

CRIMINAL INVESTIGATION & ADJUDICATION

COMMITTEE REPORT [APPENDIX B: CRIMINAL CASE MANAGEMENT]

In September 2015, Chief Justice Mark Martin convened the North Carolina Commission on the Administration of Law and Justice (NCCALJ), a sixty-five member, multidisciplinary commission, requesting a comprehensive and independent review of North Carolina's court system and recommendations for improving the administration of justice in North Carolina. The Commission's membership was divided into five Committees: (1) Civil Justice, (2) Criminal Investigation and Adjudication, (3) Legal Professionalism, (4) Public Trust and Confidence, and (5) Technology. Each Committee independently made recommendations within its area of study.

This is the report of the Criminal Investigation and Adjudication Committee along with Appendix B, Criminal Case Management. To access the Committee's full report and all four appendices, or to access the full report of the NCCALJ, including all five of the Committee reports, visit www.nccalj.org.

CRIMINAL INVESTIGATION & ADJUDICATION COMMITTEE REPORT

This report contains recommendations for the future direction of the North Carolina court system as developed independently by citizen volunteers. No part of this report constitutes the official policy of the Supreme Court of North Carolina, of the North Carolina Judicial Branch, or of any other constituent official or entity of North Carolina state government.

EVIDENCE-BASED RECOMMENDATIONS TO IMPROVE THE STATE'S CRIMINAL JUSTICE SYSTEM

COMMITTEE CHARGE & PROCEDURES

The Criminal Investigation and Adjudication Committee of the North Carolina Commission on the Administration of Law and Justice (NCCALJ) was charged with identifying areas of concern in the state's criminal justice system and making evidence-based recommendations for reform. Starting with a comprehensive list of potential areas of inquiry, the Committee narrowed its focus to the four issues identified below. Its inquiry into these issues emphasized data-driven decision-making and a collaborative dialogue among diverse stakeholders. The Committee was

composed of representatives from a broad range of stakeholder groups and was supported by a reporter. When additional expertise was needed on an issue, the Committee formed subcommittees (as it did for Juvenile Reinvestment and Indigent Defense) or retained outside expert assistance from nationally recognized organizations (as it did for Criminal Case Management and Pretrial Justice).

The Committee met nine times. The subcommittee on Indigent Defense met four times; the

subcommittee on Juvenile Reinvestment met twice. Commissioners heard from interested persons and more than thirty state and national experts and judicial officials. The Committee chair, reporter, and subcommittee members gave presentations to and sought feedback on the Committee's work from a variety of groups, including for example, the N.C. Sheriffs' Association, N.C. Senior Resident Superior Court Judges, N.C. Chief District Court Judges, N.C. Police Chiefs, and the governing body of the N.C. Police Benevolent Association. In addition to support from the Committee reporter, NCCALJ

staff, the North Carolina Administrative Office of the Courts' Research and Planning Division, the National Center for State Courts (NCSC), and the North Carolina Sentencing Policy and Advisory Commission provided data and research. The Committee prepared an interim report, which was presented to the public in August 2016 for online feedback and in-person comments at four public meetings held around the state. That feedback was considered by the Committee in formulating its final recommendations. For more detail on all of the Committee's recommendations, please see the attached Appendices noted below.

RECOMMENDATIONS

The Criminal Investigation and Adjudication Committee of the North Carolina Commission on the Administration of Law and Justice makes the following evidence-based recommendations to improve the state's criminal justice system:

- **JUVENILE REINVESTMENT**

As detailed in Appendix A, the Committee recommends that North Carolina raise the juvenile age to eighteen for all crimes except violent felonies and traffic offenses. Juvenile age refers to the cut-off for when a child is adjudicated in the adult criminal justice system versus the juvenile justice system. Since 1919, North Carolina's juvenile age has been set at age sixteen; this means that in North Carolina sixteen- and seventeen-year-olds are prosecuted in adult court. Only one other state in the nation still sets the juvenile age at sixteen. Forty-three states plus the District of Columbia set the juvenile age at eighteen; five states set it at seventeen. The Committee found,

among other things, that the vast majority of North Carolina's sixteen- and seventeen-year-olds commit misdemeanors and nonviolent felonies; that raising the age will make North Carolina safer and will yield economic benefit to the state and its citizens; and that raising the age has been successfully implemented in other states, is supported by scientific research, and would remove a competitive disadvantage that North Carolina places on its citizens.

In addition to recommending that North Carolina raise the juvenile age, the Committee's proposal includes a series of recommendations designed to address concerns that were raised by prosecutors and law enforcement officials and were validated by evidence. These recommendations include, for example, requiring the Division of Juvenile Justice to provide more information to law enforcement officers in the field, providing victims with a right to review certain decisions by juvenile court counselors, and implementing technological upgrades so that prosecutors can have meaningful access to an individual's juvenile record. Importantly, the

Committee’s recommendation is contingent upon full funding. The year-long collaborative process that resulted in this proposal also resulted in historic support from other groups, including the North Carolina Sheriffs’ Association, the North Carolina Association of Chiefs of Police, the North Carolina Police Benevolent Association, the North Carolina Chamber Legal Institute, the John Locke Foundation, and Conservatives for Criminal Justice Reform. Additionally, this issue has received significant public support. Of the 178 comments submitted on it during the NCCALJ public comment period, 96% supported the Committee’s recommendation to raise the age.

- **CRIMINAL CASE MANAGEMENT**

The Committee recommends that North Carolina engage in a comprehensive criminal case management reform effort, as detailed in the report prepared for the Committee by the National Center for State Courts (NCSC) and included as Appendix B. Article I, section 18 of the North Carolina Constitution provides that “right and justice shall be administered without favor, denial, or delay.” Regarding the latter obligation, North Carolina is failing to meet both model criminal case processing time standards as well as its own more lenient time standards. Case delays undermine public trust and confidence in the judicial system and judicial system actors. When unproductive court dates cause case delays, costs are inflated for both the court system and the indigent defense system by dedicating — sometimes repeatedly — personnel such as judges, courtroom staff, prosecutors, and defense lawyers to hearing and trial dates that do not move the case toward resolution. Unproductive court dates also are costly for witnesses, victims, and defendants and their families, when they

miss work and incur travel expenses to attend proceedings. Case delay also is costly for local governments, which must pay the costs for excessive pretrial detentions, pay to transport detainees to court for unproductive hearings, and pay officers for time spent traveling to and attending such hearings. Delay also exacerbates evidence processing backlogs for state and local crime labs and drives up costs for those entities. The report at Appendix B provides a detailed road map for implementing the recommended case management reform effort, including, among other things, adopting or modifying time standards and performance measures, establishing and evaluating pilot projects, and developing caseflow management templates. The report, which also recommends that certain key participants be involved in the project and a project timeline, was unanimously adopted by the Committee.

- **PRETRIAL JUSTICE**

As described in the report included as Appendix C, the Committee unanimously recommends that North Carolina carry out a pilot project to implement and assess legal- and evidence-based pretrial justice practices. In the pretrial period — the time between arrest and when a defendant is brought to trial — most defendants are entitled to conditions of pretrial release. These can include, for example, a written promise to appear in court or a secured bond. The purpose of pretrial conditions is to ensure that the defendant appears in court and commits no harm while on release. Through pretrial conditions, judicial officials seek to “manage” these two pretrial risks. Evidence shows that North Carolina must improve its approach to managing pretrial risk. For example, because the state lacks a preventative detention procedure, the only option for detaining highly dangerous defendants

is to set a very high secured bond. However, if a highly dangerous defendant has financial resources — as for example a drug trafficker may — the defendant can “buy” his or her way out of pretrial confinement by satisfying even a very high secured bond. At the other extreme, North Carolina routinely incarcerates pretrial very low risk defendants simply because they are too poor to pay even relatively low secured bonds. In some instances these indigent defendants spend more time in jail during the pretrial phase than they could ever receive if found guilty at trial. These and other problems — and the significant costs that they create for individuals, local and state governments, and society — can be mitigated by a pretrial system that better assesses and manages pretrial risk. Fortunately, harnessing the power of data and analytics, reputable organizations have developed empirically derived pretrial risk assessment tools to help judicial officials better measure a defendant’s pretrial risk. One such tool already has been successfully implemented in one of North Carolina’s largest counties. The recommended pilot project would, among other things, implement and assess more broadly in North Carolina an empirically derived pretrial risk assessment tool and develop an evidence-based decision matrix to help judicial officials best match pretrial conditions to empirically assessed pretrial risk. Such tools hold the potential for a safer and more just North Carolina.

● INDIGENT DEFENSE

As discussed in more detail in Appendix D, the Committee offers a comprehensive set of recommendations to improve the State’s indigent defense system. Defendants who face incarceration in criminal court have a constitutional right

to counsel to represent them. If a person lacks the resources to pay for a lawyer, counsel must be provided at state expense. Indigent defense thus refers to the state’s system for providing legal assistance to those unable to pay for counsel themselves. North Carolina’s system is administered by the Office of Indigent Defense Services (IDS). When the State fails to provide effective assistance to indigent defendants, those persons can experience unfair and unjust outcomes. But the costs of failing to provide effective representation are felt by others as well, including victims and communities. Failing to provide effective assistance also creates costs for the criminal justice system as a whole, when problems with indigent defense representation cause trial delays and unnecessary appeals and retrials. While stakeholders agree that IDS has improved the State’s delivery of indigent defense services, they also agree that in some respects the system is in crisis. The attached report makes detailed recommendations to help IDS achieve this central goal: ensuring fair proceedings by providing effective representation in a cost-effective manner. The report recommends, among other things, establishing single district and regional public defender offices statewide; providing oversight, supervision, and support to all counsel providing indigent defense services; implementing uniform indigency standards; implementing uniform training, qualification, and performance standards and workload formulas for all counsel providing indigent services; providing reasonable compensation for all counsel providing indigent defense services; and reducing the cost of indigent defense services to make resources available for needed reforms. Implementation of these recommendations promises to improve fairness and access, reduce case delays, and increase public trust and confidence.

This report contains recommendations for the future direction of the North Carolina court system as developed independently by citizen volunteers. No part of this report constitutes the official policy of the Supreme Court of North Carolina, of the North Carolina Judicial Branch, or of any other constituent official or entity of North Carolina state government.

APPENDIX B

CRIMINAL CASE MANAGEMENT

NCSC — Implementation of a Criminal Caseload Management Plan
A Report to the Criminal Investigation and Adjudication Committee
August 17, 2016



Implementation of a Criminal Caseflow Management Plan

*A Report to the North Carolina
Commission on the Administration
of Law and Justice*

FINAL REPORT
August 17, 2016

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This report was prepared at the request of the North Carolina Commission on the Administration of Law and Justice (Commission) with funding support from the State Judicial Institute. The purpose of this report is to support the Commission's deliberations regarding improvements to the adjudication of criminal cases in the state's trial courts. The opinions expressed in this report are those of the authors as employees of the National Center for State Courts and do not necessarily reflect the position of the State Justice Institute, the North Carolina Administrative Office of Courts or the Commission.

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Introduction

The North Carolina Commission on the Administration of Law and Justice (Commission) was convened by Chief Justice Mark Martin in September 2015 as an independent, multidisciplinary commission that is undertaking a comprehensive evaluation of the North Carolina judicial system and will be making recommendations for strengthening the courts.

Chief Justice Martin intends for the Commission's work to provide a basis for discussion with the General Assembly to help ensure North Carolina's Judicial Branch meets the needs of its citizens and their expectations for a modern court system. The Commission will finalize its findings and recommendations in a series of reports that will be presented to the Chief Justice and made available to the public in early 2017.

The Commission includes a number of committees. This report is made to the Committee on Criminal Investigation and Adjudication Committee. The Committee identified Criminal Case Management and a number of other issues for further exploration.

The mission of the North Carolina Judicial Branch is:

To protect and preserve the rights and liberties of all the people, as guaranteed by the Constitutions and laws of the United States and North Carolina, by providing a fair, independent, and accessible forum for the just, timely, and economical resolution of their legal affairs.¹

The Superior and District Court divisions are the trial court divisions that hold trials to determine the facts of cases. The Superior Court division houses the Superior Court, which is the court with general trial jurisdiction. Generally, the Superior Court hears felony criminal cases and the District Court hears misdemeanor criminal cases and infractions. The Superior Court holds court in one location in the county, whereas some District Courts hold court in multiple places in the county. Judges for both courts are elected in non-partisan elections.

Each Superior Court district has a Senior Resident Superior Court Judge who manages the administrative duties of the court. Judges are assigned to a judicial district for a six-month period and then rotated to another district for the same time period. Each District Court district has a Chief District Court Judge who manages the administrative duties of the court.

The National Center for State Courts (NCSC) is an independent, nonprofit court improvement organization founded at the urging of Chief Justice of the United States Supreme Court Warren E. Burger. He envisioned NCSC as a clearinghouse for research information and comparative data to support improvement in judicial administration in state courts.

The Commission contracted with the NCSC to prepare this report for the Committee.

¹ Annual Report of the North Carolina Judicial Branch. July 1, 2014 – June 30, 2015.

The NCSC consultant provided general background work for this report to the Committee at its March 11, 2016 meeting² on criminal case management and then began a review of data and reports provided by the North Carolina Administrative Office of the Courts (AOC) and made a follow up call with AOC staff. This information helped identify trends or issues that impact criminal case management. This preliminary work was followed by interviews in Raleigh with trial and appellate court judges, district attorneys, defense counsel and public defenders, court administrators, and AOC staff listed in Appendix H.

These interviews provided the NCSC consultant with a better understanding of the perspective of various stakeholders, identified major trends or issues specific to criminal case management, assessed current information collection and reporting capabilities, and determined the feasibility of creating criminal caseflow performance measures. These interviews also afforded an opportunity to discuss the AOC's capacity to support statewide implementation of a criminal caseflow plan and identify additional resources from either the trial courts or the AOC that could support this effort.

This report begins with an overview of caseflow management principles and practices and the current application of those principles in North Carolina. It then presents evidence indicating that North Carolina is ripe for criminal caseflow management reform. It also reviews how key caseflow management tools may improve case management in North Carolina. The report continues with a discussion of the potential benefits of engaging in caseflow management reform, and concludes with a rubric for North Carolina to engage in a statewide criminal caseflow management improvement project.

Justice Delayed is Justice Denied

It is a legal maxim that "justice delayed is justice denied." As Chief Justice Burger noted in an address to the American Bar Association in 1970: "A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: that people come to believe that *inefficiency and delay will drain even a just judgment of its value*; that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; [and] that people come to believe the law – in the larger sense – cannot fulfill its primary function to protect them and their families in their homes, at their work, and on the public streets"³ (emphasis added).

This concept – that Justice Delayed is Justice Denied – is embedded in Section 18 of North Carolina's Constitution:

All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

In North Carolina, just as justice may be denied as a result of problems with providing the effective assistance of counsel, justice may be denied by delays in the processing of criminal cases in the trial courts. Indications of potential problems are described below and throughout this report. Generally, delays in the processing of cases may create problems for:

² Minutes and materials from that meeting are posted online (<http://nccalj.org/agendas-materials/criminal-investigation-and-adjudication-agendas-materials/criminal-investigation-and-adjudication-meeting-materials-march-11-2016/>).

³ Burger, Warren. (1970). "What's Wrong with the Courts: The Chief Justice Speaks Out", *U.S. News & World Report* (vol. 69, No. 8) 68, 71 (address to ABA meeting, Aug. 10, 1970).

- Pre-trial detainees who sit in the county jail while waiting for the prosecution to prove to a judge or jury that they violated the law, and in the meantime cannot earn income or support their family.
- Pre-trial detainees who choose to plead guilty to a charge in order to obtain the short-term gain of getting out of jail but then must face the long term consequences of a conviction, including difficulty finding employment and, in the case of a felony, loss of voting rights.
- Victims of crimes who need resolution of their case in order to receive restitution and/or to put the emotional damage of the crime behind them.
- Witnesses who over time may become unavailable and less likely to provide credible testimony.
- Institutions and individuals who will expend additional time and cost to resolve cases.

Summary of Findings and Recommendations

Key Issues

The following is a summary of the key issues that NCSC was asked to address in this report, along with major recommendations resulting from the study:

1. Identify Indicators Suggesting That North Carolina Should Undertake Efforts to Improve the Management of Criminal Cases Through Better Caseflow Management

As detailed in this report, justice requires that North Carolina must undertake new efforts to improve the management of criminal cases.

As a first step, North Carolina needs to gather accurate information in order to determine the extent of delay in the trial courts. Current reports give a sense of the delay – median time or number not disposed within time standard goals – but they do not provide information on whether some cases are so delayed that they cause injustice to the defendants to victims, nor do the reports give any indication on the causes of that delay. Part of the challenge in obtaining accurate data includes the following:

- Courts now define cases differently, making it impossible to interpret the AOC reports or compare delay in courts within the state or with other states.
- Courts do report median time to disposition, but the median time could be influenced by the number of cases resolved at the first appearance. Reports do not make it easy for the District Attorney (DA) or the Court to determine how many cases are older than two times the time standard or four times the time standard or longer.
- There are no reports on how many cases involve pre-trial detained defendants, on how many detained defendants have had all their charges eventually dismissed, on the sentences imposed on pre-trial detainees and whether those sentences are greater than the time served as detained defendants, or on the number of detainees who plead guilty to charges that they did not commit solely because they and their loved ones could not financially or emotionally afford for them to remain in the county jail.
- There is no systematic collection of information on the number or type of hearings set per case, the number or type of hearings held, the number of hearings continued or the reason for the continuance.
- There is limited information regarding the interval between the time that the defendant, attorneys, witnesses and victims are told the case is scheduled for hearing and the time that the case is actually called for hearing.

For more detail on these issues, see the section on “Information Needed for North Carolina to Know Whether its Trial Courts Are Achieving Timely Resolution of Criminal Cases” on page 40 of this report.

North Carolina must find and allocate the resources to gather this and additional data in order to determine whether its courts are now providing timely justice, and if not, who in its population is being denied justice. Once accurate data is gathered and analyzed, North Carolina can adopt a caseflow management plan that follows the fundamentals of such plans described in this report, which will reduce any injustice now occurring.

2. Discuss Potential Benefits to the State for Addressing Criminal Caseflow Management, Including Cost Savings, Improvements in Public Trust and Confidence, and Improved User Perception of Satisfaction with, and Fairness of, Criminal Proceedings

a. Cost Savings

As described in this report, North Carolina could benefit in many ways by implementing an effective caseflow management program. Jurisdictions that have successfully implemented caseflow management practices have achieved cost savings by, for example:

- Reducing the cost of pretrial detention by reducing the length of time that defendants are jailed while they await resolution of their cases. A recent Committee study of six North Carolina counties found that, depending on the charge, the average length of pretrial detention on the study date ranged from 35 to 193 days and the cost of detention ranged from \$40 to \$60 per day.⁴ As stated above, to measure cost savings in North Carolina, the court must know and be able to report the number and age of pending cases with detained defendants. An effective case management system using differentiated case tracking can establish reduced time standards for cases involving detainees and can expedite scheduling of their cases.
- Reducing the cost of pretrial detention by reducing the time that Superior Court defendants are incarcerated while they await their first hearing in Superior Court. Detainees can now wait in jail until the DA calendars an administrative setting or first trial date.
- Reducing the cost and security risks of transporting detainees to court for unproductive hearings.
- Reducing the number of court settings per case, thereby reducing the taxpayer dollars spent on judges, prosecutors, law enforcement officers, public defenders, and court reporters and court personnel who must appear in court for unproductive hearings. As stated above, an effective case management system will result in fewer case settings per case and fewer continuances. Reducing the number of court setting will also reduce the cost to victims, witnesses and families of defendants who travel to court and may need to take time from their work and families.
- Providing more efficient coordination of individuals and tasks associated with complicated cases by utilizing early screening to allocate sufficient time and resources to resolve them.

For more detail on these issues, see the section on “Potential Benefits of Improved Criminal Case Management” on page 43 of this report.

In addition, effective caseflow management practices can save victims, defendants and their families the costs associated with taking off from work and travelling to the courthouse to attend superfluous hearings and the cost to defendants paying legal fees for private counsel. If an effective caseflow management

⁴ North Carolina Pretrial Jail Study. Buncombe, Carteret, Cumberland, Duplin, Johnston, Rowan Counties. 2016 (the study did not attempt to measure the total time of pretrial detention (from charging through trial); it measured only the length of time detainees had spent in custody on the study date).

program is implemented, the probability that every court hearing will be a meaningful event will increase, resulting in a major reduction of times that cases are scheduled for hearing and major savings in costs to taxpayers, victims and defendants.

b. Public Trust and Confidence and Improvements in User Satisfaction

NCSC conducts national surveys on public trust and confidence in the nation's courts. Surveys confirm that citizens often believe that the legal system takes too long and costs too much overall. In the most recent assessment of satisfaction, focus group participants expressed their belief that there is collusion in the judicial process, particularly by attorneys, to defer or delay court decisions. Participants also expressed concerns that the financial interests of some parties work against the efficient administration of justice.⁵

The 2015 joint Elon University and High Point University poll of citizen confidence in public institutions done for the Commission's Public Trust and Confidence Committee sheds light on the public perception of the North Carolina courts and other institutions.⁶ Public confidence in North Carolina is quite high regarding the local police or sheriff, with 81% of those surveyed expressing the opinion that they are "somewhat or very confident" in this local institution. North Carolina state courts followed with nearly 66% of respondents stating they were "somewhat or very confident" in this state institution. Approximately 40% indicated that they believe people "usually" receive a fair outcome when they deal with the court, and a small percentage (3%) answered "always."

