed. Based on interviews and observations, there appears to be widespread misunderstanding beginning at the police officer level regarding the importance of thorough and timely report writing and submission. Some of it may stem from the fact that supervisory officers or Records Department personnel often must contact arresting or

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<sup>20</sup> If there is an error in the paper copy to be corrected or additional information be added, the initiating BCSO officer must physically go to APD Records and change it on the original paper copy so it can be keyed in by Records. Missing or erroneous data could be as simple as a missing or erroneous beat number, social security number or case number.

investigating officers for supplemental information to augment or correct erroneous reports, officers feeling that along the process someone else will catch mistakes or ferret out needed details. Some may originate with inadequate training regarding the essential elements of report writing. Some could be occasioned by continued reliance on manual report writing, redundant data entry in re-keying arrest reports, and detailed Records Department approvals to ensure report completeness and accuracy. Some is connected to the difficulty in locating primary and secondary officers who may be reassigned and have lingering data problems in old reports.

Fifth, all criminal investigative work for the District Attorney must be done by law enforcement occasioning some miscommunications, delays and confusion. The DA has no investigative unit within her office. There are numerous situations where an assistant DA or DA bureau chief will send a report back to law enforcement because of missing or conflicting information, all taking additional time. An example cited was the need by some assistant DA's for handwritten statements from victims.

Recently, APD administration has taken steps to improve the police report processing. A Deputy Police Chief meets monthly with the District Attorney's Office to streamline arrest report information flow between the two offices. Arrest reports have been simplified, some being computerized to ease completion. A new approach established recently is the electronic transfer of domestic violence taped statements to assigned prosecutors. Regarding delayed or inadequate reports from officers and detectives, a procedure has been introduced to enlist the chain of command in prompting problem officers to complete reports by emailing notices to higher level supervisors when an officer is recalcitrant.

All of these steps certainly help. The problem, however, is systemic and needs a broader-scoped solution, namely business process reengineering. Business process reengineering (BPR) is the analysis and redesign of workflow. The technique gained notoriety in the 1990s as businesses began revisiting the need for speed, service and quality over control and efficiency and ran into unanticipated problems as they attempted to use technology to mechanize old, antiquated ways of doing business. Various governments, including law enforcement agencies, followed suit in the public sector, but



often fell short because the common focus was too often on quick fixes rather than breaking cleanly away from old rules about organizing and conducting business.

**Specific Recommendations on Police Reports.** One of the major tenets of process reengineering in the computer age is to organize work around outcomes, not tasks. Ideally, when followed to the extreme, the principle encourages one person to perform all the steps in a process by designing the person's job around an objective or outcome instead of a single duty or step in a process. Other principles that are helpful in process reengineering that law enforcement leaders may wish to keep in mind as they attempt to simplify and streamline workflow in police report writing include...

- Work backwards by having those who use the output of a work process engage in the reengineering analysis itself. Ad hoc, inter-agency committees or task forces often work well provided they are effectively led.
- Concentrate only on a few prioritized, urgent work redesign efforts at a time otherwise details can become overwhelming.
- Put the decision point where the work is performed and build control into the process. There is an assumption in many organizations today, police agencies included, that people doing the work have neither the time nor the inclination to monitor and control it and therefore lack the knowledge and skill to make decisions about it. Proven, modern day reengineering principles, however, argue that those who perform the work should make the decisions and that the process itself can have built in controls. The ultimate objective is for the doers to be self-managing and self-controlling. This direction is certainly in line with empowering employees and strengthening middle management capabilities.
- Capture information once and at its source. As the criminal justice system continues to move toward computerization and electronic databases, leaders need to promote the elimination of as much redundant data entry as possible. NCSC project consultants conclude there is a strong predisposition by criminal justice agencies in Bernalillo County to operate autonomously causing an excessive amount of duplicative work processing. Consequently, system-wide approaches toward reengineering solutions and integrating work are very important goals to embrace in moving forward.

*Recommendation 7: APD should locate its Court Services Unit (liaison group with the District Attorney's Office) at the DA's Office. BCSO maintains staff at the DA's Office to coordinate data and interaction with prosecutors, which promotes faster problem-solving regarding police report difficulties.<sup>21</sup>*

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<sup>21</sup> NCSC consultants were advised that in the past the APD Court Services Unit was co-located with the DA, but was moved to the Public Safety Building. It is not known why this move separating the Unit from the DA occurred.

*Recommendation 8: The APD Records Department should be reorganized and staffed more appropriately with the priority goal of promoting improved, reengineered police report processes. A priority challenge will be integrating the Copperfire® electronic field automation incident reporting suite with Records Department business practices and paper records from other sources (i.e. crime lab, other evidence reports, etc.)<sup>22</sup>*

*Recommendation 9: Compatibility between BCSO and APD electronic computer report writing systems should be sought. BCSO, courtesy of the City of Albuquerque, has licenses and hardware consistent with Tiburon, but the data transfer and interface software must be purchased and installed.<sup>23</sup>*

*Recommendation 10: The systemic significance of police reports for the felony discovery process should be reflected in efforts by the DA's Office and the Public Defender's Office to adjust business processes and introduce software as necessary to promote efficient electronic receipt of law enforcement reports and discoverable information.<sup>24</sup>*

### **C. Pretrial Release and Probable Cause Determination in Metro Court**

Within 48 hours of arrest, all defendants are scheduled for an Initial Appearance (IA) at the MDC to determine whether probable cause exists for release (bail, bond, released to pretrial services or on their own recognizance), to determine the suspect's true name and address, entitlement to a public defender, and to advise them of their rights and the charges against them.<sup>25</sup> A Metropolitan Court Judge (limited jurisdiction) conducts all IA's. During weekdays, a judge and prosecutor at the Metropolitan Courthouse in downtown Albuquerque appear by video conference transmitted to a specially structured, video-equipped MDC courtroom where a public defender physically appears with the defendants. During weekends no video appearances are conducted; Metro judges rotate sitting as an IA judge at the MDC. On Saturdays, Sundays and holidays, no district attorneys are present. When a defendant is represented by private counsel, the lawyer

<sup>22</sup> NCSC consultants were advised that on-site supervision of the Records Department was transferred from a sworn officer to a civilian supervisor. Given the culture of most law enforcement agencies, it is often easier to obtain compliance from officers and detectives in amending and supplementing arrest data when supervision of records processing is overseen by a sworn officer.

<sup>23</sup> The cost of this software is roughly \$150,000. County officials appear to be favorably disposed although budget difficulties have delayed the purchase.

<sup>24</sup> For a parallel recommendation, see Recommendation 20 in Section E, "District Court Felony Case Processing."

<sup>25</sup> Defendants booked from 5:00 AM to 5:00 PM are set over to the next day to permit data collection.

often attends the hearing at the Metro Courthouse while his/her client remains at the MDC.

