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## CONDUCTING A FELONY CASEFLOW

### MANAGEMENT REVIEW:

### A PRACTICAL GUIDE

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# CONDUCTING A FELONY CASEFLOW MANAGEMENT REVIEW

## A PRACTICAL GUIDE

### INTRODUCTION

This Guide to reviewing and improving a court's felony caseflow management system is presented in two sections with supporting appendices. The first section provides brief descriptions of fundamental elements of effective caseflow management systems and effective felony case management practices. The material in this section is drawn largely from the author's monograph, *Improving Criminal Caseflow*, published by the Bureau of Justice Assistance in 2008.<sup>1</sup> Although the discussion in Section I and throughout the Guide focuses on felony caseflow management, the fundamental elements also are equally applicable to other categories of cases.

The second section presents a methodology for assessing the extent to which a court's felony caseflow management system incorporates the elements and effective practices described in the first section. It describes approaches to developing a comprehensive understanding of the system under review, evaluating the information obtained during the review, and presenting the results of the analysis to the court and justice agencies. Finally, the appendices provide guidance for conducting effective interviews, suggested interview questions, recommended statistical data to be collected, and an analytical checklist to facilitate comparison of existing practices to those known to characterize effective systems.

It is anticipated that the Guide can be used both for analyzing felony caseflow management and as a basis for developing a curriculum to train analysts. The effective practices analytical checklist in Appendix G also has multiple uses. It can be used (1) in a caseflow management workshop curriculum as a self-assessment instrument, (2) as a survey instrument by a court conducting an in-house caseflow management review, and (3) by the analyst conducting a felony caseflow management review.

Finally, while the Guide focuses on conducting a felony caseflow management review, its applicability is largely generic. With very little modification, it may be used to evaluate civil, misdemeanor, juvenile, and family court caseflow management.

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<sup>1</sup> Solomon, Maureen, *Improving Criminal Caseflow* (Washington, DC: Bureau of Justice Assistance (BJA) Criminal Courts Technical Assistance Project, American University), October 2008.

## SECTION I

### Effective Caseflow Management

It is now generally accepted in the criminal justice community that effective caseflow management is characterized by court supervision of the time and events involved in the movement of each case from first appearance in the court system to disposition.<sup>2</sup> Effective caseflow management incorporates early judicial case management to achieve earlier dispositions in the great majority of cases that will be disposed of without a trial and to create a predictable process and timetable for those cases that may ultimately require a trial. Court supervision of case progress conserves the time and resources of judges, lawyers, and staff while achieving the ultimate goal of a fair and just disposition in every case.<sup>3</sup>

Achieving this goal requires that the court adopt a Caseflow Management Plan consisting of policies and practices that incorporate the essential concept of early and continuous judicial supervision to the caseload. Creation of such a plan establishes a common frame of reference for case management decision-making within the court and fosters the “expectation of timeliness”<sup>4</sup> in the legal community that motivates prompt lawyer preparation and observance of deadlines.<sup>5</sup> A reasonable and predictable process is necessary so that lawyers understand and can depend on consistent procedures and timetables. If the court’s philosophy and practices are not rigorous and consistent, a lawyer’s preparation efforts may not be completed in the optimal timeframe, cases will drift, and dispositions will take longer than cases actually require.

Accordingly, it is not an overstatement to say that the judges’ attitudes are pivotal to success. It

**It is essential that the judiciary commit to applying the effective practices and assume an active role in assuring that cases proceed in a timely manner.**

is essential that the judiciary commit to applying the effective practices incorporated into the court’s plan and assume an active role in assuring that cases proceed in a timely manner. Reaching this level of commitment in the court requires the chief judge’s leadership, a shared vision among the court’s judges of how the caseflow management system should function, and an agreed-upon body of policies/principles designed to achieve that vision. While individual

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<sup>2</sup> Solomon and Somerlot, *Caseflow Management in the Trial Court: Now and for the Future* (Chicago, IL: American Bar Association), 1987, 3.

<sup>3</sup> It is important to recognize that discussions of timely disposition do not contemplate speed for its own sake but, instead, recognize that the timeliness of a disposition is a key element of a fair and just outcome.

<sup>4</sup> This term originated during a major reorganization of felony caseflow management in the Detroit Recorder’s Court (the criminal court for the city of Detroit) in the late 1970s. The effort was led by Chief Judges Sam Gardner and Dalton Roberson and Court Administrator George Gish.

<sup>5</sup> The American Bar Association adopted the following principle concerning caseflow management and delay reduction: “From commencement of litigation to its resolution, whether by trial or settlement, *any elapsed time other than reasonably required* [emphasis added] for pleadings, discovery and court events is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.” National Conference of State Trial Judges, *Standards Relating to Trial Courts* (Chicago, IL: American Bar Association), 1985, Sec 2.50.

judges' specific practices may vary, those practices must be consistent with the intent of the court's Caseflow Management Plan.

### **Fundamental Elements of Effective Caseflow Management**

The elements discussed here are fundamental to successful judicial management of case progress, regardless of the types of cases involved. Thus, the analyst conducting a caseflow management review will assess the extent to which these elements have been incorporated into the system under review. The information obtained will aid diagnosis and remediation of problems both at the organizational level and the individual case management level.

#### ▪ **Judicial Leadership**

Leadership by the chief or presiding judge sets the direction and tone for the organization and, accordingly, is the cornerstone on which an effective caseflow management structure can be created and sustained. This leadership is necessary for creating an atmosphere of excellence and for setting the expectation that the caseflow management system will incorporate active supervision of case progress to assure a timely, economical, and just result in each case. Quoting from Mahoney *et al.*:

“In studies of corporate innovation and excellence, as well as of courts and criminal justice agencies that succeed in attaining significant goals, leadership emerges as a critically important factor.” “...when practitioners in successful courts were asked [as part of a major study of urban court management] about reasons for the court's effectiveness, one of the most frequent responses was a reference to the leadership qualities of the chief judge.”<sup>6</sup>

#### ▪ **Early and Continuous Judicial Supervision of Case Progress**

Early judicial involvement in case-progress decisions, followed by continuous judicial attention to the age and progress of cases, characterize systems that assure timely and just dispositions. The primary purpose of *early judicial involvement* is to focus everyone on the case at the earliest reasonable time and, more particularly, on the time and resources required to assure a timely and just disposition. In practice this means that the assigned judge, in consultation with the lawyers, plays an active role *early* to assure case evaluation by all parties and creation of an agreed timetable for future case activities. *Continuous supervision* by the judge and his or her staff assures that deadlines are met, negotiations regarding disposition occur, motions are filed and disposed of promptly, and scheduled hearing and trial dates are firm.<sup>7</sup>

The primary purpose of early judicial involvement is to focus everyone on the case at the earliest reasonable time and, more particularly, on the time and resources each case will require.

<sup>6</sup> Mahoney, Barry and Hoffman, Richard et al. in *Improving Your Jurisdiction's Felony Caseflow Process* (Denver, CO: The Justice Management Institute), April 2000.

<sup>7</sup> For example, in jurisdictions where judges conduct a case management conference within about 30 days after superior court arraignment, judges, lawyers, and administrators who have been interviewed regarding the impact of this process often express the views that dispositions occurred earlier and their time was better used in productive activities.

Since in most courts less than 5 percent of cases require a trial, it should be clear that early identification and disposition of cases least likely to require a trial will result in earlier disposition of *most* of the caseload. As a result, both the court's and lawyers' time will be freed for the remaining cases that require more resources and attention.

- **Credible Hearing/Trial Dates**

Effective caseload management systems create an expectation of timeliness by providing credible trial and hearing dates and adhering to those dates. To avoid scheduling conflicts, decisions concerning initial scheduling and subsequent requests to reschedule are made by a judge based on information the lawyers in the case provide. Reasonable accommodation of lawyers' schedules occurs initially. Subsequent requests by lawyers to reschedule must include information advising the court of the reason for the request, when the necessity for the request became known, what efforts were made to avoid it, and the earliest time that the case can proceed. Stipulation by the lawyers is never an adequate basis for granting a continuance.<sup>8</sup>

Routine granting of continuance requests, without requiring a showing of exceptional cause, signals a lack of judicial control of case progress and produces case delays and backlogs. In courts where the prevailing view is that dates are not credible and continuances are easily obtained, lawyers are less likely to meet deadlines.

Finally, it should be noted that processing continuances is not an effective use of resources and may increase litigation costs and administrative costs by creating extra paperwork for the parties and the court's administrative staff.<sup>9</sup> Equally important, continuances often cause victims, witnesses, attorneys, and defendants to make unnecessary trips to the courthouse and ultimately may discourage witnesses from appearing.

- **Observance of Time Standards and Goals**

Research in the field of caseload management during the past 40 years supports the need for time standards. One study concluded:

“The development and adoption of time standards for the processing of cases by the Conference of Chief Justices, the American Bar Association, and a number of state court systems reflects a widespread feeling...that there are outside limits on how long cases should take...Interviews with...judges and lawyers suggest that the standards are

Interviews with judges and lawyers suggest that standards are generally taken seriously, even if no sanction is imposed when a case exceeds the time allowed by the standards.

<sup>8</sup> Recently a judge reported his experience while sitting as a visiting judge in another county. Lawyers appeared and presented a stipulation for continuance, saying: “We’ve agreed to delay the case, your honor.” When the judge inquired, “Don’t I have a role to play here?” one attorney handed up the stipulation and said, “Yes, your honor. You sign here.”

<sup>9</sup> A court clerk’s office in one jurisdiction where technical assistance was provided calculated that all the tasks and paperwork associated with setting and resetting hearings and trials consumed nearly the equivalent of one full-time clerical position. Staff interviewed in other jurisdictions during technical assistance projects sponsored by CCTAP have also expressed concern about the amount of staff time required to process continuances and reset cases.

generally taken seriously, *even if there is no sanction imposed when a case exceeds the time allowed by the standards* [emphasis added].”<sup>10</sup>

In addition to an overall disposition time standard, or “speedy trial” rule, the court’s caseflow management system should incorporate (1) intermediate time goals governing the elapsed time between major case events and (2) system management standards concerning such areas as continuances and case scheduling efficiency (the ratio of total trial dates set to total trials started). These types of operational goals are helpful in managing case progress and assuring efficiency and effective use of judge, lawyer, and staff time.

- **An Information System to Support Caseflow Management**

At the most basic level, the court’s information system must provide counts of filings and dispositions, tabulate the types of dispositions, and calculate the age of cases at disposition. However, the best caseflow management information systems have capabilities well beyond generating these statistics or maintaining a register of actions, generating notices, producing daily/weekly court calendars, and providing gross statistics.

Ideally, a court will implement a case management information system that facilitates tracking individual case progress, provides up-to-date information on the size and age of each judge’s caseload and calendars, and allows measurement of system performance against the standards and goals. Without timely information on the status and age of each case and the total caseload, it is extremely difficult to sustain an effective caseflow management program.

- **Ongoing Interagency Communication and Consultation**

Interagency consultation about policies and practices that affect caseflow management is vital for a number of reasons. One is the reality that, even though the individual agencies are independent, they are part of a procedurally interdependent system. For example, in a caseflow management review, it is not uncommon to encounter a situation where one agency has adopted internal procedures that benefit the agency but have unintended negative consequences for other agencies.

The criminal justice system is, procedurally, an interdependent system even though the individual agencies are independent.

A second reason is the fact that no single organization, including the court, can create a successful caseflow management system by itself, but the problems of a single agency can negatively affect the entire system. For the criminal justice system to function effectively, inter-agency communication and consultation about perceived problems and proposed solutions are necessary.

Finally, periodic assessments of the caseflow management system are needed to keep even the most effective system on track. When the need for change arises, successfully planning

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<sup>10</sup> Mahoney, Barry et al., *Changing Times in Trial Courts* (Williamsburg, VA: National Center for State Courts), 1988.

and sustaining improvements requires collegial, constructive, and appropriate participation in analysis, design, and implementation—regardless of which agency is the primary focus of the effort.

Nevertheless, it logically falls to the court to play a leadership role and create the structure for cooperation. This usually means convening a multiagency task force or planning council. Leadership must come from the court, but the participation of all key criminal justice agencies is vital to success. Fostering a collegial atmosphere in this manner vastly increases the chances of success.

In the process of collaborating, several important organizational outcomes are achieved. It usually becomes clear that—contrary to widespread assumptions—the views of all the criminal justice agencies concerning desirable attributes of a caseflow management system are highly similar. It also becomes clear that these agencies look to the court to create the environment of timeliness and predictability discussed above. Finally, most participants ultimately acknowledge that each agency's success depends in large part on the success of the others.

### **Effective Criminal Caseflow Management Practices**

When consistently applied, the practices listed below help assure that backlogs and delay in criminal cases are avoided. Each is concerned with a critical step in the flow of felony cases. Determining the extent to which these practices are followed consistently will provide insight into causes of dissatisfaction or ineffectiveness in the existing system.

- **Early Availability of Arrest Report**

*The law enforcement agency assures rapid transmission of the arrest report to the prosecutor, possibly requiring that the report be submitted by the conclusion of the officer's shift.*

- **Early Attachment of Counsel and Prompt Client Interviews**

*Defense counsel is notified of assignment to a case promptly and interviews the client prior to his or her court appearance.*

- **Realistic Charging**

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

- **Early Exchange of Information Between Prosecution and Defense**

*Basic information, including the arrest report and available discovery, is exchanged early, preferably no later than superior court arraignment. Decisions about case disposition can be made only when the lawyers have the necessary information. In some courts, a significant number of dispositions occur at or before arraignment.*



- **Emphasis on Early Disposition**

*Many courts fail to design the caseload management system to take advantage of the fact that, as shown by published statistics, 95-99 percent of criminal cases will be disposed of by guilty plea or dismissal.<sup>11</sup> It should be unnecessary for a high percentage of dispositions to exceed the established disposition time goals when most do not involve a trial. An “early disposition climate” is created by focusing attention on the case at the earliest possible time, requiring counsel to meet with the client as soon as possible, creating a structured opportunity for serious negotiations between the lawyers, and incorporating meaningful judicial participation in the process.*

- **Case Screening by Prosecution, Defense, and Judge**

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

- **Early, Realistic Disposition Offers that are Unlikely to Improve Substantially Over Time**

*In addition to early and accurate case evaluation by the prosecutor, timely disposition also depends on early, realistic disposition offers based on what the prosecutor believes could be proven at trial. In many courts, a major disincentive for early disposition exists because the defense knows that the prosecutor’s offer will improve significantly solely due to the passage of time.*

- **Cases Assigned a Future Date Certain for a Specific Purpose**

*Realistically, enforced deadlines should be used to create the essential expectation of timeliness that stimulates timely preparation and disposition. If a disposition is not entered at arraignment, a future action date for a specific purpose<sup>12</sup> (such as a case management conference or motions hearing) is assigned before the parties leave. Consultation with the prosecution and defense in setting the date helps assure compliance.*

*Note that the firm future action dates need not be trial dates. Motions deadlines, case management conference dates, and other meaningful events satisfy the requirement for always setting a “future action date” deadline. By assuring that the sum of all future action deadlines adds up to, or is less than, the outside time limit for disposition (i.e., the disposition time standard), the court essentially gives early notice of the approximate trial date if one is needed.*

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<sup>11</sup> For example, in one jurisdiction with a 1 percent trial rate (i.e., 99 percent of dispositions were guilty pleas or dismissals), more than 50 percent of dispositions exceeded the 90-day disposition time standard. This means that it took *more than* 90 days to reach a plea agreement in about half the guilty pleas! In contrast, in jurisdictions where judges exerted early control over cases, dispositions of relatively uncomplicated cases occurred within 30-45 days of arraignment.