Many respondents to the Elon/High Point poll perceive that wealthy individuals and white residents receive better treatment by the state courts than do black, Hispanic, or low income residents. Further, more than half of the respondents believe people without attorneys and those who don't speak English receive somewhat worse or far worse treatment than others in the court system.

While the impact of delay on the public may be difficult to quantify and link directly to public opinion, individuals who appear in court as parties, witnesses, and victims are certainly impacted by delay. The NCSC has noted that one of the most frequent responses to public satisfaction surveys are concerns about starting court on time and complaints about the amount of time it takes to resolve cases.

An effective caseflow management program will result in the timely resolution of criminal cases and will enable the DA and the courts to document that timely resolution. This, over time, will enhance public trust and confidence in the courts.

3. Review the Fundamental Principles of Criminal Caseflow Management and Their Application in the North Carolina Trial Courts

On pages 10 through 30, this report provides a comprehensive overview of caseflow management principles and practices and a review of their current application in North Carolina's trial courts. North Carolina is unique in the practice of prosecutorial control over setting of cases, as opposed to the principle of early and continuous *court* control. As discussed further in the report, North Carolina law does promote a cooperative approach to scheduling, which is in keeping with the principle of communication between the court, opposing parties and other criminal justice agencies.

⁵ Rutledge, Jesse (2016). *The State of State Courts: Reviewing Public Opinion*. The Court Manager. Spring 2016.

⁶Elon University (2015). Elon University Poll. Accessed May 28, 2016 at: <http://www.elon.edu/e-web/elonpoll/111915.xhtml>.

Comments from interview participants and recent studies suggest that many courts experience problems with scheduling productive and meaningful court events. High rates of continuances are the primary indicator that jurisdictions are having difficulty ensuring that all parties are ready to proceed when they appear in court. Many of the reasons for continuances (such as delays in obtaining drug and alcohol test results, overscheduling of cases, attorney scheduling conflicts and lack of preparation) are not unique to the North Carolina courts, and many jurisdictions have taken steps to address these issues through greater coordination between parties and improved scheduling practices.

4. Identify Key Components of Effective Criminal Caseflow Management That Could Be Employed in North Carolina Such as Differentiated Case Management, Performance Metrics, Evaluation, and Feedback

As discussed in this report, a set of well-established performance measures relating to caseflow management are in use across the country, and several of these are published by their respective administrative offices. Information on time to disposition, pending case age, and disposition rates was provided by the NC AOC for this report. Problems remain, however, with the accuracy of case information due to differences in how courts count cases and report dispositions. While these limitations should not inhibit progress toward developing a comprehensive caseflow management program, they will need to be addressed. In the short term, efforts to improve consistency at the local level are needed, and more long term efforts are currently underway to move to a next generation of case management software which should provide better information and reporting capabilities.

5. Propose a Step-By-Step Plan to Guide Statewide Planning Toward Improving Criminal Case Management, Including Major Activities, Key Players, and a Timeline

A number of recommendations are provided below which relate to improving the management of criminal cases. Some of these can be implemented on an individual basis, but the greatest benefit and impact would be gained through a coordinated, state-wide effort led by the Supreme Court and managed by the AOC in order to improve case information and reporting, to promote the adoption of principles through sharing of best practices and establishment of pilot projects, and to provide on-going education and monitoring to sustain the effort. The final section of this report includes an outline and sample timetable for a state-wide caseflow management improvement effort based on experiences in other states.

Key Recommendations

The following recommendations are offered for consideration:

1. The Supreme Court, a revived Judicial Council, Senior Resident Superior Court Judges, Chief District Court Judges and the AOC should exercise leadership in communicating the importance of timely resolution of cases and adoption of caseflow management principles and practices.
2. The Supreme Court should assess the suitability of current time guidelines by directing the AOC ensure that all courts use a single definition of a case and then compare current time to disposition results against the guidelines. The Court should consider modifying the guidelines based on these results, using the Model Time Standards referred to in this report as a guide.

3. The Supreme Court should endorse the use of time guidelines as a tool to help justice system leaders actively manage criminal caseloads.
4. A revived Judicial Council, or a new multi-disciplinary body created by the Supreme Court to address caseflow management, and the AOC should review the data and information needs identified in this report and develop new measures to capture and analyze the effectiveness of scheduling practices in resolving cases within established time standards.
5. The Supreme Court should consider authorizing pilot courts to test and demonstrate the benefits of criminal caseflow management best practices which have the potential for state-wide adoption.
6. The North Carolina Supreme Court should ask the AOC to develop caseflow management plan templates for adoption by courts and district attorneys that emphasize local communication and collaboration between justice system partners. A template may specify elements that should be contained in every plan, while allowing flexibility for each court to develop language that meets local needs.
7. The AOC should continue its efforts to promote data consistency with a particular emphasis on consistent and accurate caseload counts and dispositions to ensure the accuracy of reports and performance measures. This begins with a clear definition of a case and requires the assurance that all persons entering data into the system do so correctly.
8. Along with efforts to improve data accuracy and consistency, the AOC should provide prosecutors and courts with regular caseflow management reports that provide general management information, as well as more detailed information to assist judges and prosecutors who manage individual dockets and cases.
9. The AOC should provide DAs and the courts access to caseflow management reports that contain accurate information on the age and status of pending cases to enable DAs to calendar cases and enable judicial branch leaders and the public to monitor the progress of cases.
10. The AOC should conduct studies designed to further assess the status of criminal case management across the state, which should include such questions as:
 - a. What is the frequency of continuances and their impact on case age?
 - b. What are the primary reasons for continuances?
 - c. What factors account for the wide range of time to disposition across the state?
11. The AOC should develop expertise and information to assist courts in implementing caseflow management practices.
12. Caseflow management topics should be incorporated into training programs for judges, district attorneys, the defense bar, clerks, and court administrative personnel.
13. District attorneys and judges should take steps to ensure that every court hearing is a meaningful event by calendaring and conducting an effective administrative setting in Superior Court within 60 days as required by state statute,⁷ and that a similar practice be established for most criminal cases in District Court. An effective administrative setting will

⁷ N.C. Gen. Stat. § 7A-49.4.

- resolve all pretrial issues and then set the case for trial only after discovery is complete, pretrial motions are resolved and final plea negotiations have been completed.
14. The DAs and Judicial Branch leaders should review current calendaring practices, such as “bulk” scheduling, and adopt practices that reduce the number of court settings, the number of continuances and other related delays.
 15. The DAs and Judicial Branch leaders should review the practice of setting cases solely on monthly officer court days in District Court.
 16. The Supreme Court should consider whether District Judges should be authorized to calendar administrative settings for detained Superior Court defendants during the defendants’ first appearance.
 17. The Supreme Court should consider whether magistrates should be authorized and required to make a determination of indigence and assignment of a public defender at the defendant’s first appearance.
 18. The Supreme Court should assign responsibility to the Judicial Council or create a new multi-disciplinary steering committee with the responsibility and authority for providing overall caseflow management strategy and direction to implement the preceding recommendations.

Caseflow Management Principles and Practices

Caseflow management is the coordination of court processes and resources used to ensure that cases progress in a timely fashion from filing to disposition. Judges and managers in control of case scheduling can enhance justice when they supervise case progress early and continuously, set meaningful events and deadlines throughout the life of a case, and provide credible trial dates. Proven elements of practices in caseflow management include case-disposition time standards, use of differentiated case management, meaningful pretrial events and schedules, limiting continuances, time-sensitive calendaring and docketing practices, effective information systems that monitor age and status of cases, and control of post-disposition case events.

Effective caseflow management makes justice possible both in individual cases and across judicial systems and courts. It helps ensure that every litigant receives procedural due process and equal protection. Caseflow supervision is strictly a management process. The resolution of each case on its legal merits is never compromised by an effective caseflow management system.

The Impact of Local Legal Culture

The first comprehensive and rigorous national study of delay in state courts was conducted by the NCSC. In 1976, Thomas Church and fellow researchers examined civil and criminal cases disposed in 21 state trial courts of general jurisdiction. They concluded that the speed of disposition of civil and criminal litigation in a court cannot be ascribed in any simple sense to the length of its backlog, any more than court size, caseload, or trial rate can explain it. Rather, both quantitative and qualitative data generated in this research strongly suggest that both speed and backlog are determined in large part by established expectations, practices, and informal rules of behavior of judges and attorneys. For want of a better term, this cluster of related factors was labeled the “*local legal culture.*”

Court systems become adapted to a given pace of civil and criminal litigation. That pace has a court backlog of pending cases associated with it. It also has an accompanying backlog of open files in attorneys' offices. These expectations and practices, together with court and attorney backlog, must be overcome in any successful attempt to increase the pace of litigation. Church and his colleagues observed that trial court delay is not inevitable, but that "changes in case processing speed will necessarily require changes in the attitudes and practices of all members of a legal community." In accelerating the pace of litigation in a court, they noted, "the crucial element . . . is concern on the part of judges [and in North Carolina, the District Attorney as well,] with the problem of court delay and a firm commitment to do something about it." They found that attempts to alter the caseloads of individual judges by adding judges or decreasing filings are not likely to increase either productivity or speed. To reduce pretrial delay, they recommended that courts:

- Establish management systems by which the court, and not the attorneys, controls the progress of cases.
- Use trial-scheduling practices and continuance policies that create an expectation on the part of all concerned that a trial will begin on the first trial date scheduled.
- Emphasize readiness to try (rather than negotiate plea agreements) as a means to induce settlements.
- Increase effectiveness of speedy-trial standards for criminal cases through the introduction of operational consequences for violation of the standards and through reduced ease of waiver by defendants.⁸

Efforts to improve caseload management do not just serve the paramount goal of providing prompt justice. In fact, they are critically important in saving time and work for all participants in the justice system, from litigants to lawyers. Effective caseload management promotes predictability, improves lawyering, and engenders respect for the court and justice system. As an example, when trust is enhanced among lawyers, their jobs get easier. Reliability and consistency means lawyers only have to prepare once. Lawyers' reputations, as well as that of the court, are elevated when events and decisions occur as forecasted.

Improved caseload management means better time management for lawyers, too. One of the laments of both public and private attorneys is the inordinate amount of time they must spend in court, reappearing on the same case on multiple occasions. Effective caseload management can and does reduce unnecessary appearances by lawyers and litigants, saving time and inconvenience for everyone. Clients and the general public are more satisfied when they sense lawyers and the justice system aren't wasting their time.

Lastly, a little known result of more efficient caseload is improved attorney competence. NCSC's research has shown that efficient attorneys are more likely to be viewed as competent and timely, meaning that they did not delay case disposition for lack of preparation or frivolous reasons to gain time⁹ by opposing counsel, judges and court staff.¹⁰ As a result, efficiency and preparedness become virtues expected of not only judges, but the practicing bar as well. In turn, the local legal culture changes for the better.

⁸ Steelman, David, John Goerdts and James McMillan (2004). *Caseload Management – The Heart of Court Management in the New Millennium*. National Center for State Courts, Williamsburg, VA.

⁹ Griller, Gordon M. and Joseph P. Farina (2002) *Analysis of the Efficiency and Effectiveness of the Magistrate Criminal Calendar: 4th Judicial District of Ada County Idaho*. Court Connections, National Center for State Courts, Williamsburg, VA.

¹⁰ Ostrom, Brian and Roger Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts* (1999), p. 106ff. National Center for State Courts, Williamsburg, VA.

The ABA Standards for Criminal Cases: Speedy Trial; Timely Resolution¹¹

These standards relative to speedy trial and timely resolution of criminal cases were published by the American Bar Association with commentary in 2004. They reflect the ABA's support for the principles and objectives of effective criminal case management:

Standard 12-1.4 Systems Approach

The process for timely case resolution should take into account the perspectives of the defendants, the public, including victims and witnesses, courts, prosecutors and defense counsel and law enforcement agencies.

Standard 12-3.1 The Public's Interest in Timely Case Resolution

The interest of the public, including victims and witnesses, in timely resolution of criminal cases ... should be recognized through formal adoption of policies and standards that are designed to achieve timely disposition of criminal cases regardless of whether the defendant demands a speedy trial ... increasing public trust and confidence in the justice system.

Standard 12-3.2 Goals for Timely Case Resolution

- Each jurisdiction should establish goals for timely resolution of cases that address (1) the period from the commencement of the case (by arrest, issuance of citation, or direct filing of indictment or information) to disposition; and (2) the time periods between major case events.
- Goals for timely resolution should be developed collaboratively.
- The jurisdiction's goals for timely resolution should address at least the following time periods:
 - Arrest/citation to first appearance.
 - First appearance to completion of pretrial processes (i.e., completion of all discovery, motions, pretrial conferences, and plea, dismissal, or other disposition in cases that will not go to trial).
 - Completion of pretrial processes to commencement of trial or to non-trial disposition of the case.
 - Verdict or plea of guilty to imposition of sentence.
 - Arrest or issuance of citation to disposition, defined for this purpose as plea of guilty, entry into a diversion program, dismissal, or commencement of trial.
- Goals for timely resolution intended to provide guidance. The establishment of such goals should not create any rights for defendants or others.

Standard 12-4.3 Jurisdictional Plans for Effective Criminal Caseflow: Essential Elements

Elements of a plan for effective overall criminal caseflow management in a local jurisdiction should include:

- **Incident Reports:** Rapid preparation and transmission, to the prosecutor, of good quality police incident/arrest reports.
- **Test Results:** Rapid turnaround of forensic laboratory test results.
- **Case Screening:** Effective early case screening and realistic charging by prosecutors.
- **Appointment of Counsel:** Early appointment of defense counsel for eligible defendants.
- **Discovery:** Early provision of discovery.
- **Pleas/Sentence Negotiations:** Early discussions between the prosecutor and the defense counsel concerning possible non-trial disposition of the case.

¹¹American Bar Association (2004). *ABA Standards for Criminal Justice: Speedy Trial and Timely Resolution of Criminal Cases*.

http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_speedytrial_toc.html

- **Case Scheduling Conference:** Early case scheduling conference conducted by the assigned judicial officer to:
 - Review the status of discovery and negotiations concerning possible non-trial disposition;
 - Schedule motions; and
 - Make any orders needed.
- **Pre-Trial Caseflow Orders:** Case timetables addressing the time periods allowed for completion of discovery, filing of motions, and other case events that are set at an early stage of the case by the judge in consultation with the prosecutor and defense counsel.
- **Motions:** Early filing and disposition of motions, including motions requiring evidentiary hearings.
- **Monitoring:** Close monitoring of the size and age of pending caseloads, by the court and the prosecutor's office, to ensure that case processing times in individual cases do not exceed the requirements of the speedy trial rule and that case processing time standards are being met for the overall caseload.
- **Continuances:** A policy of granting continuances of trials and other court events only upon a showing of good cause and only for so long as is necessary, taking into account not only the request of the prosecution or defense, but also the public interest in prompt disposition of the cases.
- **Backlog Reduction Plan:** Elimination of existing case backlogs (i.e., cases pending longer than the established case processing time standards), following a backlog reduction plan developed collaboratively by the court, prosecutor's office, defense bar, law enforcement and other criminal justice agencies involved in and affected by criminal case processing.

Standard 12-4.5 Court Responsibility for Management of Calendars and Caseloads

- **Control Over the Trial Calendar:** Control over the trial calendar, and over all other calendars on which a case may be placed, should be vested in the court. Continuances should be granted only by a judicial officer, on the record. The court should grant a continuance only upon a showing of good cause and only for so long as is necessary. In ruling on requests for continuances, the court should take into account not only the request or consent of the prosecution or defense, but also the public interest in timely resolution of cases. If a ruling on the request for a continuance will have the effect of extending the time within which the defendant must be brought to trial, the judge should state on the record the new speedy trial time limit date and should seek confirmation of this date by the prosecution and the defense.
- **Caseflow Management Reports:** Reports on the age and status of pending cases should be prepared regularly for the chief judge of the court and made available to leaders of other organizational entities involved in criminal case processing.

Fundamental Principles of Caseflow Management

Research and practical experience have identified fundamental principles that characterize successful caseflow management, which are outlined below.

Definition of a Case

In order to process cases to disposition and in order to report and compare the number of cases that need to be disposed and the number that have exceeded time standards with other courts and over time in the same court, the court should have a clear definition of what constitutes a case and all courts in a state

must consistently use that definition when counting cases. A “case” could be defined in a number of ways, such as:

- A single defendant,
- A single complaint/information/indictment (charge) for one defendant, or
- All charges filed against a single defendant for a single first court appearance (arraignment).

For example, when a law enforcement officer stops a driver and charges the driver with careless and negligent driving, driving with a suspended license and disorderly conduct and then the person appears in court for a first appearance on all three charges, a court may decide to count the three charges as one case or as three cases. If the defendant pleads guilty to driving with a suspended license as a plea agreement so that the prosecutor will dismiss the disorderly conduct and careless and negligent driving charges, the court may decide to report one case resolved by plea *or* may decide to report one case resolved by plea and two cases dismissed.

In some states, a “case” is defined as all charges filed against a single defendant for the same initial appearance on court date. A criminal justice system cannot count and manage its cases or compare how it is doing with other states or compare how its counties are doing compared to the other counties until it first defines a “case” and ensures that all counties in the state use the same definition and enter the information into the case management system in accordance with the definition.

Application of the Principle in North Carolina

The Administrative Office of the Courts has defined a "case" as one file number. However, according to the AOC, there is inconsistency across counties regarding how this is handled with respect to multiple charges. In some counties each charge will be a new file number, while in others, there may be multiple charges under the same file number (case).¹²

Without a single definition that is consistently used in every North Carolina court, it is impossible to compare the number of cases filed, the age of pending cases, the number of cases closed within the time standards, or the number of cases disposed by plea or trial within North Carolina or with other states across the country.

The AOC is in the process of changing its definition of a “case” to use the defendant (or incident) as the unit of measure, rather than the ‘case.’ This new AOC definition of a case conforms with the NCSC State Court Guide to Statistical Reporting (Guide), a standardized reporting framework for state court caseload statistics designed to promote informed comparisons among state courts. The Guide directs that courts count the defendant and all charges involved in a single incident as a single case.

Changing this definition will be a major improvement as long as the AOC and Branch leadership take steps to ensure that all courts consistently enter data using this new definition. It will enable North Carolina to compare the degree of trial court timeliness with other states across the country.

Early Court Intervention and Continuous Control of Cases

A fundamental principle of caseflow management is that the court, and not the litigants, controls the progress of a case from filing to disposition. The rationale for court control of calendaring and the pace of

¹² <http://www1.aoc.state.nc.us/cpms/pages/help/Definitions.jsp>.

the adjudicatory process is based on the principle that in a democratic system of justice, the court is the only neutral party capable of resolving a dispute brought to the government in a fair, unbiased, and independent manner. All other parties have a vested interest in the outcome of a case. The court's only interest is in justice.

Early court intervention means that the court monitors the progress of the case as soon as charges are initiated and again at established intervals to ensure that the case is continuing to progress along an established time track.

Early court control involves conducting early case conferences. These conferences may be called status conferences, pre-trial conferences, or as in North Carolina, *administrative settings*. A successful early case conference enables the judicial officer to review the status of discovery, learn of negotiations concerning possible non-trial disposition, schedule motions and make any orders needed to advance the case to disposition.

Court control must also be continuous, meaning that every case should have a next scheduled event. This prevents the case from being delayed because of inattention by litigants or the court.

Application of the Principle in North Carolina

Prosecutor/Court Control of the Docket in North Carolina: While the principles of caseflow management recommend that the court, and not the attorneys, control the progress of the cases, the North Carolina legislature has decided that the District Attorney is responsible for calendaring criminal cases. Docketing of superior court criminal cases is governed by North Carolina General Statutes § 7A-49.4. Paragraph (a) refers to the establishment of a "criminal case docketing plan developed by the district attorney for each superior court district *in consultation with the superior court judges residing in that district* and after opportunity for comment by members of the bar" (emphasis added). Paragraph (b) (1) places responsibility for setting of deadlines with the court, as well as paragraphs (4) and (5) which designate the court's authority to set and defer rulings on motions, and establish the necessary number of administrative hearings to achieve fair and timely administration of justice.

While the responsibility for setting the trial calendar rests with the DA, the DA no longer has total control of the process, as the prosecutors pointed out in their presentation to the Committee at one of its meetings. Calendaring in North Carolina is a hybrid and consultative process, with docket plans developed by the DA with consultation with the Superior Court and local bar. Concerns remain that about the inequity of having one party in litigation with control over initial scheduling and the potential for using delay as a tactic to influence case outcomes.