Sixty-four percent of those booked are released from jail shortly after the Initial Appearance. Most are charged with minor violations.

Prior to an IA, pretrial staff at the MDC interview the defendant, principally gathering information regarding offense, whether he/she is a flight risk or a danger to themselves or the community, and criminal history background. Data is shared with the District Attorney's Office.

At felony IA sessions, the reading of the criminal complaint is routinely waived, the defense attorney normally having a copy. The district attorney presents the charges, outlines the known criminal history and recommends release conditions or continued incarceration. A common complaint by defense attorneys and some District Court officials is that Metro judges have a propensity to set high bonds.<sup>26</sup> This does occasion a series of bond reduction motions before the District Court Criminal Department Presiding Judge.

Persons arrested on District Court probation violations, after an Initial Appearance, must appear before the sentencing judge according to local rule. These cases may be delayed numerous times – the defendant generally remaining in custody – waiting for the assigned district attorney, public defender and defendant to coordinate an appearance before the sentencing judge.<sup>27</sup> This is true even though new statewide court rules require a probation violation report be completed within 5 days of arrest<sup>28</sup> and a hearing to be conducted within 30 days. Technical violations are processed more quickly than new charges. A pilot experimental program permitting guilty pleas regarding

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<sup>26</sup> Metro judges conclude it is a matter of perspective since they customarily preside over misdemeanor cases and are reluctant to set low bonds on felony matters, the province of the general jurisdiction court. Some time ago, the District Court channeled funds and responsibility for hearing felony IA's to the Metro Court. There is an ongoing offer by the Metro Court to return responsibility to the District Court, although no mention of any additional funding which is a condition upon which the District Court would entertain the proposition.

<sup>27</sup> Each party – prosecutor, defense lawyer and defendant – may continue an appearance on a probation violation for 30 days. The result is often a 90-day delay.

<sup>28</sup> In New Mexico, the Probation and Parole Department is a state executive branch agency. They operate a separate CMS case management computer system, preparing probation violation reports using a pre-designed, electronic template. Reports are generally 3-4 pages long and require 4 to 5 days to prepare accurately. The Department has an officer stationed at the MDC to coordinate interaction with the jail.

probation violations to be heard quickly by a special appearance judge rather than the sentencing judge is now underway.

Two separate, court-operated Pretrial Service Agencies conduct the interviews. The Metro Court PSA staff offices full-time at the MDC and interviews everyone booked in the jail. The District Court PSA staff is present at the MDC during weekdays and concentrates primarily on diverting appropriately classified defendants to pretrial release. District Court PSA maintains a large pretrial release program with up to 1300 defendants monitored by 5 staff who office at the downtown Bernalillo County Courthouse. Clients are ordered into the program by District Judges after IA. The Agency recommends a release plan to the Court, develops behavior/treatment/reporting contracts with defendants administered through graduated levels of supervision. For crisis intervention and field services, the Agency relies on the state's Adult Probation and Parole Department. Defendants are supervised until they enter a plea or are sentenced.

Many defendants booked in jail have severe mental illnesses, often exhibiting co-occurring disorders including addictions, learning disabilities, and personality problems. For those who don't have the ability to bond or bail out of custody, District Court PSA works closely with a jail-based County Psychiatric Services Unit (PSU) to facilitate and divert them to counseling and medical services. There is a special Mental Health Court option run by the District Court allowing defendants with low-level, non-violent felonies who have a mental illness to enter a plea agreement and submit to a pretrial diversion program modeled on a three-phase drug court regimen. The capacity of the program is 200 clients; its recidivism rate is a low 2 percent. Metro Court PSA also works to assist those charged with misdemeanors who are diagnosed with mental illness, often channeling them to a special competency docket they conduct.

District Court PSA also maintains a three-person investigations unit at the County Courthouse which conducts criminal background inquiries for all in-custody and out-of-custody defendants to assist the Court further regarding release and case scheduling conditions. Data acquired is entered into the court's case management database.

**Specific Recommendations on Pretrial Release and Probable Cause Determination.** Based on the description presented here, the NCSC project team offers the following three recommendations.

*Recommendation 11: Serious consideration should be given to ways more cases can be resolved at Initial Appearance or shortly thereafter without the scramble that now takes place to get cases to the Grand Jury. The culture of indictment is not only delaying resolution of lower-level matters, but likely causing much extra work in case processing for public lawyers and the court. Many general jurisdiction urban trial courts target early disposition of such matters, often setting up plea calendars either at or within a few days of initial appearance.*

*Recommendation 12: A probation violation calendar should be established by the District Court overseen by a specially-assigned PV judge, not necessarily the sentencing judge.*

*Recommendation 13: Inordinate and avoidable delays regarding continuances of probation violation hearings should be reduced through tight scheduling and date certain to the extent possible within due process requirements.*

#### **D. District Attorney Case Presentation to the Grand Jury**

Statewide criminal rules of procedure permit a probable cause hearing before a Grand Jury for in-custody defendants charged with a felony within 10 business days of Initial Appearance. Out-of-custody cases must be indicted within 60 business days. Although the rules permit prosecution by information with a preliminary hearing before a judge, it is the customary practice in Bernalillo County for 80 percent of the 10,000 felony cases to be taken to the Grand Jury.<sup>29</sup>

The presentation of cases to the Grand Jury is a hectic process due to the high volume and the fact there is only one Grand Jury is empanelled to hear matters. Generally, 25 cases per day are scheduled for indictment. Evidence of this overload is a 5 to 6 month lag on Grand Jury indictments for non-10 day, out-of-custody cases. A District Attorney policy does not allow defense lawyer access to discovery prior to indictment.

Critical problems in processing cases appear to reside with law enforcement. Often there are delays in getting data from police agencies. Also, officers frequently fail

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<sup>29</sup> On commencement of prosecution by complaint, information or indictment, see Rule 5-201. On preliminary hearings, see Rule 5-302.

to appear (FTA) to testify at the Grand Jury. The FTA rate is 10 to 20 percent in spite of aggressive subpoena, telephone reminder and email efforts by the DA's Office.

Criminal complaints are filed in 20 percent of the cases, principally on low-level property and economic crimes. Many of these cases are channeled through a pre-indictment / pre-plea program (PIPP) where early pleas on first offender felony cases are encouraged; most pleading to misdemeanors and sentenced to treatment programs. Generally, a plea offer is made by the DA's Office a few days after Initial Appearance, the defendant given two weeks to reply.

Currently at the DA's Office there are three prosecutors and 28 support staff assigned to manage the Grand Jury process and 2 attorneys working with the PIPP program. To effectively manage the workload in a more methodical fashion, should the caseflow culture remain primarily an indictment one, there most certainly should be an increase in the number of DA personnel assigned to the Grand Jury and the empanelment of a second Jury. However, in the opinion of the NCSC consultants, a less costly, swifter alternative would be a widespread preliminary hearing process taking the form of a modified Early Plea Program (EPP) where the complaint and police report are the same thing.

