Developing Effective Practices in Criminal Caseflow Management

A Manual Prepared for the California Administrative Office of the Courts

by

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Overview

Efficient criminal case management improves not only the timeliness of disposition of criminal cases but also the quality of justice in their resolution. Efficiency improves the use of public resources – for the courts, the prosecutors, public defenders, probation departments, law enforcement agencies and sheriff's offices. It reduces the burden on citizens – victims, witnesses, jurors, defendants, and family members.

Efficient management of criminal cases requires a combination of know how, the will to succeed, and teamwork. Effective criminal caseflow management involves:

- following a set of very basic practices that have been shown to speed the disposition of criminal cases,
- implementing procedures that serve the needs of all of the components of the criminal justice system,
- developing and maintaining courtwide commitment to meeting case management goals, and
- avoiding common pitfalls.

This manual is designed to serve as a concise overview of the mountains of material written on this topic. It is intended specifically for California judges and administrators to assist in assessing current case management processes and designing improvements.

There is no one right way for courts to organize themselves to manage criminal cases. Individual calendars (where all cases are assigned at the time of filing to one judge for all purposes), master calendars (where cases are managed centrally and assigned to judges for specific hearings and trials), and hybrid systems (for instance, assigning cases to judges for all preliminary events, but assigning cases for trial using a master calendar approach) all work well in some places and poorly in others. The key is not which calendaring system is used, but how well the system used is managed.

Effectively managing a criminal case calendaring system requires adhering to seven basic principles:

1. maintaining court control of case scheduling;
2. creating and maintaining expectations that events will occur when they are scheduled;
3. creating opportunities and incentives for early case resolution;

4. creating maximum predictability of court procedures and outcomes;
5. finding opportunities to improve efficiency;
6. handling different types of cases differently; and
7. setting case processing goals and using court data to monitor compliance with them.

Effective criminal caseflow management requires commitment on the part of all judges and court staff to resolving criminal cases expeditiously as well as fairly. An approach that works in one court will fail in another court if the judges and staff are not determined to make it succeed. The court as a whole must buy in – not just one or two judges. Someone – a presiding judge or criminal division presiding judge – has to provide strong and persistent leadership to get an effective program in place. But all judges and staff must develop the habits and attitudes that keep the program operating successfully after the initial leader has left the scene.

A key to any successful criminal caseflow management process is maintenance of accurate and complete data and daily use of that data to track the progress of all cases, to monitor the court's accomplishment of its case processing goals, and to identify weak links in its processes.

The court alone cannot ensure prompt disposition of criminal cases. The police, prosecutors, public defenders and criminal defense bar, probation department, and sheriff's office, among others, must work together with the court. In particular, the District Attorney and the Public Defender exercise a practical veto power over court programs; by refusing to offer or accept plea bargains either agency can bring the process to a halt. However, all agencies have a self interest in speedy, efficient, and fair criminal case disposition. Courts willing to take a leadership role, to adopt approaches that accommodate the needs of the other criminal justice partners, and to refrain from attacking those partners in the press find that they are able to create and maintain highly effective cooperative efforts among all the entities – which produce improved results.

Some courts are better than others at managing criminal cases. Efficient courts focus on improving their caseflow management practices. Courts with poorer records tend to perceive their performance as the result of circumstances beyond their control. They concentrate on identifying excuses for their poor performance rather than on solving the problems they face. What are the typical excuses courts use?

- Lack of resources,
- Lack of cooperation from other entities in the criminal justice process,
- The strictures of statutes and court rules,
- The filing of a disproportionate number of serious felony charges in their courts,
- A high rate of jury trials, and
- Large populations, large courts, and high crime rates.

Research[1] has shown that none of these factors is consistently related to slow case disposition. Courts in large cities, with high crime rates, large percentages of serious crimes, and high jury trial rates, often perform better than courts in the same state in communities that do not experience these phenomena. Further, courts with higher caseloads per judge, per prosecutor, and per defender often perform better than courts with proportionally more resources. In fact, judges, prosecutors and defenders in well performing courts are more likely to report that they have adequate resources than their counterparts in better resourced courts that do not operate efficiently.[2]

[1] There are many studies in this field. Persons interested in reviewing the literature should begin with these pivotal works: Thomas Church, Alan Carlson, Jo-Lynne Lee, and Teresa Tan, *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1978); Joan Jacoby, Charles Link, and Edward Ratledge, *Some Costs of Continuances – A Multi-Jurisdictional Study* (Washington, D.C.: U.S. Department of Justice, National Institute of Justice 1986); Barry Mahoney, Alexander Aikman, Pamela Casey, Victor Flango, Geoff Gallas, Thomas Henderson, Jeanne Ito, David Steelman, and Steven Weller, *Changing Times in Trial Courts: Caseflow Management and Delay Reduction in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1988); Dales Sipes and Mary Elsner Oram, *On Trial: The Length of Civil and Criminal Trials* (Williamsburg, Va.: National Center for State Courts, 1988); John Goerdt, Chris Lomvardias, and Geoff Gallas, *Reexamining the Pace of Litigation in 26 Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1989); and Brian Ostrom and Roger Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1999). The most recent, and comprehensive summary of research and practice is David C. Steelman, John A. Goerdt and James E. McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium* (Williamsburg, Va.: National Center for State Courts, 2004).

[2] See Brian Ostrom and Roger Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1999).

This manual is divided into seven parts:

Chapter 1 – Principles of effective criminal caseflow management

Chapter 2 – Principles of effective court leadership to implement and maintain effective criminal caseflow management

Chapter 3 – Alternative calendaring approaches for criminal cases

Chapter 4 – Principles for dealing with self represented litigants in felony and misdemeanor cases

Chapter 5 – Principles for dealing with backlogs

Chapter 6 – Effective use of court data to manage criminal cases and meet criminal case disposition goals

Chapter 7 – Model criminal caseflow guidelines

This manual contains numerous descriptions of practices reported by California trial courts as effective in improving their felony and misdemeanor criminal caseflow management. They have not been designated as "effective practices" in any official manner. However the members of the Planning Team for the Developing Effective Practices in Criminal Caseflow Management Project consider them to be sound practices to which other courts can look for inspiration and example.

1

Principles of effective criminal caseflow management

There are seven fundamental principles that a court must follow to manage criminal cases effectively. Here are the principles and effective practices for implementing each of them.

1. Maintaining court control of case scheduling

Before the advent of active case management, judges routinely deferred to the lawyers to set the pace for criminal cases. Today, the court obtains information concerning the issues in the case from the lawyers, but the court determines the pace at which each case will proceed.

➢ A realistic schedule is created for each case

At the information arraignment in felony cases and at the first appearance in misdemeanor cases, the judge creates a "plan" for the case that takes into account the unique characteristics of the case, if any. How much is this case worth in terms of the hearings to be set and the length of time required to resolve it?

The plan takes the form of a schedule for the case, including a motion cut off date, allowing time for obtaining needed lab, psychiatric and other expert reports, and taking into account unusually complex issues, such as *Pitchess* motions. The schedule includes dates of all pretrial hearings and the month during which the trial, if any, will take place. The defendant's entry of a time waiver may extend the schedule for the case, but the judge sets a specific schedule nonetheless.[3] The judge ensures that every

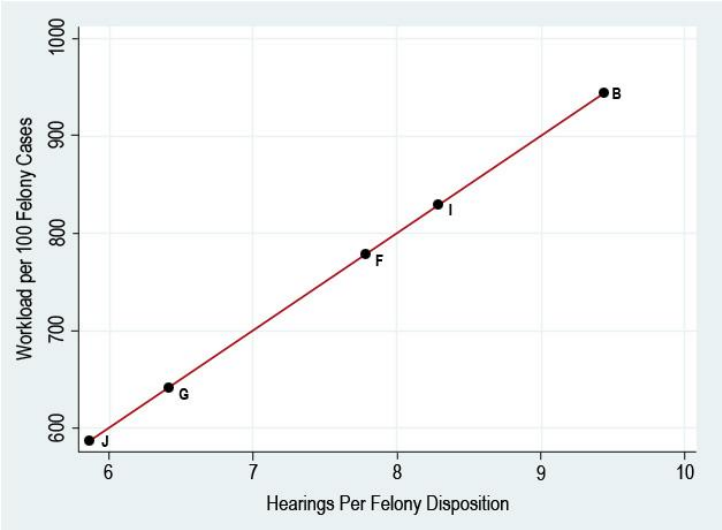
[3] A defendant who waives the right to a trial within the 60-day period of P.C. 1382 does not thereby lose the *constitutional* right to a speedy trial. The defendant must be brought to trial within a reasonable time after expiration of the period to which he or she consented, unless the prosecution shows good cause for the delay. (See *In re Lopez* (1952) 39 C.2d 118, 120, 245 P.2d 1; cf. *People v. Tahtinen* (1958) 50 C.2d 127, 132, 323 P.2d 442, p.480. California Criminal Law, Third Edition, B.E. Witkin, Norman L. Epstein, and Members of the Witkin Legal Institute. Chapter XIV. Criminal Trial, V. TIME OF TRIAL, A. Right to Speedy Trial, 5. Waiver. g. [§ 323] Constitutional Right Persists After Statutory Waiver

event scheduled will be meaningful for all parties, including the court. To the extent possible, the judge combines multiple matters for resolution at a single appearance.

Scheduling nonessential pretrial hearings (or continuing hearings to a later date because a matter cannot proceed as scheduled) multiplies the workload of the judge, the lawyers, court staff, and sheriff's deputies. It increases the burdens on citizens involved in the criminal process – jurors, victims, witnesses, defendants, family members, and interested members of the public including the press. The simple graphic below shows how dramatically the real "workload" associated with the same "caseload" escalates as the average number of hearings increases. And it is not just the judge who feels the effect of the workload increase; the impact on all the other participants is even greater than the impact on the judge when you consider unavoidable transportation and waiting time.

This point is illustrated by data collected for a study of Felony Hearing and Trial Date Certainty conducted in 2010 and 2011 by the author for the California Administrative Office of the Courts.[4] The study collected data on felony cases from ten California trial courts of different sizes. The study showed that from one third to one half of all felony hearings – depending upon the court – resulted in no action other than resetting of the hearing for a later date.

Multiplying Workload Associated with A Criminal Caseload



[4] Greacen and Miller, Final Report, Felony Trial and Hearing Date Certainty Study (2011), report available from the Office of Court Research.

The graph above shows the difference in the work required to dispose of a felony case in five of the ten courts studied. The table below shows the average number of hearings (including trials) per felony disposition for all ten courts studied. The study found a strong relationship between the average number of hearings and the average time from filing to disposition for felony cases in the ten courts; the fewer the average number of hearings, the faster the cases were disposed.

Average Number of Hearings per Felony Disposition by Hearing Type
(In Ascending Order by Total)

Court	Arrngmt	Pre-Prelim Hearing	Prelim Hearing	Info Arrgmt	Other	Trial Setting Conf	Pre-Trial Conf	Trial	Sent-encing	Total
J	1.21	1.44	0.44	0.28	0.38	0.28	0.68	0.07	1.09	**5.87**
D	1.30	3.10	0.17	0.09	0.64	0.02	0.33	0.01	0.35	**6.00**
G	1.20	2.48	0.39	0.16	0.76	0.04	0.67	0.03	0.68	**6.42**
A	1.15	2.10	0.30	0.30	0.91	0.14	0.92	0.07	0.60	**6.49**
C	1.16	3.00	0.75	0.29	0.97	0.07	0.75	0.04	0.19	**7.21**
F	1.20	2.80	0.86	0.27	1.22	0.07	0.61	0.04	0.71	**7.78**
H	1.09	2.84	0.77	0.23	1.08	0.08	1.11	0.06	0.97	**8.21**
I	1.27	2.58	0.74	0.34	1.05	0.44	1.49	0.04	0.35	**8.29**
E	1.07	3.77	0.45	0.15	1.17	0.06	1.94	0.03	0.69	**9.33**
B	1.16	2.13	1.23	0.44	0.95	1.70	0.80	0.28	0.75	**9.44**
Total	1.18	2.62	0.63	0.26	0.93	0.27	0.90	0.06	0.65	**7.50**

But the most important lesson from the study was that Court B held 60% more hearings on average per felony case than Court J, resulting in the expenditure of 60% more time of judges, prosecutors, defenders, and court staff conducting those extra hearings that Court J did not need to conduct because of its more efficient processes.