Persons charged with a felony who are detained must be brought before a district judge within 96 hours for a first appearance at which the district judge reviews bail and conditions of release and then determines whether to assign counsel. It is possible that a defendant can then sit in jail indefinitely until the DA gets around to calendaring a trial date.

While changes in this statute should be considered as part of any improvements to criminal case management, the current practice of calendaring authority resting with prosecution does not preclude moving forward with an effort to improve criminal caseflow management on a state-wide basis by employing the techniques and best practices noted in this report. Ideally, however, the court should be responsible for case control throughout the life of a criminal case, including initial scheduling.

Under the present arrangement, the DA's Office must have the information it needs to ensure every event is meaningful and is productively moving a case toward resolution. The DA's Office does not now have

the data or information needed to effectively fulfill its responsibilities. In many other jurisdictions across the country where the Clerk's Office, judicial support staff or a Court Administrator is responsible for calendaring and caseflow management, those officials use information in the Court's database to schedule and continually monitor cases to promote fair and timely resolutions. This is the case with the schedule of civil cases. The DAs in North Carolina do not have such access.

The *ABA Standards* recommend that the office responsible for calendaring cases has access to caseflow management reports that contain the age and status of pending cases. For the DA to calendar cases and for the Court to monitor the progress of its cases, the DA and the Court need access to data and reports that provide:

- The number, age, and identity of all active pending cases.
- The number, age, and identity of all inactive pending cases.
 - An inactive case is one that cannot be scheduled for hearing for reasons such as the defendant cannot be found (an order for arrest has been issued) or the defendant is incarcerated on another matter and cannot be transferred to court.
- A list of all cases that are ready for trial, with the date that the case was filed and the date that it became trial ready. The NCSC project team recommends that a case be considered as "trial ready" only after a pre-trial conference has been held and the parties agree (or the DA certifies) that:
 - Discovery is complete. The DA has filed a certificate that all discovery has been provided to defense counsel.
 - All pre-trial motions have been filed. Motions have either been disposed or the parties agree that they can be heard at the beginning of the trial.
 - The DA and defense counsel have completed or are completing everything needed to apply mitigating factors at sentencing (or have been given reasonable time to do so).
 - The ADA and defense counsel have discussed an appropriate sentence to recommend to the Court or have agreed that the sentence can be determined by the judge, pursuant to a plea of guilty by the defendant.
- The court schedule for all cases in the District and Superior Court in a format that enables the DA to identify conflicts, i.e. any other cases calendared for the defense attorney.

Differentiated Case Management: A Case Management Tool

Differentiated Case Management (DCM) is a technique that recognizes that not all cases are created equal when it comes to scheduling and case management, since various types of cases can differ substantially in terms of the time and resources required to achieve fair and timely disposition. Some cases can be disposed of expeditiously, with little or no discovery and few intermediate events. Other cases require extensive court supervision and may include expert witnesses, highly technical issues, or difficult plea negotiations.

One of the main elements of DCM is a process for early case screening which allows for the court to prioritize cases for disposition based on factors such as prosecutorial priorities, age or physical condition of the parties or witnesses, or local public policy issues. Regardless of the criteria chosen for differentiating among cases or the case assignment system in use, two goals and four resulting objectives characterize DCM. The authors of the DCM Implementation Manual suggest the following two goals:¹³

¹³ Solomon, Maureen and Holly Bakke (1993) *Differentiated Case Management Implementation Manual*. Bureau of Justice Assistance, Washington D.C.

1. Timely and just disposition of all cases consistent with each case's preparation and case management needs.
2. Improved use of judicial system resources by tailoring their application to the dispositional requirements of each case.

To achieve these goals, which are consistent with overall caseflow management goals, a DCM program should have the following objectives:

1. Creation of multiple tracks or paths for case disposition, with differing procedural requirements and timeframes geared to the processing requirements of the cases that will be assigned to that track.
2. Provision for court screening of each case shortly after filing so that each will be assigned to the proper track according to defined criteria.
3. Continuous court monitoring of case progress within each track to ensure that it adheres to track deadlines and requirements.
4. Procedures for changing the track assignment in the event the management characteristics of a case change during the pretrial process.

The development of meaningful DCM track criteria requires the identification of factors that determine the extent of party preparation and court oversight required to achieve case resolution. Some courts differentiate on the basis of the seriousness of the case, such as the nature of the charges and whether the defendant could be sentenced to death or life in prison. Other relevant factors may include: likely defenses; the need for time to prepare and present forensic testimony or a psychiatric evaluation; or the number of defendants and the amount of discovery anticipated. Some courts have developed time tracks solely on the basis of case type while others use more complex criteria that employ a combination of these approaches. (see Vermont, Boston, Massachusetts, and Pierce County, Washington, below) Whatever approach is used, it is important that courts continually assess the effectiveness of their DCM program and make adjustments as needed to the process to ensure ongoing success.

The following are examples of how various jurisdictions have implemented time standards and DCM systems:

The Vermont Supreme Court adopted Criminal Case Disposition Guidelines in 2010.¹⁴ The guidelines use the principles of DCM to establish two tracks for misdemeanor cases: a standard track with a guideline of 100% disposed within 120 days, and a complex track, with a guideline of 100% disposed within 180 days.

Additionally, the guidelines establish three tracks for felonies:

- A standard track with a guideline of 100% disposed in 180 days
- A complex track with a guideline of 100% disposed in 365 days
- A super-complex track with a guideline of 100% disposed in 455 days

Finally, the Vermont Supreme Court identified complexity factors:

- Misdemeanor complex factors: interpreter, competency evaluation, jury trial, public defender conflict at or after the first calendar call.

¹⁴ Vermont Supreme Court Administrative Directive 24. Accessed July 24, 2016 at: <https://www.vermontjudiciary.org/LC/Shared%20Documents/Administrative%20Directive%20No.%2024%20-%20Amended%20November2010.pdf>.

- Felony complex factors: interpreter, competency evaluation, jury trial, public defender conflict at or after the first calendar call, pro se defendant, juvenile victim, multiple victims, out of state witnesses, co-defendants, pre-sentence investigation.
- Felony super-complex track: fatality or possible life sentence.

The Vermont Supreme Court also adopted **interim time standards** for the two misdemeanor tracks and the three felony tracks, with guidelines for the number of days between key events, such as arraignment, status conference, motion filing deadline, motion hearing, motion decision, jury draw/trial and sentence.

The District Court of the Commonwealth of Massachusetts has established performance goals for case management for the entire criminal caseload. The Boston Municipal Court Department of the Commonwealth of Massachusetts has adopted time standards for its misdemeanor criminal cases, with two tracks, designated in accordance with the misdemeanor's maximum period of incarceration.

The Pierce County, Washington Superior Court developed a DCM program to promote the speedy disposition of drug cases and to reduce jail overcrowding. The prosecutor and public defender were responsible for making a DCM plan designation and accompanying schedule for case events, subject to court review and approval. Three tracks were developed, including a fast track of 30 days to disposition, intermediate track that followed statutory speedy-trial requirements of 60 days for in-custody and 90 days for out-of-custody defendants, and a complex track in which the speedy trial rule was waived and cases were assigned to an individual judge for monitoring. Despite a 53% increase in criminal filings over a five-year period, average time to disposition dropped from 210 days to 90 days.

Application of the Principle in North Carolina

North Carolina has not adopted differentiated case management on a system-wide basis.

Productive and Meaningful Events

The scheduling of hearings should balance the need for reasonable preparation time by parties with the necessity for prompt resolution of the case. The court should take an active role in encouraging hearing readiness by parties and lawyers and creating the expectation that court events will occur as scheduled and will be productive. Hearings should be scheduled within relatively short intervals. When hearing preparation is expected to take a particularly long time, the court may wish to schedule intermediate "status" hearings to ensure that the preparation process is proceeding. Good communication between judges and lawyers is important in order to:

- Give attorneys reasonable advance notice of deadlines and procedural requirements.
- Notify lawyers that all requests for continuance must be made in advance of a deadline date and upon showing of good cause.
- Take consistent action in response to non-compliance of parties with deadlines.

Attorneys and litigants should expect that events will occur as scheduled. These participants may not appear or be prepared at a scheduled hearing if the certainty of the hearing being held is in doubt. This means that the court provides advance notice in the event of judicial absence or provides a back-up judge if possible. Further, court scheduling practices should ensure that the calendar is not so over-scheduled as

to create delays or continuances. Creating and enforcing firm continuance policies also improves the likelihood that hearings will be held as scheduled.

Application of the Principle in North Carolina

In North Carolina, the number of continuances and the number of hearings per case indicate that not all scheduled hearings are meaningful events.

Stakeholders reported to the NCSC consultant that continuances regularly occur in North Carolina because of:

- Lack of party preparation;
- Discovery issues;
- Scheduling conflicts;
- Overscheduling of the calendar;
- Need for additional time to determine restitution; and
- Delays in obtaining toxicology and other expert reports.

Law Enforcement Officers' Monthly Court Day

It is a common practice in North Carolina's District Court for DA's to schedule first appearances and subsequent hearings on the law enforcement officer's monthly court day. These subsequent hearing are often scheduled as trials.

This practice enables law enforcement departments to know officer availability when making their assignments to the community. However, this practice has clear implications on the ability of the DA to schedule cases for timely disposition and creates implications for the defendant having timely access to counsel.

If a defendant is arrested, the defendant initially appears before a Magistrate for a determination of probable cause and for determination of pretrial release. If a defendant charged with a felony is detained, the magistrate assigns a first court date to be held within 96 hours. If a defendant charged with a misdemeanor is detained, the magistrate assigns the officer's next court date as the first court date – this could be one to five weeks later. If the officer has a conflict (i.e. a training program), the case is rescheduled to one month later. The magistrate does not make a determination of whether to assign counsel at that time. The defendant will then be jailed until his/her first appearance before a District Court Judge.¹⁵

This practice has major implications on the delivery of justice to the defendant and major implications on the cost to taxpayers for the presumed innocent defendant's detention. As discussed below, it also has implications on the time needed to resolve the case.

The NCSC recently conducted a review of scheduling practices in one of North Carolina's District Courts – Wake County.¹⁶ In 2015, the Wake County District Attorney's Office (DA) contracted with NCSC to provide suggestions and recommendations to the DA, the District Court, defense attorneys, and law

¹⁵ See §15A-511 (Initial appearance) and §15A-601 (First appearance before a district court judge).

¹⁶ District Attorney's Office, Wake County DWI Caseflow Management, March, 2016. Gordon Griller and Lee Suskin.

enforcement agencies on how impaired driving cases (DWIs) can be better calendared and processed in order to obtain a fair and timely disposition.

In Wake County (and presumably in most of North Carolina's District Courts), cases are scheduled for a first appearance and for trial on the law enforcement officers' monthly court dates. The second court setting will be one month after the first appearance and subsequent trial dates will be one month after the previous one. Cases needing six court sessions to resolve will therefore have six trial settings over six months. Each subsequent setting requires attendance and involvement by the law enforcement officer, the ADA, the defense attorney, the defendant, the Judge and court staff. In some cases, the defendant's family and victim also appear. Few cases are resolved within six months despite having six court settings. In Wake County, half of the DWI cases have at least six trial court settings and continuances.

Because the case is set for trial, if the law enforcement officer does not appear at the hearing, defense attorneys will often move to dismiss the case. Otherwise, cases are routinely continued, because the State or the defense or the Court is not ready to proceed.

In Wake County and in some other counties in North Carolina, different judges will preside over trial settings over the life of the case. The judge sitting on a case in month 1 will not necessarily be the judge who sits on the case in month 2. The NCSC project team learned during its visit to Wake County that some defense attorneys, when considering whether to advise their clients to plead guilty to the charge believe that some judges may be more inclined to apply mitigating factors and impose a lighter sentence than others. These attorneys often observe which District Judge is assigned to court that day as they decide whether to advise their client to plead guilty or request a continuance, knowing that there will likely be a different District Judge presiding over the next court appearance.

Most Wake County DWI cases are routinely continued – cases average six and a half case settings and continuances before they are resolved; some are continued twice that many times.

It is important when monitoring continuances for the DA and Court to record who requested the delay, the length of the delay, the reason for the delay, and the age of the case at the time the continuance was granted. Data on postponed and reset cases are critical in determining the location and reasons for bottlenecks in the movement of cases from filing to disposition. More difficult to ascertain is the extent to which there is delay in setting a case for initial hearing since this remains under exclusive control of the DA.

Most egregious are situations in which cases are put on the calendar and offenders and lawyers are required to appear when it is known in advance that the case is not ready for trial. While there was no aggregate data on continuances available at the time of this study, a North Carolina Office of Indigent Defense Services (IDS) report¹⁷ sheds some light on the extent of the problem. Some 75% of those responding to the IDS survey estimated that there were at least three continuances for the average district court case. Clerks estimated that most cases have six or more continuances.

In rural courts with relatively low caseloads the impact of continuances is amplified when the available court dates are limited. It was noted that in some jurisdictions the administrative calendar is scheduled quarterly (or less), so that only a few continuances can add a substantial amount of time to reach final disposition. Although the extent to which the limitations of facilities, and in particular courtroom availability, impacts readiness is not known, the consultants' experience in other states has been that problems with facilities, such as inadequate security for high-profile cases, insufficient jury courtrooms, and other factors contribute to delay. These conditions are often more common in rural jurisdictions.

¹⁷ Office of Indigent Defense Services (2009). *District Court Scheduling Survey Report*. Durham, NC.

Court Wait Time

Another practice noted during the North Carolina stakeholder interviews, and common in many courts nationwide, is scheduling all cases at a single time, typically 9:00 am. This causes two problems: First, it creates long waiting times for those whose cases are last to be called. Second, litigants quickly realize that they do not need to be prepared as they will correctly assume that with so many cases on the docket it will not matter if their case is postponed.

Existing research on and data from North Carolina suggests that wait time contributes to court system costs. For example, the IDS sought to estimate the cost of paying for private appointed counsel (PAC) waiting-in-court time. The report found public defenders had an average of 4.55 hours of wait time per case. Wait times create problems for victims and family members who take time from their work and family obligations to sit in court for half a day to observe a five to ten-minute hearing.

The DAs and Judicial Branch leaders should review the practice of setting cases on officer court days and of setting an entire morning's cases at 9:00 AM, and should develop alternative practices that enhance timely case resolution and user satisfaction without reducing department ability to provide community safety and without creating "downtime" in the courtroom or reducing the number of matters that can be heard in a day. One alternative practice suggestion would be setting one-third of the morning's cases at 9:00 AM, one-third at 10:00 AM and one-third at 11:00 AM.

Implementing practices that result in courts conducting only meaningful hearings will reduce the number of case settings and provide judges with the time to hear cases in a more orderly scheduled manner.

Multiple Unproductive Case Settings

The practice of multiple case settings (aka "churning") is costly in many ways. There is a financial cost for defendants, their families and their victims who take a day off from work or who must pay for travel to the courthouse. Defendants must pay private counsel. Taxpayers pay for the time that judges, DAs, public defenders attend multiple hearings. There is a cost for transporting detainees, and there are major safety issues related to transporting detainees.

There are also justice implications. Multiple hearings could mean that defendants who must pay private counsel and/or defendants who are detained and not able to earn income, and who cannot support their family financially or emotionally while incarcerated, may decide that it is less costly to plead guilty to an offense that they did not commit, and to suffer the collateral consequences, than it is to require the DAs to take the time to prove their case before a Judge or jury.

In addition, because the first court appearance for most cases in District Court is on the date of the law enforcement officer's monthly court date, a defendant detained after appearing before a Magistrate could sit in the county jail for up to 30 days before their first appearance in court and their first contact with defense counsel.

Despite these challenges, a number of effective practices were identified during the interviews as having been put into place by some of North Carolina's DA's and in some of North Carolina districts to help better manage cases. Examples of these practices include:

- Early discovery and plea offers;
- Informal scheduling orders that are enforced;
- Plea discussions prior to scheduled court dates;

- Staggered setting of cases to avoid docket overcrowding;
- Continuance monitoring by the prosecutor;
- Schedule coordination and posting of office hours by the DA;
- Electronic sharing of discovery materials;
- Setting aside prosecutor and defense counsel consultation time before court begins; and
- Effective use of administrative dockets to resolve cases.

Efficient Motions Practice

If parties file pretrial motions, early court action on these motions will promote earlier case resolution. The court should decide all substantive pretrial motions before the date of trial. Some suggestions for managing the motions process include:

- Scheduling contested and uncontested motions separately to increase judicial time for hearing and deciding motions that could substantially impact the outcome of the case.
- Requiring attorneys to attach a stipulated order or certification that identifies uncontested motions.
- Setting time limits for responses to motions, and setting these deadlines just prior to the hearing date.

Application of the Principle in North Carolina

While problems with delay related to motions were not specifically identified by the small sample of individuals interviewed in the preparation of this report, they may or may not be a significant factor in overall delay. Efficient motions practice is a fundamental principle of effective criminal case management and thus should be examined as part of any criminal caseflow management reform effort.

Trial Preparation and Management

Effective use of the time between filing of charges and the first scheduled trial date is critical to successful trial management. During this time, the judge makes various decisions regarding the evidence to be introduced and an estimate of the time required to hear the case. Some states set pretrial conferences or status conferences to bring parties together for the purpose of determining issues in dispute, determining whether discovery is complete, seeking consensus on evidence and witness presentation, completing discovery, and setting a next court date. Proven trial management techniques include:

- Resolving pretrial motions before the first trial date is scheduled;
- Conducting a trial management conference shortly before a trial starts;
- Reducing unnecessary or repetitive evidence; and
- Fully utilizing the time available in a day to conduct the trial.

Application of the Principle in North Carolina

North Carolina has taken steps to enhance trial preparation and management. State statute (N.C. Gen. Stat. § 7A-49.4) requires that an administrative setting must be calendared in the Superior Court for each felony within 60 days at which:

- (1) The court shall determine the status of the defendant's representation by counsel.

- (2) After hearing from the parties, the court shall set deadlines for the delivery of discovery, arraignment (if necessary), and filing of motions.
- (3) If the district attorney has made a determination regarding a plea arrangement, the district attorney shall inform the defendant as to whether a plea arrangement will be offered and the terms of any proposed plea arrangement, and the court may conduct a plea conference if supported by the interest of justice.
- (4) The court may hear pending pretrial motions, set such motions for hearing on a certain date, or defer ruling on motions until the trial of the case.

The court may schedule more than one administrative setting if requested by the parties or if it is found to be necessary to promote the fair administration of justice in a timely manner. At the conclusion of the last administrative setting, the DA may schedule a trial date unless the court determines that the interests of justice require the setting of a different date.

Conducting effective administrative settings can reduce the number of cases set on a particular date for trial, create trial date certainty, reduce the number of cases dismissed on the trial date, reduce the number of persons who plead guilty on the trial date, and reduce the many instances where attorneys show up for trial unprepared to proceed with the trial.

Unfortunately, all indications are that the trial courts are not effectively using administrative settings. The initial impression that the NCSC gained from discussions with various stakeholders and examples of calendars suggests that the scheduling of cases for trial is particularly problematic in North Carolina. This is an indication that administrative settings are not successful at achieving what they were set up to accomplish.

Experience shows that successful caseflow management involves leadership, commitment, communication, and the creation of a learning environment. These factors may ultimately determine whether a state is successful in its effort to provide fair and timely disposition of its cases.

Leadership

Visible support from both local judicial leadership and the Supreme Court is essential for success. Those in leadership positions should be able to articulate a vision of how case management will improve the system, explain the anticipated benefits, and show an ongoing commitment to the effort. Leaders should be advocates for the program and should work to build consensus and support from both within the court and from those individuals and organizations that do business with the court. Courts should seek to gain support from members of the bar and the justice community. Being a part of the leadership team also includes setting and enforcing expectations once the initial consultation has occurred.

Application of the Principle in North Carolina

Chief Justice Mark Martin has shown leadership through his creation of the Commission, which studies and provides recommendations to ensure that the Judicial Branch meets the needs of its citizens and their expectations for a functional court system.

On paper, North Carolina has established leadership responsibilities for the administration of the trial courts, for the management of cases, and for record keeping in the courts. In practice, those who could

exercise leadership in monitoring and enhancing caseflow management, as well as in scheduling cases to timely disposition, are not doing so.

The Supreme Court has taken some steps toward ensuring that the Judicial Branch meets the needs of its' citizens by adopting general rules of practice pursuant to its statutory authority to do so; which include the oversight of the following roles.¹⁸

The Senior Resident Superior Court Judge in each administrative Superior Court District (the most senior judge in years of service) is responsible for various administrative duties, including appointing magistrates and some other court officials, and managing the scheduling of civil, *but not criminal*, cases for trial.