**Specific Recommendations on District Attorney Case Presentation to Grand Jury.** The NCSC project team offers the following three recommendations for improvement of this phase of case processing.

*Recommendation 14: The District Attorney's Office should consider having many more felonies prosecuted by information rather than by indictment. The District Court can provide a setting for decisions on this issue by holding a preliminary hearing or other pre-indictment "triage event" (see Chapter III), at which prosecution and defense attorneys can identify cases suitable for early pleas and determine if there is probable cause for others are suitable for felony prosecution on an information rather than an indictment. If the majority of felony cases not resolved by plea at this stage are prosecuted by information, then the judge who is presiding can immediately arraign the defendant on those charges, thereby shortening elapsed time from arrest to commencement of District Court felony prosecutions.*

*Recommendation 15: 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.*

*Recommendation 16: Arrangements should be promoted to locate the APD Court Services Unit with the District Attorney's Office (the BCSO Unit is currently co-located with the DA). The Units should have clear formal authority, in addition to expediting arrest records, to coordinate officer appearance at Grand Jury and preliminary hearing proceedings. Statistics should be kept regarding officer failures-to-appear and those who exhibit consistent and habitual absences without good cause showing should be disciplined up to and including termination.*

## **E. District Court Felony Case Processing**

At the return of an indictment under current practices, the DA's Office files the case in the District Court. Matters are then assigned to judges and proceed to arraignment and completion of discovery, with the possibility of motions or other pretrial hearings before plea or trial and, if a defendant is convicted, sentencing. If probation is part of a sentence, there may be further hearings on any violation of probation.

**1. Arraignment and Assignment of Cases to Individual Judges.** Under Rule 5-604 (A), a defendant must be arraigned by the Court within 15 days after the filing of an indictment or information or the date of arrest, whichever is later. Under a master schedule for all judges in the Criminal Division, judges hold arraignments in rotation every Friday.

Except for arraignments, which are heard one day each week under a master schedule for the Criminal Division, each judge has individual responsibility for all other court events in the cases assigned to him or her, so that cases are scheduled in chambers by their judicial assistants (TCAA's).

Cases are assigned to individual judges at or soon after arraignment. If a defendant with a pending matter in the Criminal Division has a new case filed, the NCSC project team understands from interviews that the new matter is not sent to the judge with the prior pending matter. This appears in part to be a consequence of the manner in which the District Attorney's Office is organized, with different units handling different

kinds of matters. As a result, a single defendant may have cases pending before different judges at the same time.

New Mexico law permits a party to file a petition once per case for peremptory removal of the judge to which a case has been assigned. Any assigned case for that judge must then be reassigned to one of the other Criminal Division judges. The exercise of peremptory removal supports at least an appearance of “judge shopping,” under which an attorney can seek to avoid a judge that he or she believes may be too harsh, too lenient, or too demanding. As a consequence, some judges may have significantly fewer active assigned cases, and their approach to dealing with cases may be seen as a burden on their colleagues.

**Specific Recommendations on Arraignment and Case Assignments.** Based on these observations, NCSC offers the following recommendations.

*Recommendation 17: In the absence of exceptional factors under which justice would be served by severance of charges, the District Court in coordination with the District Attorney’s Office should introduce a practice of having all pending matters with the same defendant consolidated before one judge.*

*Recommendation 18: Individual assignment of cases to judges can have the effect of fixing accountability and avoiding having judges pass case problems on to other judges. Yet it can also provide opportunities in New Mexico for lawyers to exploit differences in practices among individual judges by way of peremptory removal petitions. Rather than allowing this prospect to cause judges to be uniformly easy on attorneys as a way to avoid peremptory removal, the judges of the Criminal Division should seek consensus by committing to the consistent application of best practices in caseflow management. Except in unusual circumstances providing good cause in individual cases, judges should consistently hold themselves and attorneys accountable to comply with such best practices as those recommended in this report.*

**2. Discovery and Pretrial Motions.** 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.



In addition, problems in the transmission of police reports and other discoverable information from the Albuquerque Police Department (APD) to the District Attorney's Office have been seen as a source of discovery delay. APD's introduction of a new "Copperfire" electronic police report writing and forms generation system (see part 2 in Section B, "Arrest, Incarceration, and Police Reports") offers promise to address some elements of this problem, especially if there is coordination with any necessary software and work-process adjustments in the DA's Office and the Public Defender's Office.

At least 10 days before trial, the DA must file a certificate that all required discovery has been produced. Should the DA fail to comply, the Court may impose sanctions. Unless a shorter time is ordered by the Court, Rule 5-502 requires the defense to provide all discoverable information within 30 days after arraignment or its waiver, or 10 days before trial, whichever is earlier.

Rule 5-212 provides that any motion to suppress evidence must be filed within 20 days after the entry of a plea unless the Court waives time for good cause shown. There is no time requirement for when a hearing must be held on a suppression motion. Rule 5-601 (D) provides that all pretrial motions must be made at arraignment or within 90 days thereafter, unless the Court orders otherwise or waives the time requirement on good cause shown. The Court must rule on motions within a reasonable time after filing.

**Specific Recommendation on Discovery and Motions.** On the basis of the above discussion, NCSC offers the following two recommendations.

*Recommendation 19: The District Attorney's Office should reconsider its interpretation of Rule 5-501 in order to disclose discoverable information before indictment sufficient 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. Such reconsideration should be encouraged by the District Court, which Rule 5-501 allows to order such disclosure earlier in a case.*

*Recommendation 20: To reflect the systemic significance of police reports for the felony discovery process, the DA's Office and the Public Defender's Office should make any necessary changes in business processes and software to promote efficient electronic receipt of law enforcement reports and discoverable information.<sup>30</sup>*

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<sup>30</sup> This suggestion parallels Recommendation 10 in Section B, "Arrest, Incarceration, and Police Reports."

*Recommendation 21: The District Court should provide at arraignment for any motion to suppress evidence to be made and heard well in advance of trial, with appropriate arrangements for discovery to be completed.*

**3. Disposition by Plea or Trial.** Rule 5-304 provides that, absent good cause shown, the District Court may fix the time at which notification must be given to the Court of a plea agreement.

New Mexico's criminal procedure rules allow a court to hold a pretrial hearing in the nature of a trial management conference<sup>31</sup> if one is deemed appropriate. Under Rule 5-603, the District Court may order the attorneys to appear for pretrial hearing at any time after the filing of an information or indictment. Such a hearing may be held to consider (a) simplification of issues; (b) the possibility of admissions of fact and documents to avoid unnecessary proofs at trial; (c) the number of expert and other witnesses; and (d) any other matters to aid trial disposition. Such a hearing is probably not needed for most criminal trials, though it would be helpful for more complex matters. The NCSC project team did not determine how frequently pretrial hearings are held for this purpose in Bernalillo County.