Most California courts have found that setting a pre-preliminary hearing several days before the date of the preliminary hearing provides a useful opportunity for the parties to agree on a plea, without requiring the subpoenaing of witnesses. While this creates an additional hearing, it also leads to the early resolution of many felony cases.[5]

The judge determines the existence of other pending charges against the same defendant and decides how they will be managed. It is a good practice to assign all pending cases filed against the same defendant (both felonies and misdemeanors) to the same judge, to have all probation

[5] The Felony Hearing and Trial Date Certainty study conducted in 2011 found no relationship between the average number of pre-preliminary hearings per felony disposition and the overall efficiency of the felony process. It appears that it is how the attorneys make use of the pre-preliminary hearings, not the number of such hearings set, that determines the effectiveness of the process.

violations "trail" a new felony charge, and to ensure that all relevant prior case files are maintained with the file for the current charge.

Any person interested in a case is able to find the date of the next scheduled event easily – by looking on the court website, accessing the court database, or calling the clerk's office.

- **The date of the next event is always confirmed at the close of any hearing**

At the close of every court hearing or event, the court reminds the parties of the date set for the next one, reaffirming the schedule and reasserting the court's control over it. If the schedule has become unrealistic, this is the opportunity for one of the parties to bring to the court's attention the reason compelling a change.

2. Creating and maintaining expectations that events will occur when they are scheduled

Effective case management focuses on influencing not only the behavior of the judges and court staff, but the behavior of the attorneys and other criminal justice system participants as well. When lawyers have an expectation that matters will occur when they are scheduled, they subpoena witnesses, they prepare for the hearing or trial, they make sure that the defendant and prosecuting and defense witness are present and prepared, and they assemble needed documents. When the matter is called, they are ready to proceed. When lawyers do <u>not</u> have that expectation – when cases are frequently postponed at the last minute, when judges frequently fail to reach all of the matters set on a calendar, or when incarcerated defendants frequently fail to arrive on time from the jail – the lawyers may have legitimate doubts that their case will go forward, will not prepare, and will not bring or subpoena witnesses. They will be reluctant to invest time and energy – and the time and energy of their clients and witnesses – in an event that may or may not proceed as scheduled. If the matter is called, the lawyer will tell the court that s/he is not prepared to proceed and the matter will have to be rescheduled.[6]

[6] The Felony Hearing and Trial Date Certainty Study, cited previously, was not able to confirm empirically the relationship between attorney preparation behavior and attorney perception of the certainty that a matter would be heard when set or the actual certainty of hearing a matter on the date set. The data showed that attorneys generally lack an accurate picture of the likelihood that a matter will be heard when set in their own court.

Delay breeds delay. Efficiency breeds efficiency. The court sets the example.

- **Trial dates are fixed and firm**

The lawyers, the sheriff, law enforcement officers, other witnesses, and court staff all know that a case set for trial on a particular date will commence on that date.

To achieve firm, fixed trial dates, courts ensure that trial dates are realistic from both the standpoint of the court and of the litigants.

A court's scheduling process involves predicting how many cases scheduled for trial will actually require a trial. The court does not overset or underset the calendar. Oversetting undermines the objective of firm, fixed trial dates. Undersetting means that courtrooms will be idle. An appropriate scheduling process accurately predicts – based on past experience – the percentage of cases that will settle before trial. We will discuss below ways that courts can encourage earlier settlements and improve their ability to predict the actual number of trials. The ultimate court calendar will include the right number of cases to fully occupy the time of the judges in all available courtrooms, taking into account that many cases will settle on the day of trial.

On the rare days that every scheduled case proceeds to trial, the court will have a mechanism for transferring judges to cover all of them and, if that is not possible, for deciding which cases take priority. Because it is extraordinarily unlikely that all cases for all judges on a court will proceed to trial on the same day, this is almost always possible. A master calendar system eases this problem. Where judges maintain individual calendars, they develop a mechanism to help each other in these situations.

In Inyo County, a two-judge court, the court generally uses assigned judges to hear all jury trials scheduled for more than two days, freeing the regular judge to take a more active role in settlement and avoiding the disruption of calendars for long trials. *For more information contact Judge Dean Stout at dean.stout@inyocourt.ca.gov.*

- **Continuances are rarely sought and even more rarely granted**

Because they need to ensure that trial dates are fixed and firm, judges are extremely reluctant to grant continuances, and never grant them simply for the convenience of counsel. That both parties to a case stipulate to a continuance is never adequate grounds for granting a postponement. The specifics of continuance practice are governed by Penal Code Section 1050, set forth in full below.

Section 1050.

(a) The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end, the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those defendants in custody and the concomitant overcrowding and increased expenses of local jails. It is therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings. In further accordance with this policy, death penalty cases in which both the prosecution and the defense have informed the court that they are prepared to proceed to trial shall be given precedence over, and set for trial and heard without regard to the pendency of, other criminal cases and any civil matters or proceedings, unless the court finds in the interest of justice that it is not appropriate.

(b) To continue any hearing in a criminal proceeding, including the trial,

(1) a written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary and

(2) within two court days of learning that he or she has a conflict in the scheduling of any court hearing, including a trial, an attorney shall notify the calendar clerk of each court involved, in writing, indicating which hearing was set first. A party shall not be deemed to have been served within the meaning of this section until that party actually has received a copy of the documents to be served, unless the party, after receiving actual notice of the request for continuance, waives the right to have the documents served in a timely manner. Regardless of the proponent of the motion, the prosecuting attorney shall notify the people's witnesses and the defense attorney shall notify the defense's witnesses of the notice of motion, the date of the hearing, and the witnesses'

right to be heard by the court.

(c) Notwithstanding subdivision (b), a party may make a motion for a continuance without complying with the requirements of that subdivision. However, unless the moving party shows good cause for the failure to comply with those requirements, the court may impose sanctions as provided in Section 1050.5.

(d) When a party makes a motion for a continuance without complying with the requirements of subdivision (b), the court shall hold a hearing on whether there is good cause for the failure to comply with those requirements. At the conclusion of the hearing, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of the finding and a statement of facts proved shall be entered in the minutes. If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted.

(e) Continuances shall be granted only upon a showing of good cause. Neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause.

(f) At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.

(g) (1) When deciding whether or not good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers. Both the general convenience and prior commitments of each witness also shall be considered in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case.

(2) For purposes of this section, "good cause" includes, but is not limited to, those cases involving murder, as defined in subdivision (a) of Section 187, allegations that stalking, as defined in Section 646.9, a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or Section 11165.6, or domestic violence as defined in Section 13700, or a case being handled in the Career Criminal Prosecution Program pursuant to Sections 999b through 999h, or a hate crime, as defined in Title 11.6 (commencing with Section 422.6) of Part 1, has occurred and the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. A continuance under this paragraph shall be limited to a maximum of 10 additional court days.

(3) Only one continuance per case may be granted to the people under this subdivision for cases involving stalking, hate crimes, or cases handled under the Career Criminal Prosecution Program. Any continuance granted to the people in a case involving stalking or handled under the Career Criminal Prosecution Program shall be for the shortest time possible, not to exceed 10 court days.

(h) Upon a showing that the attorney of record at the time of the defendant's first appearance in the superior court on an indictment or information is a Member of the Legislature of this state and that the Legislature is in session or that a legislative interim committee of which the attorney is a duly appointed member is meeting or is to meet

within the next seven days, the defendant shall be entitled to a reasonable continuance not to exceed 30 days.

(i) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes.

(j) Whenever it shall appear that any court may be required, because of the condition of its calendar, to dismiss an action pursuant to Section 1382, the court must immediately notify the Chair of the Judicial Council.

(k) This section shall not apply when the preliminary examination is set on a date less than 10 court days from the date of the defendant's arraignment on the complaint, and the prosecution or the defendant moves to continue the preliminary examination to a date not more than 10 court days from the date of the defendant's arraignment on the complaint.

(l) This section is directory only and does not mandate dismissal of an action by its terms.

Section 1050.1.

In any case in which two or more defendants are jointly charged in the same complaint, indictment, or information, and the court or magistrate, for good cause shown, continues the arraignment, preliminary hearing, or trial of one or more defendants, the continuance shall, upon motion of the prosecuting attorney, constitute good cause to continue the remaining defendants' cases so as to maintain joinder. The court or magistrate shall not cause jointly charged cases to be severed due to the unavailability or unpreparedness of one or more defendants unless it appears to the court or magistrate that it will be impossible for all defendants to be available and prepared within a reasonable period of time.

Section 1050.5.

(a) When, pursuant to subdivision (c) of Section 1050, the court imposes sanctions for failure to comply with the provisions of subdivision (b) of Section 1050, the court may impose one or both of the following sanctions when the moving party is the prosecuting or defense attorney:

(1) A fine not exceeding one thousand dollars ($1,000) upon counsel for the moving party.

(2) The filing of a report with an appropriate disciplinary committee.

(b) The authority to impose sanctions provided for by this section shall be in addition to any other authority or power available to the court, except that the court or magistrate shall not dismiss the case.

The provisions of Section 1050 can be summarized as follows:

- The court will grant a continuance only upon a finding of "good cause";

- Neither the convenience of the parties nor a stipulation of the parties is in and of itself "good cause";

- A prosecutor required to be in another court to handle a murder, stalking, domestic violence, career criminal, or hate crime matter does constitute "good cause" for a continuance of up 10 court days;

- In deciding whether "good cause" has been shown, the court must consider the general convenience and prior commitments of all witnesses;

- When a judge grants a continuance the judge must state on the record the facts constituting "good cause" and take into account the convenience of the witnesses in setting a new date;

- A party seeking a continuance is expected to request it in writing at least two court days in advance of the hearing to be continued, or within two days of learning of conflicting court dates, with notice to the other side;

- If a party fails to file such written request, the judge holds a hearing to determine whether the party had "good cause" for not doing so. If the judge does not find "good cause" for failure to submit the request in writing, the judge may sanction the requesting party, but must nonetheless determine whether "good cause" has been established orally for the requested continuance.

Penal Code Section 1050 was intended by the Legislature to give the judge the authority to "expedite [criminal] proceedings to the greatest degree that is consistent with the ends of justice." It gives the judge the discretionary power necessary to maintain scheduled trial and hearing dates, absent reasons that convince the judge that the "ends of justice" require rescheduling an event.

In Santa Clara County, a continuance requires the approval of the master calendar judge. *For more information contact Mike Melton at mmelton@scscourt.org.*

- **The court sets an expectation that lawyers and other criminal justice officials are present and prepared**

To a very great extent, the performance of lawyers reflects the expectations of the judges. If judges allow lawyers to appear late for hearings and trials, or to come to court obviously unprepared, without reprimand, they are condoning such behavior.

Effective criminal caseflow management is principally about the judges' establishing expectations and holding themselves and others to them. These expectations extend to all behaviors that affect the court's efficiency.

The same principles apply to the performance of the sheriff's office in producing in-custody defendants in court and to timely appearance of defendants who are not in custody. The court's reputation for punctuality (or lack thereof) quickly permeates the community at large. Issues with the performance of the sheriff's office are resolved mutually, as discussed further in Chapter 2.

3. Creating opportunities and incentives for early case resolution

No more than five percent of felonies and ten percent of misdemeanor and infraction cases in California are resolved by trial. Most of the remainder is resolved by a plea of guilty to the crime charged or to a lesser offense. One of the most powerful means of expediting criminal cases is to motivate the lawyers and defendants to reach agreements sooner rather than later, thus saving the time of the lawyers and the the court, and helping the defendant to commence – and therefore to complete – his or her punishment at an earlier date.

- **The court creates incentives for early resolution**

The court can work with its local District Attorney and Public Defender to establish incentives for early pleas. Working together, they can often

agree on various cut off dates – dates for completing discovery and presentation of a plea offer and dates for acceptance of such offers. After the passage of the cutoff date for acceptance, the plea offer is deemed withdrawn and the prosecutor may insist on increased punishment or plea or trial on the most serious charge.

These sorts of programs require a change in the "local legal culture" – the way cases have always been handled. To overcome the inevitable resistance to change, leaders within the court, District Attorney and Public Defender offices must demonstrate to their colleagues the benefits that accrue to all parties and address their colleagues' concerns about fairness. The ultimate support for plea cut off dates – both for prosecutors to make them and for defendants to accept them – is that the procedure does not change the outcome; it merely changes the time at which it occurs – to the benefit of everyone, including the criminal defendant.