The Chief District Court Judge in each District Court is appointed by the Chief Justice of the Supreme Court, rather than being determined by years of service. Among other duties, the Chief District Court Judge is responsible for creating the schedule of District Court sessions for the district, assigning District Court Judges to preside over those sessions and supervising the magistrates for each county in the district.

The AOC is responsible for developing the uniform rules, forms and methods for keeping the records of the courts, particularly those records maintained by the clerks of Superior Court.

The State Judicial Council was created by the General Assembly in 1999 to promote overall improvement in the Judicial Branch. Its duties include recommending guidelines for the assignment and management of cases and monitoring the effectiveness of the Judicial Branch in serving the public.

In 2003, the State Judicial Council exercised leadership in this area by endorsing the development of trial court case processing measures. Otherwise, based on interviews and in its research, the NCSC did not learn of any steps taken by the Judicial Council or any Chief Judges to communicate the importance of implementing caseflow management plans to enable the trial courts to resolve cases within given time standards.

While the AOC has provided direction on record keeping and, in particular, how to count and report cases, workload, and the age of cases, the AOC has not taken steps to ensure that all courts are following record keeping standards.

While the Supreme Court has adopted general rules of practice, the Supreme Court has not adopted rules that establish effective case management for state trial courts.

Communication

Good communication is essential for any effort to implement change in the organization. Chances of success are improved through frequent and sustained communication between judges and court staff, as well as consultation among judges, prosecutors, and defense counsel. Communication ensures that all participants have a solid understanding of what the change is, why it is needed, and what their respective roles are with regard to court filings, providing discovery, filing motions, negotiating fair disposition and preparing for trial.

¹⁸N.C. Gen. Stat § 7A-34. **Rules of practice and procedure in trial courts.**

The Supreme Court is hereby authorized to prescribe rules of practice and procedure for the superior and district courts supplementary to, and not inconsistent with, acts of the General Assembly.

Several stakeholders interviewed during this project described the benefits of communication between local justice system partners through regular meetings and consultations that helped to identify and resolve problems at the local level. These individuals cited examples of how efforts to work collectively at the local level have improved criminal case management. In most cases this is realized through regular meetings that include representatives of the bench, prosecution, defense, law enforcement, and clerk's office. One challenge in North Carolina is the absence of public defender offices in many of the rural areas, which can make it difficult to achieve this level of local collaboration.

Application of the Principle in North Carolina

The NCSC has identified two examples of good communication among participants in North Carolina's local criminal justice systems:

In Mecklenburg County, a monthly debrief to review performance goals is scheduled with the prosecutor, defense attorneys, and law enforcement. The court administrator's office plays a substantial role in coordinating criminal cases following indictment. More informal approaches, such as the bar lunch meetings conducted concurrent with each administrative session in District 30B (Hayward and Jackson Counties) also are employed.

In Wake County, the District Attorney and Chief Judge of the District Court started a workgroup made up of prosecutors, judges and defense attorneys to develop and monitor a plan to implement recommendations provided by the NCSC on DWI caseflow management. The plan's goal is a system that "sets DWIs only for meaningful initial settings, administrative settings and trial date."

Learning Environment

The successful implementation of caseflow management, whether in the local court setting or statewide, depends on judges, court staff, and outside participants understanding why and how the caseflow management program works and the benefits that can be achieved from the program.

Application of the Principle in North Carolina

Although the principles have been in practice for decades, a sustained effort to educate and update new judges, staff, and litigators is needed. NCSC did not learn of any programs on caseflow management being conducted as a regular part of training for justice system officials, court clerks, prosecutors and defense counsel. The development of caseflow management curricula should be considered.

Case Management Measures

As previously identified (see ABA Standard for Criminal Case Timely Resolution 12-3.2), "Each jurisdiction should establish goals for timely resolution of cases that address (1) the period from the commencement of the case to disposition and (2) the time periods between major events." These events could include arrest/citation to first appearance, first appearance to completion of the pretrial process, completion of pretrial process to trial or to non-trial disposition (plea/sentence or dismissal).

NCSC *CourTools*¹⁹ Caseflow Management Measures

The NCSC, concerned with trial court delay, has developed a set of ten balanced and realistic performance measures that are practical to implement and use. Understanding the steps involved in performance measurement can make the task easier and more likely to succeed. *CourTools* supports efforts made to improve court performance by helping clarify performance goals, developing a measurement plan, and documenting success.

Effective measurement is key to managing court resources efficiently, letting the public know what your court has achieved, and helping identify the benefits of improved court performance. The NCSC developed *CourTools* by integrating the major performance areas defined by the Trial Court Performance Standards with relevant concepts from other successful public and private sector performance measurement systems. This balanced set of court performance measures provides the judiciary with the tools to demonstrate effective stewardship of public resources. Being responsive and accountable is critical to maintaining the independence courts need to deliver fair and equal justice to the public.

Each of the ten *CourTools* measures follows a similar sequence, with steps supporting one another. These steps include a clear definition and statement of purpose, a measurement plan with instruments and data collection methods, and strategies for reporting results. Published in a visual format, *CourTools* uses illustrations, examples, and jargon-free language to make the measures clear and easy to understand.

CourTools measures these four aspects of trial court delay:

- **Clearance Rates:** The number of outgoing cases as a percentage of the number of incoming cases.
 - Clearance rates measure whether the court is keeping up with its incoming caseload. If cases are not disposed in a timely manner, a backlog of cases awaiting disposition will grow. This measure is a single number that can be compared within the court for any and all case types, on a monthly or yearly basis, or between one court and another. Knowledge of clearance rates by case type can help a court pinpoint emerging problems and determine where improvements can be made.
- **Time to Disposition:** The percentage of cases disposed or otherwise resolved within established time frames.
 - This measure, used in conjunction with Clearance Rates and Age of Pending Caseload (below), is a fundamental management tool that assesses the length of time it takes a court to process cases. It compares a court's performance with local, state, or national guidelines for timely case processing.
- **Age of Pending Caseload:** The age of the active cases pending before the court, measured as the number of days from filing until the time of measurement.
 - Having a complete and accurate inventory of active pending cases and tracking their progress is important because this pool of cases potentially requires court action. Examining the age of pending cases makes clear, for example, the cases drawing near or about to surpass the court's case processing time standards. This information helps focus attention on what is required to resolve cases within reasonable timeframes.
- **Trial Date Certainty:** The number of times cases disposed by trial are scheduled for trial.
 - A court's ability to hold trials on the first date they are scheduled to be heard (trial date certainty) is closely associated with timely case disposition. This measure provides a tool to evaluate the effectiveness of calendaring and continuance practices. For this measure,

¹⁹ <http://www.courttools.org/Trial-Court-Performance-Measures.aspx>. The complete *CourTools* measurement system is available from the NCSC website at www.courttools.org.

“trials” includes jury trials, bench trials (also known as non-jury or court trials), and adjudicatory hearings in juvenile cases.

Application of the Principle in North Carolina

Adoption of *CourTools*: Durham County, North Carolina’s 14th Judicial District, has adopted *CourTools* as a model for its performance accountability system.

Time Standards in North Carolina: Both the National Center for State Courts (Model Time Standards) and the North Carolina Supreme Court have established time standards for the trial courts. The following chart compares the average statewide time to disposition for FY 2014²⁰ with the current North Carolina standards and the Model Time Standards:

Case Type	Days to Disposition	Current North Carolina Standard	Model Time Standards ²¹
DISTRICT COURT			
<i>Felony</i>	104	<ul style="list-style-type: none"> • 100% within 90 days 	N/A
<i>Misdemeanor</i>	145	<ul style="list-style-type: none"> <i>Criminal Non-Motor Vehicle</i> • 75% within 60 days • 90% within 90 days • 98% within 120 days • 100% within 365 days <i>Criminal Motor Vehicle</i> • 75% within 60 days • 90% within 120 days • 100% within 180 days 	<ul style="list-style-type: none"> <i>Misdemeanor</i> • 75% within 60 days • 90% within 90 days • 98% within 180 days <i>Traffic and Ordinance</i> • 75% within 30 days • 90% within 60 days • 98% within 90 days
<i>Infraction</i>	67	<ul style="list-style-type: none"> • 75% within 60 days • 90% within 120 days • 100% within 180 days 	N/A
SUPERIOR COURT			
<i>Felony</i>	244	<ul style="list-style-type: none"> • 50% within 120 days • 75% within 180 days • 90% within 365 days • 100% within 545 days 	<ul style="list-style-type: none"> • 75% within 90 days • 90% within 180 days • 98% within 365 days
<i>Misdemeanor</i>	188	<ul style="list-style-type: none"> • 50% within 120 days • 75% within 180 days • 90% within 365 days • 100% within 545 days 	<ul style="list-style-type: none"> • 75% within 60 days • 90% within 90 days • 98% within 180 days

Table 1: Time to Disposition FY2014 Comparison

The 98 percent threshold in the new model time standards is an acknowledgment that even under the best of circumstances some cases will remain unresolved. As this chart illustrates, the model standards, particularly for general jurisdiction courts, are more stringent than the standards previously adopted by North Carolina. North Carolina has not adopted interim time standards.

²⁰ North Carolina Judicial Branch Statistics, Fiscal Year 2014-15. North Carolina Administrative Office of the Courts.

²¹ Model Time Standards for State Trial Courts. National Center for State Courts, 2011.

North Carolina's Court Performance Management System (CPMS)²²

In 2001, as recommended by the State Judicial Council, Chief Justice I. Beverly Lake, Jr., adopted a trial court performance standards system developed by the NCSC. This system is designed to help trial courts identify and set guidelines for their operations, measure their performance, and make improvements to better meet the needs and expectations of the public.

In 2003 the State Judicial Council endorsed the development of five specific trial court case processing measures. Since then the AOC has developed, tested and implemented a web-based system that provides court officials with up-to-date data for three of those measures:

- Case clearance (cases disposed as a percentage of cases filed).
- On-time processing (percentage of cases disposed within time guidelines, based on those adopted by the Supreme Court in 1996).
- Aging case index/backlog (percentage of cases older than times listed in the guidelines).

The CPMS gathers current data (within one month) from the AOC's civil and criminal automated systems and organizes this data allowing for a search and query of the information, for various case types, in any county or district. The CPMS includes both the three percentage-based measures above, plus extensive statistical data, such as the disposition rate for Superior Court criminal or civil cases in a certain county in the past 12 months, or the backlog of all District Courts within the state.

The CPMS "help" pages provide more detailed information about future plans to enhance the CPMS with expanded case types and additional performance measures and statistics, which will eventually eliminate the need for the printing and distribution of paper management reports. The anticipated next two performance measures (subject to enhancements to automated systems) are the number of times a case is put on a court calendar before being disposed, and a measure that will be designed to assess collection of restitution. The CPMS is also an important factor in the planning and development of court technology and information systems.

According to the North Carolina AOC report, four of the eighteen Superior Courts disposed of more than 80% of their cases within the time standard, and seven disposed of less than two-thirds of their cases within the time standard. Few District Courts disposed of less than 50% of their misdemeanors within the time standards.

Many of the stakeholders interviewed for this report were unaware of North Carolina's current overall time standards, and there was considerable divergence in opinion regarding their utility. Concerns included how the results might be interpreted by those outside the courts, as well as their overall usefulness in managing individual caseloads.

Post-Judgment Issues with Criminal Cases

Most of the emphasis in caseflow management has been on achieving reasonable times to disposition. Increasingly, courts are also looking at how the post-judgment phase can be better managed. Post-judgment issues with criminal cases include enforcement of sentence terms and orders of probation, as well as the appeals and post-conviction process. Few, if any, states have established post-judgment time standards in criminal cases.

²² <http://www1.aoc.state.nc.us/cpms/login.do>.

Application of the Principle in North Carolina

It was noted during interviews with North Carolina stakeholders that problems with court transcription resources are contributing to delay in the post-judgment period. This issue has arisen in other states where problems with the availability of qualified personnel to prepare transcripts or restrictions on third party transcription have created delay.

The Current Caseload in North Carolina's Trial Courts

As stated before, it is impossible to describe the current landscape in North Carolina because the courts are not using a single, consistent definition of a case. This makes it impossible to accurately provide the number of case filings, the number of cases resolved within time standards, the number of cases resolved by trial, by plea, or by dismissal; or to compare the North Carolina courts with each other or with courts in other states. It is crucial that the North Carolina Judiciary make sure that all courts in the state use a single definition of a case when entering information into the case management system or generating reports or workload or backlog. This is a crucial first step to examining and then improving caseload management in the trial courts.

The following information on caseload filing and disposition is provided to the Committee in this report because it is the best information available. NCSC cautions the Commission to not make any decisions based on this information other than a decision to take steps to ensure the future commissions will be able to review accurate and consistent data.

This report uses a number of measures to define the current landscape: case filings, case dispositions, clearance rates, time to disposition, age of pending cases, and trial date certainty.

North Carolina Trial Court Caseloads: 2014 – 2015²³

Case Filings:

Superior Court

120,835 criminal-non-traffic cases filed

8,131 criminal traffic cases filed

District Court

518,879 criminal-non-traffic cases filed

895,718 criminal traffic cases filed

596,127 infractions filed

Case Dispositions:

Superior Court: Criminal – non-traffic cases

2,644 were disposed by trial

77,188 were disposed by plea

1,419 were dismissed with leave to re-file

49,259 were dismissed without leave

986 were dismissed after deferred prosecution

14,794 – Other

²³ Annual Report of the North Carolina Judicial Branch, 2014-2015.
http://www.nccourts.org/Citizens/Publications/Documents/2014-15_North_Carolina_Judicial_Branch_Annual_Report.pdf

District Court – non-traffic cases

18,192 were disposed by trial
162,821 were disposed by plea
13,199 were dismissed with leave to re-file
264,360 were dismissed without leave
16,034 were dismissed after deferred prosecution
115,471 – Other

The number of dismissals is extraordinarily large compared to other states. NCSC assumes, but has not attempted to verify, that the reason for this variance is that a defendant may, in some districts, be charged with four offenses which are counted as four separate cases. A defendant then pleads guilty to one offense with an agreement that the other three offenses will be dismissed, and that court then reports one case disposed by plea and three dismissed. It is common in other states to count dispositions as the AOC defines a case: one disposition by plea.

This creates a problem because it is in the interest of promoting justice for the public to know how many defendants that are arrested and are detained pre-trial are subsequently cleared of all charges by the prosecutor or by the court, or who are “cleared” of some charges as long as they plead guilty to one charge.

Similarly, it is important to know how many cases go to trial and to compare that number with other courts in North Carolina and across the country. NCSC research has found a general downward trend in the percentage of cases which actually go to trial, with no more than one to five percent of criminal misdemeanor cases going to trial nationally.²⁴ This is the case in North Carolina as well, where only a small number of cases were actually disposed of by trial last year.

Clearance Rates

One of the indicators of court caseflow performance is represented by the following NCSC *CourTools* measure:

CourTool 2: Clearance Rates – The number of outgoing cases as a percentage of the number of incoming cases.

The case clearance measure relates to the court’s success at resolving as many cases as are filed. For example, if during the time period being measured, 100 cases were filed and 98 were disposed, the case clearance measure is 98% (98/100). This is an important tool for courts that are resolving cases timely and do not have backlogs, as this could signal that the court may be starting to accumulate a backlog.

The North Carolina clearance rate in FY2014 was greater than 100% for all case types. This in no way should be interpreted to mean that North Carolina is providing timely justice.

- Because not all courts in North Carolina define a case as a defendant, a clearance rate of greater than 100 % does not necessarily mean that the court is resolving all cases for as many defendants as are being charged.
- Because cases in North Carolina’s courts may currently be delayed, resolving as many or even more cases as those filed does not mean that they are being resolved timely. A 100% clearance rate can be used by a court and the criminal justice community to justify the status quo.

²⁴ See www.courtstatistics.org Court Statistics Project, National Center for State Courts.

Time to Disposition and Age of Pending Cases

Time to disposition is a *CourTool* measure that provides information on a court's ability to provide timely resolution of disputes:

CourTool 3: Time to Disposition – The percentage of cases disposed or otherwise resolved within established time frames.

If North Carolina consistently counted cases in accordance with the AOC's definition, the *CourTool* would enable comparison with other courts in the state and with state or national guidelines for timely case processing.

Many states have adopted recommended time guidelines similar to those established by the American Bar Association in 1992,²⁵ more recently updated as the Model Time Standards. The 98% threshold in the model time standards is an acknowledgment that even under the best of circumstances, some cases will remain unresolved. As the comparative table of time guidelines illustrates, the model standards, particularly for general jurisdiction courts, are more stringent than the standards previously adopted by North Carolina.

Another performance measure relating to case age is the age of active pending cases:

CourTool 4: Age of Active Pending Caseload – The age of pending active cases on which court action can be taken.

Pending cases are those that have been filed but not disposed. An accurate inventory of pending cases as well as information about their age and status helps the court manage pending matters by identifying overall trends and identifying specific cases which may be exceeding time guidelines so that action can be taken to resolve them. Typically, courts will produce reports that calculate the time, in days, from filing to the date of the report. Overall results can be reviewed, along with a detailed report listing open cases chronologically, beginning with the oldest pending case. Most states also report individual cases that are over time guidelines for judges to review and take action on those cases, if necessary.

Detailed information provided by the AOC regarding the age of both disposed and pending cases by prosecutorial district is provided in tables found in Appendix D. These tables detail the average age of cases which are pending and disposed over a two-year period by prosecutorial district. The following table summarizes the range of case age for both disposed and pending cases for the prior two years:

Fiscal Year	Range of Age of Disposed Cases	Range of Age of Pending Cases
2013	145 - 419	129 - 455
2014	126 - 496	149 - 374

Table 2: Range of Superior Felony Case Age (in days) by Prosecuting District - Last Two Years

The summary table illustrates the wide range of results between the North Carolina judicial districts. While it is helpful to know that in 2014 some cases took as long as 496 days to resolve, or that some cases were pending for as long as 374 days; this information alone is not helpful. Because the courts define and report cases differently, the summary table does not provide information on how many persons are awaiting disposition in each prosecutorial district. Additionally, North Carolina has set goals for

²⁵ American Bar Association, *Standards Relating to Trial Courts*, 1992 Edition.

disposition within 120, 180, 365 and 540 days. It would be more helpful to understand the nature of the backlog and to compare courts within the state for courts to accurately and consistently report the number of pending cases within each of those time intervals.

The reasons for district differences in the time to disposition may be the result of a variety of factors, including prosecutorial philosophy, availability of judicial resources, scheduling practices, continuance policies, etc. There does not appear to be any clear relationship between the workload of the court and age of pending or disposed cases based on the data available for fiscal years 2013 and 2014.

Trial Date Certainty

The fifth *CourTool* performance measure relating to caseflow management looks at the efficiency of trial scheduling practices:

CourTool 5: Trial Date Certainty – The number of cases resolved by trial or scheduled for trial.

A court's ability to hold trials on the date they are scheduled is another indicator of caseflow management effectiveness. The measure is calculated by identifying all cases disposed by trial during a given time period, and determining how many times the trial event has been set for each case. By identifying specific cases in which trials were continued the court can further investigate the reasons for delay and take steps to remedy them.

In the NCSC's experience working with numerous jurisdictions, there can be a variety of internal and external factors that cause trial certainty problems. Internal court factors include lack of judicial resources (often due to trial overscheduling), a shortage of jurors, and unavailability of special resources such as interpreters or court reporters. External factors are similar to those that cause delay in general, including lack of preparation by parties, witness availability, delays with exchange of discovery, etc. The unpredictability of trial scheduling causes many courts to schedule a large number of trials on a given day and time, knowing that most will resolve beforehand but with the expectation that a small number will proceed and therefore not leave judges with empty calendars.

One important way to promote trial date certainty is to be realistic in setting trial calendars. This can be accomplished by using data on outcomes of recent trial settings or status conferences to anticipate the percentage of cases set for trial that may be resolved and that must be continued (even under a firm policy limiting continuances), while still trying and disposing enough cases to meet both case clearance goals and time standards.²⁶ As noted previously, the overwhelming number of cases never go to trial, so efforts dedicated to trial readiness should also include techniques to improve the probability of a timely non-trial resolution.

With the practice of scheduling all hearings after the first appearance as trials (as NCSC learned occurs in Wake County District Court) it is no surprise that trial date certainty does not exist in North Carolina. Courts should set cases for trial only after it has been found in an administrative setting or at a status conference that discovery is complete, that all motions that need to be resolved pre-trial have been filed and decided, and that all witnesses are available.

²⁶ Steelman, David (2008) Caseflow Management. *Future Trends in State Courts*. National Center for State Courts.

Information Needed for North Carolina to Know Whether its Trial Courts Are Achieving Timely Resolution of Criminal Cases

Quality information is critical for knowing whether courts are achieving timely resolution of cases, whether any injustice is resulting from delay and whether changes need to be made to enhance the effectiveness of the court's caseflow management program.

As stated above, as a first step to having quality information, North Carolina must ensure that all courts use a single definition of a case when entering data into the case management system and when counting filings, pending cases and dispositions.