As has been noted in Chapter II, Rule 5-604 provides that a trial must typically commence within six months after arraignment. For good cause shown, a trial start can be extended up to six months by the District Court, and then again by the Supreme Court. As Table 12 in Chapter II indicates, half of all Bernalillo County cases sampled by NCSC took 18 months or more (median 542 days) from District Court filing to jury trial disposition.

The rule provides 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. The average time in the sample was about 20 months (596 days mean time), and 10% took 35 months (1,061.5 days) or more. It was thus common for jury trial cases to have more than two time extensions. Since about two-thirds of all cases had at least one bench warrant, it is possible that such time extensions were often granted because a defendant had failed to appear.

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<sup>31</sup> See Ernest Friesen, "The Trial Management Conference," 29 *Judges' Journal* (No. 4, Fall 1990) 4.

**Specific Recommendations on Plea or Trial.** NCSC offers the following two recommendations for this stage of proceedings.

*Recommendation 22: 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.) Such a policy appears to be permissible under Rule 5-304, which permits the Court to fix the time at which notification must be given of any plea agreement.*

*Recommendation 23: 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.*

**4. Sentencing and Probation.** Under Rule 5-703, a presentence report must be available at least 10 days before a sentencing hearing. Rule 5-701 requires, absent good cause shown, that a sentencing hearing must begin within 90 days after trial conclusion or entry of a guilty plea. Sentence must then be imposed within 30 days after the end of the sentencing hearing.<sup>32</sup> Any motion to modify a sentence must under Rule 5-801 be filed within 90 days after sentence has been imposed or an appeal has been dismissed or conviction affirmed.

Under Rule 5-805, the initial hearing on a probation violation must begin within 30 days after the filing of a petition to revoke probation, or later if the defendant has been found incompetent, if a case is on appeal, or if a defendant fails to appear. The adjudicatory hearing on a probation violation must be held within 60 days after the initial hearing. Hearings on probation violations are held by the judges under a master schedule on a rotating basis every Friday.

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<sup>32</sup> The rule permitting at least 120 days (and perhaps longer if a sentencing hearing ends on a date later than when it was begun) from conviction to imposition of sentence in New Mexico appears to allow a longer time than is provided by rule or statute in some other states. For example, sentence must be imposed within 40 days after conviction in the State of Washington; within 45 days in Tennessee; within 60 days in West Virginia; within 90 days in Wisconsin and Pennsylvania; and "without unreasonable delay" in Kentucky and New Jersey.

**Specific Recommendation on Probation Violations.** NCSC offers the following suggestions for management of probation violation hearings.

*Recommendation 24: To improve timeliness in probation violation hearings and promote better use of time for judges and other criminal case participants, the judges of the Criminal Division should revisit the prospect of having a single judge hear all probation violation hearings for a week on a rotating basis. The risk of having a party exercise the right to peremptory removal of a judge at this stage should be addressed through the development and reasonably consistent application of Criminal Division policies and practices.*

## **F. Conclusion**

In the different sections of this chapter, a set of specific recommendations for improvement have been offered. It is important to make two points about these recommendations. First, it is critical that adoption of such improvements as those recommended here be a matter of division-wide policies among the judges, and that all or almost all of the judges be committed to following the policies most of the time in most circumstances. Second, the Court must avoid viewing “improvement” as little more than the adoption and application of one or two simple, discrete changes. Instead, attention must be given to the systemic nature of the criminal justice process and the need for a systematic approach to improvement.

*Recommendation 25: To limit judge shopping and any potential for having individual judges criticized at retention, the judges of the Criminal Division should adopt and consistently apply best practices in the management of cases during all phases of case processing. To the extent possible, the Criminal Division should have published policies for the management of criminal cases, and the judges should follow them with sufficient consistency to give predictability and consistency to attorneys in the handling of criminal cases.*

*Recommendation 26: Bernalillo County officials and District Court leaders should not view the recommendations offered in this report as a “cafeteria menu” from which they may simply pick some and reject others. Nor should the problems and potential solutions be viewed as the responsibility of just one or two organizations for piecemeal implementation. Instead, improvement of felony caseflow*

*management in Bernalillo County should be viewed as a matter requiring systemic effort under the leadership of the District Court and involving all its criminal justice partners and stakeholders. To that end, the Court and the County should adopt and implement a comprehensive improvement plan such as that offered in Chapter III of this report.*

## **Chapter III.**

# **Comprehensive Felony Caseflow Management Improvement Program for Bernalillo County**

Although specific numbered recommendations for improvement are offered throughout Chapter II, it is not enough simply to “fix” a defined set of specific problems. Instead, the District Court and the other court-related and general government stakeholders in Bernalillo County must take a broader and more comprehensive approach. It is critical to change the mindset of the criminal justice community in Bernalillo County.

Based on their assessment of felony case-processing situation in Bernalillo County, the NCSC project team members offer the following overall program for felony caseflow management improvement in Bernalillo County. This program follows Recommendation 26, and it builds on the other specific numbered recommendations offered in Chapter II for particular phases of felony case processing.

### **A. Criminal Division Judge Commitment and Policies**

- Currently, there is little communication among the judges about what works and what doesn’t regarding calendar settings, continuances, pretrial processes, and trial management. Judges meetings should be structured to discuss these basics and move toward agreement on Division policies. Lawyers and staff are confused, on the one hand, and game the judges, on the other hand, since there is no consistency among the judges.
- Learning the basic principles and best practices of criminal caseflow management by the judges and key court staff must be an announced, agreed upon objective. Either county or grant funds should be sought to run a one to two-day session specifically targeting these principles.
- Pretrials and criminal settlement conferences should be consistently set 30-45 days after arraignment, lawyers must be expected to be prepared, and a judge with authority to accept a plea must be present.

### **B. District Attorney and Law Enforcement**

- The DA should develop a plan and process for preliminary hearings instead of channeling the vast majority of cases through Grand Jury indictment. Delays can be reduced, pleas enhanced, and excessive work on the part of many justice system agencies lessened.

- Law Enforcement arrest records processing must be improved; accurate and timely data needs to be transmitted to the DA's Office without the current delays experienced. There should be a commitment and action plan to reengineer the workflow procedures with special attention to remedying the widespread delays in APD's Records Department.
- DA plea policies should be widely understood by the defense bar, including a strong plea cut-off policy widely known to the defense bar.
- The DA should explore assigning lawyers to cases as soon as practical after a decision is made to charge. The delays occasioned in not assigning a lawyer to a case until after Grand Jury indictment work against early pleas and disposition of the case.

### **C. Public Defender and Private Defense Counsel**

- Discovery needs to be exchanged as early as possible.
- Pretrial conferences must to be meaningful; defense lawyers must be conversant with their case at the first pretrial. The system should operate on the presumption there will be only one pretrial unless the case is highly unusual, complex, or there has been a change in counsel. Settlement conference orders (trial management orders) should be developed at the pretrial for any case that is not pled.