In Shasta County, the court, prosecutor and public defender have established a "drop dead date" for acceptance of a plea offer. *For more information contact Melissa Fowler-Bradley at mfowler-bradley@shastacourts.com.*

Even without such specific policies, the judge's taking an active role in encouraging early plea offers and being readily available to receive a change of plea is effective in reaching earlier dispositions, thereby reducing the number of appearances in criminal cases.

- **The court provides opportunities for early resolution of cases**

A number of courts have created structures that ensure that a judge is available to discuss a case with the lawyers and to receive and enter changes of plea.

Los Angeles County has established an Early Disposition Court (EDP Court) to encourage early settlement of cases, including defining eligible cases and specifying the roles and obligations of all participating entities. *For more information contact Judge Patricia Schnegg at pschnegg@lasuperiorcourt.org.*

In Orange County, cases bound over are assigned on a master calendar to the Felony Panel Supervising Judge, who handles preliminary matters and is available to discuss pleas. If the case does not plead it is sent to a Felony Panel judge for trial. *For more information contact Hon. Craig E. Robison @ crobison@occourts.org.*

In Sacramento County, early disposition of misdemeanors is encouraged by having the Public Defender and Conflict Counsel present at arraignment, resulting in disposition of approximately 97% of all misdemeanor cases without trial. *For more information contact Trish Meraz at merazp@saccourt.com.*

In San Diego County, felony readiness calendars are used before preliminary hearings and trials, and then disposition calendars are held to facilitate settlement. Expedited readiness hearings may be held for some felonies, excluding serious violent felonies and co-defendant cases. *For more information contact Terri Brewton at terri.brewton@sdcourt.ca.gov.*

- **The court ensures that all parties have the information they need to resolve cases early in the process**

Courts can take steps to ensure that early disclosure takes place or that facts are developed so that parties and the court have the information they need to agree upon a just resolution of the case early in the proceedings.

In San Diego County, Pretrial Services makes its Arraignment Report available at the initial felony arraignment to reduce the need for subsequent bail hearings. The reports are prepared primarily for custody matters. *For more information contact Terri Brewton at terri.brewton@sdcourt.ca.gov.*

The court focuses on the following critical elements – laboratory results (particularly DNA results), discovery (including the discovery of police officer records pursuant to *Pitchess* motions), the existence of other cases involving the same defendant, criminal history reports, and psychologist and psychiatrist reports. The court will require counsel to inform the court before submitting supplemental information to a psychologist or psychiatrist to avoid unnecessary extension of the time available to the doctor to submit a report.

In San Francisco Criminal Court, a probation officer (PO) is present in the master calendar department every day. In the afternoon, the PO runs a criminal history report for each probationer on the next day's calendar that has returned on a bench warrant. The PO then conveys this information in court so the master calendar judge can understand the situation and facilitate resolution of the case. *For more information contact Mark Culkins at mculkins@sftc.org.*

4. Creating maximum predictability of court procedures and outcomes

Courts can take a number of steps to minimize the uncertainty and mystery of court procedures and to make it less difficult for lawyers and defendants to predict sentencing outcomes.

➢ Judges take steps to reduce sentencing disparity

Lawyers are reluctant to offer pleas or to advise their clients to accept them if they cannot predict with some degree of confidence the sentencing consequences associated with such a plea. Judges can reduce that uncertainty.

In Orange County, judges assigned to felonies discuss the dispositions of various types of cases to establish consistency and to provide a commonly understood standard for early disposition by plea. Misdemeanor judges conduct the same dispositional discussions as the felony judges. *For more information contact Hon. Craig E. Robison @ crobison@occourts.org.*

The judges of Yolo County have established general sentencing guidelines for misdemeanor and infraction cases for judges to take into account in exercising their sentencing discretion on a case-by-case basis. The chart is on the court website. *For more information contact Cathleen Berger at cberger@yolo.courts.ca.gov.*

In San Diego, a similar set of misdemeanor sentencing guidelines has been created for the benefit of judges and court commissioners. It includes suggestions for special conditions of sentences. *For more information contact Terri Brewton at terri.brewton@sdcourt.ca.gov.*

- **Courts adopt structures that reduce judge shopping and increase certainty of outcome**

Courts can modify their case processing structures to reduce trial and sentencing outcome uncertainty. A master calendar system, in which a case may be heard by different judges for different purposes, fosters uncertainty.

"Home court" structures in Sacramento and Shasta Counties and similar structures in Orange County assign each case to a single judge for all non-evidentiary matters, including arraignment, further proceedings, law and motion, plea negotiation, and trial status conferences. Sentencing on a plea is referred back to the home court to reduce judge shopping. The home court judge works with the same Deputy District Attorney and Deputy Public Defender for all matters except trial, including sentencing on a plea entered during trial. In Sacramento County, all domestic violence cases are assigned to the same courtroom and in Shasta County all sex cases involving minors or victims are assigned to the same home court. In Shasta County, preliminary hearings, motions to suppress and settlement conferences also take place in the home court. *For more information in Sacramento contact Trish Meraz at merazp@saccourt.ca.gov; in Shasta contact Melissa Fowler-Bradley at mfowler-bradley@shastacourts.com.*

Inyo, San Luis Obispo, and Stanislaus Counties have adopted "vertical adjudication" or "direct calendaring" processes – in which cases are assigned to one judge for all purposes – to increase the predictability of case outcomes. *For more information contact in Inyo County Judge Dean Stout at dean.stout@inyocourt.ca.gov, in San Luis Obispo County Karen Liebscher at karen.liebscher@slo.courts.ca.gov, and in Stanislaus County Debbie Perry at debbie.perry@stanct.org.*

- **Judge, prosecutor and defender "teams" are created to handle all cases assigned to a courtroom**

As noted in the examples of "home court" structures, prosecutors and defenders can be assigned to the same judge and her or his courtroom for an extended period of time. During this period, all three come to understand the way the others think and become able to predict with a high degree of certainty how they will react to specific cases. This arrangement also creates scheduling efficiencies; because the lawyers are already present in the courtroom all day, no time is wasted waiting for lawyers to assemble.

In Santa Clara County, representatives from District Attorney, Public Defender, Alternate Defender Office (for Public Defender conflicts), and Legal Aid (for third tier conflicts) are assigned to each master calendar department for extended periods of time. *For more information contact Melinda Fort at mfort@scscourt.org.*

5. Finding opportunities to improve efficiency

Any steps that the court can take to save time and effort – not just for the judge and court staff but also for the lawyers, victims, witnesses, jurors, probation officers, interpreters and law enforcement officers involved in criminal matters – will make the court system more efficient and less burdensome for citizens.

In the distant past, judges took the position that any process that improved their personal efficiency was an effective process. For instance, calling all parties and lawyers to appear at 9:00 am would ensure that the judge would not have any "wasted" bench time before the noon recess. The court was oblivious to the inconvenience visited upon all other court participants by this practice. The modern perspective on efficiency is a much broader one – which encompasses all court participants. The days of the "cattle call" docket have passed in most court systems today.

There are, of course, instances in which it is efficient to require all counsel to be present at the same time. For example, a master calendar trial call at which cases are assigned out to divisions for trial. In this example it is obvious why all trial counsel must be present.

- **Eliminate unnecessary hearings, events, and requirements**

Some courts have been able to combine court proceedings to eliminate the need for a court appearance.

In San Diego, Sacramento, Shasta, and Placer Counties, arraignment of the defendant occurs at the time of bind over, if the parties stipulate to doing so. The court deems the complaint to be an information. Amended informations are the exception, not the rule. If the District Attorney decides that the charges need to be amended, the court will entertain the request, rearraigning the defendant on any new charges added by amendment. *For more information in San Diego contact Terri Brewton at terri.brewton@sdcourt.ca.gov, in Sacramento contact Trish Meraz at merazp@saccourt.ca.gov, in Shasta contact Melissa Fowler-Bradley at mfowler-bradley@shastacourts.com, in Placer contact Sharry Shumaker at sshumak@placerco.org.*

In San Diego County, the preliminary hearing is used as an evidentiary hearing on probation revocation on a prior conviction, avoiding the need to schedule and hold an additional hearing. *For more information contact Terri Brewton at terri.brewton@sdcourt.ca.gov.*

San Diego County has also established a revocation calendar court where probation revocation is used in lieu of filing a new criminal case. *For more information contact Terri Brewton at terri.brewton@sdcourt.ca.gov.*

Some courts have focused on the average number of hearings or appearances per criminal case. Paying attention to this issue, coupled with stricter continuance policies, has reduced the number of hearings dramatically, saving significant resources for the court, lawyers, law enforcement officers, and the sheriff's office, as well as reduced the inconvenience for citizens involved in the process.

Stanislaus County conducted a study of the number of Proposition 36 hearings ordinarily held in criminal cases. The large number shocked the judges, who ceased scheduling routine status conferences. *For more information contact Debbie Perry at debbie.perry@stanct.org.*

It is also possible to decide that certain standard requirements do not apply to particular types of cases and can be waived.

In Los Angeles County, probation officers completing presentence reports in Early Disposition Program cases do not have to complete a social history. The Corrections Department has agreed to accept the shorter reports, under PC 1203. The reports include an analysis of Proposition 36 eligibility. *For more information contact Judge David Wesley at dwesley@lasuperiorcourt.org.*

In San Diego and Stanislaus Counties, the court (upon request in San Diego County) proceeds immediately to sentencing, without waiting for a probation report, when the parties stipulate to a prison sentence if the case does not involve restitution or a repeat offender. *For more information contact Debbie Perry at debbie.perry@stanct.org and Terri Brewton at terri.brewton@sdcourt.ca.gov.*

In Stanislaus County, probation officers are allowed to present their reports and recommendations orally. In San Francisco, reports are now ordered and the matter is set for probation hearing three weeks from the date of filing of the Motion to Revoke Probation. *For more information contact Natascha Roof at roofn@mail.co.stanislaus.ca.us and Mark Culkins at mculkins@sftc.org.*

In Placer and Santa Clara Counties, if a defendant stipulates to the entry of a standard probation order, the case may not be referred to probation for a presentence report. In Santa Clara, this procedure is used in cases involving victimless crimes – such as Proposition 36 cases – in which no restitution or victim statement is involved, and the defendant has no prior record. The probation officer is present in court to inform the court of a circumstance warranting preparation of a presentence report. In Placer County, the Court discusses the case with the District Attorney and Defense Counsel before making a decision on whether a formal presentence report is required. *For more information in Placer contact Sharry Shumaker@ sshumak@placerco.org, and in Santa Clara contact Linda Vallejos at lvallejos@scscout.org.*

Some judges have eliminated multiple probation grants for a single defendant convicted of multiple offenses. All misdemeanor charges are closed out and the defendant is sentenced to one felony probation term. The result is significant future savings – both for the probation department in maintaining duplicate supervision records in multiple case files and for the court, prosecutor and defender in the event of a subsequent offense, which will be accompanied by one rather than multiple probation violation charges. Public safety is not affected. The defendant's term of probation is the same; it is just attached to a single conviction. This is an example of an improvement producing efficiencies for many parts of the criminal justice community.

- **Some events can be delegated to a non-judicial officer**

Enterprising courts have found ways to use persons other than judges to preside over some matters.

In San Diego (Central Division), mandatory review hearings occur before a probation officer for the DV Rehabilitation Program. The parties do not go into the courtroom unless there is a problem. The program has reduced the judges' calendars and freed the time of the offenders, who are able to leave the courthouse following the probation interview. It has allowed meaningful readiness conferences on cases headed for trial. It facilitates settlements before the date of trial. *For more information contact Terri Brewton at terri.brewton@sdcourt.ca.gov.*

- **Hearings and trials take no longer than necessary**

Courts have developed numerous ways to avoid wasted time in the courtroom. Attorneys are required to provide estimates of the time a hearing will require. At the beginning of the hearing, the judge will remind them of the amount of time set aside. If an attorney goes over that time, the judge consults with the attorney about his or her time estimate and cuts him or her short to the extent possible.

The court refuses to hear duplicative witnesses, or receive extraneous or irrelevant exhibits. The court will limit argument by the lawyers. These steps do not sacrifice justice. Instead they reinforce the expectations concerning efficiency.

- **Motions and matters taken under submission are acted on promptly**

The court sets an example of efficiency and timeliness.

- **Processes are designed to make the best use of everyone's time – judges, court staff, prosecutors, defense attorneys, witnesses (including police officers and victims), defendants and their families**

In an efficient court, no one's time is wasted sitting or standing around waiting for something to happen.