North Carolina needs to gather accurate information in order to determine the extent of delay in the trial courts. Current reports give a sense of the delay – median time and number of cases not disposed within time standard goals – but they do not provide information on whether some cases are so delayed that they cause injustice to the defendants or victims, nor do the reports give any indication on the causes of that delay.

- Courts *do* report median time to disposition, but the median time could be influenced by the number of cases resolved at the first appearance. Reports do not make it easy for the DA or the Court to determine how many cases are older than two or four times the time standard or longer.
- There are no reports on how many of the courts' cases involve pre-trial detained defendants, and in particular how many defendants are detained in the county jail for longer than the time standard.
- There are no reports on how many detained defendants have had all their charges dismissed, nor how long they were detained while awaiting the dropped charges.
- There are no reports on the sentence imposed on pre-trial detainees who are eventually convicted and whether that sentence is greater than the time served as a detainee.
- There are no reports on the number of detainees who plead guilty to charges that they did not commit solely because they could not financially or emotionally afford to remain in the county jail.
- There are no reports on the number or type of hearings set per case, the number or type of hearings held, the number of hearings continued, nor the reason for the continuance.
- There are no reports on the wait time between the time that the defendant, attorneys, witnesses and victims are told the case is scheduled for hearing and the time that the case is actually called for hearing.

Inventory of Pending Cases

Judges, prosecutors and court clerks need to know the inventory of pending cases. To schedule cases and to be able to report on the court's inventory, DAs and courts must be able to identify and report:

- The status and age of each individual case. Does the case need a status conference/administrative setting, a motion hearing, or a trial date?
- Court caseload and performance information such as clearance rates, the number of pending cases, the age of disposed cases, the number of cases older than the time disposition goal, the number of cases twice and three times as old as the time disposition goal, the number of hearings set per case, and the number of continuances in the case.

While automation is not a pre-requisite to caseflow management, the existence of an electronic case management system that includes the ability to track cases, events, and dispositions provides the most efficient way to monitor performance. Useful information for case management includes the following:

For each case:

- Its current status.
 - Is the case active, or has an order for arrest been issued?
- The detention status of the defendant.
- The last scheduled event and date.
- The next event and date.
- The number of times that the case has been scheduled for a hearing.
- The number of hearings actually held.
- The number of times a case has been continued, and the reasons behind the continuances.
- The age of the case at disposition.

For all cases at the court:

- The number and type of cases filed in a time period.
- The number, type and age of cases disposed of in a time period.
- The number, type and age of cases pending each next meaningful event.
- The number of cases continued prior to a scheduled trial date and on a scheduled trial date and the reasons for those continuances.

Both aggregate and case-specific information should be available for judges and court managers to assess overall program performance and to manage individual cases effectively. Judging from the information provided by the AOC for this report, some of this information appears to be available, though a great deal of this information is unavailable.

Interest by Stakeholders in Improving Caseflow Management

The issue of **prosecutorial control** over setting of calendars was prominent during the interviews. District attorneys believe the current system can work and note that the law provides safeguards and priority to older cases. With judges rotating through districts, they note that the district attorneys are the most consistent element of caseflow management. They also observed that good case management depends on the expectations of judges, regardless of who sets the calendar or preparation by all parties involved. The perceptions of defense counsel are quite different. They question whether the system is really a “level playing field” since the district attorney can potentially keep cases off the docket to put pressure on the defense. It was apparent from the conversations that the philosophy and approach of the district attorney may be a determining factor in successful caseflow management. Several participants noted that regular meetings and communication have helped facilitate better calendar control and coordination. In a limited number of courts, most prominently Mecklenburg County, the court administrator’s office plays a key role in managing the calendar. Calendar management by court support staff, such as court administrators, clerk’s office or judicial assistants, is more typical in other states.

In terms of **reasons for delays** noted during the interviews, practitioners (district attorneys and defense counsel) noted many of the same reasons. External factors such as difficulty in obtaining timely lab reports and incomplete investigative information top the list. Lack of preparation by opposing counsel was also cited. These factors, along with overscheduling of cases and schedule conflicts for attorneys are contributing to high rates of continuances. At least one district attorney who participated in the interviews has developed an internal system for tracking continuances and the reasons for delay. Another noted that his assistants regularly report the outcome of case events for better management. From the perspective of magistrates, missed court dates by defendants is another factor. They attribute this to defendant’s having

to call in for a court date, as well as problems that attorneys have in contacting their clients early in the court process.

Whatever the reason, there was general agreement among all the interviewees directly involved in case processing that **delay is a significant problem**. It was noted that more rural counties where judicial rotations are less frequent may experience greater delay, although some courts have allowed criminal matters to be set on a civil session day if needed, and in some courts district court judges have been authorized to take superior court pleas. Magistrates cited delays in blood kit processing for DUI offenders and the limited number of misdemeanor probation violation hearing dates in some courts (which results in defendants sitting in jail while waiting for a hearing) as significant issues. Magistrates suggested that the expanded use of video conferencing capabilities could reduce delay in certain situations.

There were mixed responses to the utility of **time guidelines and performance measures** among those interviewed. There is a perception among some that time guidelines may focus too much on processing cases efficiently at the expense of quality. Defense attorneys were more in favor of implementing time guidelines than their counterparts in prosecution. Some courts are regularly looking at case data to manage calendars and continuances, though they are likely the exception. There appears to be very little awareness of the existence of the North Carolina time guidelines, although individual courts have adopted time standards as part of a caseflow management plan. Court administrators were particularly critical of the lack of reporting tools for management.

Problems with **data quality** and lack of **case tracking tools** were noted by judges and administrative personnel. Court Services staff acknowledged that there are often inconsistencies in the recording of dispositions and entering counts, and that a standard for bills of indictment is needed to obtain more accurate figures. In terms of case management reports, Court Services staff noted that the number of continuances granted can be recorded and that filters are available in the current system for district attorneys to track case age. Clerks also noted that they are able to track continuances if necessary.

Overall, those interviewed acknowledged that delay is a significant problem. There is agreement that there are a number of systemic issues that need to be addressed, and that better local communication and collaboration is an effective strategy to improve criminal case management, along with better tools and more accurate data. There remains disagreement over the issue of prosecutorial control of calendars, and the utility of performance measures, specifically time guidelines.

Potential Benefits of Improved Criminal Case Management

Cost Savings

In the post-recession era, legislative bodies are particularly keen to reduce the cost of providing government services. Several recent analyses reviewed by the NCSC in the preparation of this report provided insight on areas where savings might be realized by other agencies through more efficient management of criminal dockets.

Effective caseflow management practices can reduce costs in several areas. Jurisdictions that have successfully implemented caseflow management practices have achieved cost savings by, for example:

- Reducing the cost of pretrial detention by reducing the length of time that defendants are jailed while they await resolution of their cases. As previously stated, to measure cost savings in North Carolina, the court must know and be able to report the number and age of pending cases with

detained defendants. An effective case management system using differentiated case tracking can establish reduced time standards for cases involving detainees and can expedite scheduling of their cases.

- Reducing the cost and safety risks of transporting detainees to court for unproductive hearings.
- Reducing taxpayer dollars spent on judges, prosecutors, public defenders, and court reporters and court personnel at unproductive events. As previously stated, an effective case management system will result in fewer case settings per case and fewer continuances.
- Reducing the number of failure to appear bench warrants and related cost to law enforcement due to shorter time between court events and greater event predictability.
- Reducing clerical time and costs spent making docket entries and sending notices to parties by reducing the number of scheduled hearings and eliminating unnecessary continuances.
- Saving witness costs, including those related to police overtime through reduced waiting times and continuances.
- More efficient coordination of individuals and tasks associated with complicated cases by completing early screening to allocate sufficient time and resources to resolve them.

In addition, effective caseflow management practices can save victims, defendants and their families the costs associated with taking off from work and traveling to the courthouse to attend a hearing, as well as the cost of defendants paying legal fees for private counsel.

While the research is dated, in the early 1980's the National Institute of Justice funded a study of the cost of continuances to prosecution and defense agencies and witnesses in felony and misdemeanor cases. The study included courts in North Carolina, Virginia, and Pennsylvania. Researchers found that continuances added 12 to 24 percent more work to each prosecution or public defense agency. In fiscal year 1983/84, this increase translated into additional labor costs ranging from \$78,000 to \$1.1 million at the time. Although the dollar amounts are likely to be quite different today, the finding that continuances are quite costly would not be different.²⁷

Public Trust and Confidence

The NCSC's Vice President for External Affairs, Jesse Rutledge, summarized some of the recent findings regarding public satisfaction with the courts nationally. He noted that previous surveys confirmed that citizens often believe that the legal system takes too long and costs too much overall. In the most recent assessment of satisfaction, focus group participants expressed their belief that there is collusion in the judicial process, particularly by attorneys, to defer or delay court decisions. Participants also expressed concerns that the financial interests of some parties work against the efficient administration of justice.²⁸

The 2015 joint Elon University and High Point University poll of citizen confidence in public institutions, completed for the Commission's Public Trust and Confidence Committee, sheds light on the public perception of the North Carolina courts and other institutions.²⁹ Public confidence in North Carolina is quite high regarding the local police or sheriff, with 81% of those surveyed expressing the opinion that they are "somewhat or very confident" in this local institution. North Carolina State Courts followed with nearly 66% of respondents stating they were "somewhat or very confident" in this state institution.

²⁷ Jacoby, Joan (1986). *Some Costs of Continuances, A Multi-Jurisdictional Study*. US Department of Justice.

²⁸ Rutledge, Jesse (2016). *The State of State Courts: Reviewing Public Opinion*. The Court Manager. Spring.

²⁹Elon University (2015). Elon University Poll. Accessed May 28, 2016 at: <http://www.elon.edu/web/elonpoll/111915.xhtml>.

Approximately 40% indicated that they believe people “usually” receive a fair outcome when they deal with the court, and a small percentage (3%) answered “always.”

Many respondents to the Elon/High Point poll perceive that wealthy individuals and white residents receive better treatment by the state courts than do black or Hispanic residents, low-income defendants, or those without a lawyer. Further, more than half of the respondents believe people without attorneys, low-income people, and those who don’t speak English receive somewhat or far worse treatment than others in the court system.

While the impact of delay on the public may be difficult to quantify and link directly to public opinion, individuals who appear in court as parties, witnesses, and victims are certainly impacted by delay. The NCSC has noted that one of the most frequent responses to public satisfaction surveys are concerns about starting court on time and complaints about the amount of time it takes to resolve cases. Many studies have concluded that these perceptions are important to the overall level of trust and confidence that the public places in courts as institutions.

An effective caseflow management program will result in timely resolution of criminal cases and will enable the DA and the courts to document that timely resolution. This, over time, will enhance public trust and confidence in the courts.

A Rubric for North Carolina to Engage in Statewide Caseflow Management Improvement

Accomplishing Effective Implementation – A Cultural Shift

For a number of reasons identified below, even when judges, DA’s and defense counsel agree that the status quo is not working and that change is needed to effectuate more fair and timely resolution of court cases, accomplishing change in the courts is often difficult.

NCSC research related to legal culture suggests that the organizational character of courts inhibits judges from reaching consensus on obtaining a more active role in the management of criminal cases. Lack of agreement on the judicial role in managing cases underlies the long-standing research problem of what explains substantial differences in criminal case processing times among courts. Explanations that seem obvious, such as workloads and resources, have not been found to consistently impact resolution.³⁰ Rather, it appears that the broader concept of court culture is a driving force.

Finally, achieving even minimal coordination among judges, prosecutors, law enforcement, and criminal defense attorneys is for some court leaders a substantial departure from the traditional way of doing business. This may be in part rooted in the adversarial nature of the system, in which the court remains neutral while prosecutors are committed to the protection of society and defense attorneys to the protection of their client’s constitutional rights. However, this view fails to recognize the mutual interest in the fair and timely resolution of criminal cases shared by all participants in the process. Collaboration between all concerned institutions and leaders is critical to successful case management.

³⁰ (Church et al., 1978; Goerd et al., 1989, 1991).

Key Steps

Numerous states have engaged in statewide efforts of improving caseflow management systems. The approaches have varied to some extent and have depended on the degree of court unification and the role of the administrative office in each state. Some states have already been through several iterations of caseflow planning, revising and updating plans concurrent with revisions to time guidelines. It is important to note that the improvement of caseflow management is an ongoing process in which continuous feedback is necessary to assess the effectiveness of new approaches and to account for inevitable changes in statutes and operational practices. Courts must compile, analyze and continually monitor case information, such as the data identified elsewhere in this report, before making necessary modifications to improve results. Notwithstanding the various approaches taken across the country, there are several key steps outlined below that are typically followed by states engaging in caseflow management improvement efforts.

Adopt or Modify Time Standards/Performance Measures

Whether to begin a statewide effort with the adoption of time and performance standards or delay adopting such standards until more is known about the existing state of caseflow management is a chicken and egg question. Many states have employed published performance measures as a first step and proceeded to develop information and programs to help courts meet the standards. Others have delayed creating or updating time standards pending the collection of background data to assess the current state of caseflow management.

The threshold question is whether information systems can provide sufficiently accurate and reliable information to enable courts and the AOC to determine with reasonable confidence the age and status of criminal cases. Since North Carolina already has published time standards, one approach might be to assess how courts currently stack up against the existing standards before deciding what direction to take with regards to a revised set of standards.

As stated earlier, the court must have confidence that data is reliable before it engages in a process to adopt, implement and monitor compliance with time standards. The Judicial Branch must first make sure that all districts consistently use a definition of a case established by the AOC. This will require leadership and oversight by the Chief Justice, a revived Judicial Council, the Senior Resident Superior Court Judges, and the Chief District Court Judges.

In terms of general performance measures, the NCSC's *CourTools* are a good starting point for developing quality performance measures. The measurement process and recommended instruments in *CourTools* are based on a self-administered format with instructions and suggested report forms. The AOC's Court Performance Management System has already implemented a web-based system that provides information on the following three of *CourTools*' ten performance measures:

- Case clearance rate.
- On-time processing (percent disposed within 1996 time guidelines).
- Aging case index (cases pending over time guidelines).

As noted in the next section, data is gathered in the AOC's criminal automated system and can be searched by case type, county, or district. Additional statistical data, such as the disposition rate for superior court criminal cases by county in the past 12 months, and district court backlogs are also available.

The measures found in the NCSC's *CourTools* suite are by no means exclusive. The Judicial Council (or other body) and the AOC could also adopt other measures that have been developed as part of the original Trial Court Performance Standards or develop in-house measures and standards to meet local needs. These could include measuring some of the cost-related factors mentioned in this report such as juror utilization and jail and prisoner transport costs. Appendix F provides an extensive listing of criminal caseflow benchmarks and indicators.

The AOC and a revived Judicial Council (or a new multi-disciplinary body) should review the data and information needs identified in this report and develop new measures to capture and analyze the effectiveness of scheduling practices in resolving cases within established time standards.

Collect Information on Current Practices and Conditions

It may be that some North Carolina districts are substantially better than others when it comes to timely resolution. Interviews with stakeholders (i.e. those in Mecklenburg and Wake County) in connection with this report revealed that judges, prosecutors, and defense attorneys are already involved in innovative and successful approaches to managing criminal cases that may be appropriate for wider application. Identifying and sharing best practices, including the circumstances under which they appear to be most effective, is an essential step in implementing a plan. For example, as part of its caseflow management improvement effort, the North Dakota Court Administrator's Office surveyed judges and district administrators regarding successful practices that are already in place and shared this information on a special project web site.

In addition to looking at best practices within the state, lessons also can be learned from other jurisdictions. From 2011 through 2014, the NCSC conducted over 20 training and technical assistance projects across the country funded by the Bureau of Justice Assistance (BJA). One project specifically targeted felony caseflow management, and the NCSC worked with courts to identify and resolve felony caseflow issues. The results of successful caseflow management practices and strategies documented during the project are summarized in Appendix E.

The Supreme Court and the AOC should consider requesting technical assistance from the NCSC or another court organization to help North Carolina develop and implement a caseflow management plan. State Justice Institute funds may be available to help reduce the cost to North Carolina's budget.

Identify Additional Information Needs

As discussed above, accurate and timely information is essential to both the management of individual cases and overall policy. The AOC's current information systems supporting record keeping, calendaring and financial management appear to have been developed incrementally and are falling short of user expectations and needs. The AOC is currently engaged in a "gap analysis" to assess current and future automation capabilities. Future opportunities to capture and utilize performance-related information should be included in this analysis.

Realizing that an overhaul of judicial branch information systems is a long-term project, for the time being efforts should focus on getting the best data possible from the current systems. This includes improving the consistency of data entry across jurisdictions by establishing clear definitions for "cases" and disposition types (i.e. dismissed by DA, dismissed by court, guilty or not guilty by bench or jury trial,

plea to the original charge or to an amended charge). This will enable courts to count case settings, hearing types, continuances and reasons for the continuances, and to capture and report on the age and detainee status of pending cases.

Plans are already underway to improve performance measure reporting. As noted on the AOC web site, the current version is scaled-down to introduce the system to court officials, and with their input, improvements will be implemented. Some of the enhancements under consideration include:³¹

- Counting criminal cases with the defendant (or incident) as the unit of measure, rather than each charge (there can be many related charges against the same defendants in different cases, and now these related cases are counted as several cases, instead of just one).
- Aging criminal cases in superior court from the time of original arrest or service of process rather than the time of transfer to superior court.
- Including workload measures for cases in post-disposition status, especially criminal “motions for appropriate relief” and probation violation proceedings, as post-conviction activity comprises a considerable workload for court officials.
- Expanding the display of statistical data (numbers of cases) and eventually eliminating the printing and distribution of paper “management” reports (data on manners of disposition is the principal type of statistical data not yet in the CPMS, but that data is currently in printed reports).
- Removing cases from pending status in appropriate circumstances, such as when a deferred prosecution is being given a chance to work. This will not allow these cases, which can become “old” for good reason, to inappropriately skew or increase overall aging data.
- Adding measures that have already been approved by the judicial branch, but for which automated systems must be enhanced; including the number of times a case is calendared before being tried, as well as the total amount of restitution recovered for victims compared to the amount ordered.
- Breaking down the existing case categories into more specific case types.

These improvements, along with capturing additional data identified in this report, will resolve many of the current issues with data reliability that impact performance measurement and expand into the area of post-judgment performance management.

Establish and Evaluate Pilot Projects

Pilot projects allow courts to test new policies and procedures before engaging in a major change effort. They allow policy makers to try various options, identify costs and benefits, and determine obstacles to implementation. Pilots can serve as a testing ground to evaluate efficiency and effectiveness, and can be applied on a broader basis if proven to be successful. An essential element of implementing change is obtaining support and consensus about both the need for improvement and the solutions that will be effective.

Pilot projects help in the early stages of reform by providing visible examples of how new methods of work can be effective and beneficial. In some cases, courts may need to be granted temporary authorization to implement procedures that are not currently specified by law. For example, in the mid-1990s the Michigan Supreme Court authorized the cross assignment of judges to temporarily create pilot projects to test the impact of court unification. The results of this effort eventually lead to legislation that allowed local consolidation plans.

³¹ Source: <http://www1.aoc.state.nc.us/cpms/pages/help/FuturePlans.jsp> Accessed June 11, 2016.

The IDS report³² on scheduling noted that there was considerable interest among survey respondents in pilot testing a new district court scheduling system. Given the close relationship of this study to caseflow management in general, there is likely similar interest in establishing pilot projects for caseflow management. In addition, the AOC has relied in the past on the pilot approach to roll out changes to technology and is therefore in a good position to manage this process.

Many of the individuals interviewed for this report emphasized that “one size doesn’t fit” all jurisdictions and accordingly, any effort to implement a statewide program should take this into account. This is where careful thought as to the selection of pilot projects and assessment of existing best practices is needed.

Review/Modify Existing Court Rules, Statutes, and Procedures

Improving case management often requires a re-assessment of existing court rules and statutes. Typically, recommendations for changes will follow an assessment of pilot projects or other means of identifying where existing language either impedes case management or where additional language would provide better clarity or authority. In addition, some changes may be called for in existing work flows and procedures. Often, efforts to improve case management will identify procedural bottlenecks or problems with forms that can be easily remedied. As the AOC considers the development or purchase of next generation case management software, opportunities may exist to improve the efficiency of case processing through functionality that allows better monitoring and management of case events.

Develop Caseflow Management Planning Templates and Resources

One tool that has been successful in many courts is a local caseflow management plan. A good example of a comprehensive plan is Mecklenburg County’s plan, which was developed by a careful analysis of caseflow management data and implemented through a series of stakeholder reviews.³³ Caseflow management plans are most effective when they are developed with input from the individuals and agencies impacted by the plan, such as prosecutors, the defense bar, law enforcement, and corrections officials.

While the court should take the lead in developing the plan, it should be done in a collaborative environment. Plans should also be periodically reviewed, particularly when significant changes in court rules or statutes that impact case processing occur or there are changes in organizational leadership. A benefit of this process, which should be an ongoing effort, is that in many jurisdictions this will be the first time that all criminal justice system actors have come together to focus on improving the judicial process.