<sup>12</sup> The likelihood of appropriate attorney preparation is enhanced by the knowledge of what the court expects to accomplish at the next appearance.

- **Every Proceeding Used as an Opportunity to Dispose of the Case or Move It Toward Disposition**

*Each scheduled appearance should have a purpose directly related to making progress toward disposition. Conferences or status hearings that are held solely for the purpose of inquiring about counsel's progress or setting a date for another conference should be avoided. When the defendant and lawyers are present, it should be for activities that can lead to disposition.*

- **Trial Dates Scheduled Only if Needed**

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

## SECTION II

### Summary of the Caseflow Management Review Process

Court staff, representatives of the state’s Administrative Office of the Courts, or consultants may conduct a caseflow management review. Clearly, the ultimate goal of such a review is to assist the court in creating a caseflow management system that increases the likelihood of a just, fair, timely, and economical result in every case. Accordingly, the principal review activities focus on understanding current practices, comparing them to the policies and practices known to characterize effective caseflow management systems, and suggesting modifications, as necessary. A secondary objective of the review process is to foster the inclination and capability within the justice system to engage periodically in self-examination, analysis, and change as required. The reality is that continual self-assessment is essential for sustaining improvements. A caseflow management review has four principal stages:

#### *Four Principal Stages of a Caseflow Management Review*

Stage One: Preparation for the Review

Stage Two: System Documentation

Stage Three: Analysis

Stage Four: Formulation of Conclusions and Suggestions

#### ▪ **Stage One – Preparation for the Review**

Tasks include:

- Reaching agreement with the court on the scope of the review.
- Reaching agreement on how the results will be presented to the court and justice agencies.
- Acquiring descriptive information about the court.
- Acquiring and analyzing available statistics.
- If possible, conducting a preliminary site visit to establish a relationship with key personnel in the jurisdiction and to explore problem areas that these personnel have identified.

#### ▪ **Stage Two – System Documentation**

Successfully completing this review depends on obtaining and analyzing a variety of information from a broad range of sources to form the basis for system analysis and development of conclusions and recommendations. Specifically, one must obtain:

Facts  
Perceptions  
Attitudes  
Beliefs

- Facts – “What is happening? How does the caseflow system operate?”
- Perceptions – “What do key personnel *think* is happening?”
- Attitudes – “How do these personnel *feel* about what is, or may be, happening?”
- Beliefs – “What do these personnel believe *should be* happening and why?”

By the time the review is complete, all four types of information will have been considered. But, before one can effectively deal with perceptions, attitudes, and beliefs, it is essential to have the facts! And that is the primary purpose of the initial documentation effort.

Stage Two will involve:

- Onsite documentation of the caseflow management process in considerable detail including:
    - The procedural steps in moving a case from filing to disposition.
    - The usual elapsed time between procedural steps.
    - What problems may arise in connection with these events or activities.
    - How such problems are handled.
    - Who makes the critical decisions that affect case progress at each step.
    - The extent to which each step contributes meaningfully to case progress and disposition.
  - Documentation of the perspectives and attitudes of key individuals through interviews.
  - Collection and analysis of objective data concerning filings, dispositions, clearance rates, trial rates, continuances, and other information to obtain a complete profile of the present situation.
  - Observation of activities such as arraignments, calendar calls (if these are used), and case management conferences.
- **Stage Three – Analysis**

In Stage Three, the analyst will use the combination of objective and subjective information to:

- Evaluate the existing system against the established elements and practices discussed in Section I.
  - Compare actual practices to what those in the system think is occurring.
  - Discriminate between “symptoms” and underlying “problems.”
  - Assess the organization’s readiness to undertake changes.
- **Stage Four – Formulation of Conclusions and Suggestions**

Observations, conclusions, and suggestions for improvement will be compiled into a report to be presented to the court and other justice agencies, sometimes in a bound report and sometimes simply in memorandum form. This document has several purposes:

- Convey information.
- Serve as the basis for change.
- Encourage a collaborative atmosphere among all stakeholders in the criminal justice process.

Careful consideration should be given to the wording and tone of this document to ensure that it is constructive. The analyst wants readers to focus on the merits of the arguments

presented, not the manner in which the information is presented. The report should avoid a negative tone or outright criticism except under the most extreme circumstances, as this is rarely appropriate. Finally, as discussed in more detail on page 20, a draft of the report should be reviewed with the court before final submission to assure clarity and accuracy.

### **Detailed Description of Each Stage of the Caseflow Management Review**

#### ▪ **Stage One – Preparation for the Review**

Before the review begins, a number of preliminary activities must be completed. The analyst should be sure that agreement has been reached with the court administrator and chief judge concerning the review’s purpose, scope, and outcomes. Agreement also should be reached about who will receive the final report. Usually the initial recipients are the court’s chief or presiding judge and court administrator, and they in turn make the report available to the other criminal justice agencies. The analyst should be explicit about the fact that she or he will not discuss the findings and conclusions of the review with anyone outside the court or other criminal justice agencies.

Before the review begins, the analyst should be sure that agreement has been reached with the court administrator and chief judge concerning the review’s purpose, scope and outcomes.

A realistic estimate of the time required to complete the felony caseflow management review should be presented to the court at this time, although it may be revised periodically as the review progresses. Careful planning is required to develop this estimate because the time can be highly variable. It depends on factors such as the size of the jurisdiction and the number of interviews required, the location and availability of key personnel for interviews, the extent of the problems, whether original data collection and analysis will be required, the number and length of required observations, the number of analysts on the project, and the time required for writing and rewriting the report.

It usually proves helpful for the chief judge to send a letter to involved agencies to introduce the project and the analyst, describe the focus and scope of the project, and solicit cooperation. Finally, as the project begins, the court administrator should schedule the initial interviews and provide the analyst with interview and office space in the courthouse, if possible.

Time and budget permitting, the analyst may want to make a preliminary site visit to meet with the court administrator, chief judge, and other key personnel as part of completing these preliminary activities. During this visit, agency heads may be asked to designate knowledgeable individuals to be interviewed for the review.<sup>13</sup>

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<sup>13</sup> In many jurisdictions, felony cases originally appear in the court of limited jurisdiction. Significant case management and disposition opportunities occur in this court’s processing of the case. Accordingly, interviews and observations should be scheduled with judges and staff of this court, as well as in the superior court. The only exception would be a situation where the problems to be solved clearly are exclusive to the superior court.

Finally, the analyst should obtain information about the court's organization, the number and type of court staff, and the size and age of the incoming and pending caseloads.<sup>14</sup> This information will help in final formulation of plans for the onsite portion of the review. Statistical reports showing filings, dispositions, and case age usually can be obtained in advance of the first site visit; often these preliminary statistics provide clues about issues to explore during the review. It also is advisable, if possible, for the analyst to obtain copies of relevant statutes and rules before starting the review.<sup>15</sup>

## ▪ **Stage Two – System Documentation**

### *Interviews Concerning the Process*

The review usually begins with interviews of knowledgeable individuals in the court and other criminal justice agencies to document the felony caseflow process. Those interviewed should include law enforcement, jail personnel, prosecutors, public and private defense lawyers, pretrial services personnel, probation officers, clerk's office staff, judges, and courtroom staff.<sup>16</sup> The early interviews will cover a range of facts and perceptions, but the analyst must be sure to document precisely how felony cases move through the criminal justice system.

This process, known informally as “walking the track,” starts with arrest or citation and explores each step in the process. The analyst should determine the following for each step:

- What agencies are involved?
- What information is necessary to complete the activity?
- What is its source?
- How is it used?
- What preparation is required of each agency for the activity?
- What exceptions occur and how are they handled?
- Who are key decision-makers in the process?
- How do their decisions affect case progress?

Early interviews most often will involve a number of individuals at the so-called “process” level—that is, those who know how things get done regardless of the governing policy. For example, the Chief of Police might say that office policy requires completion of an arrest report before the end of the officer's shift, but interviews with the officers or clerical staff might reveal that this rarely happens because of insufficient computer terminals.

Information about caseflow and relevant paper flow (e.g., preparation of reports, calendars, notices, warrants, and ticklers) should be obtained. Much of this detailed information will

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<sup>14</sup> Examples of information to obtain in advance appear in Appendix A of this Guide.

<sup>15</sup> For a full description of this preliminary stage see Mahoney and Solomon et al., *How to Conduct A Caseflow Management Review – Guide for Practitioners* (Williamsburg, VA: National Center for State Courts), 1992, pp. 9-10.

<sup>16</sup> Techniques to assure effective interviews appears in Appendix B to this Guide. Suggested questions appear in Appendix C.

come from clerical staff. In some offices (e.g., the clerk’s office), obtaining detailed information will require talking with a number of individuals handling different steps in the process.

These so-called “process” interviews also can yield useful clues for further investigation. For example, the clerk who prepares the calendar might mention that there are frequent last-minute requests from courtrooms to add or remove cases from the next day’s calendar. This suggests a problem with continuance policies and practices, which the analyst should note for discussion with the judges.

It is recommended that at least two analysts work on a review. This reduces the time required for interviews. Equally important, it facilitates accurate interpretation of results. Two sets of eyes and ears often prove better than one set when the time for analysis and formulation of conclusions arrives.

### *Diagram of the Process*

“Process” information will be used by the analyst to prepare a detailed flow diagram depicting—step-by-step—the events, hearings, decisions, recordkeeping, and other activities associated with movement of felony cases through the criminal justice system. In short, the analyst must understand the process in sufficient detail to draw a picture of it! This is not a trivial exercise. It is a proven way to assure the analyst’s solid understanding of the operation and discover areas about which those in the system are uncertain. In preparing the diagram, knowledge gaps that require further inquiries will become apparent. The diagram, especially if an annotated format like that shown in Appendix D is used, also becomes a place to make note of important information about specific practices or departures from established policies that may emerge during interviews with judges or others.

**Prepare a detailed flow diagram of the process. Knowledge gaps will become apparent immediately.**

Instructions for constructing a process flow diagram are included in Appendix D. An example (depicting the lower court stage of felony caseflow) is provided to demonstrate the type of diagram and level of detail that is required.<sup>17</sup> The diagram would be enhanced by including even more detail concerning the nature and timing of paper flow associated with the process. A second example is provided to demonstrate how space may be allowed on the diagram so the analyst can enter questions and observations beside the steps in the process.

Review the diagram with principal staff members to verify its accuracy, and talk to information sources as many times as necessary to form an accurate picture of the process. For example, information obtained from one source may be inconsistent with information obtained from another, it may not be clear what procedure is followed

**Review the diagram with principle staff members to verify its accuracy.**

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<sup>17</sup> Note that the steps and terminology shown in the sample diagram are specific to the court that prepared it and, accordingly, may vary somewhat from those of the jurisdiction that are the subject of the analyst’s caseflow management review.

when events/hearings do not occur as scheduled, or the objective data from reports or special data collection efforts may contradict process descriptions obtained in interviews.

### *Interviews to Understand Perceptions, Attitudes, and Beliefs*

While it seems tidy to reserve discussions of perceptions and attitudes for interviews scheduled specifically for that purpose, in reality perceptions, attitudes, and beliefs arise during interviews to document the caseload management process. In fact, this may help put what has been learned about the process in perspective.

**It takes persistence to distinguish symptoms from underlying problems.**

In interpreting the perceptions, attitudes, and beliefs expressed by interviewees, it often takes persistence to distinguish symptoms from problems. For example, during an interview about docket management, a judge complains that court time is wasted because the public defender frequently fails to appear for initial hearings. When asked about this, the defender says he doesn't appear because he doesn't receive notice of his appointment from the clerk's office. This leads to an interview with the clerk concerning noticing practices, where the analyst learns that the office places the appointments in the defenders mail box at the courthouse. Subsequently, the public defender concedes that his office staff frequently is late picking up notices.

In exploring perceptions, attitudes, and beliefs, the analyst should obtain sufficient information to determine whether practice matches policy<sup>18</sup> and if not, why not. The court may have a written continuance policy requiring a showing of exceptional cause to continue a case, but careful interviewing may reveal that continuances are easily obtained. Or, the Caseload Management Plan may specify that a case management conference be held within 30 days of arraignment, but the practice is not consistently followed.

**In exploring perceptions, attitudes, and beliefs, the analyst will learn whether practice matches policy.**

How do the practices of one agency affect another's ability to operate effectively? Is the prosecutor aware, for example, of the impact of his method of assigning deputies to courtrooms on the court's case scheduling system? Do the court and criminal justice agencies consult with the others before implementation of procedural changes? Do the court and other agencies communicate with each other at the policy level about problems and potential solutions or do they simply complain while taking no constructive action?

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<sup>18</sup> In a recent review, the analyst was advised that the court rules required that all continuances, whether at the request of counsel or on the judge's own motion, be documented in writing. In the process of examining trial calendars, the analyst noticed that one judge's daily calendars far exceeded the number of cases that could be handled each day. She asked the judge how he handled so many cases, especially considering the small size of the courtroom. The judge indicated that it wasn't a problem because most of the lawyers didn't show up. Puzzled, the analyst observed that dealing with all the required written continuance requests must be a significant burden for the judicial assistant. "Not at all," said the judge. "Those motions aren't necessarily filed with me in advance. All that is required is that they eventually get filed in the clerk's office and put in the file." The analyst then asked, "Well, in that case, how do you know on a Monday morning how many cases you'll be dealing with?", to which the judge responded, "Oh, I just look out in the hallway and see who's there."