A typical example is the notification of jurors by phone the evening before a trial if their services will be needed.

In Los Angeles County, if a jury panel is not called into the courtroom within 20 minutes after it is sent, it returns to the jury room. *For more information contact Judge Jacqueline A. Connor at jconnor@lasuperiorcourt.org or Gloria Gomez at ggomez@lasuperiorcourt.org.*

Through sustained effort between the court, the Modesto Police Department, and the District Attorney's office, officer overtime related to appearance in court has been reduced substantially in Stanislaus County. *For more information contact Debbie Perry at debbie.perry@stanct.org.*

In San Francisco County, pre-trials are set in a master settlement conference department. This has produced more consistent outcomes and a much higher rate of settlement. It also reduces shopping by the attorneys. *For more information contact Mark Culkins at mculkins@sftc.org.*

In Shasta County, the disposition/confirmation hearing is set on a day before the actual preliminary hearing. A settlement conference is conducted and the District Attorney is alerted as to whether witnesses will be needed. *For more information contact Melissa Fowler-Bradley at mfowler-bradley@shastacourts.com.*

In Yolo County, a police department court liaison officer monitors the felony courtrooms and calls subpoenaed officers and witnesses to cancel their appearances in cases that are not going forward. *For more information contact Cathleen Berger at cberger@yolo.courts.ca.gov.*

In San Diego (Central and North County Divisions), the court clusters trial dates for infraction cases on a day an officer is on duty for the same courtroom. *For more information contact Terri Brewton at terri.brewton@sdcourt.ca.gov.*

In Yolo County, the Supervising Criminal Judge reviews the trial schedule weekly with the criminal judges to ensure that matters are handled as scheduled or re-assigned to maximize the use of all criminal trial departments. *For more information contact Cathleen Berger at cberger@yolo.courts.ca.gov.*

- **Backlogs are not allowed to develop**

Backlogs are not only the result of inefficiency. In and of themselves, they create additional inefficiency.

Case backlogs create delay for all pending cases. The time required to reach a hearing or trial is extended because of the number of other cases that must be heard first. In extreme cases, when the requirements of PC 1382 are not met, backlogs result in additional hearings needed to deal with the consequences of exceeding statutory time frames. The additional hearings take up the time of judges and lawyers, further contributing to the case backlog.

Paperwork backlogs in the out-of-court processing of documents by court staff create problems as serious as case backlogs. Sentencing documents are not produced. Convictions are not reported to the state criminal history repository. The court's statistics are no longer dependable because case records have not been updated on a timely basis. Hearings may have to be rescheduled if necessary documents have not been filed in case files. When backlogs of paper develop, additional time is required to locate specific papers needed for an upcoming hearing or other purpose. Here again, backlogs not only disrupt the criminal process, but they contribute to further backlogs.

Monitoring the number and age of pending cases is the key to avoiding a case backlog. To accomplish this, the court maintains, and uses, accurate caseload statistics. When it perceives a bulge in pending cases at any stage of the criminal process, it shifts resources to deal with the bulge before it becomes a backlog.

Monitoring pending staff work is the responsibility of court administrators and supervisors. They pay close attention to the accumulation of unprocessed papers and files. They, too, shift resources to deal with build ups before they become serious and before they begin to create additional work.

Backlogs are discussed more fully in Chapter 5.

- **Technology is used to improve efficiency**

Technology and effective information systems ensure that all participants have direct access to current and accurate information about their cases and automated tools for completing documents during court and non-court events.

In Los Angeles County, regular statistical reports are created for and used by the judges, including a monthly inventory of pre-adjudicated cases, analyses of adjudication time, monthly reports for each department, and daily reports of last day cases. *For more information contact Coordinator Margarita Reinoso at mreinoso@lasuperiorcourt.org.*

Placer County uses a secure website to receive probation filings, including probation officer reports, credits memos, memos, formal probation orders and supplemental probation officer's reports. The court also posts its calendar and final probation orders to the website. *For more information contact Sharry Shumaker at sshumak@placerco.org.*

In Sacramento County, a CJIS case management system serves all criminal justice entities and provides immediate updates to case status to all participants. *For more information contact Trish Meraz at merazp@saccourt.ca.gov.*

San Diego (Central Division) creates online minutes for the following felony hearings: arraignments, readiness, sentencings and further proceedings as they occur in the courtroom. *For more information contact Terri Brewton @ terri.brewton@sdcourt.ca.gov.*

6. Handling different types of cases differently

"Differentiated case management" is a complicated name for a simple concept: criminal cases of different degrees of complexity should be handled in different ways. For example, the procedures appropriate for first degree murder cases are not necessary or appropriate for less serious

felonies. Different sorts of misdemeanor cases warrant different procedural approaches. Many California courts have adopted practices consistent with this principle.

- **Courts establish separate courts or calendars for handling cases of different levels of complexity**

Los Angeles County uses a master calendar court in the Central District to assign all cases that are designated "long cause" to special complex litigation long cause courts. The criteria include death penalty cases and multiple defendant cases estimated to be 10-day trials or more in length. Criteria are set forth in a criminal case coordination plan distributed to all judges assigned to criminal. *For more information contact Judge David Wesley at dwesley@lasuperiorcourt.org.*

Los Angeles County differentiates protracted trials, non-jury cases, and short cause trials for handling by separate courts. *For more information contact Coordinator Margarita Reinoso at mreinoso@lasuperiorcourt.org for misdemeanor cases.*

- **Courts assign cases with the same characteristics to the same judges so that the cases get heightened attention and consistent treatment**

When some types of misdemeanor cases are assigned to general calendars, they are virtually overlooked as minor or trivial. Assigning them to a single calendar raises their visibility and increases the awareness of the judge handling them of the social circumstances out of which they arise. These sorts of courts are often referred to as "problem solving" courts because they attempt to stop the revolving door of criminal court involvement of the defendants who appear in them.

Los Angeles County has centralized the handling of special writ proceedings involving cases such as DNA cases, battered women syndrome cases, and parole denials. For more information contact Judge Patricia Schnegg at pschnegg@lasuperiorcourt.org or Andrew Holmer at aholmer@lasuperiorcourt.org.

Placer County has created a separate calendar for mental health cases. All requests for mental competency determinations under Penal Code Section 1368, Penal Code Section 1026, and any not guilty by reason of insanity plea cases are handled in this court. A representative of the mental health department attends all sessions of the special mental health calendar. *For more information contact Sharry Shumaker at sshumak@placerco.org.*

San Diego County has established drug, homeless, community behavioral health, parole re-entry, veteran's treatment review, mental health, and welfare fraud courts. *For more information contact Terri Brewton at terri.brewton@sdcourt.ca.gov.*

7. Setting case processing goals and using court data to monitor compliance with them

Courts making an effort to improve their case processing find it helpful to set clear goals not only for the overall time required to dispose of a case, but also for intermediate stages of case processing as well. Examples of such intermediate stage measures appear in Chapter 6.

The California Judicial Council has promulgated case processing standards that "establish goals for all cases filed, [but] are not meant to create deadlines for individual cases. Through its case management practices, a court may achieve or exceed the goals for the overall disposition of cases." California Standards of Judicial Administration, Section 2.1 (b).

The case processing goals for criminal cases are:

Felony preliminary hearings (Section 2.1(l))

90% are concluded within 30 days after the defendant's first arraignment on the complaint
98% are concluded within 45 days after the defendant's first arraignment on the complaint
100% are concluded within 90 days after the defendant's first arraignment on the complaint

Misdemeanors (Section 2.1 (k))

90% are concluded within 30 days after the defendant's first arraignment on the complaint
98% are concluded within 90 days after the defendant's first arraignment on the complaint
100% are concluded within 120 days after the defendant's first arraignment on the complaint

Felonies (Section 2.1(j))

100% are concluded within 365 days after the defendant's first arraignment in any court

Section 2.1 (n)(2) identifies case events that are deemed to remove cases from the court's control so long as they are in effect, suspending the running of the times set forth in the rule during those periods. Section 2.1(n)(2)(J) provides that time granted by the court to secure counsel if the defendant is not represented at the first arraignment is excluded from the time to disposition period.

California public policy on speedy criminal trials is also articulated in Penal Code Section 1382, defining the circumstances in which criminal prosecutions will be dismissed for failure to afford a speedy trial.

Section 1382

(a) The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases:

(1) When a person has been held to answer for a public offense and an information is not filed against that person within 15 days.

(2) In a felony case, when a defendant is not brought to trial within 60 days of the defendant's arraignment on an indictment or information, or reinstatement of criminal proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2, or, in case the cause is to be tried again following a mistrial, an order granting a new trial from which an appeal is not taken, or an appeal from the superior court, within 60 days after the mistrial has been declared, after entry of the order granting the new trial, or after the filing of the remittitur in the trial court, or after the issuance of a writ or order which, in effect, grants a new trial, within 60 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney, or within 90 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney in any case where the district attorney chooses to resubmit the case for a preliminary examination after an appeal or the issuance of a writ reversing a judgment of conviction upon a plea of guilty prior to a preliminary hearing. However, an action shall not be dismissed under this paragraph if either of the following circumstances exist:

(A) The defendant enters a general waiver of the 60-day trial requirement. A general waiver of the 60-day trial requirement entitles the superior court to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial. If the defendant, after proper notice to all parties, later withdraws his or her waiver in the superior court, the defendant shall be brought to trial within 60 days of the date of that withdrawal. If a general time waiver is not expressly entered, subparagraph (B) shall apply.

(B) The defendant requests or consents to the setting of a trial date beyond the 60-day period. Whenever a case is set for trial beyond the 60-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter. Whenever a case is set for trial after a

defendant enters either a general waiver as to the 60-day trial requirement or requests or consents, expressed or implied, to the setting of a trial date beyond the 60-day period pursuant to this paragraph, the court may not grant a motion of the defendant to vacate the date set for trial and to set an earlier trial date unless all parties are properly noticed and the court finds good cause for granting that motion.

(3) Regardless of when the complaint is filed, when a defendant in a misdemeanor or infraction case is not brought to trial within 30 days after he or she is arraigned or enters his or her plea, whichever occurs later, if the defendant is in custody at the time of arraignment or plea, whichever occurs later, or in all other cases, within 45 days after the defendant's arraignment or entry of the plea, whichever occurs later, or in case the cause is to be tried again following a mistrial, an order granting a new trial from which no appeal is taken, or an appeal from a judgment in a misdemeanor or infraction case, within 30 days after the mistrial has been declared, after entry of the order granting the new trial, or after the remittitur is filed in the trial court. However, an action shall not be dismissed under this subdivision if any of the following circumstances exist:

(A) The defendant enters a general waiver of the 30-day or 45-day trial requirement. A general waiver of the 30-day or 45-day trial requirement entitles the court to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial. If the defendant, after proper notice to all parties, later withdraws his or her waiver, the defendant shall be brought to trial within 30 days of the date of that withdrawal. If a general time waiver is not expressly entered, subparagraph (B) shall apply.

(B) The defendant requests or consents to the setting of a trial date beyond the 30-day or 45-day period. In the absence of an express general time waiver from the defendant, the court shall set a trial date. Whenever a case is set for trial beyond the 30-day or 45-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.

(C) The defendant in a misdemeanor case has been ordered to appear on a case set for hearing prior to trial, but the defendant fails to appear on that date and a bench warrant is issued, or the case is not tried on the date set for trial because of the defendant's neglect or failure to appear, in which case the

> defendant shall be deemed to have been arraigned within the meaning of this subdivision on the date of his or her subsequent arraignment on a bench warrant or his or her submission to the court.
>
> (b) Whenever a defendant has been ordered to appear in superior court on a felony case set for trial or set for a hearing prior to trial after being held to answer, if the defendant fails to appear on that date and a bench warrant is issued, the defendant shall be brought to trial within 60 days after the defendant next appears in the superior court unless a trial date previously had been set which is beyond that 60-day period.
>
> (c) If the defendant is not represented by counsel, the defendant shall not be deemed under this section to have consented to the date for the defendant's trial unless the court has explained to the defendant his or her rights under this section and the effect of his or her consent.