Plans are often adopted as local administrative orders. To achieve greater consistency across the state, the North Carolina Supreme Court should ask the AOC to create plan templates for courts to follow. A template may specify elements that should be contained in every plan, while allowing flexibility for each court to develop language that meets local needs. The following are examples of elements found in criminal caseflow plans across the country:

- Case assignment and scheduling.

³² Office of Indigent Defense Services (2009). District Court Scheduling Survey Report. Durham, NC.

³³ <http://www.nccourts.org/Courts/CRS/Policies/LocalRules/Documents/1168.pdf>.

- Continuance policies.
- Status or scheduling conferences.
- Motions practices.
- Discovery.
- Diversion.
- Probation violations.
- Time standards.
- Meetings and consultations.

A number of plans from other states are available from the NCSC.

Finalize Reporting and Information Requirements

Any changes or enhancements to reports and other information should be tested before being finalized. In many cases, an unintended consequence of paying greater attention to case reports is the discovery of problems with data quality. The problems most frequently encountered in electronic case management systems are due to clerical errors, such as incorrect date or event entry and failure to close out cases. These kinds of problems typically cause inaccurate case age and disposition counts. Audits and other checks should be performed by the clerk or court to identify errors that impact the reliability of reports.

Decisions regarding who should receive reports, and how often, will need to be made. Caseflow management reports generally fall into one of two broad categories, aggregate and other reports. Aggregate reports provide information on overall trends and conditions, such as clearance rate, time to disposition, and pending inventories statewide and by district. Other reports are designed for the management of individual cases, such as listings of pending cases and cases over time guidelines. Again, the future case management system should be designed with caseflow management information and reporting needs in mind.

Additionally, thought should be given to how performance reports will be monitored and whether any follow up will be conducted to assist jurisdictions where potential problems are indicated. This could be the function of the Senior Resident Judges, the Chief Judges, the AOC and the District Attorney's Office.

Provide Training and Technical Assistance

To ensure consistent adoption of new policies and approaches, education and technical assistance can improve the sustainability of a statewide effort. The AOC Court Services division currently provides assistance to courts around the state, primarily trouble-shooting and training on current applications. With additional qualified staff resources, this office could perform several functions as part of a statewide roll out, including monitoring pilot projects, offering technical assistance, providing resources, and collection and follow-up of performance reports.

There are a number of resources and tools available to help individual courts assess current caseflow management effectiveness, which are available from the Bureau of Justice Assistance and NCSC:

- *Conducting a Felony Caseflow Management Review – A Guide*
https://www.bja.gov/Publications/AU_FelonyCaseflow.pdf
- *How to Conduct a Caseflow Management Review*
<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/5>

- *Caseflow Management Maturity Matrix and Questionnaire*
<http://ncsc.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/2127>
- *Improving Caseflow Management: A Brief Guide*
<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1022>

In addition, the NCSC has over twenty presentations and technical assistance reports created as a result of a three-year BJA funded project to improve felony caseflow management. Appendix G includes two examples of training program agendas from the project. One of those programs in Cuyahoga County, Ohio, included a broad range of local criminal justice professionals, such as prosecutors, defense counsel, judges and court clerks. The second program in Williamsburg, Virginia, focused on judges and court administrative staff and was designed to help participants develop a caseflow management action plan for their jurisdictions.

Feedback and technical assistance efforts in other states are often tied to regular caseflow management reports provided to the courts and monitored by the administrative office of courts. Trial court services divisions and/or regional administrative offices in many states provide direct technical assistance to courts in this area. The North Carolina AOC would need to assess whether this is a function that could be within the scope of Court Services' responsibilities. Additionally, as the primary training provider for the judiciary, the University of North Carolina School of Government may be engaged to incorporate caseflow management topics in training agendas for the judiciary.

Sustained Support through Leadership and Collaboration

It has been argued that successful reforms are 90% leadership and 10% management. Research and practical experience with caseflow management efforts, both at the state and local levels, is most successful when there is clear and sustained support from leadership. This includes a high-level endorsement by the Supreme Court as well as leadership and collaboration between prosecutors, local judges, and the defense bar.

Key Participants

Direction from judiciary leadership and participation by stakeholder representatives is essential throughout a project of this nature. North Carolina's unique combination of prosecutorial, judicial, and public defense services under one roof should facilitate overall coordination. The following major tasks are associated with a state-wide implementation along with key participants, based on NCSC's experience in other jurisdictions:

Project Oversight

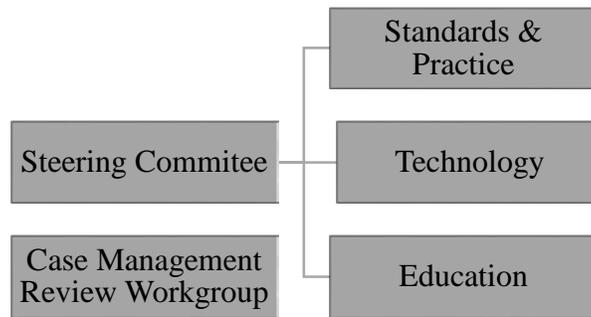
The Supreme Court should assign responsibility to the Judicial Council (or create a new steering committee or similar body) charged with the responsibility of overall project strategy and direction. The committee should be composed of high-level representatives from judicial branch agencies or organizations and the criminal justice community. For example:

- Supreme Court Justice or designee
- Director of the Administrative Office of the Courts or designee
- Trial Court Administrator

- Superior Court Judge
- District Court Judge
- Clerk of Court
- Prosecutor
- Public Defender
- Criminal defense bar
- Law enforcement officials

The committee may establish various working groups to address specific issues such as rule and statutory revisions, technology, communication and education. Participants in working groups will depend on the subject matter, and typically will include individuals with specific expertise or experience. Working groups will be involved in developing specific recommendations and action steps for approval by the steering committee.

As an example, the following is the organizational structure of an effort currently underway in the state of North Dakota to revise the current time guidelines and implement best practices in caseflow management. In this case, the project steering committee has appointed a primary workgroup to manage three topical sub-groups which are responsible for most of the work. The workgroup is responsible for managing project communications and has set up a website for this purpose. North Dakota's effort does not include pilot projects, although courts throughout the state have been asked for their input regarding best practices.



Project Management

An individual or office should be designated to act as project manager for the effort and should report directly to the steering committee. This position will work closely with the working groups, monitor pilot sites, manage the project budget, and provide general administrative support throughout the project. Typically, a staff person or unit from the administrative office of courts, such as a court services division, is designated for this purpose.

Evaluation

If a pilot project approach is taken, it is particularly important to have resources available for ongoing monitoring and evaluation. This is a function that could be managed by AOC staff along with the assistance of the University of North Carolina School of Government or similar external organization with research and evaluation experience. AOC technical staff will also need to be closely engaged with the evaluation of the pilot project.

Education and Training

The sustainability of this effort will be greatly enhanced by establishing a communication strategy throughout the project to educate the criminal justice community about the goals and intended outcomes. This also includes the development of caseflow management training resources for inclusion in programs for judges, clerks, prosecutors and defense counsel.

Suggested Timeline

The following is a *hypothetical* timeline for implementation of a statewide plan utilizing a pilot project approach to identify best practices over a two-year period:

ACTIVITY	Year 1				Year 2			
Adopt or modify time standards/performance measures	■							
Collect information on current practices and conditions	■							
Identify additional information needs	■	■						
Establish and evaluate pilot projects	■	■	■	■	■	■		
Review/modify existing court rules, statutes, and procedures				■	■	■		
Develop caseflow management planning templates and resources					■	■		
Finalize reporting and information requirements					■	■		
Provide training and technical assistance (ongoing)		■	■	■	■	■	■	■
Revise time standards (as needed)								■

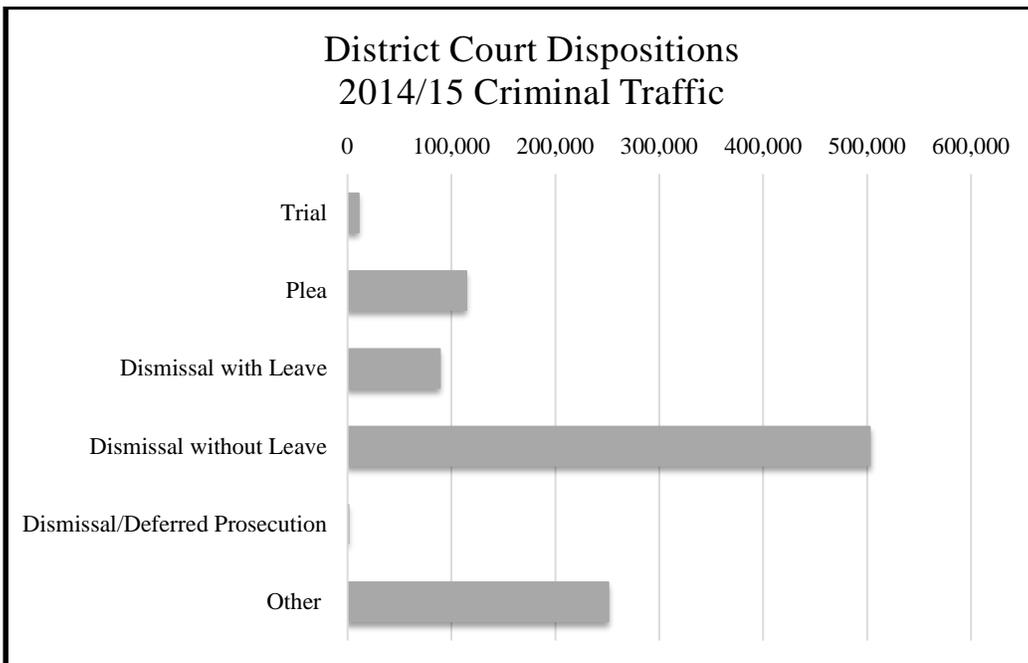
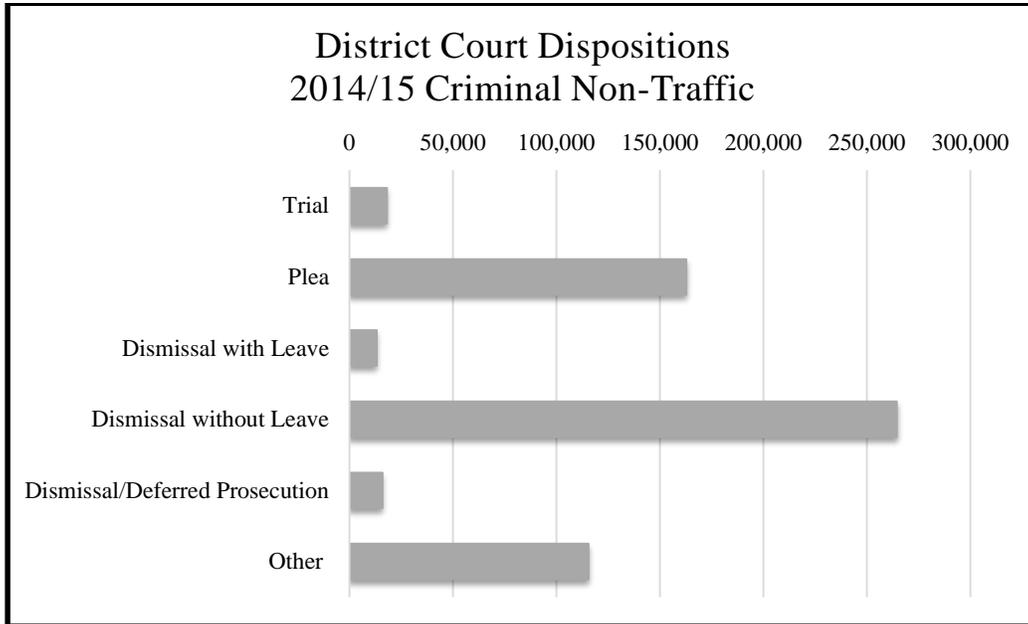
This timeline assumes the creation of pilot projects early in the effort and that changes to rules, statutes and procedures will be identified as a result of the lessons learned in the pilots. As the pilots wind down and receive a final evaluation after a year in operation, specific resource and informational needs can be finalized. This schedule includes an ongoing communication effort during the course of the project, along with the development of education and training materials that will become a standard part of the training curricula.

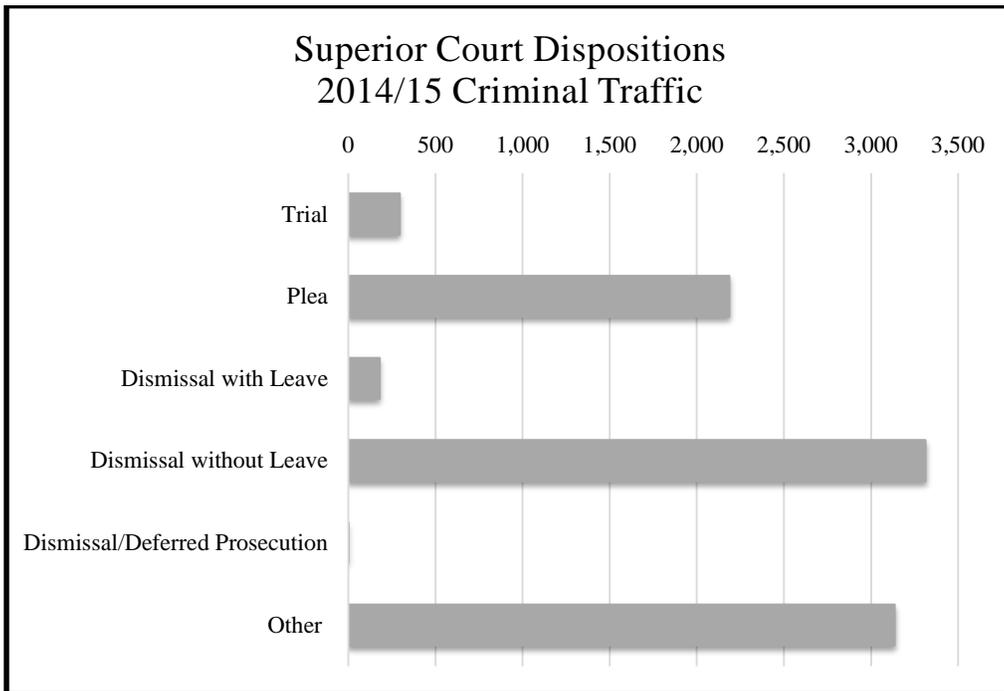
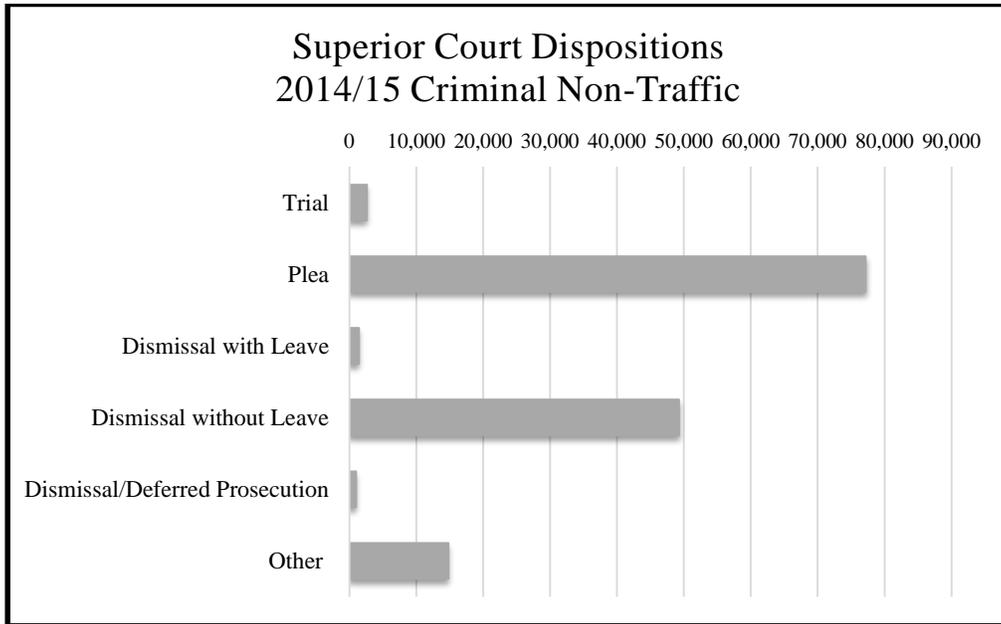
The actual timeline for deployment of a major caseflow management initiative will depend on a number of factors, including whether pilot projects are established before major changes are implemented, the time required to secure enabling legislation or changes to court rules, and the availability of additional staff resources to support the effort.

Appendices

Appendix A – Criminal Dispositions by Type

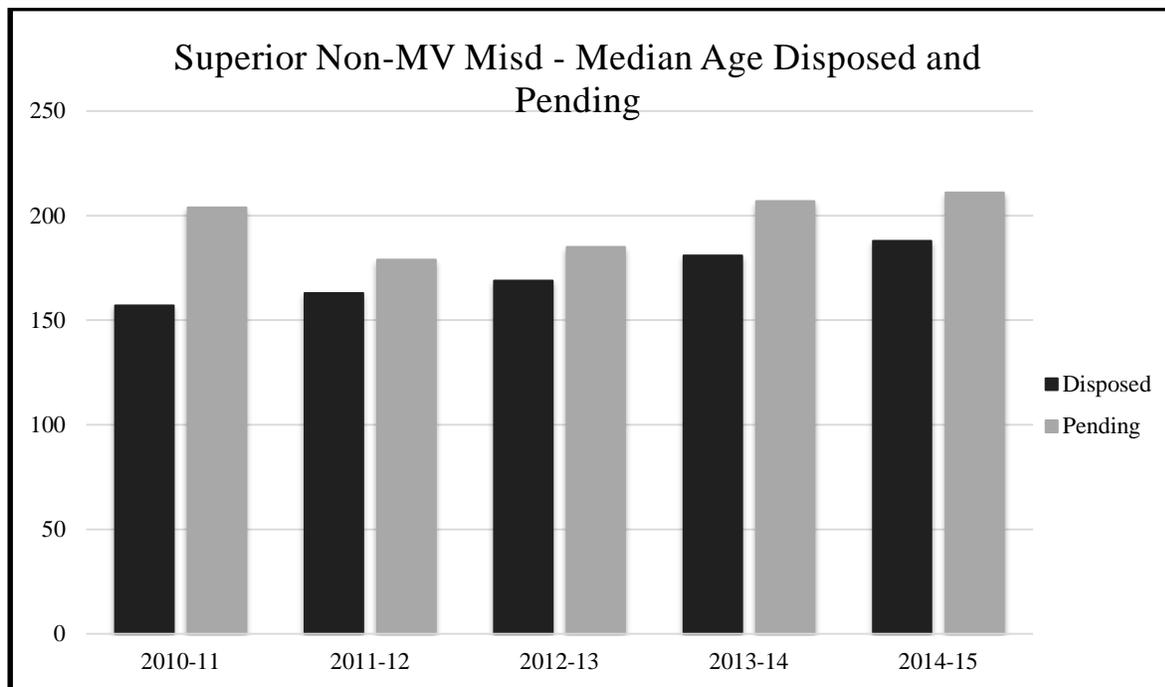
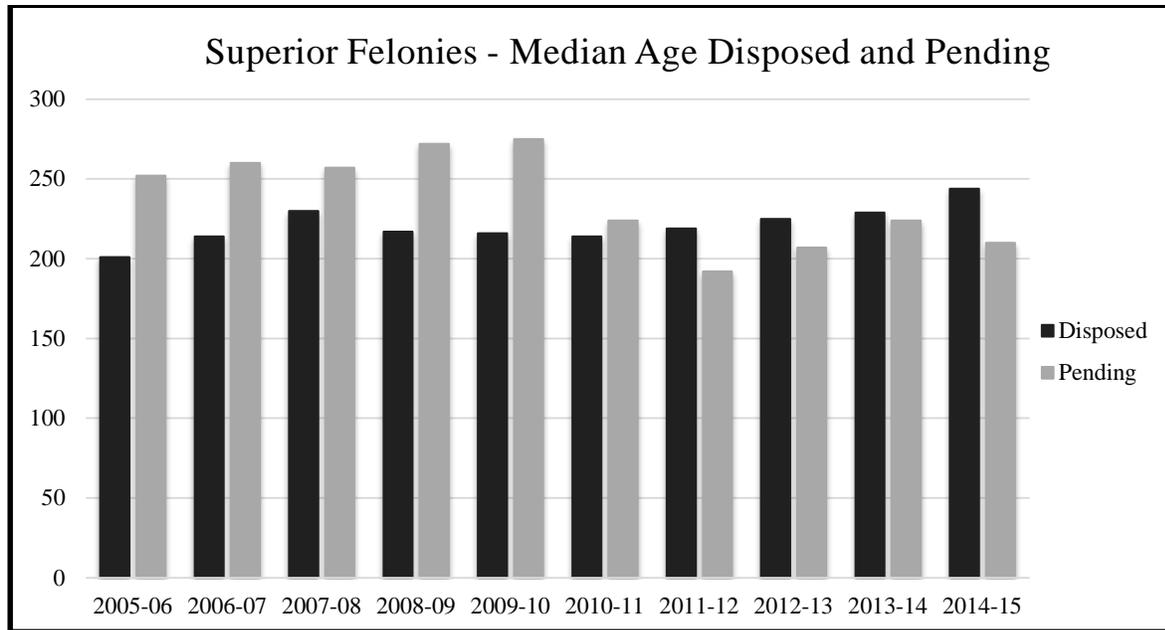
(Source: North Carolina Judicial Branch 2014-15 Statistical and Operational Report)