To answer these and other questions, consider interviewing at least the following personnel in depth. (The interview guidelines in Appendix B are particularly important for these interviews since sensitive areas may be explored.)

- Trial court administrator and selected staff.
- Chief or presiding judge (Note: as a courtesy, the judge already will have been interviewed at the commencement of this project to discuss expectations for the outcome of the project).
- Other judges of the court. Try to speak to all judges who handle felonies unless the court is very large.
- Judges' courtroom staff, especially on topics concerning case scheduling and continuance policies and practices; they often provide extremely important information.
- Public defender.<sup>19</sup>
- Several deputy defenders. The option of meeting with the analyst in a group setting may be offered.
- Prosecutor.
- Chief deputy prosecutor. This person often is most knowledgeable about office policy and practices.
- Several courtroom deputies. Again, they may be given the option of meeting as a group.
- Deputy prosecutor who screens cases and makes charging decisions.
- Sheriff and the deputy who manages the office and deputies responsible for pretrial detainees.
- Chief of police and the deputy who manages the office.
- Several private defense lawyers.<sup>20</sup>
- Clerk of court and the clerk's office personnel.
- Directors of pretrial services and probation.

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<sup>19</sup> In some jurisdictions, indigent defense is handled by contract attorneys.

<sup>20</sup> Lawyers are an excellent source of information about the extent to which the court is controlling case progress. Usually the lawyers are candid. The analyst may be surprised by the extent to which lawyers: a) would like the judge to be more involved in managing case progress; b) want more reliable trial and hearing dates; c) want the court to enforce deadlines; and d) support the strict limitation of continuances.

- County administrator or the chair of the county board or commission.

Topics the analyst should be sure to address appear in Appendix C, roughly organized according to interviewees and to the effective practices discussed in Section I of this Guide. Although this list is extensive, as a practical matter it cannot address every eventuality that may arise in interviews. It is left to the analyst to make the final determination of which questions are most appropriate for each category of interviewee and to augment the list as necessary. The analyst is likely to supplement the list as information emerges about existing problems/shortcomings and what remedies should be explored.

### *Observations of Proceedings*

Concurrent with conducting interviews, the analyst also should conduct (if possible) structured observations of certain activities, like calendar calls (if these are used) or case management conferences, and document what is observed. This not only will expand his or her understanding of the way cases proceed through the court and/or the level of case management exercised, but also will suggest productive avenues for further interview questions. For example, in a recent caseflow management review, observation of the weekly felony calendar call revealed that all judges of the court were required to attend the call—a practice that sometimes required sitting in the chief judge’s courtroom for most of the morning. Discussion with the court concerning the reasons for this practice resulted in the judges concluding that this time could be better spent on case-related activities.

The analyst should conduct structured observations of activities that have case management implications.

If time permits and/or if staff can be made available for collecting data through observation, such activity may be the only way to obtain information such as:

- How many cases were scheduled daily? Of those:
  - How many announced a negotiated disposition?
  - How many were dismissed?
  - How many were continued?
  - How many defendants failed to appear and what action did the judge take?
  - How many hearings proceeded as scheduled?
- How many lawyers failed to appear or were late and what judicial action resulted?
- In how many cases was the case file or other necessary information unavailable?

While one might assume that this information could be obtained from a review of the calendars or dockets, experience shows that often it is not recorded.

### *Review of Caseflow Rules and Statutes*

It is important to know what requirements are placed on the process by local and state rules and by statutes. Interviewees, including judges, often cite rule-based or statutory constraints

that in fact do not appear in the rules or statutes or that are misinterpretations of the rules or statutes. Thus, the analyst will find it helpful to obtain copies of rules and statutes governing procedural aspects of felony caseflow, particularly those governing (1) the time to dispose of a case, (2) time limits between case events, (3) the time limits for filing and disposing of motions, (4) case scheduling, and (5) continuances. The prosecutor's office, the defender's office, or court personnel may be able to cite the relevant rules and statutes and even provide copies. Otherwise, the analyst will need to do the research.

Obtain copies of rules and statutes governing procedural aspects of felony caseflow.

### *Data Collection*

The subjective information obtained through interviews should be supplemented with objective data. At a minimum, the descriptive statistics listed in Appendix E of this Guide should be obtained. Some of these statistics will be added to the flow diagram (for example the usual elapsed time between key events in the process) and compared to the statutory times prescribed—such as a requirement that superior court arraignment occur within 30 days of first appearance. Creativity often is necessary to find relevant statistics. The analyst may choose to:

- Use statistical reports produced by court staff or the state administrative office of the courts.
- Locate recent studies that may contain the required statistics.
- Collect data from case files, calendars, dockets, or other records using specially designed forms. (See examples suitable for adaptation in Appendix F.)
- Record data on specially designed forms as part of direct observations of court hearings and processes such as arraignments and calendar calls (if used), etc.

Since delay and the need to observe disposition time standards usually are major issues in the felony caseflow system, the analyst should examine delay from several perspectives. The measure most commonly used is the time from filing to disposition, usually represented by the median<sup>21</sup> time for cases disposed of during a specified time period.

The age of the pending caseload is an important measure because it can clearly disclose the absence of court supervision of case progress.

An equally, or possibly more, important measure is the age of the currently pending caseload. The best way to portray the age of the pending caseload usually is in age categories measured from the time of filing (e.g., 0-3 months, 3-6 months) rather than by the median age. Generally, the age of the pending caseload is a better indicator than the age of cases at disposition when

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<sup>21</sup> The median is the value that appears in the middle, when all the disposition times are listed from lowest to highest. Thus, unlike the “mean” or “average,” it is not influenced by extremely high or low values in the data set.

evaluating the extent of case management exercised by the court.<sup>22</sup> Two examples are provided below to demonstrate why that is the case:

- In a metropolitan jurisdiction, one judge always led the bench with the shortest times between filing and disposition in the monthly statistical report. However, an examination of the age of the judge's pending caseload revealed that he had the oldest pending cases in the courthouse. What was the explanation? This judge concentrated on disposing of newer, less complicated cases and did not periodically review the age and status of his total caseload. Thus, by the particular measure used in this court, he appeared to excel at case management.
- When a court undertakes a delay reduction program, a major focus of the program is, appropriately, disposition of the old cases in the pending inventory. Ironically, if the only reported statistic is the "age of cases at disposition," the program will appear to be failing because this statistic will show longer disposition times than *before* the improvement project started. This is simply because old cases are being terminated as planned! The way to demonstrate the success of a backlog reduction program for the first year or so is to chart the gradual decrease in the age of the *pending* caseload as the delay reduction program digs into and disposes of the backlog!

Two other measures that demonstrate the court's level of control of the caseflow process are:

- The number of trial dates set, compared to the number of trials started. This sometimes is called "trial setting efficiency." If the ratio of trial settings to trials actually started is high, it suggests that case screening and management could be improved. In essence, it shows that the court is allowing cases to "go down to the wire" before reaching the same disposition that could have been achieved at an earlier time through more effective judicial case management and lawyer preparation.
- The percentage of scheduled hearings that are continued to a future date. This is a good indicator of the extent to which the court sets credible dates and holds the lawyers to them. Indirectly, it also is an indicator of lawyers' expectations regarding the credibility of scheduled dates and the level of preparation required of them by the court.

By the conclusion of Stage Two, the analyst will have acquired a solid understanding of the process and identified possible problems. This will allow an informed comparison of system performance to effective caseflow management practices. Follow-up interviews of key individuals about their policies, perceptions, attitudes, and beliefs concerning the felony caseflow process in the court can then be conducted effectively.

After completing Stage Two, the analyst should have a solid understanding of the process and identified possible problems.

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<sup>22</sup> Note that cases in which a warrant has been issued for failure to appear should be excluded from these calculations.

- **Stage Three – Analysis**

To this point, the analyst has been engaged primarily in documenting existing practices, perceptions, and attitudes. In Stage Three, the combination of objective and subjective information obtained will be used to do the following.

*Evaluate the Existing Felony Caseflow Management System*

The analyst will refer to the established principles and techniques of effective caseflow management discussed in Section I of this Guide to compare what has been learned about the current operation to what is known to be effective. The Analytical Check List in Appendix G provides a structured way to begin this comparison and facilitates identification of shortcomings. If justice system personnel consent to completing the same or a similar checklist on a strictly confidential basis, the results will provide insight into their perceptions about the existing system. It is useful—especially when contemplating implementation of changes—to be aware of these views and the extent to which perceptions vary across the organizations.

In comparing the existing practices to those in Section I, the analyst should not only make note of departures from effective practices, but also should highlight the reasons for and consequences of these departures. A finding such as “Felony cases experience substantial delay in reaching disposition” by itself is not helpful. What is the extent of the delays? What are the practices that contribute to the delays? If a problem of consistently late arrest reports is documented, why are they late? What problems are caused by tardy transmission of arrest reports? This type of analysis will substantiate the findings presented in the final report and provide an informed basis for recommendations.

Highlight the reasons for and consequences of departures from the effective practices identified in Section I of the Guide.

*Compare Actual Practices to What Those in the System Think is Occurring*

This is an important comparison because the court and other agencies are unlikely to be interested in pursuing possible changes until they have an accurate perception of the current situation and the extent of the problems. For example, in one court the project team asked permission to document continuance practices by observing and tabulating the results of the daily criminal master calendar call over an extended period of time. The presiding judge consented but commented that the team would not have much to record because he “only continued cases ‘for good cause shown’.” At the conclusion of the observation period, the judge was surprised to learn that the team had documented a continuance rate of 75 percent of scheduled cases.

Frequently, judges advance as the reason they do not actively supervise case progress the *fact* that lawyers oppose judicial involvement in their cases. In most caseflow management reviews, however, analysts learn from the lawyers they interview that reality is just the reverse. Most lawyers welcome active judicial involvement in the form of meaningful case management conferences, deadlines for completion of steps in the case, and court limitation

of continuances—as long as policies are consistent throughout the court and all lawyers are treated fairly. Presenting this information to the court addresses the misperception and can be instrumental in changing the approach to case management.

### *Differentiate between “Symptoms” and Underlying “Problems”*

The ability of the analyst to think critically is especially important here. When interviewees provide their perceptions of the current felony caseflow management process, their perceptions may, in actuality, be descriptions of the *effects* of underlying problems. It is the analyst’s job to sift through the information obtained in the caseflow management review to determine the underlying causes of the perceived problems. For example, a commonly cited issue is pretrial jail overcrowding—a problem usually ascribed to the size of the jail. However, if it turns out that the prosecutor usually takes 60 days to make a charging decision or it takes a year to dispose of a significant number of cases, it becomes clear that the size of the jail is not the sole cause of overcrowding.

Those in the system may confuse cause and effect.

A common complaint from judges is that the prosecution or defense is not ready to dispose of the case by guilty plea on the date set for that purpose. The analyst’s challenge is to determine, based on the information that he or she will obtain, why this is the case and what remedies may be suggested. Are there communication problems between the prosecutor and defender offices? Does the court fail to confer with counsel in setting deadlines for disposition negotiations? Does the court routinely continue the case to a future date when the lawyers are not prepared? In examining what must be accomplished in order for both sides to be prepared to dispose of the case, the analyst should be able to recommend remedies concerning policy or procedure (or both) that will ensure that the activities for which dates are set will occur as scheduled.

### *Assess the Organization’s Willingness to Undertake Changes*

During interviews, the analyst will begin to identify individuals or agencies who are genuinely interested in pursuing the possibility of improvement and those who seem content to maintain the *status quo*. This will be based in part on views expressed during interviews, the history of change efforts in the jurisdiction, and the analyst’s understanding of the “local legal culture” mentioned later in this Guide. Getting an understanding of the organization’s readiness for change is very useful information. The scope of the analyst’s recommendations may be tempered by his or her perception of the organization’s receptivity and readiness for change. The type of planning structure recommended in the final report also may be influenced by this assessment.

The scope of recommendations may be tempered by the analyst’s perceptions of readiness for change.

## ▪ **Stage Four – Formulation of Conclusions and Recommendations**

It is time to put findings, conclusions, and recommendations resulting from the foregoing documentation and analysis into a report. As a result of discussions during the review, some

key personnel already may have a sense of what conclusions are emerging. In fact, sometimes during the review it is helpful and appropriate to review conclusions and ideas preliminarily with interested judges and staff. This allows testing of reactions and provides some insight into the likelihood of implementing change successfully.

Report preparation is a very time-consuming activity.<sup>23</sup> Drafting, redrafting, editing, and waiting for clarity and accuracy reviews by the court can easily take as much time as the onsite portion of the project. For that reason, especially when the budget for the review is of concern, it may be appropriate and agreeable to all involved for the report to be submitted in memorandum form rather than as a polished report. Sometimes all parties may agree that an oral report, accompanied by a list of “bullet points,” will suffice. Be sure to reach agreement regarding the format *before* starting the review.

It is important to avoid surprises in the report!

It is important to avoid surprises in the report! Once the report is drafted—but before submitting it—discuss the conclusions and suggestions with the court and, possibly, with representatives of the other agencies. It is advisable to ask certain personnel (e.g., the court administrator and chief judge) to review the draft for accuracy and clarity. It is unlikely that these discussions/reviews will result in substantive changes, but reviewing findings and recommendations with key personnel is a courtesy, can help avoid errors of interpretation or fact, and can facilitate implementation activities that may follow.

The analyst may suggest that a systemwide meeting be convened by the court for the purpose of discussing the report’s observations and suggestions and attempting to reach consensus on what action should be taken. This would be particularly appropriate if major system changes have been recommended in the report. Ideally, the outcome of such a meeting would be an action plan leading to implementation of an improved system.<sup>24</sup>

A suggested organization for the project report or memorandum is presented below. It is drawn in part from *Improving Your Jurisdiction’s Felony Process*<sup>25</sup> and from project reports prepared by the author.

- **Introduction.** A few paragraphs describing the review’s background and purpose, who conducted the review, the expectations for its usefulness to the criminal justice community, thanks to those who assisted/cooperated with the review, and the organization of the body of the report.
- **Executive Summary.** One or two pages summarizing the principal findings, conclusions, and recommendations

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<sup>23</sup> Preparation of a comprehensive report can take as long as a month.

<sup>24</sup> For a description of this process, see Solomon, Maureen, *Improving Criminal Caseflow* (Washington, DC: Bureau of Justice Assistance (BJA) Criminal Courts Technical Assistance Project, American University), October 2008, pp. 3-4.