Penal Code Section 1382 has been the subject of considerable caselaw. However, its effect can be summarized as follows: The statute requires the dismissal of a criminal prosecution if:

- an information is not filed within 15 days of the date a defendant is held to answer;
- trial is not held within 60 days after a felony arraignment, unless the defendant files a time waiver;
- trial is not held within 30 days after a misdemeanor arraignment or entry of a plea for defendants in custody or with 45 days for defendants not in custody, unless the defendant files a time waiver; or
- trial is not held within 10 days of a date set with the consent of the defendant at the time of filing a time waiver.

Because of the drastic consequences of not meeting these speedy trial standards, courts monitor these time periods very closely and ensure that proceedings are scheduled as required.

- **Courts set their own internal goals to supplement the statewide goals or to move toward compliance with the statewide goals gradually**

Some trial courts refine statewide case processing standards to apply more directly to their own caseloads, often setting more strict standards for themselves than the state mandates.

Los Angeles County has established interim criminal case disposition goals that run from the date of filing in the Superior Court rather than from the date of first arraignment/appearance. *For more information contact Coordinator Judy Pieper at jpieper@lasuperiorcourt.org.*

- **Courts use case management information to report on the timeliness of case processing and to monitor compliance with local and state timeliness standards**

Courts cannot know whether they are complying with their standards without regular, complete and reliable statistical information. Chapter 6 of this manual deals extensively with case management reports.

2

Effective leadership

Successful implementation of the techniques discussed above will not occur by accident or through the efforts of one judge or administrator. It requires a court to marshal its resources, its determination, and its attention on prompt disposition of criminal cases and to maintain that energy and focus for an extended period of time.

As the discussion in Chapter 1 makes clear, successful criminal caseflow management consists of repetitive and sometimes tedious attention to the age and status of cases. It requires consistency and determination and does not bring immediate popularity. The discipline of caseflow management consists of paying attention to myriad details, as well as to the larger concepts of setting and reinforcing positive expectations. Those details require repeated attention every day of the court year.

Summoning the will to become effective in criminal caseflow management requires leadership. The principal court leaders are the presiding judge, the presiding or supervising judge of the criminal department, the court executive officer, and the staff director for the criminal department. Other judges and staff can also lead by example and otherwise play pivotal roles in the implementation of new criminal caseflow management processes. The principal leadership task is change management – convincing the other judges and staff of the need for and benefits of improved criminal case management, creating and maintaining enthusiasm for new procedures, and ensuring that the procedures remain in place when other projects become the center of attention.

In criminal caseflow management, leadership is not limited to mobilization of the energies of court personnel. In includes leading the criminal justice community.

Involving all of the criminal justice entities in the community, including the prosecutor, public defender, private defense bar, police, sheriff's office (or other operator of the local jail), probation department, corrections, and the state criminal history records repository

Effective criminal caseflow management requires the involvement and cooperation of all partners within the criminal justice system. Bringing these groups into an effective working relationship often resembles more closely the principles of international diplomacy than those of court administration.

- **An effective leader brings the criminal justice system partners together at the same table**

Rule 10.952 requires the court to meet regularly with the other entities within the criminal justice community. But it does not ensure that the elected public officials will attend. Convincing them of the importance of effective interaction is one of the leadership challenges of the presiding judge.

Many courts have found it effective to establish a "policy committee" composed of the principals themselves. This group restricts itself to policy setting, delegating to a comparable mid level staff committee the responsibility for detailed implementation.

Many California counties have monthly meetings of a Criminal Justice Policy Committee that includes the Supervising Criminal Judge, County Executive Officer, Court Executive Officer, District Attorney, Public Defender, Chief Probation Officer, Chair of the local law enforcement association, Director of Health and Human Services, and Sheriff. The Committee meets to discuss common problems and resolve them amicably.

- **Initial efforts involve "confidence building" measures that produce trust on which cooperative efforts can build**

The heads of criminal justice entities have not always been supportive of each other. Competition for scarce resources often pits their organizations against each other. Criticism by the press or political leaders of the performance of one of the entities has often led that unit's leaders to respond defensively by blaming other parts of the system. Courts have been known to blame prosecutors and defenders for the slowness of criminal case processing. And they may have returned such criticism. The most important confidence building measure that the presiding judge can instill in the coordinating group is the principle that henceforth disagreements will be resolved within the group and that the entities will strive to support each other in public. That single measure can produce immediate good will and reduce the rancor produced by past disagreements.

Cooperation among criminal justice entities usually produces benefits for all. Efficiencies identified in Chapter 1 benefit the attorneys, probation officers, law enforcement officers, and sheriff's deputies – as well as the judge and court staff. A presiding judge can set an agenda that focuses the group's attention initially on the areas in which cooperation will have the greatest mutual benefits, thereby building confidence to use in addressing more difficult and divisive issues.

In Ventura County, community forums were held in the City Council chambers, broadcast over local networks, involving representatives from Superior Court, the Court of Appeals, law enforcement, and the County Board of Supervisors. *For more information contact Robert Sherman at robert.sherman@mail.co.ventura.ca.us.*

Bringing diverse interests together into a team, overcoming institutional boundaries and separations

The court can never delegate its duty to manage its own calendar. However, it can convince the heads of the agencies of their common interest in an effective criminal justice system and in efficient procedures that save the time and resources of staff from all parts of the system.

Unlike the pursuit of limited public funds, improvement of criminal case management is an endeavor in which all entities can benefit simultaneously.

In addition to instilling a common vision of successful interaction, an effective leader can encourage interactions and exchanges at all levels of the respective organizations.

In Placer County, criminal division supervisors and managers attend staff meetings at the sheriff and probation departments and meet regularly with District Attorney, Public Defender, Probation, County Executive Officer, Sheriff and Department of Health and Human Services supervisors, resulting in better customer service and interoffice agreements on procedures. *For more information contact Sharry Shumaker at sshumak@placerco.org.*

In Sacramento County, the CJIS case management system serves all entities and provides immediate updates to case status to all participants. *For more information contact Trish Meraz at merazp@saccourt.ca.gov.*

Multi-agency task teams in Sacramento County, usually chaired by a judge, develop programs, make recommendations, provide reports and monitor progress of projects. Teams involve court, District Attorney, Public Defender, conflict attorneys, Health and Human Service, Probation and local law enforcement personnel. *For more information contact Trish Meraz at merazp@saccourt.ca.gov.*

Imbuing the team with a common view of the problem to be solved and a sense of urgency in solving it

Effective court leaders throughout California have brought the outside agencies together with court personnel to solve common problems.

In Sacramento County, Drug Court and Proposition 36 teams developed alcohol and drug programs for the county, including a specialized department to hear all matters relating to defendants enrolled in Drug Court or Prop 36 programs and frequent front end court appearances. *For more information contact Trish Meraz at merazp@saccourt.ca.gov.*

Likewise, in Santa Clara County, establishment of a Drug Court was a cooperative venture of the Department of Alcohol and Drug Services, Adult Probation, PreTrial Services, and Family Court. *For more information contact Terri Cain at tcain@scscourt.org.*

In Ventura County, the District Attorney and Public Defender share the court's goal of speedy case disposition. *For more information contact Patricia Murphy at patricia.murphy@ventura.org and/or Chief Deputy Asst. District Attorney James Ellison at james.ellison@ventura.org.*

However, the most important leadership role is within the court itself. An effective court leader also brings the judges and court staff together in support of effective criminal caseflow management.

Selling Criminal Caseflow Management

The first task is to convince court personnel of the need to improve the court's performance, by techniques as straightforward as:

- using criminal case data to show that the court is not meeting state criminal case disposition standards;
- determining the number of cases dismissed under Penal Code 1382
- pointing out the difficult working environment created by inefficient practices;
-
- explaining the difference between "caseload" and "workload."

It is generally more effective to involve judges and staff in a discussion of the problems associated with criminal case management – where they

have the opportunity to present their own perceptions and issues – than to make a presentation to them. However it is helpful to have empirical information and practical examples available to bolster points made by others.

The second task is to convince the judges and staff that adherence to the principles of caseflow management will improve the court's performance and their own work environments, for instance by:

- reciting examples of effective practices followed in another court and the benefits achieved by them;

- having a judge or court executive officer from another court come to your court to describe the other court's caseflow management procedures;

- having a judge from another court come to talk to judges in your court (Hearing a message from a person of your own rank and stature is more convincing than hearing it from a person who is not a judge.);

- distributing this manual; and

- anticipating objections and being prepared to address them (Lawyers are well trained to think of the "hard cases" for which a new approach will not work; be prepared to recognize the need to implement any policy with the discretion to recognize and accommodate exceptional cases or situations.).

In addition to their powers of persuasion, the presiding judge and court executive officer have explicit, formal authority under the Judicial Administration Rules concerning the administration of the court. Rule 10.603 assigns to the Presiding Judge responsibility for:

> (1) Ensuring the effective management and administration of the court, consistent with any rules, policies, strategic plan, or budget adopted by the Judicial Council or the court; [and]
>
> (2) Ensuring that the duties of all judges specified under rule 10.608 are timely and orderly performed;

Rule 10.610 governing the court executive officer, in Section 10.610(c)(4), gives the CEO explicit responsibility for monitoring caseflow management and recommending effective techniques:

> (4) (*Calendar management*) Supervise and employ efficient calendar and case flow management systems, including analyzing and evaluating pending caseloads and recommending effective calendar management techniques.

And Rule 10.608 setting forth the duties of all judges, in Section 10.608 (5) requires judges to comply with the presiding judge's administrative direction:

> (5) Follow directives of the presiding judge in matters of court management and administration, as authorized by the rules of court and the local rules and internal policies of the court.

Helping the court to apply the principles to develop new practices that will save time and effort and improve results

While many of the principles of caseflow management are explicit and straightforward, most of them are more general in nature, requiring application to the circumstances of each court.

It is often useful to create a small working group to prepare a set of detailed recommendations for improved practices and procedures for consideration by the court's governance body. Allow persons to volunteer, but ensure that the group has within its number the persons needed to think analytically, reach conclusions, and articulate proposals clearly. It is rarely useful to include strong opponents, with the hope of co-opting them into support; they are more likely to stymie the rest of the group. Suggest to the working group persons outside the court from whom they can obtain suggestions and input.

And It is often useful to use the same principle noted previously for Rule 10.952 committees – establishing a "policy committee" composed of judges and the court executive officer to formulate the broad vision of new procedures and delegating to a staff team the development of detailed implementation plans and proposals.

Obtaining commitment from the judges, court staff and other entities involved to pursue the new practices

Experience shows that obtaining the commitment of the judges and court staff to the achievement of ambitious goals is far more important than the details of how those goals are accomplished. Commitment will be enhanced by participation in and "ownership" of the new practices and procedures to be implemented. An effective leader realizes that achieving maximum "buy in" from the judges and staff of the court is far more important than having a final plan that reflects his or her own personal preferences and judgments about the best new approaches.

It is often not possible, or necessary, to obtain 100% agreement with a new approach. If there is significant skepticism about a new approach, it can be useful to suggest a "pilot" program to try the approach in a limited number of courtrooms for a limited period of time. If opposition is limited to one or two judges, it is often easier to find a way to exempt them from the program until they can be reassigned to a different department in the course of the court's regular judicial rotation policy.

A new policy should have a date on which it will commence, approved by the court's governance body. Bringing the members of the working group together at the end of the first day of implementation, and regularly for the next several days and then once or twice a week for the first month, provides an opportunity to identify "glitches" and work them out quickly. An early program failure can doom the effort.

Paying continuing attention to the new process – providing encouragement and reinforcement for improvements and refining the process as needed to increase its effectiveness

It is not sufficient to institute a change. The leader must devote her or his continuing energies to ensuring that the improvements in criminal caseflow management persist. Experience shows that as a leader diverts her or his primary attention to a new goal, thinking that criminal caseflow problems have been solved, commitment to the new programs begins to waiver. Practical means for maintaining attention to criminal caseflow management include:

- posting the new policies on an Intranet web site where they are readily available to all judges and staff;

- making regular reports on key criminal caseflow management indicators, such as the total pending caseload, the average time to disposition, and other locally chosen indicators, such as average number of appearances per case; and

- maintaining a large chart in the judges' conference room showing the trends for such indicators.

Establishing accountability for meeting timeliness goals and standards

A number of California courts have put in place effective mechanisms for ensuring that each judge and staff member becomes personally responsible for the success of the criminal caseflow management reforms. Examples of statistical reports useful for this purpose are found in Chapter 6.