### **D. Criteria for Success in Timely Case Processing**

- Bernalillo County case processing standards commencing at arrest or initial appearance should be developed and applied, including time to district court indictment, and phasing in the movement toward agreed-upon best practices using such goals as those recommended by the American Bar Association as a guide.
- Perhaps building upon the Bernalillo County experience in this effort, the Supreme Court of New Mexico should revisit its current implied 18-month time guideline running from district court arraignment, having research done on statewide standards in other jurisdictions. See National Center for State Courts, Knowledge and Information Services, "Case Processing Time Standards in State Courts, 2007" (February 2009), available online at <http://www.ncsc.org>.

### **E. Information Technology and Effective Capacity to Monitor Case Status**

- The new Tyler electronic case management software must be able to clearly measure the time between major events in the criminal caseflow, producing understandable statistics. All those entering data, especially judicial assistants to judges, must dependably and uniformly log data into the system. Training programs and error rates, including omissions, delays and inaccuracies, must be strictly monitored by court administration and reported to the employing judge. Enhancing the current system may be difficult and take needed time away from instituting other necessary caseflow reforms.

- TCAA's in judges' chambers should be required to attend periodic special training programs on their key role in case processing and provided opportunities to enhance their skills and understandings.
- To address the systemic significance of police reports for the felony discovery process, the DA's Office and the Public Defender's Office should coordinate with APD and BCSO to make any necessary changes in business processes and software to promote efficient electronic receipt of law enforcement reports and discoverable information.

## **F. Recommended Steps to Exercise Active Caseflow Management**

- Law enforcement: See case processing recommendations in "Arrest to Indictment" Section of Chapter II.
- District Attorney: By moving more cases away from prosecuting virtually all cases by indictment to one focusing more on prosecution by information, earlier exchange of discovery should be easier to accomplish for those matters. For cases that continue to proceed to indictment, exchange of discovery should take place prior to indictment as should the assignment of an assistant DA responsible for the case up to and through trial.
- Indigent Defense: Currently, a public defender is not assigned to the case until after Grand Jury indictment. An ad hoc task force chaired by a leadership judge should help the DA and PD develop a mutually acceptable early discovery experimental project. Once perfected, the new approach should be expanded to the entire court.
- Triage Event: Although this might be achieved through an expansion of the "Pre-Indictment Plea Program (PIPP)" or of the "Early Plea Program (EPP)," it would be more effective in a pre-indictment preliminary hearing conducted by the District Court. Should the justice system move a majority of cases to preliminary hearing, this can serve as a pre-indictment triage event, provided there is a simultaneous commitment to exchange discovery and assign defense and prosecution counsel prior to indictment. The great majority of cases not resolved by plea at this stage should be prosecuted by information and arraigned at preliminary hearing by the District Court judge immediately upon filing of the information.
- Case Preparation: Preparation of a case from arraignment requires a written continuance policy that is consistently enforced by



Criminal Division judges; agreement about standard time periods from arraignment to pretrial; and Division-wide consistency in conducting pretrial conferences (i.e., what is expected, routine settlement and trial management orders, and expectations that lawyers will be prepared). (See Appendix D.)

- Pretrial Conferences: See the best practices described in Appendix C.
- Plea Cutoff: The Criminal Division and the District Attorney's Office should consider the possibility of introducing a plea cutoff policy, which would require commitment and consistency from both the Court and the District Attorney. (See Appendix E.)
- Credible Trial Dates: The Criminal Division should have a written and published policy to limit unnecessary continuances. (See Appendix D.) Most of the time, most of the Criminal Division judges should follow the policy, granting continuances for good cause and only when absolutely necessary.

In addition, a clear, workable, agreeable back-up judge plan must be developed. It should be widely understood and clearly demonstrated by trial date that no one will be turned away on a trial date for lack of a judge. This may require that civil judges cover for Criminal Division judges when they are all in trial and are overset.

- Trial Management: Pursuant to Rule 5-603, the District Court should hold a pretrial hearing for purposes of trial management in cases where streamlining the order of proof would be aided by such a hearing. If the judge and the attorneys are able to shorten the typical trial duration by reducing any unnecessary redundancies, it has the effect of making more judge, prosecutor and defense attorney time available for other matters, in effect expanding the amount of available resources.<sup>33</sup>
- The PV Calendar: A separate probation violation calendar should be structured. To date, the Court has allowed the lawyers to control whether such a calendar is structured or not. In developing such a calendar, most courts in other jurisdictions listen to suggestions from numerous parties,

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<sup>33</sup> See Dale Sipes and Mary Oram, *On Trial: The Length of Civil and Criminal Trials* (Williamsburg, VA: National Center for State Courts, 1988).

and then proceed with a solution decided upon by the Court taking into account the suggestions. The decision should rest with the Criminal Division.

## **G. Priorities and Consensus for Implementation**

- **Needed Priorities:** Leadership; Criminal Division-wide training on the principles of criminal caseflow management; an agreed upon action plan; experimental / pilot programs; timely and accurate information.
- **Court Consensus:** Criminal Division judges need a retreat for training and consensus-building in caseflow management.
- **DA/PD Consensus:** These two offices and their top-level leaders do not appear to get along institutionally. Perhaps some sort of one-on-one meeting with a facilitator would help. It is to their mutual advantage to work effectively together and promote early resolution of cases, especially given the continued poor economy and likely constricted budgets and staff. Is there an icon in the community that could encourage cooperation? A current or former judge or chief justice, a mediator, a respected attorney?
- **City/County Consensus:** A candid assessment is that trust levels appear low among the County and City stakeholders. There seems to be suspicion of ulterior motives. A respected public official or a retired professional or other community leader who is well-respected might champion the effort to build inter-governmental consensus.
- **Assuring Success:** There must be continued attention to corrective initiatives. Data should be published, public commitments offered, and reports issued. This would be a big step in the culture of the local justice system which is currently based on autonomously operated agencies. The ultimate issue is this: How can the Court and affiliated criminal justice agencies operate together as a system?