<sup>25</sup> Mahoney, Barry and Hoffman, Richard et al., *Improving Your Jurisdiction’s Felony Caseflow Process* (Denver, CO: The Justice Management Institute), April 2000.

- **Established Practices for Effective Felony Caseflow Management.** This section would be similar to Section I of this Guide, properly footnoted.
- **Highlights of the Current Operation, Caseload Trends, and the Extent of Delay.** A brief summary of the existing process is appropriate, supplemented by key statistics. The level of detail in this section will be guided by the knowledge level of the intended audience. If the report will be limited to personnel of the court and other agencies, less detail is needed than if a broader distribution (e.g., to the county commissioners or legislature) is anticipated.
- **Analysis of the Existing System and Practices.** This may be the most extensive section in the report. Here the analyst will present perceived strengths and weaknesses and explain the benefits of considering alternative approaches. Care should be taken to avoid presenting this information in a negative manner.
- **Recommendations.** Here the analyst presents specific proposals to improve the process. The tone should be positive, highlighting the potential benefits of the proposed changes. Rarely will the analyst present a completed system redesign recommended for implementation because the best final product will result from a collaborative effort involving all concerned agencies.<sup>26</sup>

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<sup>26</sup> An exception might be a recommendation that concerns mechanical or procedural processes, such as a protocol for judge rotation or a case assignment system. In this instance, after completing interviews to determine the needs to be met by the system, the analyst appropriately could present a design that the court and affected criminal justice agencies then could review and modify before finalization.



## CONCLUDING COMMENTS

It is important to keep in mind that, while a felony caseflow management review may be initiated by the court, the fact that the review usually is conducted by “outsiders” (e.g., caseflow management consultants or staff of the state’s administrative office of the courts) may create tension in the early stages of the review. Such tension is even more likely if there is a perception that the “outsiders” have been brought or sent in to conduct the equivalent of an “audit.”<sup>27</sup>

The so-called “outsiders” will increase their chances of building rapport with court staff, judges, and representatives of other agencies by acknowledging the following:

- Representatives of the court and criminal justice agencies need assurance that a caseflow management review is not a personnel or performance audit. It is an opportunity for the analyst and stakeholders, jointly, to take an objective view of current operations and determine whether improvements are possible.
- Staff members who will be contacted during the review are the “experts” about their own jobs. The analyst never will understand the details of the existing system as well as those who have worked with it for years. Therefore, the analyst needs to make clear that he or she will be grateful for interviewees’ candid responses and explanations of current processes.
- The staffs of the court and other agencies often have a fairly accurate notion of what problems exist and what has caused those problems.<sup>28</sup> Even though some of these perceptions eventually may prove incorrect, the analyst should be open to exploring them.
- The reality is that, however dysfunctional the process under study may appear, it is one with which the people in the system have become reasonably comfortable even though they may acknowledge its shortcomings. This is a common reason that suggestions for change are resisted.
- To increase the probability that suggestions will be given full consideration, the analyst must understand the “local legal culture”<sup>29</sup> and local norms that will affect people’s understanding and acceptance of the analyst’s recommendations.

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<sup>27</sup> One judge referred to the consultants throughout a project as the “D. O.s” (Dreaded Outsiders).

<sup>28</sup> In an extensive caseflow management review, about 3 months after the analysts had started studying the Criminal Assignment Court, the Assignment Clerk met the consultants in the hallway and motioned for them to follow him. In his office he produced, from the back of the bottom drawer of his file cabinet, 3 years’ worth of statistics on the operation of the Assignment Court. When asked whether he had shown these to the chief judge he said, “No. I have been waiting for the right people to show them to.”

<sup>29</sup> See Church, Thomas and Carlson, Alan, et al., *Justice Delayed* (Williamsburg, VA: National Center for State Courts), 1978, pg. 54.

**APPENDIX A**

**FELONY CASEFLOW MANAGEMENT REVIEW**

**PRELIMINARY INFORMATION SHEET**

(to be completed before beginning the review)

**I. General Information**

A. Court Name and Address:

B. County(ies) Served by this Court:

C. Names, Phone Numbers and E-mail Addresses:

- Chief/Presiding Judge:
  
- Criminal Presiding Judge, if different from above:
  
- Court Administrator:
  
- Clerk of Court:
  
- District/State's Attorney:
  
- Public Defender:
  
- Sheriff:

- Chief of Police:
  
- Other:

**II. Organizational Information**

- A. Number of judges in this court: \_\_\_\_\_
- B. How are judges selected?
- 
- C. What is the length of a judge's term? \_\_\_\_\_
- D. Do judges handle  Mixed dockets? or  Specialized dockets (e.g., only criminal)?
- E. Cases are assigned to judges on:  A master calendar system.  
 An individual calendar system.  
 Mixed or general dockets.
- F. Is any form of differentiated case management used for criminal cases? \_\_\_\_\_  
 If so, please describe:
- 
- G. What is the method for selecting the chief or presiding judge?
- 
- H. How long is the term? \_\_\_\_\_
- I. Is the term renewable?  Yes  No
- J. Where is the current chief/presiding judge in his/her term?

K. What is the method for selecting the prosecutor?

L. What is the prosecutor's term of office?

M. What is the method for selecting the public defender?

N. What is the defender's term?

O. If there is no public defender, how is indigent defense handled?

P. If another defense organization handles *conflict* cases, describe:

Q. What courtroom staff are assigned to a judge?

R. Are prosecutors assigned to a courtroom for a period of time? Specify:

S. Are defenders assigned to a courtroom for a period of time? Specify:

T. What statutory time standards or local rules apply to felony cases? Cite and provide copies if possible.

**III. Purpose of Caseflow Management Review**

A. Felony caseflow management review was requested by: \_\_\_\_\_

B. Problems identified by requestor: \_\_\_\_\_

\_\_\_\_\_

C. Desired outcomes for this review: \_\_\_\_\_

\_\_\_\_\_

**IV. Attach the Court's Felony Caseflow Management Plan and Continuance Policy, If Any.**

**V. If Available, Attach Statistical Reports Concerning Felony Filings and Dispositions, the Pending Caseload, and Numbers of Trials Started and Concluded.**

## APPENDIX B

### USING INTERVIEWS EFFECTIVELY

Guidance to assure that interviews yield the desired results is presented here. Effective interviews are planned in advance and observe some basic rules. This is true whether it is the staff of the clerk's office or the district attorney who is being interviewed. Effective interviews elicit the required information concerning existing policies, practices, and procedures. At the same time they yield a sense of how the organization functions as a whole and are a window into the attitudes of interviewees. For example:

- What are the relationships between key personnel (e.g., between the chief judge and the public defender or between the chief deputy prosecutor and courtroom deputies)?
- Who believes there are problems in the system?
- What do they think the problems are?
- What goals and aspirations are expressed by interviewees?
- Who seems interested in exploring change?
- Who seems content to maintain the status quo?
- Who are the *de facto* leaders in the organizations?

In short, while conducting initial interviews to document the existing system, the analyst should be tuned into perceptions, attitudes, and beliefs that may explain why the system operates as it does and that may affect the prognosis for successfully implementing change.

To get the most from interviews, certain pitfalls—many of which occur all too often and threaten the effectiveness of the interview—should be avoided.

#### Pitfalls to Avoid

1. **Failure to prepare for the interview.** Be sure to (a) know specifically what information is desired and (b) formulate questions in advance. Otherwise, the necessary information may not be obtained.
2. **Failure to assure the interviewee of confidentiality or to follow through on that promise.**
3. **Talking too much and listening too little.** The purpose of the interview is to obtain information, not to demonstrate the interviewer's knowledge of the subject. It is not possible to obtain information while talking! As a general rule, the interviewer should limit her comments to those necessary to assure a full exploration of the subject matter.
4. **Conveying bias, or the answer that is desired, by the way the question is phrased.** An interviewer should be neutral. The interviewer must create

an atmosphere in which the interviewee feels comfortable offering candid views.

5. **Asking questions of interviewees who could not reasonably be expected to have the information.** For example, don't ask a judge what the district attorney thinks about differentiated case management. To find out what the district attorney thinks, ask the district attorney.
6. **Telling the interviewee what others have said.** This is the fast track to a failed interview. Why would this interviewee believe a promise of confidentiality when the interviewer relates what others have said? Further, integrity is sacrificed, and the trust of previous interviewees, is violated by "carrying tales."
7. **Failure to write up the interview notes within a few days.** Unless one has an incredible memory, the meaning of possibly cryptic interview notes fades rapidly.

### **Suggestions for Effective Interviews**

An interview is a very short period of time in which to build some trust and obtain candid responses to questions. Keeping the following in mind will help:

1. Schedule the interview for a specific length of time—usually not more than 45 minutes—and arrive on time. Follow-up interviews can be scheduled if needed. However, if the interviewee expresses the desire to continue past the scheduled time, do so unless it conflicts with other interviews already scheduled.
2. Accommodate the interviewee's schedule when at all possible; it often is necessary to be available before court starts or at the end of the day when scheduling interviews with judges. Generally, luncheon interviews are not very productive, and it is difficult to take notes.
3. At the beginning of the interview, inquire about whether the interviewee understands the purpose of the interview and why he or she was selected. If not, explain why and answer any questions.
4. Assure the interviewee that views and opinions expressed will be kept in confidence and only shared with other members of the project team. For a representative of the state Administrative Office of the Courts, this can be tricky. Give serious thought to what specific statements are appropriate for sharing.
5. Keep questions short, clear, and relevant to the subject matter of the interview.

6. Match questions to the information level of the respondent unless the limit of the respondent's knowledge, expertise, or experience is being tested. Generally, a good rule is to ask questions for which there is good reason to believe that the respondent has the information.
7. For *facts*, go to the source. For example, a judge can describe his or her own practices with respect to trial scheduling, but is not a good source for the practices of the judge in the courtroom next door. Also, keep in mind that what the interviewee *thinks* is a "fact" may not *be* a "fact". Often, it is wise to verify information through data collection if it is germane to the focus of the review.
8. Don't ask interviewees to speculate about what others think unless there is a specific purpose for doing so. For example, one might ask for speculation in an attempt to assess the level of the interviewee's understanding of the views of others, but this is rarely applicable.
9. Maintain neutrality and avoid bias, even with facial expressions. The purpose of the interview is to obtain information from the interviewee, not to convey personal views or values. Doing so may discourage a candid response. For example, don't ask, "You wouldn't leave case scheduling to the district attorney, would you?"
10. Indicate that any response from among the range of possible responses is acceptable. For example, "Some lawyers find the Assignment and Scheduling Notice helpful in setting up their own tickler system; others say it is just another annoying piece of paper. What's your view?"
11. Convey that it's okay if the interviewee doesn't know the answer to a question. Otherwise, the respondent may offer a guess just to please the interviewer. For example, "Do you happen to know the percent of your scheduled cases that are continued on the trial date? If not, I can check with the clerk's office."
12. Avoid leading questions like, "Isn't Differentiated Case Management just the same old system in a new wrapper?"
13. Limit each question to a single issue, idea or question. For example, don't ask, "Are the DCM Track Information Statements useful, and how often do you allow lawyers to waive completion of them?" Instead, ask two separate questions.
14. If seeking specific information, don't ask a general question like, "How do you feel about DCM?" Instead, ask something like, "What are the major strengths, if any, of DCM?" and follow up with, "Are there any weaknesses with such an approach?"



15. Avoid acronyms. For example, refer to forms, notices, and organizations by their name, not their initials, unless the initials are commonly used in the criminal justice community.
16. Don't let the interviewee deflect questions or derail the purpose of the interview by turning the question back to the interviewer. Get back on track with statements such as, "I'd be glad to talk to you about that later, but right now it's important to get your views..." or, "I'm more interested in hearing your opinion."

### **Probing: When, Why, and How**

Use probing to clarify, motivate, or control the direction of the interview. This is a good skill to cultivate. In spite of care in wording interview questions, responses often are unclear or incomplete or there is sometimes reticence to respond to a question. Usually the need to probe will arise in an interview concerned with perceptions and attitudes. The interviewer wants to be sure to understand the responses and ensure that the interviewee has provided a full and complete response.

If it is necessary to ask questions that may elicit only a 'yes' or 'no' answer, be ready with a follow-up question to obtain a more complete and richer response. Usually, something like, "Could you tell me a little more about that?" or "What leads you to that conclusion?" will work. If the interviewee deflects that question as well, move on. The topic clearly is off limits as far as the interviewee is concerned.

Techniques to assure a complete response include:

- Using brief encouraging comments to indicate understanding, acceptance (Note: *acceptance* is not the same as *agreement*), and interest to keep the interview rolling. For example, "Uh huh," "I see," or "Tell me more about that" are helpful.
- Summarizing or reflecting to help assure understanding of what the respondent has said, and at the same time encourage further response. For example, "So, on balance you feel there has been no change in the timeliness of discovery completion under DCM?" If the interviewee believes he or she has been misunderstood, this provides a chance to clarify.
- Employing well-timed pauses to encourage a further response. The interviewer waits patiently and attentively after the first response without saying anything. Usually the silence will encourage further comments from the interviewee, especially if there are sensitive issues involved.
- Neutral probes help clarify without introducing bias. For example: "I'm not sure I understand.", "Could you tell me a little more about that?", "Could you elaborate?", or "For example?" can help move the discussion along.

- Hypothetical questions can elicit more specific responses. For example: “Well, what would your response be, for example, if a lawyer...?” Sometimes even somewhat argumentative questions are acceptable as in: “Don’t the criminal Rules specify that requests for continuance must be in writing?” Or, “Wouldn’t that be contrary to the ABA standards?” But, generally, a gentler approach is better: For example: “Hmmm...I thought I read somewhere in the Rules that requests for continuance must be in writing. Did I misinterpret that?”

## APPENDIX C

### INFORMATION TO OBTAIN THROUGH INTERVIEW<sup>30, 31</sup>

#### Information Relating to Leadership in the Felony Caseflow Management System

Most of these issues should be explored first with the chief judge. Later, the same or similar issues should be explored in interviews with the prosecutor and public defender (and possibly other agency heads) and also with trial judges to allow comparisons of the perceptions and attitudes of the leaders in these key agencies in the system. It is highly likely that the discussions of these types of issues will surface both the viewpoint and knowledge of the interviewee about the system, as well as the interviewees' perceptions of and attitudes toward other criminal justice agencies.