In Los Angeles County, it is the responsibility of the Supervising Judge of the Criminal Division for ongoing monitoring of the performance of the criminal departments. It is also the Supervisory Judge's job to evaluate under-performing judges. *For more information contact Judge David Wesley at dwesley@lasuperiorcourt.org.*

Putting in place permanent monitoring and reporting mechanisms that ensure that all participants continue to pay attention to the objectives of the modified process

Too frequently a court will meet with well-publicized success in improving its criminal case management performance. When observers return to the court five years later, most evidence of the reforms has vanished and the court has returned to its prior ways, with its prior poor performance record. The ultimate task of the judicial leader is to leave behind a court whose judges and staff are so fully committed to the reforms that they consider them to be their own personal achievement, not the achievement of the judicial leader.

Los Angeles County uses its monthly judges' meetings to circulate case statistics and discuss problems and procedures. *For more information contact Judge David Wesley at dwesley@lasuperiorcourt.org.*

In Stanislaus County, monthly statistical reports are prepared for the judges, and they are often provided to the Criminal Justice Forum. *For more information contact Debby Perry at debbie.perry@stanct.org.*

3

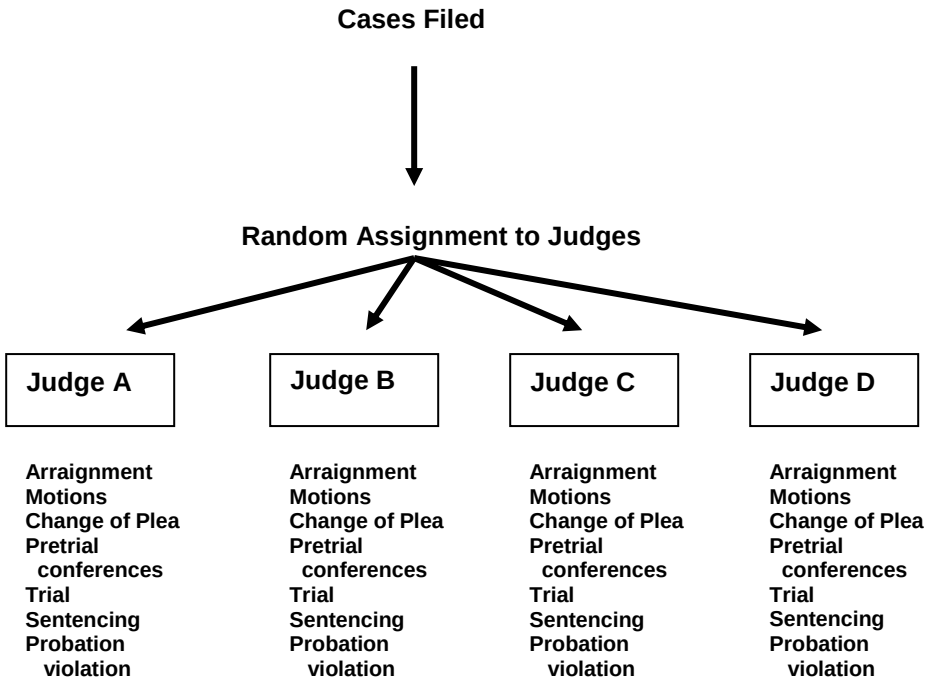
Alternative calendaring approaches for criminal cases

The principal approaches to calendaring criminal cases are the individual calendar system (often referred to in California as "direct" or "vertical" calendaring), the master calendaring system, and mixed or hybrid calendaring systems. We will focus on one particular hybrid system used in a number of California courts, referred to as the "home court" process.

"Direct" or "Vertical" Calendar Process

In a "direct" or "vertical" calendaring process, cases are assigned as they are filed to a single judge for all purposes. Figure 1 is a graphical depiction of this model.

Figure 1
"Direct" or "Vertical" Calendaring



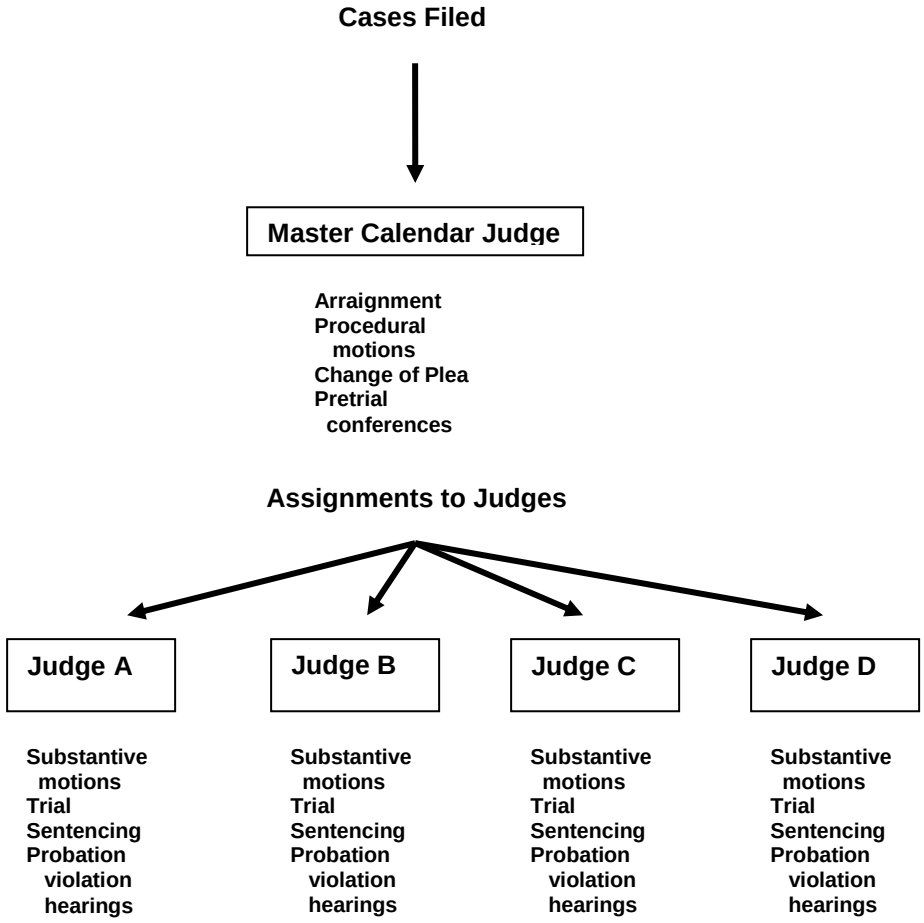
Note that the list of matters heard does not include initial appearance and preliminary hearing. In a "pure" vertical process, these matters would be the responsibility of the assigned judge. However, these proceedings are often considered distinct from the felony prosecution and handled through a master calendar process by other judges.

The major advantages of this calendar process are that it distributes the work evenly among all judges, provides clear accountability for the speedy resolution of all cases, and allows a judge to follow a case from beginning to end, not having to re-educate him or herself for every hearing. Lawyers know that the decisions in the case will be consistent from motion practice through a trial. If they are familiar with the sentencing practices of the judges, they are able to predict sentencing outcomes accurately for their clients. The disadvantages include the difficulty of accommodating the uncertainties of trial scheduling – the relative difficulty of transferring to another judge cases when a judge finds him or herself with multiple trials ready to proceed on the same day. A second disadvantage is the inability of the system to accommodate the strengths and weaknesses of individual judges by assigning them to different types of proceedings or to different types of cases. One "underperforming" judge can have a significant affect on the performance of the court as a whole.

Master Calendar Process

In a master calendar process, preliminary and pretrial processes are handled centrally, with hearings and trials assigned out to other judges who handle only those proceedings. Figure 2 is a graphical representation of a typical master calendar system.

Figure 2
Master Calendaring



In the master calendar process, the master calendar judge is responsible for case management. The other judges are responsible for deciding substantive matters. Cases are originally set before the master calendar judge, who ascertains their readiness for hearing or trial and assigns them out to available judges.

In some master calendar systems, the master calendar judge will impose sentence in those cases in which he or she accepts a guilty plea. In other systems, the cases are assigned out for sentencing after the plea has been entered.[7]

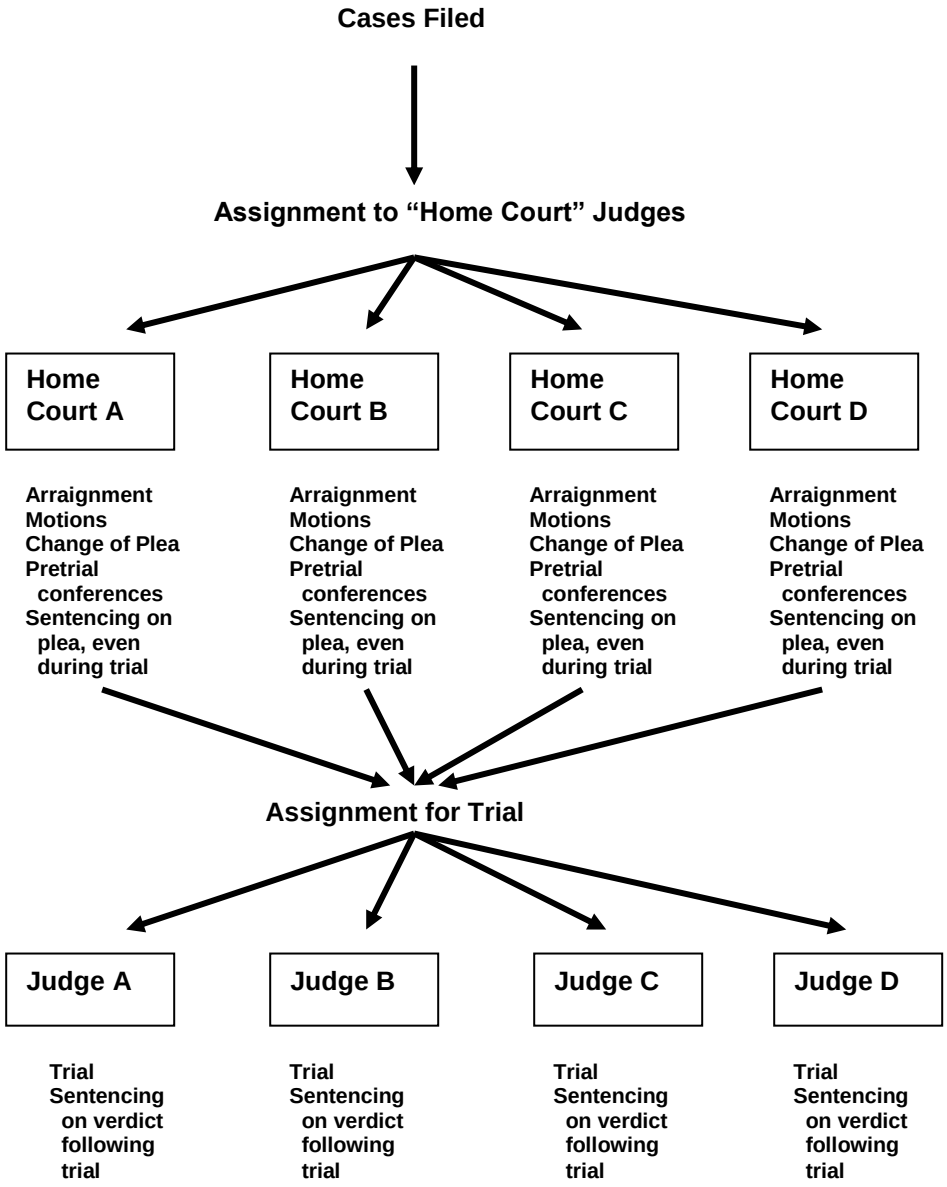
The advantage of a master calendar is its ability to make the best possible use of all resources available to the court at any moment. If the master calendar judge is an effective case manager it will work effectively. The system allows the master calendar judge to assign cases according to the strengths and weaknesses, including the length of experience, of each judge. A disadvantage is that it produces disparate workloads among the judges. The work of the master calendar judge is unlike that of any other judge. Judges who resolve cases more quickly than others get assigned more work than their colleagues. Some lawyers dislike the uncertainty of not knowing the judge before whom the case will be tried prior to the morning of trial. They also dislike the inconsistency of rulings by multiple judges hearing different matters in the same case. There is some loss of judicial efficiency arising from the need for each judge to become familiar with the case when it is assigned to him or her for some purpose. The system is ineffective when the master calendar judge is not a capable case manager. No other judge is responsible for seeing that cases move with speed through the process.