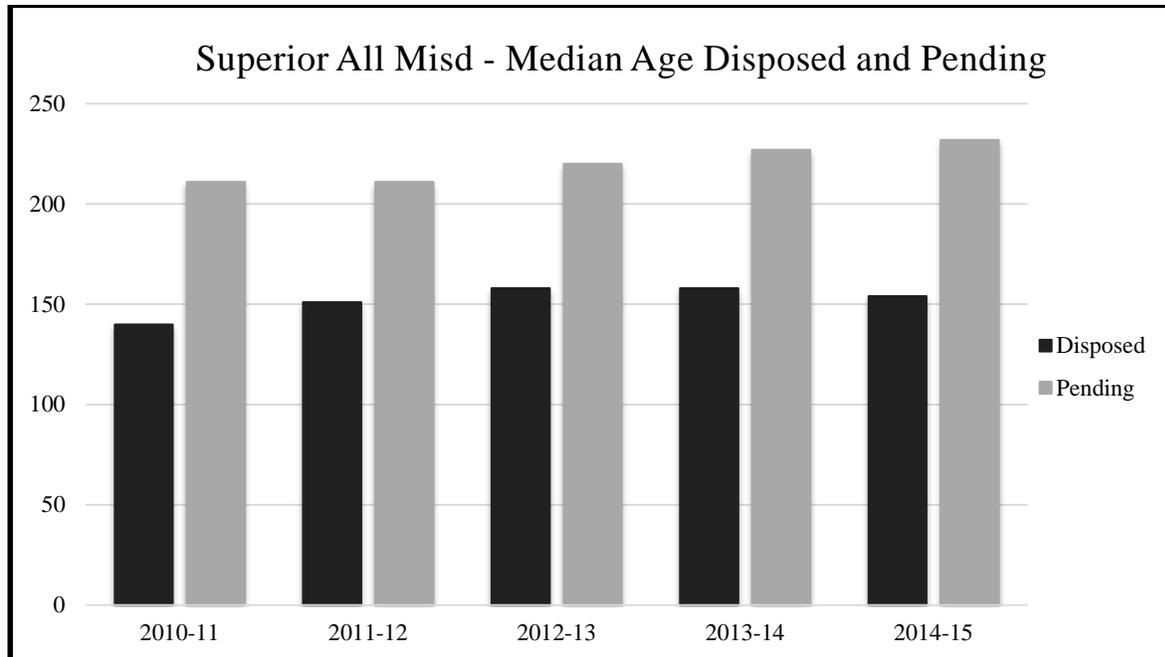
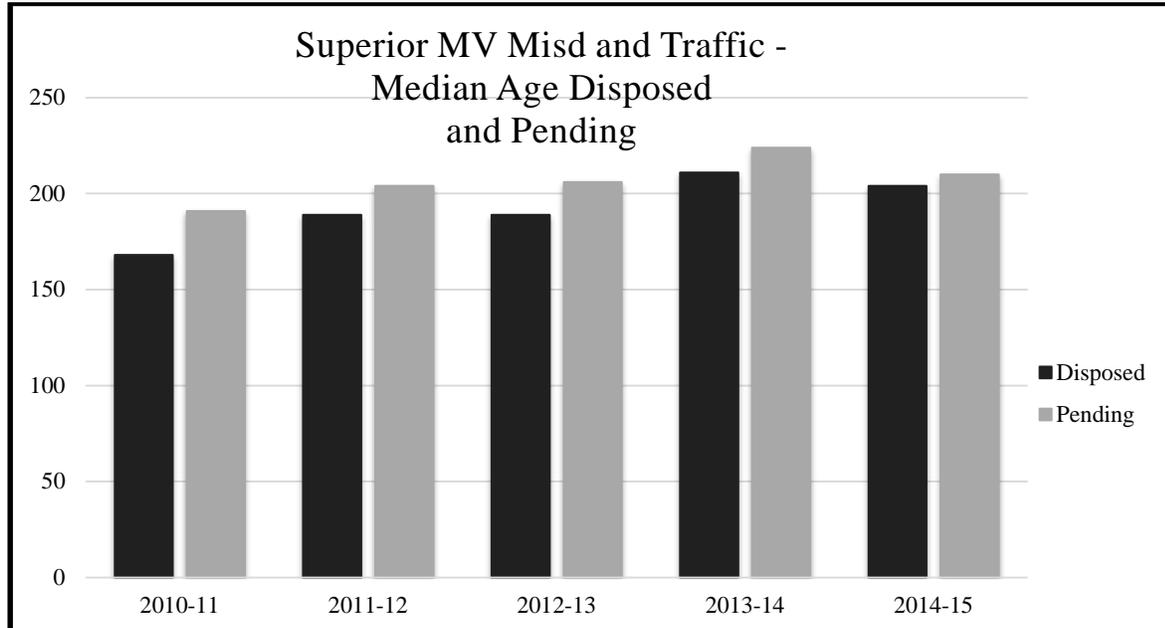




Appendix B – Disposed and Pending Case Age

Provided by the North Carolina Administrative Office of Courts

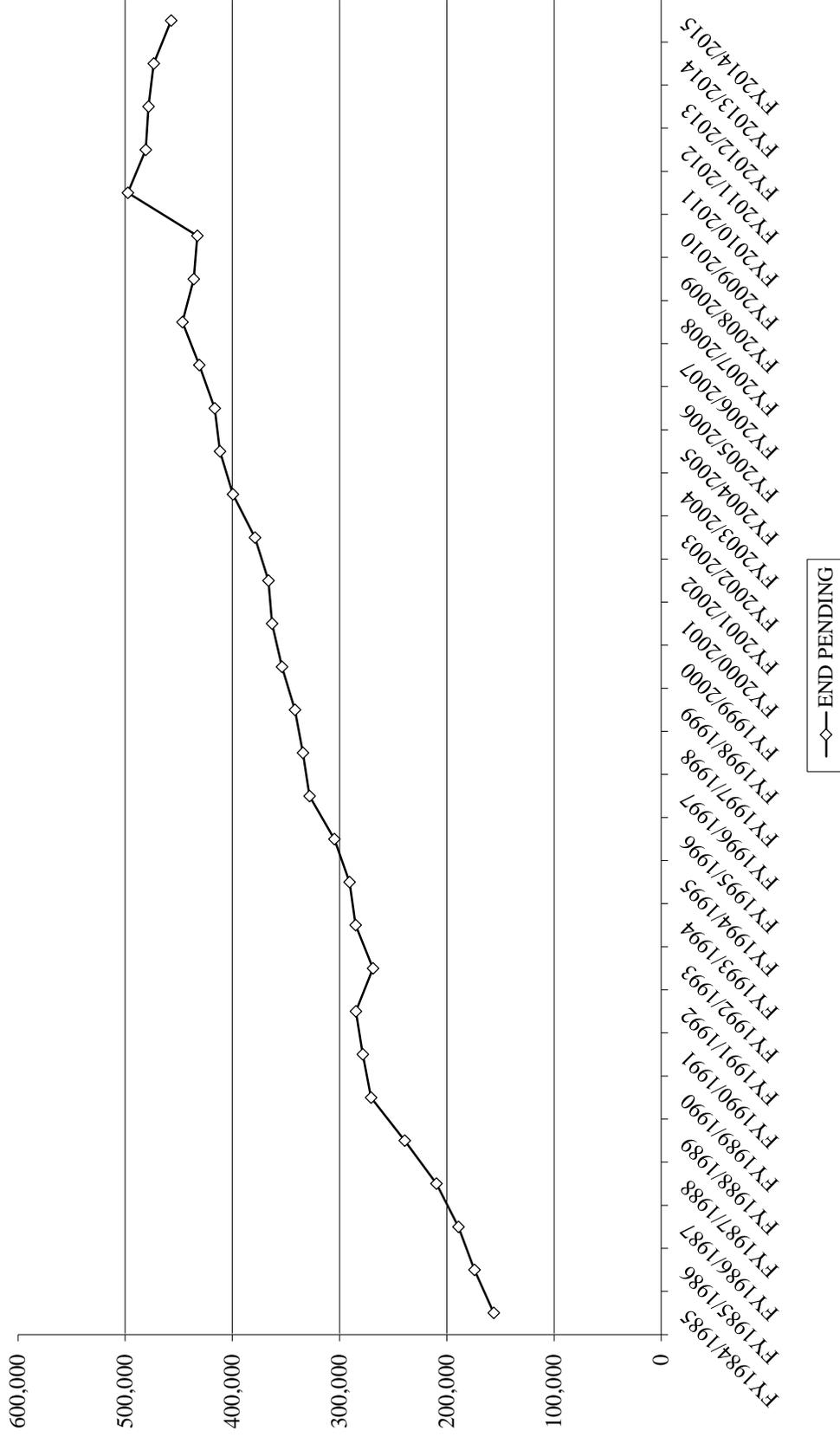




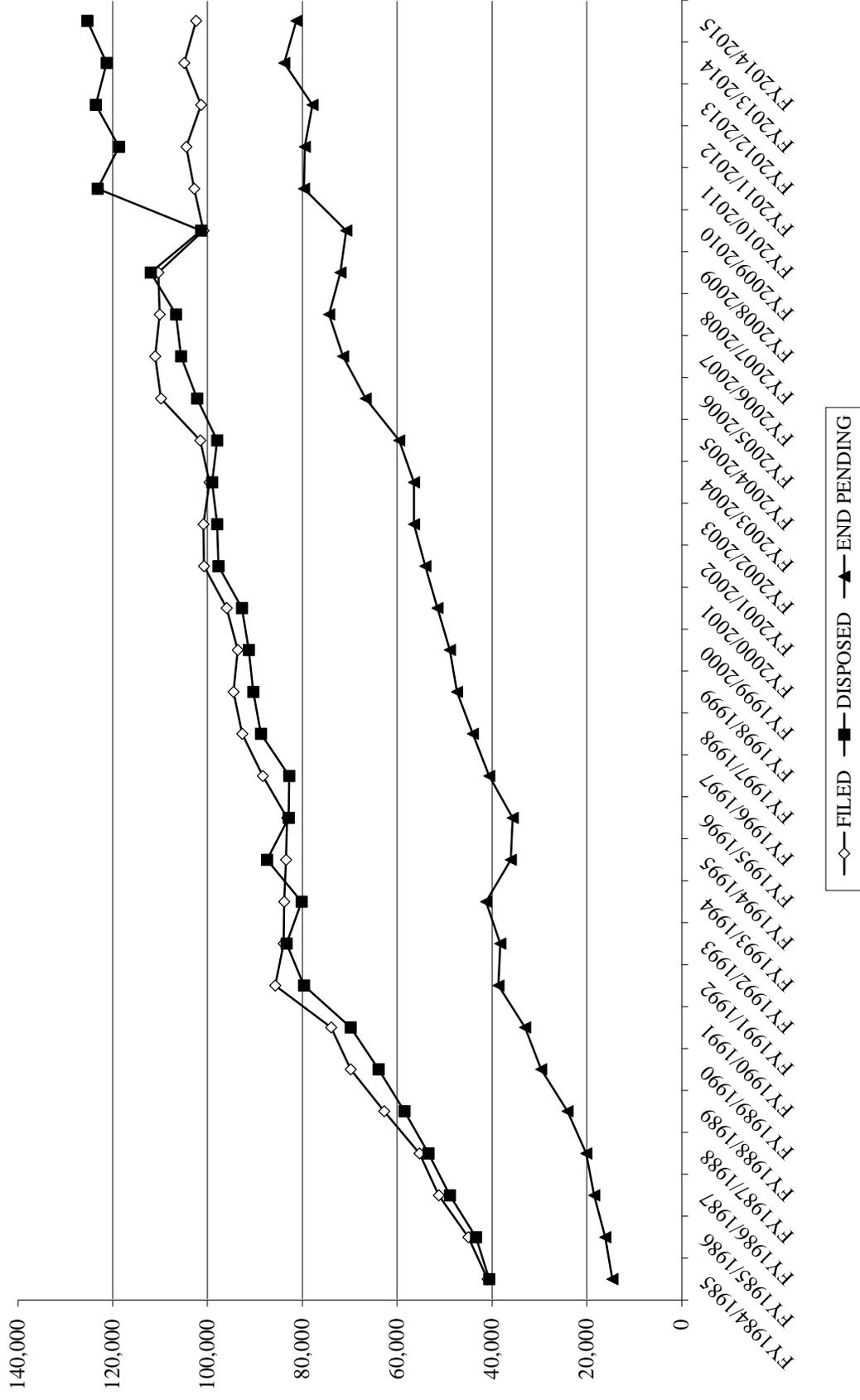
Appendix C – Criminal Filing Trends 1984-2014

(Source: North Carolina Administrative Office of Courts, derived from Court Statistics section of the Judicial Branch website)

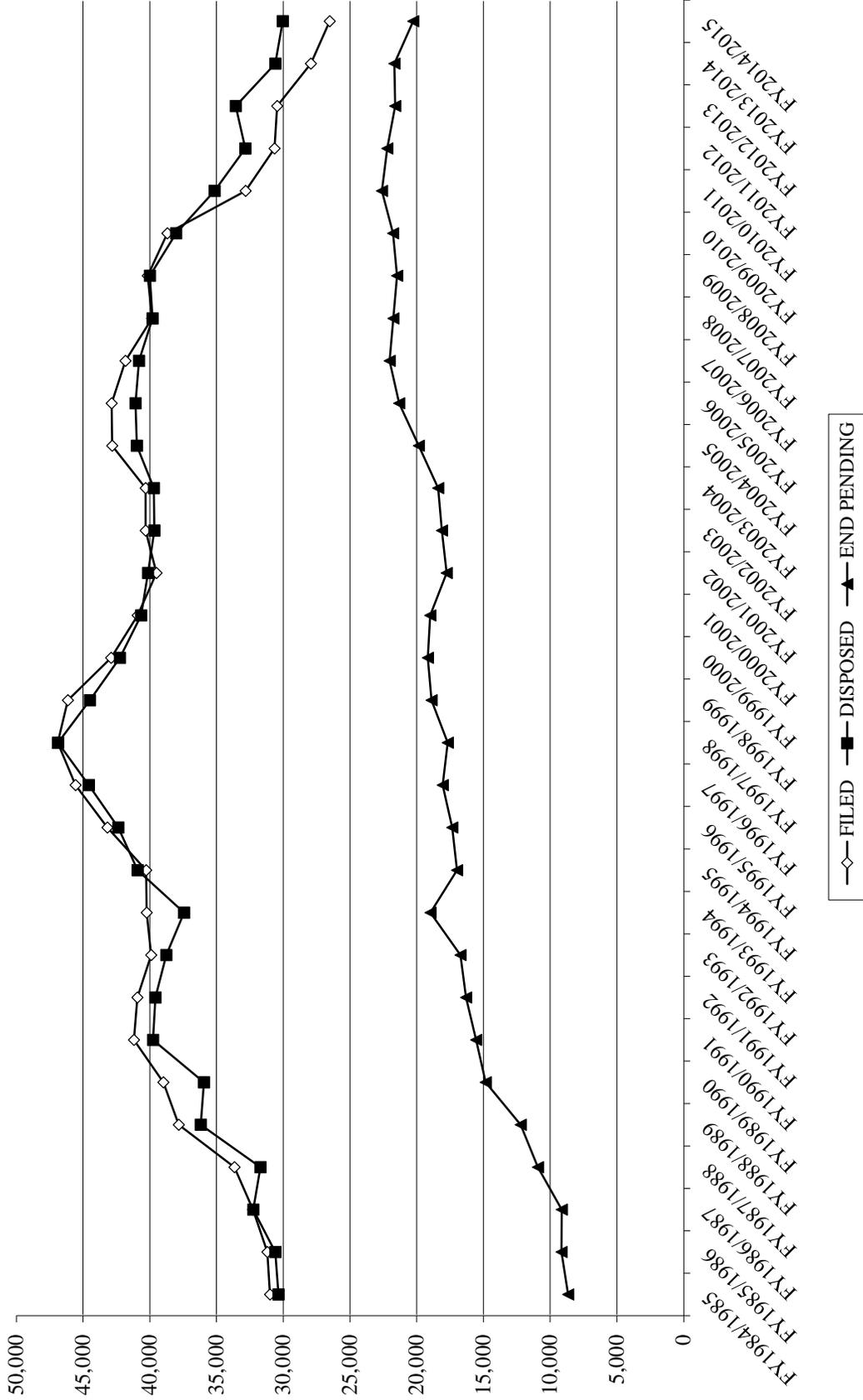
Statewide End Pending (CVS, CRS, CVD, CR-NMV only)