1. What problems, if any, are you currently experiencing with felony caseflow?
2. Is delay in felony case disposition a problem here? (Ask if not mentioned in response to question 1 above.)
3. If so, what is the principal cause of delay?
4. What is the time goal for disposition of *most* felony cases (recognizing that there are always exceptional cases)?
5. Is the court meeting this goal?
6. What are the most significant impediments, if any, to the timely disposition of felony cases?
7. What do you believe are the causes of these impediments?
8. What remedies have been attempted to date, and with what results?
9. Are there problems with felony caseflow other than delay issues?
10. What is the mechanism by which the court communicates with other key criminal justice agencies about these problems?
11. What is the role of the chief judge in interagency communication about these or other caseflow problems?
12. In your view, what could be done to improve felony caseflow?
13. Have there been any special backlog reduction programs? What were the results?
14. Are any significant changes to the caseflow system contemplated?
15. What is the role of the chief judge with respect to felony caseflow management policy in the court?
16. Should the chief judge do more, less, or the same in this regard?
17. Does the chief judge communicate with individual judges concerning their dockets/the age of their cases?
18. Why or why not? What is appropriate and why?
19. How often are judges' meetings held?

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<sup>30</sup> For an expanded list of potential interview questions, see Mahoney, Barry and Hoffman, Richard et al., *Improving Your Jurisdiction's Felony Caseflow Process* (Denver, CO: The Justice Management Institute), June 2000, Appendix B, pg. 28.

<sup>31</sup> Note that the analyst may decide that it would be wise not to ask some of these questions in as direct a manner as they are stated here. The same information may be obtained more indirectly or by inference.

20. Who is invited?
21. Who usually attends?
22. Is there an agenda for the meetings?
23. What typically would be on the meeting agenda? (Get samples of agendas if possible.)
24. What reports are received, and on what schedule, concerning the age and size of the pending felony caseload?
25. How are they used?
26. To what extent are you concerned about the current time to disposition?
27. If you know, how many felony cases are currently pending?
28. How old are they?
29. If you know, what percentage of cases is disposed of by trial?
30. Ideally, what should be the role of the assigned judge in supervising the progress of felony cases?
31. What would be the characteristics or attributes of an ideal caseload management system?

### **Procedural Information**

The following list concerns procedural information that is needed to understand the felony caseload process and begin analysis. It will be provided by a variety of sources, which means that preparation for interviews will require reviewing this list and deciding which questions to ask of a particular interviewee. Consideration should be given to who would be the best source on each issue and whether certain questions should be asked of several different sources to test accuracy and assess interviewees' levels of understanding.

1. How long after arrest or citation is the police report completed?
2. To whom is it sent?
3. When is the police report, or a redacted version, provided to defense counsel?
4. When does the first appearance/advisement occur?
5. Is counsel always present at this hearing?
6. What is the process for notifying defense counsel of assignment to a case?
7. When does this occur?
8. Who is responsible?
9. When does counsel interview the defendant?
10. Does the same lawyer remain with the case until disposition?
11. How is eligibility for appointment of public defense established?
12. When does this occur?
13. When is the preliminary hearing held (if used)?
14. How often is preliminary hearing waived?
15. What dispositions occur at this stage?
16. How are they processed (e.g., sentenced by lower court judge, if guilty plea)?
17. What is the process?
18. When and how is the case assigned to a superior court judge?

19. When is the first superior court hearing date set, and what type of event is it?
20. Who selects the date?
21. How is the defendant notified?
22. How is the arrest/incident report transmitted to the prosecutor's office?
23. What happens when it arrives at the prosecutor's office?
24. Describe the process for screening the case and making a charging decision:
  - a) Is there a single charging desk, or are cases screened by the deputies to whom they are assigned?
  - b) If a single charging deputy, what are the qualifications for this position?
  - c) Does this responsibility rotate? If so, describe.
  - d) How much time usually elapses between receipt of the report and the decision?
  - e) Is this time interval governed by statute? Rule? Custom? Nothing?
  - f) To whom is the charging decision provided? And how?
25. How soon is the information filed? (If a grand jury jurisdiction, describe that process.)
26. What happens at superior court arraignment?
27. Who is present?
28. What future dates are set, if any?
29. When is the police report (and other discovery) provided to the defense?
  - a) Prior to superior court arraignment?
  - b) At superior court arraignment?
  - c) After superior court arraignment? If so, how long after?
  - d) What problems, if any, exist in defense receipt of discovery?
30. When is defense disclosure provided to the prosecution?
31. What problems, if any, exist with this process?
32. What is the first court appearance of a management nature (e.g., case management conference, status conference, motions hearing)?
33. For the steps in the process covered up to this point, what are the goals, rules, and/or statutes governing the following:<sup>32</sup>
  - a) Arrest/citation to filing of information or indictment.
  - b) Arrest to initial court appearance.
  - c) Initial court appearance to filing of information or indictment.
  - d) Arrest/citation to appointment of counsel.
  - e) Prosecutor's disclosure to defense.
  - f) Prosecutor's first disposition offer to defense.
  - g) Defense response to offer.
34. Which of these, if any, are cited as points of delay?
35. Is there a standard practice in the court regarding when pretrial motions are filed and heard? Describe.
36. If each judge follows a unique practice in scheduling motions, obtain this information from each judge.
37. What statutes or rules, if any, govern the timing of scheduling motions?

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<sup>32</sup> See Mahoney, Barry and Hoffman, Richard et al., *Improving Your Jurisdiction's Felony Caseflow Process* (Denver, CO: The Justice Management Institute), June 2000.

38. Are pre-sentence reports usually requested?
39. When are pre-sentence investigations initiated?
40. How long does it take, usually, to provide the pre-sentence report?
41. What are the paperwork and recordkeeping processes in the clerk's office when trials or hearings are continued?

### **Information about Judicial Case Management Procedures**

The following information will come largely from interviews with judges because it concerns policies and practices for case scheduling, continuances, motions practice, and similar topics. Nevertheless, some of these same areas should be explored in interviews with the private lawyers, deputy public defenders, and deputy prosecutors who practice in the courtrooms. Their perspectives may differ from those of the judges. If the court operates a master assignment system rather than an individual docket system, it will be necessary to allocate questions/issues between the master calendar judge and trial judges, as appropriate.

1. Could you briefly walk us through the felony caseflow process in your courtroom from the first time a case appears on your docket?<sup>33</sup>
2. What is your first intervention/hearing in the case of a management nature?
3. What activities of a case management nature occur at this point?
4. What future dates, if any, are set for a case at the conclusion of a hearing?
5. About how far in the future are these dates?
6. Do cases always have a future action date assigned for a specific purpose?
7. Please provide a few examples of the types of dates that are assigned.
8. If not covered above, when are trial dates assigned in a case?
9. Who sets the trial date?
10. Are lawyers consulted when dates are being set?
11. Are the dates set in open court, or are they set later and lawyers notified?
12. If set later, please describe the notification process.
13. About how many cases are set on the same day or same week?
14. How likely is it that a case will be tried on the first scheduled date?
15. What arrangements are made to avoid continuances if too many trials are ready to go on the same trial date?
16. What is the usual trial length?
17. What proportion of trials are jury? Non-jury?
18. What is the process for obtaining a continuance of a scheduled hearing?
  - a) How far in advance must it be requested?
  - b) Is a reason required?
  - c) In what form must the request be? Oral? Written? By telephone?
  - d) Who decides the request?
  - e) What are considered adequate grounds?
  - f) If this varies, can you give us some examples?
  - g) What tends to be the most common reason given for a continuance?

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<sup>33</sup> Note that in courts where a master calendar, rather than an individual docket, system is used, this and related questions will need to be tailored to the situation.

- h) How far in the future, usually, is the new date set?
  - i) If the answers to the above vary between trial settings and other hearings, please describe the differences.
  - j) Do you have a limit beyond which you will not grant a request (e.g., number of previous requests or elapsed time since filing)?
19. Is any form of differentiated case management used?
  20. If so, please describe the screening process, criteria, and the “tracks” to which cases are assigned.
  21. Do you encounter any delays associated with exchange of discovery?
  22. If so, please describe.
  23. Is a plea “cutoff” policy imposed by the court? By the prosecutor?
  24. When is this “cutoff” in relation to other case events?
  25. Is the “cutoff” enforced?
  26. What is the consequence, if any, of a plea not being entered by the “cutoff” date?
  27. Do you hold a pretrial conference?
  28. If so, when (in relation to the scheduled trial date) is it held?
  29. What happens at this conference?
  30. What preparation is required of the lawyers?
  31. Are lawyers required to estimate how much more time will be required to reach a disposition?
  32. Is this a form of trial management conference?
  33. When are motions scheduled?
  34. What are the processes for requesting and scheduling a motions hearing?
  35. What time limits apply to filing, responding to, and scheduling a motions hearing?
  36. What staff are assigned to the courtroom?
  37. How long are these assignments (e.g., 6 months? 1 year? Indefinite?)
  38. Is delay a problem in felony cases?
  39. Could you briefly describe how your workload is distributed throughout a week’s calendar (e.g., motions on Monday morning, trials start Tuesday, etc.)?
  40. Do you happen to have any statistics concerning delay? Size of your caseload? Number of cases currently pending? Number of trials started in a month? A year? If so, how do you use them?
  41. Are there generally any problems with the sentencing process, including pre-sentence reports?
  42. Are there any problems in the area of probation revocations?
  43. In your view are there issues in either the prosecutor’s office or the public defender’s office that have a negative impact on felony caseflow?
  44. In particular, are lawyer scheduling conflicts a problem?
  45. Is there anything else you think we should know about felony caseflow in this court?

## **Information Relevant to the Offices of the Public Defender and Prosecutor**

Many of the same questions discussed with judges also will be appropriate for the offices of the public defender and prosecutor. It is wise to determine who are the best people to speak with in each office. Sometimes, only a courtesy call is needed for the head of the office. During this visit, a general discussion of perceived problems with the existing felony caseflow management system can be held. The prosecutor or defender may be asked about any initiatives recently instituted or contemplated that may affect felony caseflow.

It is appropriate to ask (with an assurance of confidentiality) certain questions about perceptions of the extent of leadership exercised by the court and the relationships among criminal justice agencies in the jurisdiction. Views on such sensitive topics as the diligence or qualifications of individual judges may emerge spontaneously in these interviews; otherwise, as a general rule, the analyst should not raise these topics.

In conducting interviews with lawyers in these offices, it is important to be alert to contradictions that may occur in the descriptions of practices between the two offices. For example, deputy prosecutors may say that the disposition offer does not get better over time, while defense counsel may say they delay disposition as long as possible to get a better offer. This presents a fruitful avenue for further exploration.

Usually, after a brief visit with the prosecutor or defender, his or her advice and agreement should be sought concerning which deputies will be interviewed as part of this project. At a minimum, the analyst will want to talk to the personnel who screen and charge felonies, as well as the courtroom deputies who handle them.

### **Deputy Prosecutors**

1. What problems, if any, are you currently experiencing with felony caseflow?
2. Describe the process for screening cases to determine whether information will be filed.
3. How long does it usually take to make the charging decision after the police report is received?
4. What influences the time required?
5. What is your assessment of the quality of police reports?
6. How and when is a case assigned to a courtroom deputy?
7. Is this a permanent assignment or only for purposes of the first superior court appearance?
8. If only for the arraignment, describe the process for assigning a case to a "trial deputy."
9. Does the system of assigning cases to deputies and/or assigning cases to judges cause any scheduling conflicts? Other problems?
10. What problems, if any, are encountered in connection with interviewing the defendant or witnesses?
11. When is a disposition offer transmitted to defense counsel? Before



- arraignment? At arraignment? After? How long after?
12. If before arraignment, how do you identify defense counsel in the case?
  13. How is the offer transmitted?
  14. Is a time limit for response established?
  15. Do you establish a plea "cutoff" date?
  16. Describe how this works in practice.
  17. Do prosecution and defense confer in person? By telephone? By E-mail?
  18. Describe problems, if any, in making arrangements for plea negotiations.
  19. How soon after being assigned the case do you have a pretty solid idea of what outcome is likely in the case or whether a trial will be required?
  20. How likely is it that the offer will improve as time passes?
  21. Tell us more about that.
  22. In your view, is the judge actively involved in assuring cases progress toward disposition?
  23. In your view, is this appropriate? Why? Why not?
  24. Do you believe the judge could play a more active role?
  25. If so, please describe.
  26. How often do hearings proceed as scheduled and achieve the result for which they were scheduled?
  27. When a trial date is assigned, what is your expectation about whether the trial will start on that date? Explain.
  28. In your view, are there any issues concerning motions practice?
  29. How much of your time would you say is occupied just waiting around? Explain.
  30. Do you think delay is a problem in felony cases?
  31. If so, what are the causes of delay?
  32. What do you think would improve the process?
  33. In your opinion, what would characterize an ideal caseflow management system?

### **Deputy Defenders, Contract Attorneys, or Private Counsel**

Most of the process questions listed for the prosecutors can be used in interviews of defenders. It can be particularly instructive to ask all interviewees to describe their vision of the ideal caseflow management system (as in question 33, just above). Usually, the responses of all groups are very similar, but as indicated above perceptions may differ, and these differences should be probed.

Important questions specific to the defense are:

1. When are you notified of assignment to a case (or if private counsel, when are you contacted by the client)?
2. What is the notification process?
3. Are there any problems with the notification process?
4. How soon after notification do you interview the defendant?

5. Are there any problems associated with obtaining access to your client for interviews, either initial or subsequent? If so, please describe.
6. Is your assignment permanent or only for purposes of the first hearing?
7. See prosecutor's list for additional questions related to this topic.
8. Roughly how early, in most cases, do you have a reasonably good idea of what the outcome will be or whether a trial will be needed?