## **APPENDICES**

**APPENDIX A.**

**AVERAGE AGE OF DISPOSED AND PENDING  
BERNALILLO COUNTY FELONY CASES, FY 2004-FY  
2009, COMPARED TO NEW MEXICO STATEWIDE  
DISTRICT COURT AVERAGES**

**Table A-1. Average Time to Disposition (in Days), New Felony Cases with One Judge, Second Judicial District and Statewide <sup>a</sup>**

Fiscal Year	Total Cases	2d Dist Ct Average	Statewide Average	Over Statewide Average	Under Statewide Average
2004	3,324	271	207	54.1%	45.9%
2005	4,014	202	207	38.2%	61.8%
2006	3,891	200	207	35.9%	64.1%
2007	3,559	232	207	43.7%	56.3%
2008	3,396	225	207	42.3%	57.7%
2009 <sup>b</sup>	1,996	222	207	41.0%	59.0%

**Table A-2. Average Time to Disposition (in Days), Reopened Felony Cases with One Judge, Second Judicial District and Statewide <sup>a</sup>**

Fiscal Year	Total Cases	2d Dist Ct Average	Statewide Average	Over Statewide Average	Under Statewide Average
2004	1,606	127	99	27.4%	72.6%
2005	1,768	123	99	22.9%	77.1%
2006	1,965	110	99	21.2%	78.8%
2007	1,705	98	99	22.0%	78.0%
2008	1,663	106	99	21.5%	78.5%
2009 <sup>b</sup>	860	71	99	16.6%	83.4%

**Table A-3. Average Age (in Days), Pending Felony Cases with One Judge, Second Judicial District and Statewide <sup>a</sup>**

Fiscal Year	Total Cases	2d Dist Ct Average	Statewide Average	Over Statewide Average	Under Statewide Average
2004	5,581	243	305	19.0%	81.0%
2005	6,296	240	305	18.1%	81.9%
2006	5,898	248	305	18.7%	81.3%
2007	6,035	225	305	19.1%	80.9%
2008	5,462	232	305	18.7%	81.3%
2009 <sup>b</sup>	6,683	242	305	21.0%	79.0%

<sup>a</sup> Source: Court Administrator, Second Judicial District.

<sup>b</sup> FY 2009 data are for the period from July 1, 2008, through February 28, 2009, only.

**APPENDIX B.**

**NCSC REQUEST FOR SAMPLE ELAPSED TIME FELONY  
CASE DATA FROM DISTRICT COURT**



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Manchester, NH 03104-3211  
Phone and Fax: (603) 647-4143  
E-Mail: [dsteelman@ncsc.org](mailto:dsteelman@ncsc.org)

# Memo

To: Kevin Ybarra  
From: David Steelman  
CC: Judge William Lang  
Judge "Pat" Murdoch  
Juanita Duran  
Mark Pickle  
Jane Macoubrie  
Gordy Griller  
Date: April 14, 2009  
Re: Request for sample case data

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This request comes after my discussions with Juanita Duran and my receipt of information from you. NCSC would like data from three representative samples -- one consisting of 100 criminal cases recently disposed by each criminal division judge; a second consisting of all criminal cases recently disposed by jury trial; and the third consisting of 100 cases per criminal division judge that were still open on a recent date. A "case" is a single defendant and all the charges involved in a single incident.

By "disposed" cases I mean those in which there has been a conviction by plea or trial or an acquittal or other non-conviction event ending a prosecution (such a dismissal or nolle prosequi). A case "disposed by jury trial" is one in which a disposition is reached after a trial jury has been impaneled. An "open" case is one that has not yet been disposed by any such means.

A sample consisting of 100 cases per judge will have a  $\pm 10\%$  margin of sampling error, and NCSC will not report on individual judges. The sample results will be reported in the aggregate for the entire division, and the aggregate sample will have a margin of error of less than  $\pm 5\%$ , which is considered an

acceptable level of sampling error. Of course, there will be no margin of error for jury trial dispositions.

To identify the specific cases in the sample of "disposed" cases for each judge in the criminal division, please determine how many cases each judge disposed in the most recent 12-month period (for example, between April 1, 2008, and March 31, 2009), and then divide that total by 100. If Judge A had 1,500 disposed cases, example, begin the sample with the first disposed case during that period, and then pick every  $(1,500 \div 100 =)$  15th case until you have a total of 100 sample cases. (If there are multiple defendants prosecuted together at the same time, please pick just one of those defendants -- for example, the one first named in the indictment.)

To identify the "jury trial dispositions," determine how many cases had a jury impaneled in the most recent 12-month period (for example, between April 1, 2008, and March 31, 2009). Then provide the information we need for all of those cases.

To identify the specific cases in the sample of "open" cases for each judge in the criminal division, determine how many cases each judge had pending as of the last day of the one-year period for disposed cases (e.g., March 31, 2009), and then divide that total by 100. Begin the sample with the oldest pending case, and then pick every "nth" (for example, "n" could equal  $1,500 \div 100$ ) until you have a total of 100 sample cases, being careful to pick just one defendant in a multiple-defendant prosecution.

In each sample, here is the information that NCSC requests:

- § Date of arraignment on indictment;
- § Date of first entry of appearance by a public defender or first entry of appearance by private defense counsel;
- § Date of entry of appearance by any conflict counsel;
- § Date of last recorded discovery event;
- § Date of hearing on any suppression motion;
- § Date of last pretrial hearing;
- § Number of times a bench warrant was issued;
- § Number of times any event before trial was not held and was rescheduled;
- § Date of trial commencement or disposition by non-trial means;
- § Number of times that trial start was scheduled but was not held and had to be rescheduled; and
- § In conviction cases, date of sentencing.

Our analysis will involve the calculation of elapsed times from date of arraignment to subsequent court event. This will enable us not only to determine how well the Court does by comparison to relevant generally-accepted time standards, but also to see where things typically get bogged down.



**APPENDIX C.**

**BEST PRACTICE LESSONS FOR FELONY PRETRIAL  
SETTLEMENT CONFERENCES**

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## **Appendix C.**

### **Best Practice Lessons for Felony Pretrial Settlement Conferences**

#### **A. Introduction**

In 2009, the Supreme Court of New Mexico approved the use of settlement conferences (often known as criminal pretrial conferences) in the District Court for the Second Judicial District in Bernalillo County. To aid the development and implementation of such settlement/pretrial conferences for felony cases in Bernalillo County, the National Center for State Courts (NCSC) has been asked to provide a “white paper.” This chapter is based on that white paper. It outlines best practices from urban trial courts around the country, with particular reference to experience in the Maricopa County Superior Court in Phoenix, Arizona. The overall theme for this chapter is that successful use of criminal pretrial settlement conferences requires that they be part of a broader effort by the court and its justice partners to see that justice is done in a prompt manner that serves the interests of both case participants and taxpayers.

#### **B. Lessons from Urban Trial Courts Generally**

A trial court’s use of settlement/pretrial conferences in felony matters can be an important part of a caseflow management effort.<sup>34</sup> In order for criminal pretrial conferences to work successfully, the following are critical:

- Court commitment to achieving justice promptly;
- A strong commitment by the prosecutor’s office to speedy case processing; and
- Commitment by public defenders and others representing criminal defendants not only to providing effective assistance of counsel, but also to resolving cases expeditiously in recognition of speedy trial requirements.