[7] A waiver should be obtained from the defendant allowing sentencing before a judge other than the judge who accepted the guilty plea. "Whenever a judge accepts a plea bargain and retains sentencing discretion under the agreement, an implied term of the bargain is that sentence will be imposed by that judge." People v. Arbuckle, 22 Cal. 3d 749; 150 Cal. Rptr. 778.

"Home Court" Calendar Process

The "home court" process combines features of the other two. Cases are originally assigned to a "home court" for all purposes other than trial. For trial, they are distributed as in a master calendar process. Figure 3 shows the process graphically.

Figure 3
Home Court Calendaring



Initial assignment to a home court judge may be made randomly. However, it can also be done on the basis of geography or by the subject

matter of the cases (with all of a particular type of case assigned to one judge because of that judge's expertise or the desire to have them all handled consistently).

The "home court" process in use in California also includes continuity of counsel assigned to each "home court." The same prosecutor and public defender are assigned to a "home court" for an extended time period. Note that the home court judge is responsible for sentencing on a guilty plea, whether entered before or during trial. Trial assignments are made to any available judge.

The system combines some of the best features of the standard systems. A single judge is responsible and accountable for moving each case speedily to the point of trial and disposition. The lawyers can count on that judge's consistent rulings on all pretrial matters. They can also predict what sentence will be entered on a plea; "judge shopping" for a heavier or lighter sentence on a plea is not possible. On the other hand, the judges are used as they are available for the conduct of trials. There is still some unevenness in work distribution, arising from the trial assignments.

It is not necessary for a court to adopt one or the other of these models. Many successful courts use several different calendaring methods for different types of cases. Furthermore, they make regular adjustments or changes to their calendaring practices. The result is an effective calendaring system different in some details from any of these models.

It is important to reiterate the statement made in the overview: Research has shown that no calendaring system is inherently better than any other. Any calendaring system will work, if it is managed effectively. Without effective management, changing to a different calendaring system will not result in improved performance.

4

Special techniques applicable to cases involving unrepresented litigants

Although California judges handling criminal cases are well aware of the phenomenon, few outsiders understand that large numbers of persons entitled to state funded legal counsel are choosing today to represent themselves. These persons risk serious consequences to their legal rights and interests and create significant problems for judges and court staff. In addition, defendants facing minor criminal, infraction, and traffic charges are not entitled to appointed counsel and usually choose to represent themselves. What approaches appear to be effective for courts in dealing with self represented criminal case litigants? This section discusses approaches used for both felony and misdemeanor cases.

There is considerable case law concerning how a judge handles felony hearings and trials involving a defendant who chooses to waive his or her right to appointed counsel. This manual does not cover that topic. The issues are complex. A judge handling her or his first such case should become intimately aware of the multiple facets of the law applicable to these situations before presiding over the first hearing.[8]

Ensuring that all criminal pro pers are treated the same

Self represented felony defendants are entitled to certain services from the court, at the discretion of the judge. If judges of the same court exercise that judgment differently, incarcerated defendants quickly learn the differences, perceive them as evidence of bias on the part of one of the judges, and escalate the tone and frequency of their motions to the court.

Santa Clara County coordinates with the Department of Corrections on inmate privileges. *For more information contact Melinda Fort at mfort@scscourt.org.*

[8] Judge Jacqueline A. Connor of the Los Angeles Superior Court has prepared a 37 page memorandum entitled *Pro Per Problems and Difficult Defendants*, dated May 2004, referencing and summarizing the case law in this area.

In Orange County, in custody felony and misdemeanor defendants proceeding pro per are assigned to a single department, given a Pro Per Privileges Hearing which results in an order granting propria persona privileges, and handled according to a written protocol which provides for the supplies to be provided and the appointment of investigators and experts when appropriate. *For more information contact Hon. Craig E. Robison @ crobison@occourts.org.*

The Los Angeles County Superior Court and Sheriff's Office have collaborated in developing extensive, coordinated written policies for the court and for the county jail detailing the extent of inmate law library and other privileges when they are representing themselves. *For more information contact Judge David Wesley at dwesley@lasuperiorcourt.org.*

Ensuring that criminal pro pers have sufficient information to evaluate plea offers, to understand the rights that they jeopardize by foregoing counsel, and to have a basic understanding of the criminal trial process

While a person representing him or herself assumes the risk of inadequate representation, the court has a responsibility to fully inform him or her of the rights that he or she is foregoing and the potential harm in doing so. The court can also do what it can to educate him or her about the proceedings. An educated litigant is a better and less disruptive litigant.

In Ventura County, a "Right to Represent Oneself" form is provided to persons expressing a desire to represent themselves, which explains rights and potential liabilities associated with self-representation. *For more information contact Judge Bruce A. Young at BruceA.Young@ventura.courts.ca.gov.*

Los Angeles County has prepared a new "Faretta" Waiver form and a guide for judges in handling these cases. *For more information contact Judge David Wesley at dwesley@lasuperiorcourt.org.*

In Yolo County, an information sheet has been prepared for pro per litigants explaining court operations and expectations of the litigant. In addition, a video explaining the arraignment process is played in the lobby as people enter the arraignment courtroom. *For more information contact Cathleen Berger at cberger@yolo.courts.ca.gov.*

In San Diego County, the Public Defender offers a "counseling attorney" at the arraignment on a misdemeanor to provide brief advice and to negotiate with the District Attorney. This service is not means tested. If the case is disposed, the pro per is charged a small "counseling fee." *For more information contact Terri Brewton at terri.brewton@sdcourt.ca.gov.*

In Stanislaus County, a video is provided for misdemeanor arraignments, informing litigants of typical dispositions and general information such as time to pay and jail reporting protocols. *For more information contact Debby Perry at debbie.perry@stanct.org.*

In Butte County, a court attendant makes a presentation to the audience before the beginning of a DUI arraignment calendar describing how the arraignment will proceed and the typical DUI sentence, including the terms of probation. *For more information contact Beverly Gilbert at bgilbert@buttecourt.ca.gov.*

Appointing standby counsel

There is a disagreement among California courts concerning the advisability of routine appointment of "standby counsel" in felony cases in which the defendant chooses to represent him or herself. Unlike "advisory counsel," which is appointed at the request of the self represented defendant to provide assistance under ground rules established by the court, "standby counsel" is present in court for the sole purpose of assuming defense of the case in the event the defendant's pro per status is revoked by the court because of the defendant's misconduct in the courtroom. Los Angeles County has experienced a number of instances in which self represented litigants appear to act up in court for the purpose

of forcing the court to revoke their pro per status and grant a continuance for the appointment and familiarization of counsel with the case. When "standby counsel" has been appointed, the trial continues without interruption. Los Angeles finds the cost of "standby counsel" well worth the avoidance of disruption and time loss in these instances.

Other courts, including San Diego and Santa Clara Counties, take the opposite point of view and never appoint "standby counsel."

For information on the practice of appointing "standby counsel" in Los Angeles County, *contact Judge Jacqueline Connor at* jconnor@lasuperiorcourt.org. For information on the opposite policy in San Diego and Santa Clara, *contact Terri Brewton at terri.brewton@sdcourt.ca.gov or Judge Richard Loftus at rloftus@scscourt.org.*

Monitoring pro per cases to ensure that they are staying on track for timely resolution

In other contexts involving self represented litigants, courts have learned that they must see that self represented litigants take the steps necessary to move their cases forward. Even though they are legally responsible for initiating case activity in accordance with court rules, as a practical matter pro pers are frequently incapable of doing so.

In San Diego County (Central Division), pretrial conferences are held to make sure pro per cases stay on track. *For more information contact Terri Brewton at terri.brewton@sdcourt.ca.gov.*

5

Strategies for dealing with backlogs

Cases should progress steadily through the court's criminal process. If at any time there are cases needing to proceed to the next stage – whether to preliminary hearing, arraignment, motions, or trial – to meet the state time standards but the court does not have the capacity on its calendars to accommodate them, the court is encountering a case backlog.

One standard for a backlog at the trial stage is when the court is not able to provide trials to all cases within the time frames set forth in PC 1382. However, that is not the only indication of a trial backlog. The court must also remain cognizant of the number of pending cases in which the defendant has waived the right to speedy trial provided by the statute. The court may unknowingly accumulate an unacceptably large number of pending cases if it pays attention only to the PC 1382 deadlines.

A court that consistently disposes of as many cases as are filed, and disposes of all of its cases within the state time to disposition standards, will not have a backlog.

As noted above, an efficient court does not allow case backlogs to accumulate. It regularly reviews case aging information to identify particularly large groups of cases progressing through the criminal process so that it can have the resources ready for them when they reach the next stage.

When a backlog occurs, the court takes immediate steps to eliminate it as quickly as possible. Effective strategies include:

- temporarily shifting judges from civil assignments to try criminal cases. By law (Penal Code 1050), criminal cases take precedence over civil cases on the court's docket;
- seeking the appointment of assigned judges to help eliminate the backlog;
- enlisting the assistance of the prosecution to review the oldest pending cases with an eye towards quick disposition. A backlog in the court always means that the same backlog exists for prosecutors and defenders. It is in the best

interests of all three to find a quick way to reduce the number of pending cases; and

- scheduling special settlement conferences for certain categories of cases such as all cases over a certain age or certain less serious matters.

The other type of backlog that may develop is a clerical backlog of out-of-court paper and file processing. As noted in Chapter 1, clerical backlogs can also be extremely disruptive for the court and can threaten public safety. Steps available to the court executive officer to eliminate paper backlogs include:

- Shifting staff resources from less essential functions to help work through the backlog;
- Temporarily assigning supervisors to paperwork tasks;
- Batch processing of documents and information entry, where an individual staff member will be assigned to a single task, such as preparing sentencing orders, until the backlog is gone. Such assignments free the persons who would otherwise be responsible for these items to devote their efforts to other aspects of the backlog; and
- Authorizing overtime for the purpose of backlog processing.

6

Effective use of court data to manage criminal cases and meet criminal case disposition goals

Having accurate and complete criminal case data is essential for effective criminal caseflow management. This section discusses the sources of data and provides examples of various types of reports that judges and court administrators need.

In a few instances, the tables are populated with data. For the most part, however, they are empty – serving merely as examples of how caseflow data might be displayed for use by judges and court staff.

Sources of criminal case data

Judges and court administrators obtain most of their court data from their automated case management information system (CMIS). Caseflow data is produced from a CMIS as a byproduct of clerks' entry of basic information used to maintain an accurate and complete record of the history of each criminal case. Very few data fields exist in these systems solely for the purpose of assisting administrators to understand caseflow issues. Information often exists in court databases merely as text, which makes it – for all practical purposes – inaccessible as data that the computer can read and compile.

All CMIS systems have report writing functionality. Some systems have more flexibility than others, allowing court staff to design their own customized reports in addition to the standard reports delivered with the application. Although most CMIS systems provide a great deal of useful caseflow data, judges and administrators have very little capability to expand the data and data reports produced by their current systems.

An example where many current case management systems encounter difficulty tracking cases adequately is in the overlap of criminal and mental health issues in cases involving sexually violent predators. Civil commitment hearings following release of a person convicted of a violent sexual crime are not criminal matters but they must, as a practical

matter, be held in criminal courtrooms because of the in-custody status of the defendant. It is extremely difficult for most current case management information systems to accommodate this level of complexity.

However, courts have always been able to supplement their automated systems with manual data gathering. Using simple data collection forms (two examples are set forth below), a court can gather, report and analyze data that is not included within its CMIS application. Most courts have limited capabilities to gather data manually because of the burden imposed on court staff. Therefore, manual data collection is reserved for issues that the court considers critical to the success of its case management effort.

The burden of manual data collection can be minimized by gathering data for only a short period of time – for instance for a week or a month followed by another week or month six months later – or for only a sample of cases – for instance only for cases of a particular case type or only for cases ending in the number "3" (a one tenth sample).

Form 1 -- Form for Manually Gathering Data on Continuances

Cases pending before Judge _____
Activity during the month of _____/200__

Case number in which continuance was requested	Party requesting continuance (P for District Attorney, D for defense attorney, PP for pro per, and S for stipulated continuance)	Action by court (G for granted, D for denied. Use G if the matter is delayed, even though the delay is shorter than the party requested.)

Another topic of critical importance to efficient case processing is the number of appearances per case. While each appearance may be recorded in the court's CMIS, it may not be possible to produce a reliable automated report of the average number of appearances per case. A manual data gathering process – based on data maintained in the CMIS,

or, if that data is not complete, from a review of case files, could be conducted using Forms2.