### **Court or District Administrator**

1. What problems, if any, are you currently experiencing with felony caseflow?
2. What problems, if any, currently exist with felony caseflow management?
3. Does the court have explicit goals concerning felony caseflow?
4. To what extent does the chief judge exercise a leadership role in the court?
5. Could you give us some examples of the exercise of leadership?
6. In your view, are the judges committed to the concept of court responsibility for supervising case progress?
7. How would you characterize the relationship among the judges in the court?
8. How would you characterize the relationship between the court and the prosecutor? The defender? The defense bar?
9. In your view, is delay a problem in felony caseflow?
10. If so, what are the causes of delay?
11. How do you define "backlog"?
12. Is there a currently "backlog" of felony cases?
13. Are there any other problems with felony caseflow?
14. Do the judges hold regular judges' meetings?
15. If so, who sets the agenda? Is it written?
16. How frequently are the size and age of the pending caseloads discussed at the meetings?
17. Are minutes of the meeting produced and distributed?
18. If so, by whom?
19. What statistical reports are produced on a regular basis?
20. Are they distributed to the judges?
21. Are there any accountability mechanisms in the court (e.g., reports ranking the judges by age of their pending caseloads)?
22. Are there any "sanctions" for poor management of a caseload?
23. What rewards exist, if any, for achieving disposition time goals or for minimizing the age of a judge's pending caseload?
24. Do specialty or "problemsolving" courts exist in this jurisdiction?
25. If so, describe their organization and operation.
26. What is the nature of the court's management of cases on these dockets (e.g., does the court track the status of cases)?
27. Are management/statistical reports prepared concerning these dockets?

## **Law Enforcement**<sup>34</sup>

1. Describe the booking process for a felony defendant.
2. Who prepares the arrest report?
3. Is this a handwritten report? Typed? Entered on the computer?
4. How much time elapses between arrest and completion of the report?
5. What problems, if any, are encountered in preparation of the report?
6. What materials are transmitted to the prosecutor in addition to the arrest report?
7. How and when are these materials transmitted?
8. What types of communication do you have with the prosecutors after submitting the report? For example, concerning the charging decision? Further investigation?
9. How often is it necessary to do further investigation prior to charging?
10. How often is it necessary to rewrite the arrest report?
11. How do you receive notice of court dates at which an officer is expected to appear?
12. Are there any problems with notification?
13. If so, please describe.
14. For what court events/hearings is the presence of the officer required?
15. Are statistics available concerning the amount of time officers spend waiting at the courthouse or the number of officer appearances when the scheduled hearing is continued?
16. Are there any problems with prisoner transport for court hearings?
17. If so, please explain.
18. From your perspective, what improvements could be made in the felony caseflow process?

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<sup>34</sup> See Mahoney, Barry and Hoffman, Richard et al., *Improving Your Jurisdiction's Felony Caseflow Process* (Denver, CO: The Justice Management Institute), June 2000.

## APPENDIX D

### PREPARATION OF A PROCESS FLOW DIAGRAM

**PURPOSE:** To begin the process of analyzing and evaluating the felony caseload management system. By creating a diagram showing key events/activities and the deadlines and usual processing times associated with them, the analyst will have a basis for conducting further interviews and discussing possible enhancements to the system.

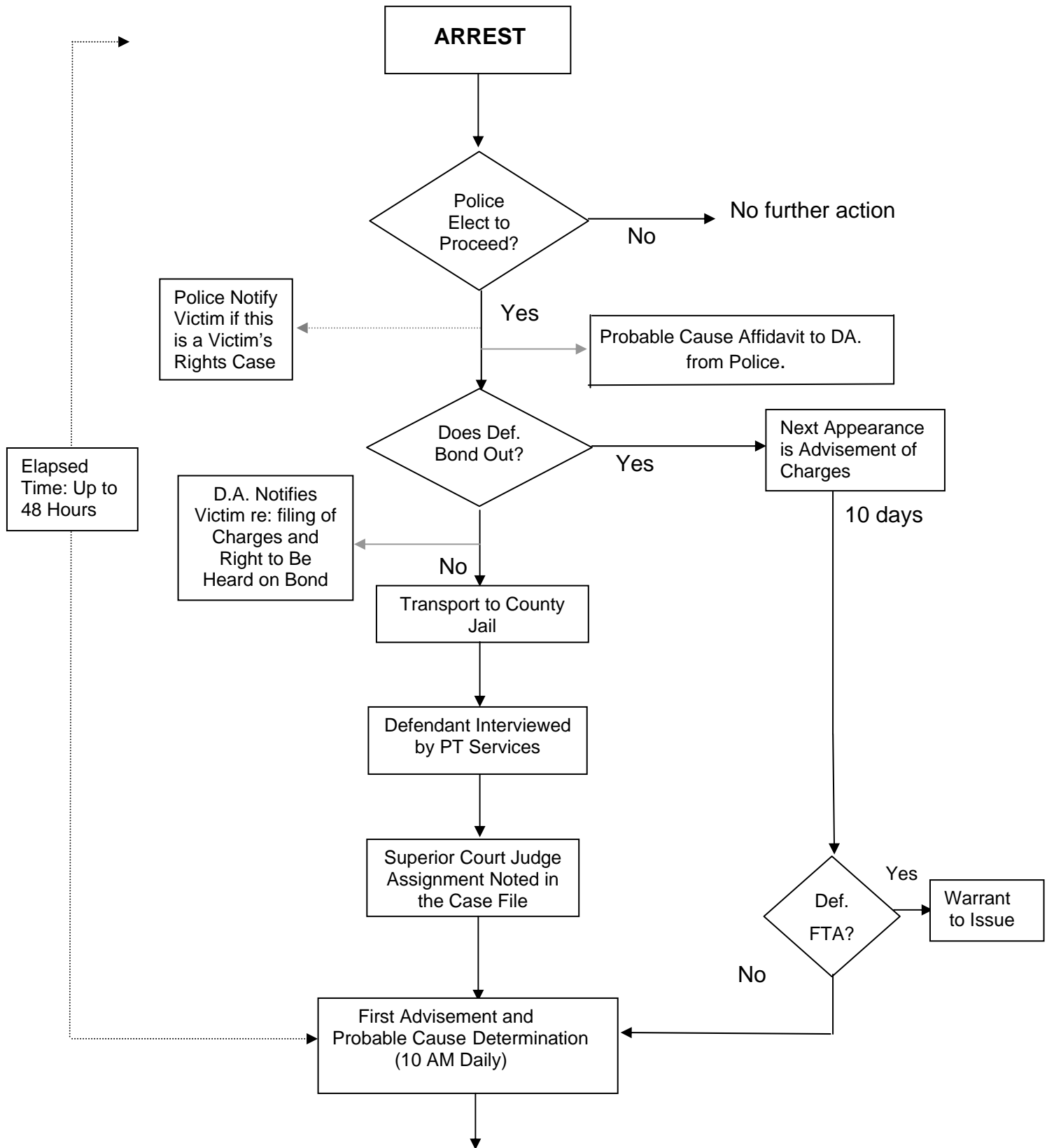
**PROCESS:** Include all activities and steps, starting with arrest, whether they are court events or activities conducted by other agencies. Be sure to show as much detail as possible, including associated paperwork where possible.

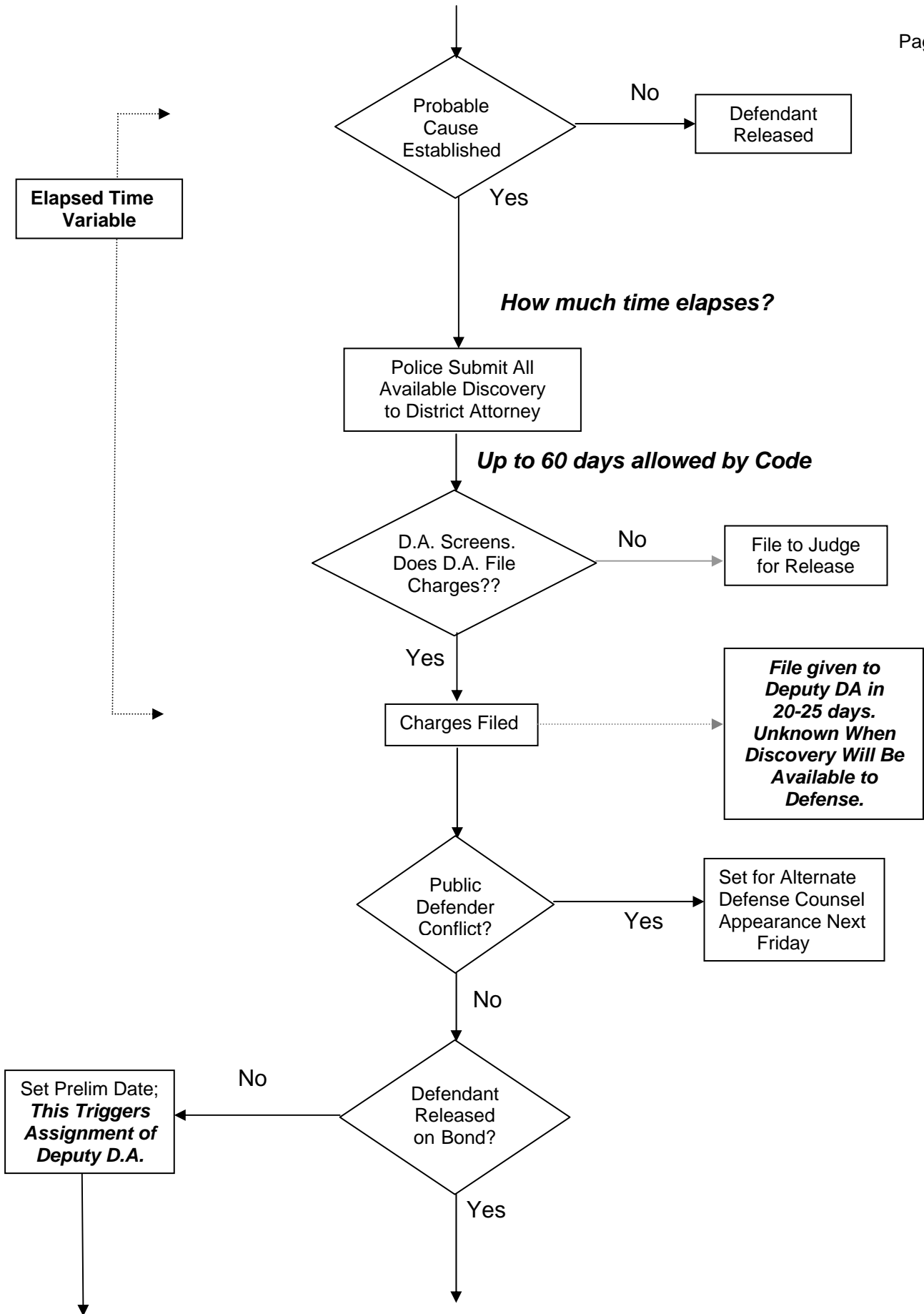
Address the following in preparing the flow diagrams:

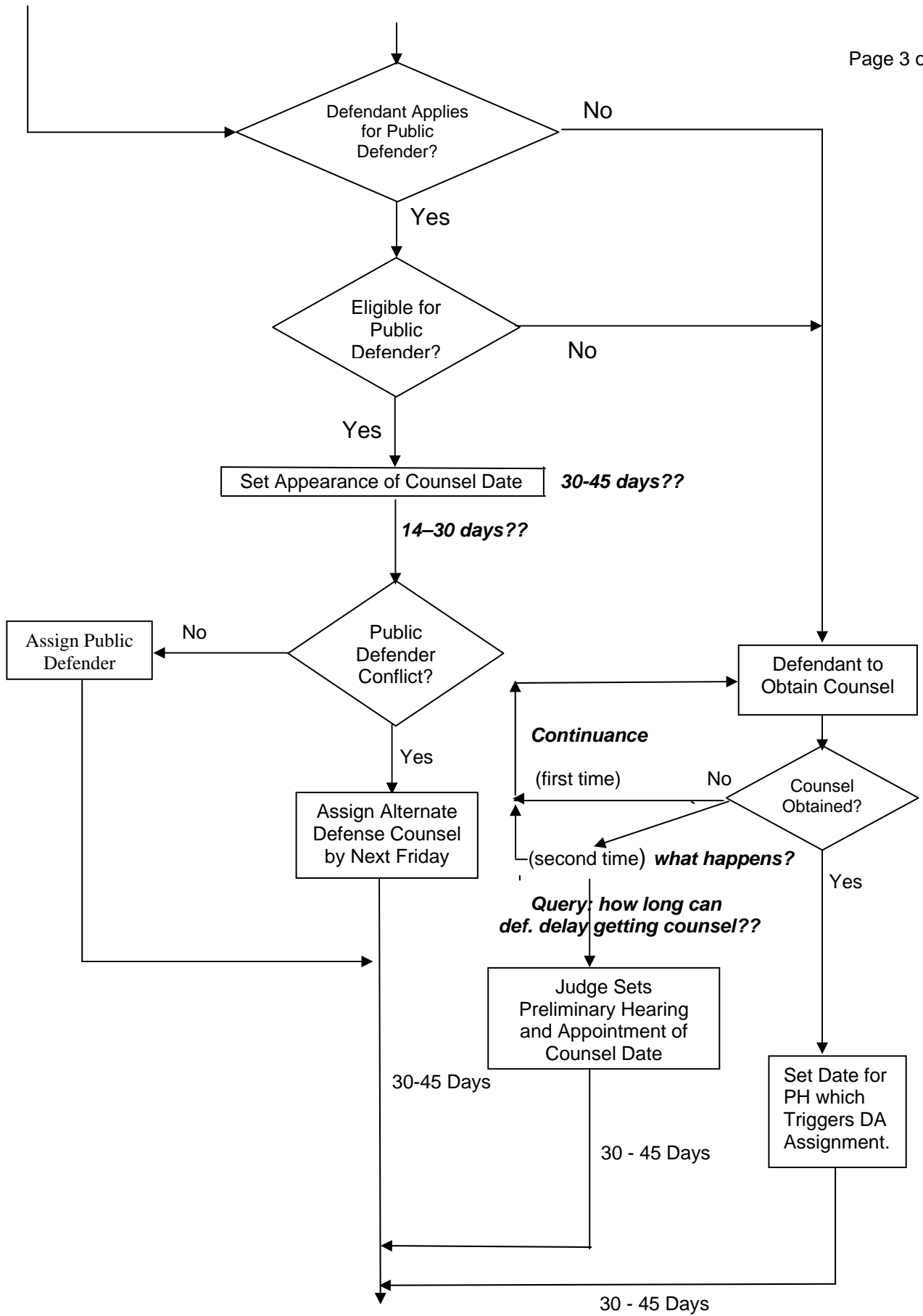
- Show key activities and events for both the court and other agencies in squares or rectangles—include status monitoring and preparation of calendars, notices, etc., by the clerk’s office.
- Show the usual processing paths and alternative pathways, if any, for different “tracks” or for cases in which a guilty plea is entered early or which are continued.
- Show what happens when activities don’t occur as planned or are not completed as planned.
- Annotate the diagram with comments, questions and observations (See suggested format on page 48).
- Indicate who has responsibilities for preparation to assure each event or activity occurs as scheduled.
- Indicate who must be present for the event or activity.
- Note what occurs at that event to move the case forward.
- Highlight decision points in the flow (e.g., where disposition may occur, a case-progress decision is made, or cases are referred or diverted to another agency) by putting them in a diamond shape.
- Enter the usual elapsed time between events; if the time shown is an estimate, indicate the basis for the estimate (e.g., sample of cases, best guess, etc.); if applicable, indicate the time allowed by statute.
- Highlight possible disposition points in the flow and estimate the number of cases, if any, usually disposed of at each.