In view of the fact that about 95% of all criminal cases in American trial courts are disposed by plea or other nontrial means, criminal caseflow management should focus on ways to provide for meaningful plea discussions between prosecution and defense counsel, beginning at an early stage of proceedings. This includes the following:

- Early determination of defendant eligibility for counsel at public expense, so that defendants can be represented by counsel as soon as possible after arrest and initial appearance in Bernalillo Metropolitan Court;
- Early opportunities for defense counsel to meet with their clients;
- Prompt provision of arrest reports, recorded statements and other police information by law enforcement officers to the prosecutor’s office;<sup>35</sup>

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<sup>34</sup> See Barry Mahoney and Dale Sipes, “Toward Better Management of Criminal Litigation,” *72 Judicature* (No. 1, June/July 1988) 29.

<sup>35</sup> To avoid problems that may arise *after* cases have been filed in court, it may be necessary for the district court in Bernalillo County to work with prosecutors and law enforcement officials to address *pre-filing* issues associated with police and prosecutor activities immediately after arrest.

- Prosecution provision of an early “discovery package” to defense counsel to promote meaningful early discussion of disposition options between prosecution and defense counsel;<sup>36</sup>
- Realistic plea offers by the prosecution as early as possible;<sup>37</sup>
- Defense counsel preparation to negotiate, balancing the best interests and constitutional rights of their clients, and including meetings with their clients;
- Court insistence that counsel meet deadlines for case preparation and monitoring of the scheduling of pretrial settlement conferences to identify and resolve reasons for unnecessary continuances and rescheduling;<sup>38</sup>
- Early court decisions (preferably before pretrial settlement conferences) on admissibility of evidence, most notably regarding defense motions to suppress evidence;
- Court and prosecution commitment to enforcing a “plea cutoff date” policy (see Appendix E);<sup>39</sup>
- To help prosecution and defense counsel be focused on achievement of negotiated pleas as part of the pretrial settlement conference process, court provision of firm and credible trial dates.

### C. Lessons from Maricopa County Superior Court

National-scope studies of delay in urban trial courts show that the judges, court staff and justice partners of the Arizona Superior Court for Maricopa County in Phoenix have for decades sought to assure that justice is done promptly in the felony and civil matters that come before it.<sup>40</sup> As a result, it has long been recognized as a court with a long and successful history of managing delay.<sup>41</sup> Presented here are best practices from the successful operation of criminal pretrial conferences in the Maricopa County Superior Court.

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<sup>36</sup> Unless and until the prosecution has provided suitable discovery to the defense attorney, there can be no meaningful opportunity for plea discussions. To avoid unnecessary multiple rescheduling of criminal pretrial settlement conferences, it is critical for this to be addressed as early as possible in the felony process.

<sup>37</sup> A realistic plea offer is one that can be seen by defense counsel and the defendant as being sound on the specific evidence in the case and reflects a reasonable prediction of the likely outcome in the case. Unless a prosecutor is willing to make such offers, defense counsel will maintain that “justice delayed is justice achieved,” and criminal pretrial settlement conferences will fail to achieve early case dispositions.

<sup>38</sup> For a model continuance policy, see Appendix D.

<sup>39</sup> For the elements of a successful plea cutoff policy, see Appendix C.

<sup>40</sup> See, for example, Thomas Church, et al., *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (NCSC, 1978); Larry Sipes, et al., *Managing to Reduce Delay* (NCSC, 1980); Barry Mahoney, et al., *Changing Times in Trial Courts: Caseflow Management and Delay Reduction in Urban Trial Courts* (NCSC, 1988); and John Goerd, et al., *Reexamining the Pace of Litigation in 39 Urban Trial Courts* (NCSC, 1991).

<sup>41</sup> See William Hewitt, et al., *Courts That Succeed: Six Profiles of Successful Courts* (NCSC, 1990).

Prior to the Conference

- The **pretrial should be thought of as a process** rather than a conference, because the progression of narrowing the issues, clearly identifying the options, and assessing the arguments culminates in negotiated pleas.
- It is **critical for the court to promote preparation by the lawyers prior to the conference**. The oft mentioned caseflow adage that prepared lawyers settle cases is based on hard evidence and documented fact. The earlier a case is prepared for trial, the earlier it can be resolved by the parties. Counsel preparation is the single most important factor in settlement.
- Since lawyers are more prone to prepare for meaningful events; the **conference must be seen by all as an important significant event**. Not a mere status conference which many meaningless pretrials essentially are where the judge inquires of the parties what they have done, the lawyers explain why things are not moving along as they should, the judge admonishes the lawyers and then another pretrial conference date is set.
- The **conference must be realistically set**; far enough in advance (e.g., 2 weeks prior to the trial date is a common point) to permit preparation, but short enough to stimulate preparation.
- An effective trial management conference **requires that the lawyers be substantially ready for trial**.
- The **lawyers who will try the case and the defendant must be present**.
- Normally, in a criminal management conference, the **assigned trial judge is not the trial conference judge** unless the parties so stipulate.
- Under the NM Supreme Court permitted criminal trial management conference pilot project, the **trial conference judge takes a more active role in presenting information to the defendant**. This requires that the judge be relatively familiar with the nature of the offense, the prosecutor's plea offer, the defendant's criminal history, and defense arguments.
- To ensure the trial management conference is successful, **it would be wise that the court require counsel to prepare certain documents in advance of the pretrial**. Discussion and agreement among public lawyers and the court regarding the exact requirements and documents should be decided in establishing the pilot. The Maricopa Superior Court model, although discretionary, often requires a settlement memorandum be filed.

*At the Conference*

- **Strict adherence to a plea cut-off date.** Normally, the plea offer should expire no later than 24 hours after the trial management conference. Negotiated dispositions are based on an early, realistic offer that is unlikely to improve substantially with the passage of time. (See Appendix E.)
- **Conference should last no longer than 45 minutes.**
- **Level-headed discussion of major discovery elements, but not in an adversarial manner.** The pretrial is not intended to engender arguments, but to present data and options.
- **Informal setting** at a counsel table in the courtroom, a conference room or jury room, generally with the judge robed.
- Judge explains the **three-fold purpose** of the conference: give information to the defendant, advise the defendant of the evidence, and examine the plea offer.
- Judge reviews the **context in which the pretrial or trial management conference is offered**...it is non-coercive (not trying to force the defendant to enter a plea), it examines the role of the jury regarding conviction and acquittal and it relates the settlement statistics for like criminal cases, indicating that most arrive at a negotiated plea.

**APPENDIX D.**  
**MODEL CONTINUANCE POLICY**

## Appendix D. Model Continuance Policy<sup>42</sup>

It is the policy of this Court to provide justice for citizens without unnecessary delay and without undue waste of the time and other resources of the Court, the litigants, and other case participants. For all of its case types and dockets, and in all of its courtrooms, the Court looks with strong disfavor on motions or requests to continue court events. To protect the credibility of scheduled trial dates, trial-date continuances are especially disfavored.

Except in unusual circumstances, any continuance motion or request must be in writing and filed not later than [48 hours] before the court event for which rescheduling is requested. Each continuance motion or request must state reasons and be signed by both the attorney and the party making the request.