Form 2 -- Form for Manually Gathering Data on Appearances in Felony Cases

Case Number	Number of Appearances
Lowest number	
Highest number	
Average (total appearances in all 20 cases divided by 20)	

This form can also be used to gather misdemeanor data as well.

Basic caseflow data

Whether gathered automatically or by hand, case management data is most useful when presented in regular, periodic (e.g., monthly) reports in the form of tables or graphs. Basic caseflow data informs the court of the overall status of its caseload and its short and long range trends.

The most fundamental data is filings, dispositions and pending caseload. Table 1 shows this information for different categories of criminal cases.

Table 1

Annual Filings and Dispositions						
	Total Excluding Parking	Felonies	Non-Traffic		Traffic	
			Total Misdemeanors	Infractions	Total Misdemeanors	Infractions
Beginning pending						
Filings						
Dispositions						
End pending						

It is not sufficient for a court to know its overall criminal case filing trends. It should also analyze the makeup of that caseload. For instance, Table 2 shows the number and percentage of felonies that fall within the major felony case types. This data helps the court know whether particular portions of its caseload are increasing or decreasing. The impressions of judges and court staff are often inaccurate for this kind of information – biased by specific incidents that stick in their minds.

Table 2

Caseload Data by CaseType						
	Filings	% of total	Dispositions	% of total	End Pending	% of total
Homicide						
Forcible Rape						
Kidnap						
Assault						
Robbery						
Sexual Offense						
Property Offense						
Drug Offense						
Other Felony						
Miscellaneous Felony Petition						
Reduced to Misdemeanor						
Habeas Corpus						
Total Felonies						

The court also needs to know how the cases are being resolved – by conviction at trial, by plea, by diversion, by dismissal, by acquittal, etc. Table 3 shows that data for the eight most serious felony case categories.

Table 3

Data by Type of Disposition by Case Type								
	Homicide	Forcible Rape	Kidnap	Assault	Robbery	Sexual Offense	Property Offense	Drug Offense
Found Guilty by Jury								
Found Guilty by Court								
Pled Guilty to Felony								
Pled Guilty to Misdemeanor								
Diversion								
Acquittal								
Dismissal								
Total								

Time to disposition data

Time to disposition data measures how quickly or slowly a court disposes of its criminal cases. The first critical issue is the period being measured. Are you measuring from the date of arrest, from the date of filing of a criminal charge in the court, from date of first appearance, from date of bind over for trial, or from date of arraignment? There are legitimate reasons to warrant choosing any one of these dates: Measuring from date of arrest captures the complete time the criminal justice system has been aware of the defendant's criminality. However, the date of formal charge is the first time the court becomes aware of the matter and can exercise any control over the case. Using the date of first appearance eliminates much of the time during which a defendant may have been a fugitive and is the starting date most often used for misdemeanor cases. Bind over and arraignment are times traditionally used for felonies – when the court knows that the case will proceed to trial as a felony and when the defendant has his or her first opportunity to plead to the charge in the court in which the trial will take place.

California's time to disposition standards – California Rule of Court Section 2.1 (j) and (k) – use the date of first appearance on the complaint for misdemeanors and the date of first appearance in any court for felonies.

To know how quickly the court disposes of criminal cases, we generally look at the median, average, or adjusted average time to disposition. Median disposition time is the time required to dispose of the first half of the cases decided during a given time period. This is a very stable

statistic and is the time measure favored by the federal court system in its statistical reporting. Median disposition times are invariably shorter than average or adjusted average times. Median disposition time data sheds light only on the court's performance with respect to the easiest one half of its work. It ignores how the court handles the hardest, longest cases.

Average time to disposition is the total number of days required to dispose of all the cases in the category being analyzed divided by the number of cases. Average disposition times are inordinately influenced by the longest cases. The existence of one or two very long cases can change the average disposition time by ten or twenty days, frequently producing a distorted picture of the court's performance during a particular time period.

An "adjusted average" removes the "outlying values" in computing the average, using statistical techniques to identify the "outliers" – those numbers that are extremely uncharacteristic of the data as a whole. "Adjusted averages" produce a more stable statistic – one not influenced by the longest cases unless the court has many of them. It is theoretically the best single measure of disposition time data, but requires some statistical sophistication on the part of the court's data analysts.

Table 4 could be used to display either median, average, or adjusted average disposition time data. Note that the table does not include a median time for all criminal cases combined; such a number has little meaning because the number of minor offenses is so much greater than the number of felonies a total median time would reflect predominantly misdemeanors and infractions.

Table 4

Median Time to Disposition by Case Category					
	1999	2000	2001	2002	2003
Felony					
Non traffic Misdemeanor					
Non traffic Infraction					
Traffic misdemeanor					
Non traffic misdemeanor					

Three other often used time to disposition statistics are the time required to dispose of the 75th percentile, 90th percentile, or 95th percentile of all cases of a particular case category. Like the median, these statistics

measure the time required to dispose of a percentage of the court's workload. The median disregards the hardest half of all cases. These measures disregard the hardest quarter, ten percent, or five percent, respectively, of the court's cases.

The Judicial Council Court Statistics Reports report time to disposition data in yet a different fashion – the percentage of cases disposed of within the state time standard for each case category. Table 5 is an example of that form of data display, showing the statewide standards and the statewide performance for fiscal year 2002-2003, the latest year for which such data is available.

Table 5

Percentage of Dispositions within California State Time Standards							
	Felonies Disposed Of Within Less Than 12 Months	Felonies Resulting In Bindovers, Certified Pleas Or Dismissals At Or Before Preliminary Hearing In Less Than __ Days			Misdemeanors Disposed Of In Less Than __Days		
		30	45	90	30	90	120
Judicial Council Case Processing Standard	100%	90%	98%	100%	90%	98%	100%
Statewide average for FY 2002-03	90%	56%	67%	82%	70%	87%	91%

Basic case monitoring reports

Judicial staff generally use raw case data, not summary statistical data, to monitor the progress of specific cases – to identify those that are getting close to Penal Code 1382 deadlines, those nearing the court's or the state's time to disposition standards, or those that are exceeding the timelines for their stage in case processing.

Table 6 is an example of a standard report that a judge might get at the end of every week or every two weeks showing the age and status of every case pending on her or his docket. Courts with master calendar systems would not report this data by judge. Judges and staff responsible for the master calendar would review the data on all criminal cases pending before the court – but for the same purpose of identifying those cases in need of immediate attention.

Table 6

Case Monitoring							
Case Name	Case #	Date Filed	Date of Initial Appearance	Date Bound Over	Date Arraigned	Trial Date Set	Current Age
State v. A							
State v. B							
State v. C							
State v. D							
State v. E							

Similar reports can be produced for monitoring compliance with Penal Code 1382.

Table 7

PC 1382 Report of 60 Day Cases					
Case Name	Case #	Date Filed	Date Arraigned	Final date allowable for trial	Date set for trial
State v. A					
State v. B					
State v. C					
State v. D					
State v. E					

Table 7 format can be used to monitor PC382 for 30 and 45 day misdemeanor cases as well.

Data gathering for detailed analyses or problem solving

General case management data and time to disposition data will disclose the existence of a problem with the management of criminal cases. It will not, however, pinpoint the cause of the problem. And, when the cause is identified, it will not monitor progress in solving that particular problem. The following reports are examples of specialized reports designed to focus on specific criminal caseflow management problems.

Tables 8 and 9 would initially be used to determine how many continuances the judges are granting and how many separate hearings or appearances they are holding in the course of a criminal case. If problems are identified in either area, the same reports can be used to influence future judicial behavior – to reduce the number of continuances granted and the number of appearances per case, respectively.

Table 8

Number of Continuances Granted												
	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Judge A												
Judge B												
Judge C												
Judge D												
Judge E												

Table 9

Average Number of Hearings/Appearances Per Case												
	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Judge A												
Judge B												
Judge C												
Judge D												
Judge E												

For more detailed information and forms to use for identifying and solving caseflow problems, see Greacen Associates, LLC, "Developing Effective Practices in Criminal Caseflow Management: Standard Criminal Caseflow Management Reports" available at *http://serranus.courtinfo.ca.gov/programs/courtresearch/documents/ocr-crim-standReports.pdf*

Reporting on compliance with performance standards

Table 10 shows the percentage of criminal cases disposed of each month that are concluded within the number of days prescribed by the statewide time to disposition standards.

Table 10

Actual Performance v. Standards													
	Standard	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Felony		%	%	%	%	%	%	%	%	%	%	%	%
Misdemeanor		%	%	%	%	%	%	%	%	%	%	%	%
Infraction		%	%	%	%	%	%	%	%	%	%	%	%
Traffic		%	%	%	%	%	%	%	%	%	%	%	%

Table 11 shows the same data for each judge on the court for a court using an individual calendaring system.

Table 11

Performance v. Standards													
	Standard	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Judge A		%	%	%	%	%	%	%	%	%	%	%	%
Judge B		%	%	%	%	%	%	%	%	%	%	%	%
Judge C		%	%	%	%	%	%	%	%	%	%	%	%
Judge D		%	%	%	%	%	%	%	%	%	%	%	%

"Priorities for data collection and analysis

This chapter has presented several examples of data tables that courts might wish to use to better display and understand their data. Additionally, "Developing Effective Practices in Criminal Caseflow Management: Standard Criminal Caseflow Management Reports" (http://serranus.courtinfo.ca.gov/programs/courtresearch/documents/ocr-crim-standReports.pdf) provides several more examples. The purpose for presenting them is not to suggest that all courts must or should have all of this data, but rather to show what sorts of data reports other courts have found worthwhile and helpful.

Because all courts have limited resources, it is legitimate to ask, "Which of the various reports and measures are the most important?" The most basic are the most important. Filings, dispositions, and pending caseload are the most important; displaying some form of time to disposition data is next in importance; and reporting case aging, is third in importance. The next order of importance should be given to specific reports on the issues on which the court wishes to focus its criminal case management efforts, such as reducing the number of continuances or reducing the average number of appearances per case.

7

Model Caseflow Management Guidelines

The following are examples of the sorts of guidelines to which all the judges of a court might agree to enhance criminal caseflow management within the court. These guidelines are hypothetical and their detailed provisions would have to be established by each court, after consultation with the heads of other criminal justice entities.

1. Setting criminal case schedules. The dates for trial and for all pretrial events will be set at the arraignment in all felony cases. All case schedules will include a motion cut off date. Judges will reduce to a minimum the number of pretrial appearances scheduled.

2. Implementing the plea cut off policy. In accordance with the procedure agreed upon among the court, the District Attorney and the Public Defender, the case schedule for all cases, except murder, forcible rape, and career criminal cases, will include a date, not to exceed 15 days following the arraignment, for tendering of an offer of disposition by the District Attorney, followed by a plea acceptance cut off date 15 days thereafter. The court will not accept a plea based on an offer of disposition after the plea acceptance cut off date.

3. Identifying all pending criminal charges against the same individual and scheduling them for consideration concurrently. Before scheduling a matter, staff will search the CMIS for any other criminal matters pending against the same defendant, including misdemeanors and violation of probation charges. If such matters are found, staff will alert the judge, who will confer with the judge or judges to whom the other matter or matters are assigned and agree on the transfer of all pending cases to one of them. As a general rule, if there are two open felony cases, the later filed will be transferred to the judge to whom the first-filed case has been assigned.

4. Limiting continuances. In accordance with the policy set forth in PC 1050, continuances will not be granted merely for the convenience of the parties or counsel, nor merely upon stipulation by the parties. All judges shall attempt to maintain established trial dates, to the extent consistent with the ends of justice.

5. Scheduling hearings. All hearings shall be scheduled for a time certain. Every judge will exert her or his utmost energies to see that hearings begin at the time scheduled. All judges will assume the bench at or before the time the first matter in the morning or afternoon is scheduled.

6. Eliminating arraignments. Upon the stipulation of all parties, the judge, following the completion of a preliminary hearing and the entry of an order binding the defendant over for trial on one or more of the charges contained in the complaint, will treat the complaint as an information and will immediately conduct an arraignment on the basis of that information.

7. Concurrent resolution of new criminal charges and probation or parole revocation proceedings. When a person currently on probation or parole is charged with a new criminal offense, the court will at the first appearance explore with the District Attorney the possibility of scheduling the matter for a hearing on the revocation of his or her probation or parole with the understanding that the new criminal charge will be dismissed if at such hearing parole or probation is revoked.