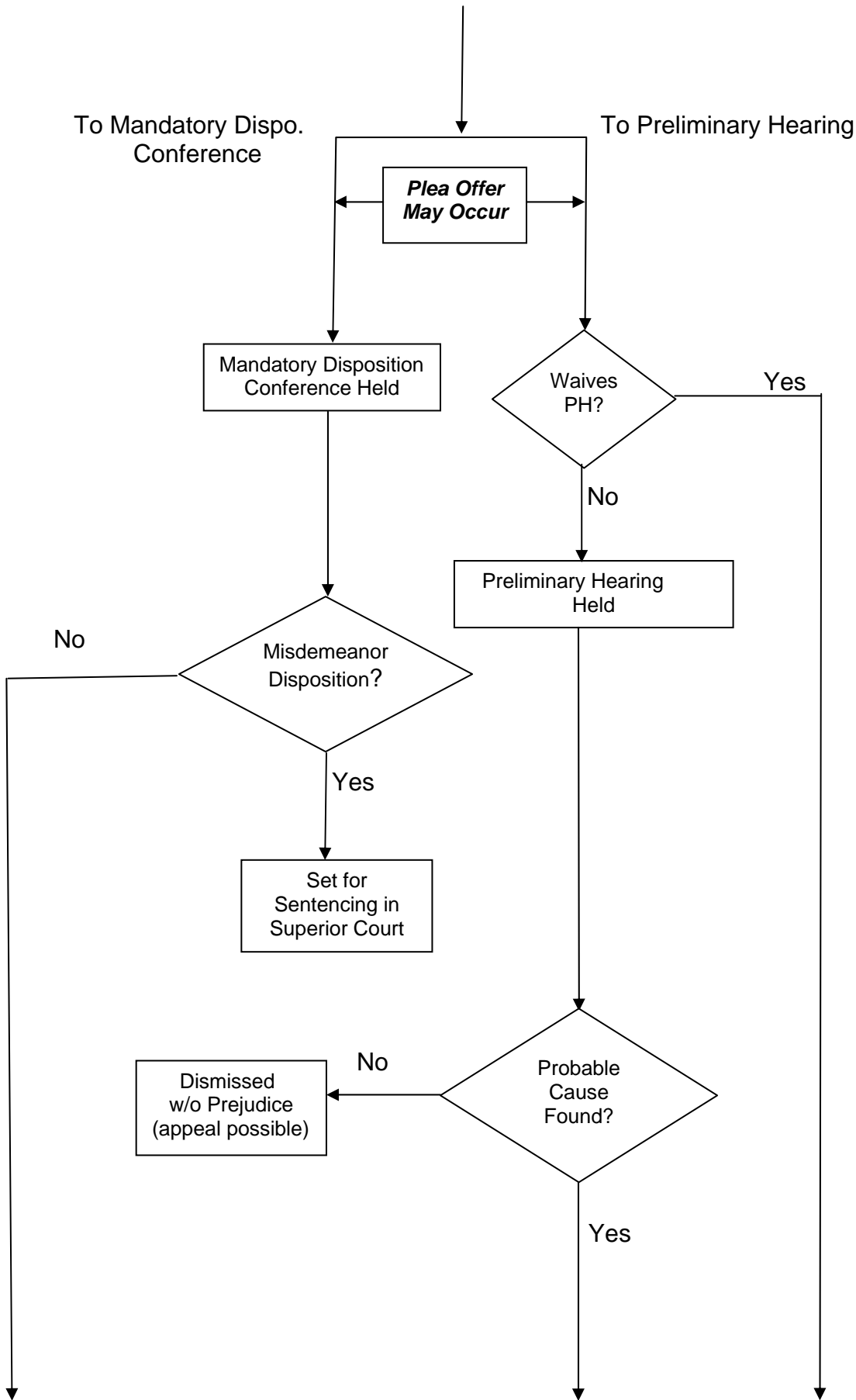
### EXAMPLE OF A FLOW DIAGRAM DEPICTING FELONY CASEFLOW FROM ARREST TO UPPER COURT ARRAIGNMENT

(This diagram was prepared by a court during a project to improve felony caseflow management)

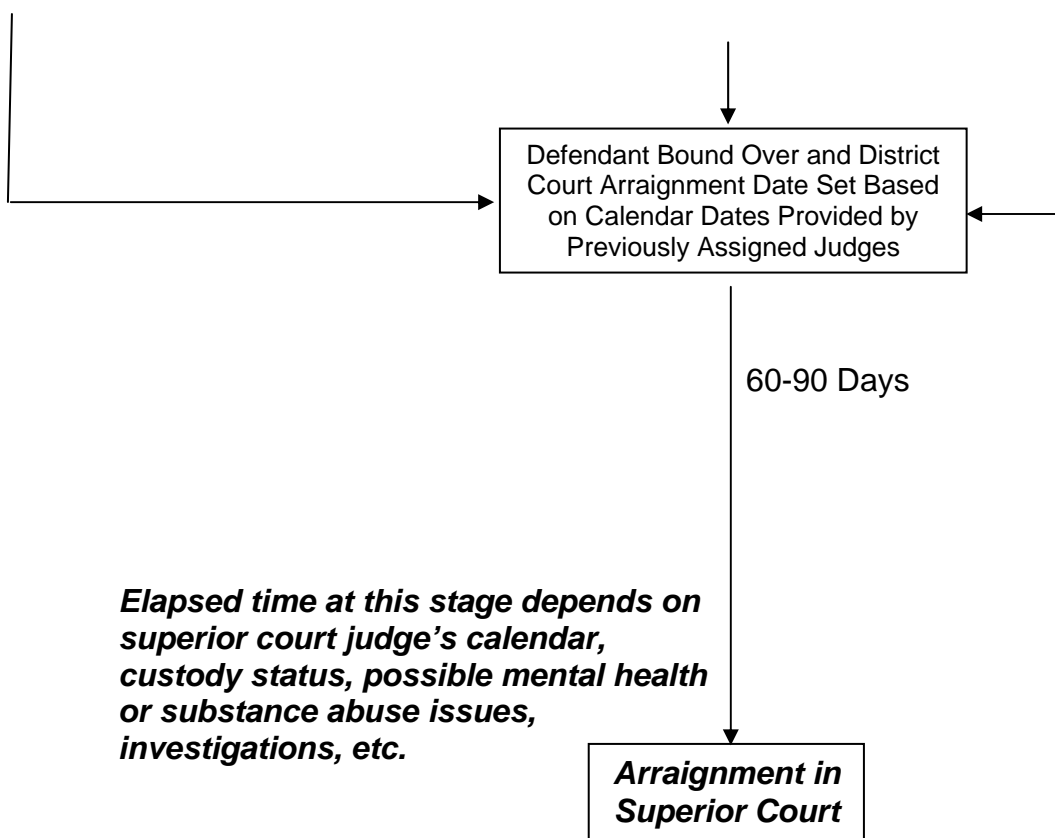






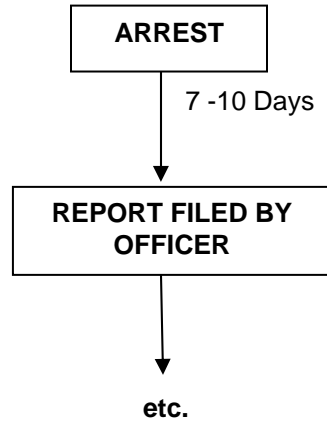






## FORMAT FOR AN ANNOTATED FLOW DIAGRAM

### EVENT/ACTIVITY



### COMMENT/OBSERVATION

Note to self: Find out why it takes a week or more to get the arrest report prepared

## APPENDIX E

### CASELOAD DATA TO BE OBTAINED

#### THROUGH DATA COLLECTION AND/OR OBSERVATION

(or from existing statistical reports)

The data suggested here are considered the minimum that will provide an overall sense of the extent to which the court is controlling case progress and paying attention to the age of the caseload and to the case management process, if any.<sup>35</sup>

**Note: Indicate the source for each measure. For example: Is it information that is readily available or was it obtained through a special data collection effort?**

1. Total annual felony filings for each of the past 3 years, broken down by most serious charge, if possible. Specify whether defendants, cases, or charges are counted.
2. Total annual felony dispositions for each of the past 3 years, broken down by most serious charge, if possible.
3. Total felony cases pending at the end of each of the 3 past years. Again, break down by charge, if possible.
4. Total felony cases now pending, by most serious charge if possible.
5. Felony cases now pending in age categories measured from arrest or measured from first court appearance (e.g., 0-30 days, 31-60 days, 60-90 days, etc., or some other age categories that may be readily available).
6. Number of pending felony cases that currently are older than the disposition time standard for this jurisdiction. This is the so-called “backlog.”

**Note: Attention to the currently pending caseload is especially important because these are the cases that can benefit from case management improvements.**

7. For each of the past 3 years, or for the last year, if that is all that is available:
  - a. The number of trials scheduled and the average number scheduled *per trial calendar*.
  - b. The number of trials started (define “trial” and define “trial started”, for example, jury seated? First witness sworn?).

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<sup>35</sup> For an expanded discussion of useful data, see Steelman, David et al., *Caseflow Management: The Heart of Court Management in the New Millennium* (Williamsburg, VA: National Center for State Courts), 2000, Chapter VI.

- c. The number of trials completed to verdict or judgment.
  - d. The percentage of scheduled trials that started on the first scheduled date, second scheduled date, third scheduled date, etc., or never started because of non-trial disposition.
  - e. For trials started, the average number of trial dates set per case.
  - f. For scheduled trials that ultimately were disposed of by plea or dismissal, the average number of trial dates set per case.
8. Tabulate, for a sample time period, the reasons for which cases (at all stages of the felony case flow) were continued. The source of this information may be a court record or it may be necessary to observe what happens in the courtroom. In short, some imagination may be necessary to find a way to document the reasons for continuances. Some reasons are shown here:
- a. Defendant failed to appear.
  - b. Attorney unavailable.
  - c. Judge's calendar over-scheduled.
  - d. Non-trial disposition has been reached.
  - e. Disposition discussions ongoing.
  - f. Discovery has not been provided.

**Note: *Emphasis is placed on exploring scheduling practices and the frequency of, and policies governing, continuances because it is in this area that many courts lose control of case progress.***

9. Types of dispositions, as a percentage of all dispositions, for each of the past 3 years or for the most recent year available:
- a. Jury trial (as defined above).
  - b. Court trial.
  - c. Dismissal.
  - d. Guilty plea.
  - e. Nolle pros.
  - f. Other (define).
10. Median time, and range of times, from arrest or first appearance in lower court to disposition by type of disposition. Define disposition; is it judgment/verdict or sentencing?
11. Median time, and range of times, from arraignment in upper court to disposition.
12. Time from arrest to first appearance for custody cases. The choice of measures may be dictated by the data available. The median time probably is the most informative.
13. Time from arrest or first appearance to the prosecutor's filing of formal charges. The median time probably is the most informative and readily available. Compare this to the time allowed by statute or court rule.

14. Percentage of arrests that result in felony charges being filed.
15. Percentage of dispositions taking longer than the court's disposition time standard.
16. For a sample of cases, document for the first hearing/event of a management nature *after arraignment*: a) What is the purpose of this hearing *usually*? b) What is the median interval, and range of intervals, from arraignment to this hearing?
17. Median time, and range of times, from arraignment to sentencing or to disposition, if not guilty.

## APPENDIX F

### SAMPLE DATA COLLECTION FORMS

#### Suggestions for Developing and Using a Form

Here are a few tips for designing a data collection form:<sup>36</sup>

1. Take a look at the source from which data will be obtained to see whether it is feasible to obtain the required information. For example, it may turn out that open and closed cases are not segregated in the file room. In this case, a way to distinguish closed from open cases must be found. Possibly, the automated system can provide case numbers of disposed cases so that they can be located on the shelves or in the register of actions. Selection of the best information source is important. It may be necessary to try out a few sources before deciding which is best.
2. Provide instructions for the data collection effort based on the type of survey (e.g., pull every 10th case folder for cases disposed of in the following date range; or explain how the data collector can determine whether a continuance has occurred, or specify the correct format for entering dates).
3. Organize the data on the form in the same order it will be found in the source.
4. Provide definitions for all terms *on the back of the data collection form*, not in a separate document. For example:
  - a. When is a case considered “disposed of?”
  - b. If information about the crime charged is being collected, make clear how to identify the “most serious charge” in the jurisdiction—possibly by listing charges on the form in order by most serious possible penalty.
  - c. What activity is considered the start of the trial (e.g., jury sworn or first witness sworn)?
5. Set up the form to assure ease of reading and tabulation/data entry. Among other issues, this means putting case codes on the form for such elements as type of case.
6. Pull 10 cases, test the form, then revise the form. The first draft of a data collection form is rarely the final version. In short, it takes time and planning to develop a workable data collection instrument and methodology, so plan ahead.

The data collection forms shown on pages 54-62 have been adapted from *How to Conduct a Caseflow Management Review*,<sup>37</sup> referenced earlier. Although used

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<sup>36</sup> For more information about data collection, see: Mahoney, Barry et al., *Changing Times in Trial Courts* (Williamsburg: National Center for State Courts) 1988, Appendix A, pg. 219.

<sup>37</sup> Mahoney and Solomon, et al., *How to Conduct A Caseflow Management Review – Guide for Practitioners*, (Williamsburg, VA: National Center for State Courts) 1992, pg. B-3.

successfully many times, these are only a suggestion. The analyst should develop a form that is tailored to the sample (e.g., pending cases, closed cases, only continuances, etc.), incorporates local terminology, and includes additional data elements relevant to areas of special concern to the particular court under study.