The Court will grant a continuance only for good cause shown. On a case-by-case basis, the Court will evaluate whether sufficient cause justifies a continuance. As a guide to practitioners, the following will generally *not* be considered sufficient cause to grant a continuance:

- Counsel or the parties agree to a continuance;
- The case has not previously been continued;
- The case probably will settle if a continuance is granted;
- Discovery has not been completed;
- New counsel has entered an appearance in the case or a party wants to retain new counsel;
- Unavailability of a witness who has not been subpoenaed;
- Plaintiff has not yet fully recovered from injuries when there is no competent evidence available as to when plaintiff will be fully recovered;
- A party or counsel is unprepared to try the case for reasons including, but not limited to, the party's failure to maintain necessary contact with counsel;
- The failure to schedule the hearing on a suppression motion on a timely basis unless the prosecution failed to comply with a discovery order;
- A police officer or other witness is either in training or is scheduled to be on vacation, unless the Court is advised of the conflict soon after the case is scheduled and sufficiently in advance of the trial date;

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<sup>42</sup> This model policy was originally developed by David C. Steelman, Principal Court Management Consultant, National Center for State Courts, at the request of the Presiding Judge of the Yamhill County Circuit Court in McMinnville, OR, in 2006, as part of a caseflow management technical assistance program with the Oregon Judicial Department. It has been revised in 2009 as part of a technical assistance project with the Alaska Judicial Department and the Alaska Superior Court for Anchorage, incorporating examples of grounds on which continuances would generally be granted or not granted in substantial reliance on the continuance policy published by the Circuit Court of Petersburg, VA (11<sup>th</sup> Judicial Circuit)(© Supreme Court of Virginia 2009) (see <http://www.courts.state.va.us/courts/circuit/Petersburg/continuance.html>, as downloaded on June 23, 2009).

- Any continuance of trial beyond a second trial date setting.

The following will generally be considered sufficient cause to grant a continuance:

- Sudden medical emergency (not elective medical care) or death of a party, counsel, or material witness who has been subpoenaed;
- A party did not receive notice of the setting of the trial date through no fault of that party or that party's counsel;
- Facts or circumstances arising or becoming apparent too late in the proceedings to be fully corrected and which, in the view of the Court, would likely cause undue hardship or possibly miscarriage of justice if the trial is required to proceed as scheduled;
- Unanticipated absence of a material witness for either party;
- Illness or family emergency of counsel.

Any grant of a continuance motion or request by the Court shall be made on the record, with an indication of who requested it and the reasons for granting it. Whenever possible, the Court shall hold the rescheduled court event not later than [7 days] after the date from which it was continued.

Information about the source of each continuance motion or request in a case and the reason for any continuance granted by the Court shall be entered for that case in the Court's computerized case management information system. At least once a quarter, the chief judge and other judges of the Court shall promote the consistent application of this continuance policy by reviewing and discussing a computer report by major case type on the number of continuances requested and granted during the previous period, especially as they relate to the incidence and duration of trial-date continuances. As necessary, the Court shall work with bar representatives and court-related agencies to seek resolution of any organizational or systemic problems that cause cases to be rescheduled, but which go beyond the unique circumstances of individual cases.



**APPENDIX E.**

**ELEMENTS OF A SUCCESSFUL “PLEA CUT-OFF”  
POLICY FOR CRIMINAL CASES**

## **Appendix E.**

### **Elements of a Successful “Plea Cut-Off” Policy for Criminal Cases<sup>43</sup>**

#### **Introduction<sup>44</sup>**

In view of the fact that about 95% of all criminal cases are disposed by plea or other non-trial means, criminal caseflow management should focus on ways to provide for meaningful plea discussions between prosecution and defense counsel, beginning at an early stage of proceedings. Prosecutors should be prepared to make realistic plea offers as early as possible. Defense counsel, in turn, should be prepared to negotiate, balancing the best interests and constitutional rights of their clients.

The court should establish and be prepared to enforce a “plea cut-off” policy. Under such a policy, the court in a scheduling order might establish a date for prosecution and defense counsel to meet to discuss the possibility of a plea, at which the prosecutor’s office would be prepared to make its best offer to the defendant. A plea cut-off date, perhaps a week after that conference and one or two weeks before the scheduled trial date, would be the last date on which the defendant could accept the prosecution’s best offer. If the defendant sought to plead guilty after that date, he or she would have to plead to the original charge filed by the prosecutor. There would be no benefit for the defendant to wait, since the prosecutor’s offer would not “get better” from a defense perspective.

#### **Necessary Features**

In order for a plea cut-off policy to be successful, there are certain features that must be present. They are the following:

- The court and the prosecutor’s office must both be committed to making the program work.
- The program must provide an opportunity for a “best-and-final” prosecution plea offer after defense counsel has (a) received sufficient discoverable evidence to assess the strength of the prosecution’s case, and (b) met the defendant enough to have attorney-client credibility in discussion of the prosecution offer.
- The prosecutor’s office must make a best-and-final plea offer that is really a “good offer” – that is, one that is credible based on the evidence and what a reasonable defense attorney would expect to happen if the case went to trial.
- There should be a plea cut-off date after which the prosecution’s best-and-final plea offer is no longer available.
- Even though the court cannot be expected to reject a defendant’s guilty plea, even on the day of trial, the court must be firm in its enforcement of the plea cut-off

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<sup>43</sup> This document was originally prepared by David Steelman, Principal Court Management Consultant, National Center for State Courts, on September 13, 2008, in response to a technical-assistance request from Suzanne H. James, Court Administrator for the Circuit Court for Howard County in Ellicott City, Maryland.

<sup>44</sup> David Steelman, with John Goerdts and James McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium* (NCSC, 2004 edition), p. 33.

date. This means that in almost all circumstances, absent unforeseen developments, most or all of the criminal judges must require the defendant to “plead straight up” or “make a naked plea,” without the benefit of the best offer made by the prosecutor.

**Other Features Promoting Success**

The success of a plea cut-off policy requires that the above features be present. There are other features that can enhance the likelihood of success. These include the following:

- Court capacity to provide credible trial dates.
- Early prosecution screening of cases to assure that charges fit the evidence.
- Early determination of defendant’s eligibility for representation by the public defender or otherwise at public expense.
- Early defense counsel contact with the client to develop a working attorney-client relationship.
- Early prosecution provision of a “discovery package” to defense counsel, with sufficient information to allow defense counsel (a) to identify any potential suppression issues, and (b) otherwise to assess the strength of the prosecution case.
- Timing of the final prosecution-defense plea discussion close enough to the trial date for the defendant to take the prosecution’s best-and-final offer seriously, but enough in advance of the trial date to allow the court scheduling flexibility if the defendant decides to accept the prosecution offer and plead guilty on or before the plea cut-off date.