A form for use in studying the pending caseload begins on page 61. As mentioned earlier, the age and status of pending cases are key indicators of the level of court supervision of case progress. Usually in pulling a sample of open cases it is best not to include the very oldest cases because frequently, the oldest cases represent exceptions. For example the oldest civil cases may be inactive because they have been stayed awaiting the outcome of related bankruptcy proceedings. The oldest criminal cases may be those in which a warrant has been issued for failure to appear in court. In jurisdictions where warrants are not actively worked by law enforcement, these cases may be many years old.<sup>38</sup>

It is more useful to pull a sample of cases that fall somewhat beyond what is considered the outside time limit for case disposition. This yields a more accurate picture of the condition of the court's pending caseload and the most common reasons for delay. Pull a minimum of 100 cases for the sample. As shown on the sample form, the analyst will determine such things as the last action in the case and when it occurred, what action is needed to move the case forward or dispose of it, how many times it has been set for hearings and trials, and how many times these have been continued. If reasons for continuances are available, these should be recorded, too. Using this information, it is possible to reach informed opinions regarding the sources of delay in the jurisdiction.

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<sup>38</sup> While that fact is a finding in itself, it is not directly pertinent to the court's caseload management policies.

## Felony Case Data Collection Form for Disposed Cases

Court Location Identifier:

Case Number: \_\_\_\_\_

Name of First Defendant: \_\_\_\_\_

Most Serious Felony Charge (circle only one):

- |                              |    |
|------------------------------|----|
| Homicide                     | 01 |
| Rape                         | 02 |
| Robbery                      | 03 |
| Assault with a Deadly Weapon | 04 |
| Drug Distribution            | 05 |
| Drug Possession              | 06 |
| Possession of a Weapon       | 07 |
| Burglary                     | 08 |
| Theft                        | 09 |
| Felony DWI                   | 10 |
| Other: Specify               | 11 |

Arrest Date: \_\_\_\_\_

Date of First Appearance  
in Lower Court: \_\_\_\_\_



Date Indictment or Information  
Filed in Superior Court:

\_\_\_\_\_

Check Here if Defendant Remained  
in Custody Pending Arraignment:

Date of Arraignment:

\_\_\_\_\_

Date of First Scheduled  
Hearing after Arraignment:

\_\_\_\_\_

Type of Hearing:

Case Management Conference

01

Motions Hearing

02

Calendar Call

03

Pretrial Conference

04

Trial

05

Other: Specify

06

First Scheduled Trial Date:

\_\_\_\_\_

If No Trial Date Scheduled,  
Disposition Date:

\_\_\_\_\_

Check Here if Defendant Ever Failed to Appear:

Number of Trial Dates Scheduled:

\_\_\_\_\_

Number of Trial Continuances  
Requested by Defendant: \_\_\_\_\_

Requested by Prosecutor: \_\_\_\_\_

Due to Overscheduled Calendar: \_\_\_\_\_

Check Here if A Trial Commenced:

Date Trial Started: \_\_\_\_\_

Length of Trial: \_\_\_\_\_

Type of Disposition (circle only one):

- Dismissal/Nolle Pros 01
- Diversion 02
- Guilty Plea to Original Charge 03
- Guilty Plea to Reduced Felony 04
- Guilty Plea to Misdemeanor 05
- Guilty Verdict – Jury Trial 06
- Guilty – Nonjury Trial 07
- Acquittal/Not Guilty – Jury Trial 08
- Acquittal/Not Guilty – Nonjury Trial 09
- Other: Specify 10

Disposition Date: \_\_\_\_\_

**Most Serious Charge Convicted (circle only one):**

- |                              |    |
|------------------------------|----|
| Homicide                     | 01 |
| Rape                         | 02 |
| Robbery                      | 03 |
| Assault with a Deadly Weapon | 04 |
| Drug Distribution            | 05 |
| Drug Possession              | 06 |
| Possession of a Weapon       | 07 |
| Burglary                     | 08 |
| Theft                        | 09 |
| Felony DWI                   | 10 |
| Misdemeanor                  | 11 |
| Other: Specify               | 12 |

**Date of Sentencing  
(if applicable):**

\_\_\_\_\_

**Type of Defense Counsel:**

- |                  |    |
|------------------|----|
| None             | 01 |
| Public Defender  | 02 |
| Conflict Counsel | 03 |
| Private Attorney | 04 |
| Unknown          | 05 |

**Short Form for Data Collection on  
Felony Case Dispositions<sup>39</sup>  
Occurring During the Period \_\_\_\_\_**

**Case Number:** \_\_\_\_\_

**Most Serious Charge (circle only one):**

- 01 Homicide
- 02 Rape
- 03 Robbery
- 04 Assault with a Deadly Weapon
- 05 Drug Distribution
- 06 Drug Possession
- 07 Possession of a Weapon
- 08 Burglary
- 09 Theft
- 10 Felony DWI
- 11 Other (specify): \_\_\_\_\_

**Date of Arrest/Citation/Summons:** \_\_\_\_\_

**Date of First Appearance in Lower Court:** \_\_\_\_\_

**Date Indictment or Information Filed:** \_\_\_\_\_

**First Scheduled Preliminary Hearing Date:** \_\_\_\_\_

Check Here if Preliminary Hearing Waived

**Number of Times Preliminary Hearing Continued**

**Date of Preliminary Hearing, if Held:** \_\_\_\_\_

Check Here if Defendant Remained in Custody Pending Arraignment

**District Court Arraignment Date:** \_\_\_\_\_

**Number of Times Arraignment Continued**

**First Scheduled Case Management Conference Date** \_\_\_\_\_

<sup>39</sup> For purposes of this survey, consider a case disposed of when a) the case is dismissed or b) a sentence is imposed, or c) or the defendant is placed in a diversion program.

Number of Times this Hearing Continued

Date Case Management Conference Held \_\_\_\_\_

First Scheduled Pretrial Conference Date: \_\_\_\_\_

Number of Times this Hearing Continued

Date Pretrial Conference Held<sup>40</sup>: \_\_\_\_\_

Number of Times this Hearing Continued

First Scheduled Trial Date: \_\_\_\_\_

Number of Times Trial Date Continued

Check Here if A Trial Started:

Trial Date, if Trial Held: \_\_\_\_\_

Length of Trial (days): \_\_\_\_\_

If No Trial, Plea or Dismissal Date: \_\_\_\_\_

Sentencing Date (if conviction): \_\_\_\_\_

**Type of Disposition (Circle One):**

- 01 Dismissal/Nolle Pros
- 02 Diversion
- 03 Guilty Plea to Original Charge
- 04 Guilty Plea to Reduced Felony
- 05 Guilty Plea to Misdemeanor
- 06 Guilty Verdict – Jury Trial
- 07 Guilty – Non-jury Trial
- 08 Acquittal/Not Guilty – Jury Trial
- 09 Acquittal/Not Guilty – Non jury Trial
- 10 Other (specify): \_\_\_\_\_

<sup>40</sup> If any hearing not held, enter N/A

**Check Here if Defendant Ever Failed to Appear  
Length of Time Defendant on FTA Warrant**

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**Type of Defense Counsel (circle one):**

01 None                      04 Private Attorney

02 Public Defender        05 Unknown

03 Conflict Counsel

## Felony Case Data Collection Form for Pending Cases

Date of Data Collection: \_\_\_\_\_

Case Number: \_\_\_\_\_

Name of First Defendant: \_\_\_\_\_

Most Serious Felony Charge (circle only one):

- |                              |    |
|------------------------------|----|
| Homicide                     | 01 |
| Rape                         | 02 |
| Robbery                      | 03 |
| Assault with a Deadly Weapon | 04 |
| Drug Distribution            | 05 |
| Drug Possession              | 06 |
| Possession of a Weapon       | 07 |
| Burglary                     | 08 |
| Theft                        | 09 |
| Felony DWI                   | 10 |
| Other: Specify               | 11 |

Arrest Date: \_\_\_\_\_

Elapsed Time Since Arrest (in days): \_\_\_\_\_

Date of First Appearance in Lower Court: \_\_\_\_\_

Elapsed Time Since First App. (in days): \_\_\_\_\_

Date of Arraignment in Superior Court: \_\_\_\_\_

Elapsed Time Since Arraignment (in days): \_\_\_\_\_

Date of Last Appearance or Action: \_\_\_\_\_

Elapsed Time Since Last Appearance/Action  
(in days): \_\_\_\_\_

Type of Appearance/Action: \_\_\_\_\_

Number of Trial Dates Scheduled: \_\_\_\_\_

Number of Trial Continuances  
Requested by Defendant: \_\_\_\_\_

Requested by Prosecutor: \_\_\_\_\_

Due to Overscheduled Calendar: \_\_\_\_\_

Next Scheduled Action Date (if any): \_\_\_\_\_

Type of Action/Hearing Scheduled: \_\_\_\_\_

Action Needed to Dispose of the Case: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## APPENDIX G

### FELONY CASEFLOW MANAGEMENT REVIEW

#### ANALYTICAL CHECKLIST

**PURPOSE:** To assist in analysis of the status of the felony caseflow management system.

**PROCESS:** Record perceptions of the current system using the following scale:

1 = Definitely Not

2 = It's Hard to Tell

3 = Application is Inconsistent/Happens Occasionally

4 = Appears Mostly True

5 = Definitely True/Consistently Observed

1. The court has a written caseflow management Plan \_\_\_\_\_
2. The chief or presiding judge demonstrates commitment and active leadership to achieve effective caseflow management \_\_\_\_\_
3. The chief or presiding judge reviews the statistics of all judges and discusses apparent problems with the judges \_\_\_\_\_
4. Caseflow management issues and caseflow statistics appear on the agenda of judges' meetings frequently \_\_\_\_\_
5. The chief or presiding judge discusses caseflow issues with the court's administrators \_\_\_\_\_
6. Judicial commitment to the concept of court responsibility for assuring timely case progress is evident on the part of most or all judges \_\_\_\_\_
7. If this is a multi-judge court, caseflow management policies and procedures are reasonably uniform among the judges \_\_\_\_\_
8. There is frequent communication between the assigned judge and his/her courtroom staff about the caseload and/or case delays \_\_\_\_\_
9. The court uses statistics/information prepared by the state Administrative Office of Courts or other sources to evaluate its caseflow management system \_\_\_\_\_
10. The court administrator is an active participant with the chief judge in addressing caseflow management issues \_\_\_\_\_

11. Every scheduled appearance of the defendant serves as a meaningful opportunity to either dispose of the case or make significant progress toward disposition; status calls or calendar calls are not used \_\_\_\_\_
12. Trials or hearings usually occur on the first scheduled date \_\_\_\_\_
13. If this is a multi-judge court, judges take cases from each other when schedule problems arise so that continuances can be avoided \_\_\_\_\_
14. Cases always have a future action date or deadline assigned \_\_\_\_\_
15. The court has a written continuance policy in place \_\_\_\_\_
16. The court's policy requires requests to be made in writing \_\_\_\_\_
17. The court's policy requires a showing of good cause for the request \_\_\_\_\_
18. The court's policy requires requests to state what efforts have been made to avoid the request \_\_\_\_\_
19. Only a judge can decide a request for a continuance \_\_\_\_\_
20. There are statutory disposition time standards for felony cases or goals to which the criminal justice community has agreed \_\_\_\_\_
21. The extent to which these goals are met is monitored by the court \_\_\_\_\_
22. The age of each judge's pending caseload (or the court's, if a master docket system is used) is considered a key case management statistic \_\_\_\_\_
23. There are guidelines governing the time between each event in the felony case flow from initial appearance to disposition \_\_\_\_\_
24. The court monitors the time between events to identify lagging cases \_\_\_\_\_
25. There is regular communication between the court and other justice agencies and the private bar regarding caseflow issues \_\_\_\_\_
26. Incident/arrest reports are received from law enforcement within 3-5 days of the incident \_\_\_\_\_
27. Incident/arrest reports are clear and complete \_\_\_\_\_
28. Defense counsel for indigent defendants are appointed and notified promptly \_\_\_\_\_

29. Defense counsel receive the arrest report *before* the first court appearance \_\_\_\_\_
30. Appointed counsel interview *detained* clients within 24 hours \_\_\_\_\_
31. Appointed and retained counsel interview *noncustody* clients promptly \_\_\_\_\_
32. The prosecutor's case screening and charging decision occurs promptly after receipt of the arrest report \_\_\_\_\_
33. Defense lawyers receive disposition offers by first appearance in the superior court \_\_\_\_\_
34. Discovery is exchanged early enough to facilitate early disposition (e.g., at or shortly after arraignment in the superior court) \_\_\_\_\_
35. Disposition offers are perceived by defense as realistic, usually \_\_\_\_\_
36. Offers do not improve substantially solely due to the passage of time \_\_\_\_\_
37. A case management conference between the judge and lawyers occurs within 30 days of the first appearance in the superior court if no disposition is announced at first appearance \_\_\_\_\_
38. Defense counsel and the prosecutor confer on possible disposition of the case prior to the case management conference \_\_\_\_\_
39. The judge, prosecution, and defense in the case make an early assessment of case complexity and the time needed to dispose of the case \_\_\_\_\_
40. A timetable for disposition of the case is established early \_\_\_\_\_
41. Unavailability of defenders and prosecutors for hearings or trials due to scheduling conflicts is rare \_\_\_\_\_
42. Cases appropriate for early plea or other disposition are identified early and placed on a fast track for disposition \_\_\_\_\_
43. The caseload management system has an *explicit* goal of disposing of cases at the earliest possible time consistent with the characteristics of each case \_\_\_\_\_
44. Deadlines for filing and hearing motions are set and enforced \_\_\_\_\_
45. Motions deadlines and hearings are timed to facilitate early disposition \_\_\_\_\_

- |  |       |
|--|-------|
| 46. Trial dates are set only when it is clear that a trial will be needed  | _____ |
| 47. The responsible law enforcement agency is reliable in transporting defendants to court hearings on time              | _____ |
| 48. Conference, hearing, and trial dates are perceived by the legal community to be credible and firm                    | _____ |
| 49. Preparation of presentence reports is not a source of delay  | _____ |
| 50. The court's information system allows easy identification of cases in danger of exceeding established time standards | _____ |
| TOTAL  | ===== |

Add the scores and divide the total by the number of questions. A perfect result would be "5." The extent to which the actual result departs from "5" gives an indication of how far the caseflow management system departs from the practices generally accepted as characterizing effective criminal caseflow management.

It is recommended that when this instrument is used in a system-wide meeting or workshop, the leader should first have each individual answer the questions and compute the total score privately and then share them with the other members of his or her discussion group. Discussion of the reasons group members' scores differ on the individual items can be enlightening and can assist in the process of developing improved processes.