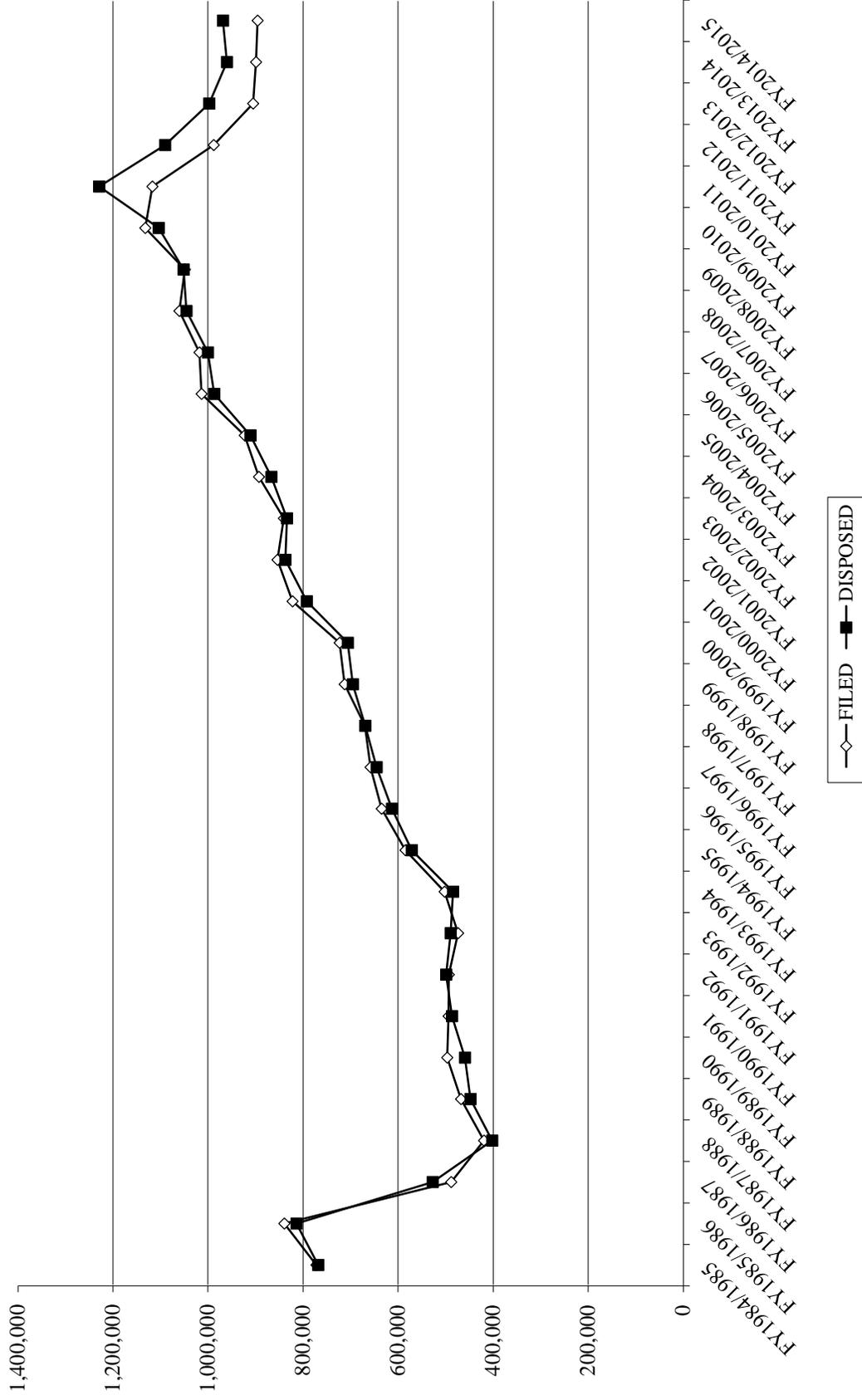
Statewide Superior Felony Cases



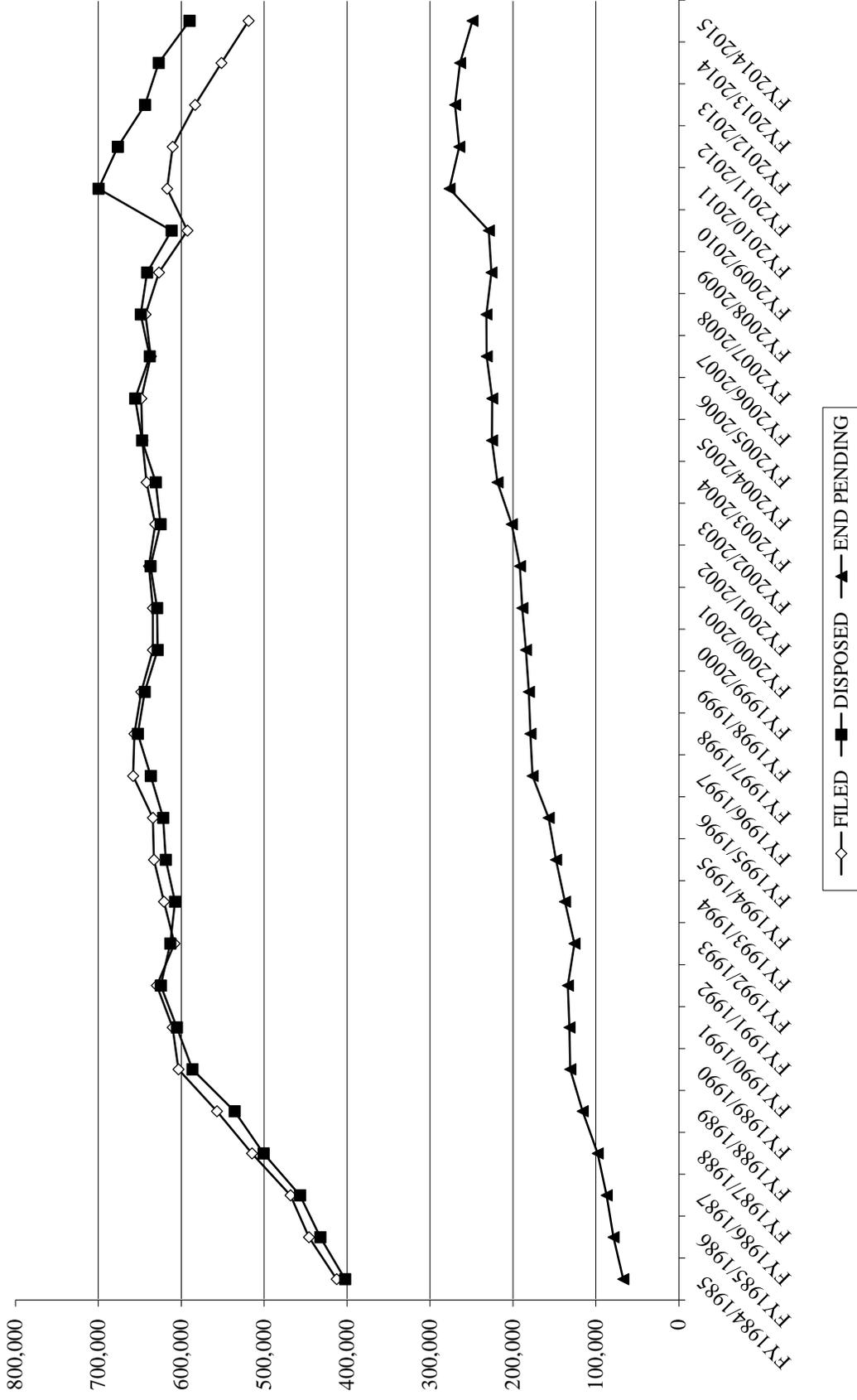
Statewide Superior Misdemeanor Cases



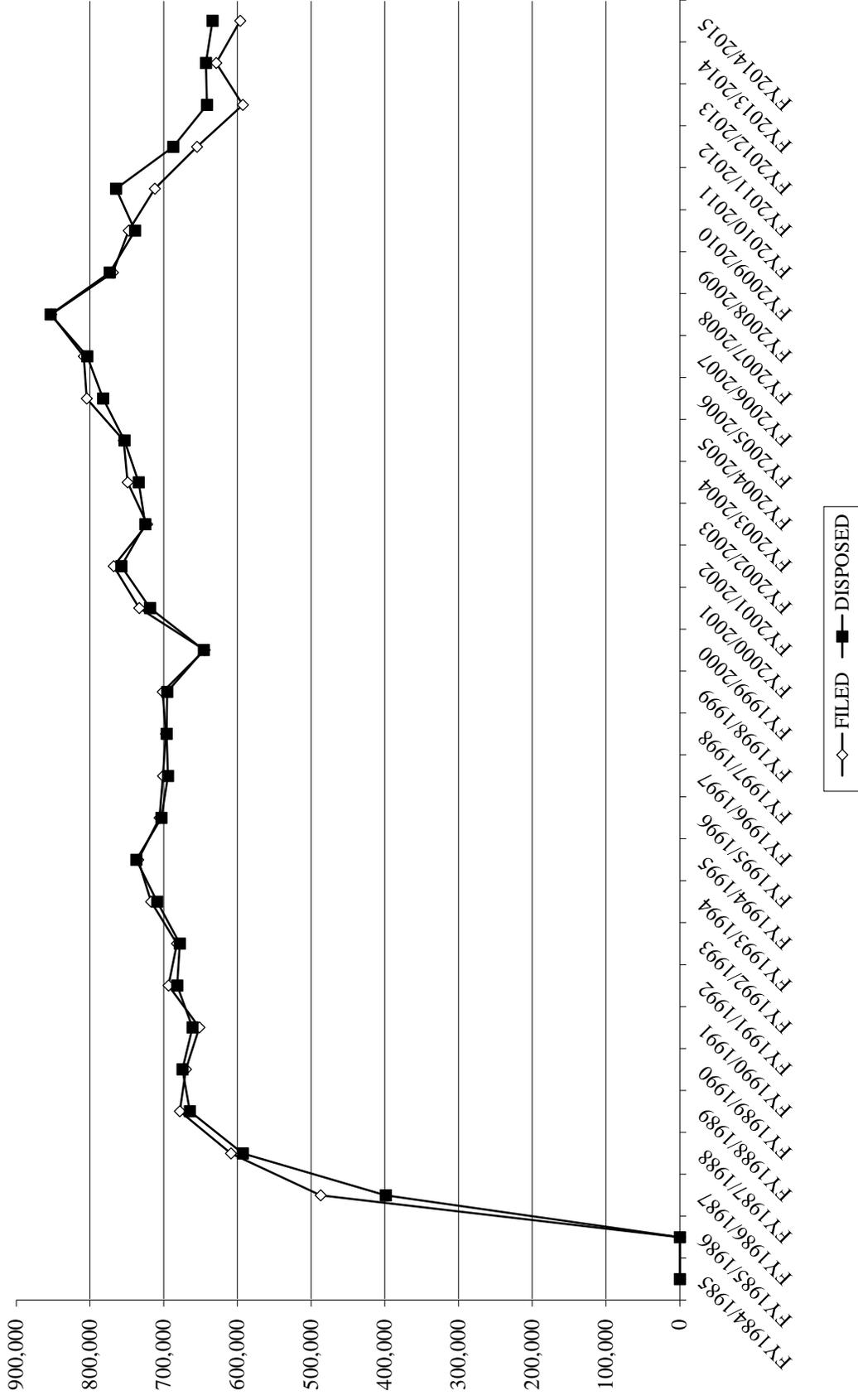
Statewide District Criminal Motor Vehicle Cases



Statewide District Criminal Non-Motor Vehicle



Statewide District Infractions Cases



Appendix D - Pending & Disposed Case Age Detail, Last Two Years

(Source: North Carolina Administrative Office of Courts)

Criminal Superior Felony Cases by Prosecutorial District

July 1, 2013 - June 30, 2014

Sorted by Pending Median Age - Fewest Days to Most Days Pending

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/14)	Pending Median Age (days)
Statewide		104,942	121,306	83,814	224
15B	Chatham, Orange	971	1,123	553	129
7	Edgecombe, Nash, Wilson	3,761	4,247	2,479	139
4	Duplin, Jones, Onslow, Sampson	3,321	3,954	1,869	140
23	Alleghany, Ashe, Wilkes, Yadkin	1,256	1,686	700	145
03A	Pitt	2,663	3,134	1,765	153
21	Forsyth	1,332	1,493	812	153
14	Durham	2,598	2,998	1,587	158
22B	Davidson, Davie	2,066	2,354	1,452	166
26	Mecklenburg	9,921	11,789	6,908	168
12	Cumberland	4,099	5,126	2,899	174
15A	Alamance	1,789	2,066	1,050	174
17B	Stokes, Surry	1,858	1,850	1,436	194
27A	Gaston	3,170	4,078	1,687	196
09A	Caswell, Person	1,727	1,380	1,594	202
16A	Hoke, Scotland	1,108	1,236	921	202
17A	Rockingham	1,036	1,171	754	202
18	Guilford	9,741	10,017	7,283	202
19D	Moore	1,140	1,362	817	202
11A	Harnett, Lee	1,246	1,297	1,082	209

**Criminal Superior Felony Cases by Prosecutorial District
 July 1, 2013 - June 30, 2014**

Continued: Sorted by Pending Median Age - Fewest Days to Most Days Pending

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/14)	Pending Median Age (days)
28	Buncombe	2,078	3,094	1,211	210
13	Bladen, Brunswick, Columbus	3,834	3,849	3,207	224
19A	Cabarrus	1,735	1,834	1,458	224
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain	1,892	1,917	1,457	224
20B	Union	1,896	2,686	1,397	235
03B	Carteret, Craven, Pamlico	2,702	3,141	2,073	236
20A	Anson, Richmond, Stanly	2,124	3,017	1,617	236
24	Avery, Madison, Mitchell, Watauga, Yancey	1,256	1,529	1,062	238
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	1,790	2,017	1,962	241
8	Greene, Lenoir, Wayne	1,664	2,110	854	243
5	New Hanover, Pender	2,729	2,625	2,471	244
9	Franklin, Granville, Vance, Warren	2,496	2,595	2,387	244
10	Wake	4,453	5,298	3,120	244
11B	Johnston	869	1,081	544	257
29B	Henderson, Polk, Transylvania	1,174	941	1,064	270
19B	Montgomery, Randolph	1,826	2,003	2,300	273
2	Beaufort, Hyde, Martin, Tyrrell, Washington	1,722	2,149	1,921	279
25	Burke, Caldwell, Catawba	3,110	3,646	3,912	293
27B	Cleveland, Lincoln	3,070	3,778	3,335	293
29A	McDowell, Rutherford	1,171	1,435	1,112	311
22A	Alexander, Iredell	1,745	2,161	2,085	356
06A	Halifax	1,093	1,213	1,115	363
06B	Bertie, Hertford, Northampton	859	974	1,295	371
16B	Robeson	1,558	2,096	1,921	389
19C	Rowan	1,293	1,756	1,286	455

**Criminal Superior Felony Cases by Prosecutorial District
 July 1, 2013 - June 30, 2014
 Sorted by Disposed Median Age - Fewest Days to Most Days Pending**

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/14)	Pending Median Age (days)	Disposed Median Age (days)
Statewide	Statewide	104,942	121,306	83,814	224	229
8	Greene, Lenoir, Wayne	1,664	2,110	854	243	145
15B	Chatham, Orange	971	1,123	553	129	158
4	Duplin, Jones, Onslow, Sampson	3,321	3,954	1,869	140	163
21	Forsyth	1,332	1,493	812	153	165
23	Alleghany, Ashe, Wilkes, Yadkin	1,256	1,686	700	145	169
15A	Alamance	1,789	2,066	1,050	174	173
14	Durham	2,598	2,998	1,587	158	176
27A	Gaston	3,170	4,078	1,687	196	176
17B	Stokes, Surry	1,858	1,850	1,436	194	178
10	Wake	4,453	5,298	3,120	244	182
5	New Hanover, Pender	2,729	2,625	2,471	244	196
17A	Rockingham	1,036	1,171	754	202	197
18	Guilford	9,741	10,017	7,283	202	197

Criminal Superior Felony Cases by Prosecutorial District

July 1, 2013 - June 30, 2014

Sorted by Pending Median Age - Fewest Days to Most Days Pending

Prosecutorial District	Counties in District	Filed	Disposed	Ending Pending (as of 6/30/14)	Pending Median Age (days)	Pending Median Age (days)
11B	Johnston	869	1,081	544	257	198
28	Buncombe	2,078	3,094	1,211	210	203
03A	Pitt	2,663	3,134	1,765	153	205
29B	Henderson, Polk, Transylvania	1,174	941	1,064	270	207
11A	Harnett, Lee	1,246	1,297	1,082	209	209
22B	Davidson, Davie	2,066	2,354	1,452	166	212
26	Mecklenburg	9,921	11,789	6,908	168	213
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain	1,892	1,917	1,457	224	213
03B	Carteret, Craven, Pamlico	2,702	3,141	2,073	236	215
7	Edgecombe, Nash, Wilson	3,761	4,247	2,479	139	217
9	Franklin, Granville, Vance, Warren	2,496	2,595	2,387	244	217
06A	Halifax	1,093	1,213	1,115	363	225
16A	Hoke, Scotland	1,108	1,236	921	202	230
24	Avery, Madison, Mitchell, Watauga, Yancey	1,256	1,529	1,062	238	231
29A	McDowell, Rutherford	1,171	1,435	1,112	311	231
12	Cumberland	4,099	5,126	2,899	174	244
27B	Cleveland, Lincoln	3,070	3,778	3,335	293	258
19D	Moore	1,140	1,362	817	202	260
19C	Rowan	1,293	1,756	1,286	455	268
19A	Cabarrus	1,735	1,834	1,458	224	269
13	Bladen, Brunswick, Columbus	3,834	3,849	3,207	224	273

20B	Union	1,896	2,686	1,397	235	279
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**Criminal Superior Felony Cases by Prosecutorial District
 July 1, 2013 - June 30, 2014**

Continued: Sorted by Pending Median Age - Fewest Days to Most Days Pending

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/14)	Pending Median Age (days)	Pending Median Age (days)
20A	Anson, Richmond, Stanly	2,124	3,017	1,617	236	280
22A	Alexander, Iredell	1,745	2,161	2,085	356	331
25	Burke, Caldwell, Catawba	3,110	3,646	3,912	293	345
09A	Caswell, Person	1,727	1,380	1,594	202	350
2	Beaufort, Hyde, Martin, Tyrrell, Washington	1,722	2,149	1,921	279	352
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	1,790	2,017	1,962	241	361
19B	Montgomery, Randolph	1,826	2,003	2,300	273	375
06B	Bertie, Hertford, Northampton	859	974	1,295	371	398
16B	Robeson	1,558	2,096	1,921	389	419

Criminal Superior Felony Cases by Prosecutorial District
 July 1, 2014 - June 30, 2015

Sorted by Pending Median Age - Fewest Days to Most Days Pending

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/15)	Pending Median Age (days)	Disposed Median Age (days)
Statewide	Statewide	102,443	125,357	81,274	210	244
04	Duplin, Jones, Onslow, Sampson	3,935	4,506	2,159	76	149
23	Alleghany, Ashe, Wilkes, Yadkin	1,486	1,846	634	113	131
28	Buncombe	2,496	2,569	1,752	119	197
03A	Pitt	2,773	3,749	1,541	126	175
12	Cumberland	4,008	5,039	2,729	139	217
07	Edgecombe, Nash, Wilson	3,914	5,078	2,216	140	197
17A	Rockingham	1,213	1,356	870	140	233
08	Greene, Lenoir, Wayne	1,876	2,097	1,121	144	171
27A	Gaston	3,128	3,840	1,721	148	169
05	New Hanover, Pender	2,962	3,459	2,317	154	218
10	Wake	4,362	5,415	2,737	154	195
11B	Johnston	911	1,136	442	160	169
03B	Carteret, Craven, Pamlico	2,912	4,007	1,687	161	229
26	Mecklenburg	9,968	10,616	7,318	169	211
20A	Stanly	743	954	611	175	320
15B	Chatham, Orange	917	1,204	510	181	197
14	Durham	2,419	2,877	1,671	183	202
20B	Union	1,859	2,423	1,350	201	265
09A	Caswell, Person	2,051	2,207	1,736	203	279
21	Forsyth	1,488	1,629	870	210	126
22B	Davidson, Davie	1,683	2,432	1,311	210	279
29A	McDowell, Rutherford	1,200	1,504	1,111	216	317

25	Burke, Caldwell, Catawba	3,440	4,432	3,651	223	366
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Criminal Superior Felony Cases by Prosecutorial District

July 1, 2014 - June 30, 2015

Continued: Sorted by Pending Median Age - Fewest Days to Most Days Pending

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/15)	Pending Median Age (days)	Disposed Median Age (days)
29B	Henderson, Polk, Transylvania	1,115	1,283	1,075	229	337
11A	Harnett, Lee	1,356	1,443	1,214	230	280
16C	Anson, Richmond	1,238	1,622	851	232	269
09	Franklin, Granville, Vance, Warren	2,830	3,495	2,184	235	250
18	Guilford	7,676	9,740	6,236	236	245
13	Bladen, Brunswick, Columbus	3,212	3,816	3,268	238	286
15A	Alamance	1,527	2,123	877	245	178
16A	Hoke, Scotland	835	1,352	672	245	245
27B	Cleveland, Lincoln	3,306	3,401	3,848	271	321
22A	Alexander, Iredell	1,958	2,438	2,054	272	426
01	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2,034	2,369	2,078	273	336
19A	Cabarrus	1,478	2,167	1,164	273	269
02	Beaufort, Hyde, Martin, Tyrrell, Washington	1,583	2,165	1,746	286	402
19B	Montgomery, Randolph	1,705	2,041	2,343	291	434
19D	Moore	1,108	1,160	907	294	254
17B	Stokes, Surry	1,397	1,688	1,337	299	211
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain	1,312	1,877	1,209	315	262
24	Avery, Madison, Mitchell, Watauga, Yancey	882	1,261	898	341	299
19C	Rowan	1,290	1,433	1,305	356	266
16B	Robeson	1,372	1,890	1,934	419	496
06	Halifax, Bertie, Hertford, Northampton	1,485	2,218	2,009	433	374

Criminal Superior Felony Cases by Prosecutorial District

July 1, 2014 - June 30, 2015

Sorted by Disposed Median Age - Fewest Days to Most Days Disposed

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/15)	Pending Median Age (days)	Disposed Median Age (days)
Statewide	Statewide	102,443	125,357	81,274	210	244
21	Forsyth	1,488	1,629	870	210	126
23	Alleghany, Ashe, Wilkes, Yadkin	1,486	1,846	634	113	131
4	Duplin, Jones, Onslow, Sampson	3,935	4,506	2,159	76	149
11B	Johnston	911	1,136	442	160	169
27A	Gaston	3,128	3,840	1,721	148	169
8	Greene, Lenoir, Wayne	1,876	2,097	1,121	144	171
03A	Pitt	2,773	3,749	1,541	126	175
15A	Alamance	1,527	2,123	877	245	178
10	Wake	4,362	5,415	2,737	154	195
7	Edgecombe, Nash, Wilson	3,914	5,078	2,216	140	197
15B	Chatham, Orange	917	1,204	510	181	197
28	Buncombe	2,496	2,569	1,752	119	197
14	Durham	2,419	2,877	1,671	183	202
17B	Stokes, Surry	1,397	1,688	1,337	299	211
26	Mecklenburg	9,968	10,616	7,318	169	211
12	Cumberland	4,008	5,039	2,729	139	217
5	New Hanover, Pender	2,962	3,459	2,317	154	218
03B	Carteret, Craven, Pamlico	2,912	4,007	1,687	161	229
17A	Rockingham	1,213	1,356	870	140	233
16A	Hoke, Scotland	835	1,352	672	245	245

Criminal Superior Felony Cases by Prosecutorial District
 July 1, 2014 - June 30, 2015

Continued: Sorted by Disposed Median Age - Fewest Days to Most Days Disposed

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/15)	Pending Median Age (days)	Disposed Median Age (days)
18	Guilford	7,676	9,740	6,236	236	245
9	Franklin, Granville, Vance, Warren	2,830	3,495	2,184	235	250
19D	Moore	1,108	1,160	907	294	254
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain	1,312	1,877	1,209	315	262
20B	Union	1,859	2,423	1,350	201	265
19C	Rowan	1,290	1,433	1,305	356	266
16C	Anson, Richmond	1,238	1,622	851	232	269
19A	Cabarrus	1,478	2,167	1,164	273	269
09A	Caswell, Person	2,051	2,207	1,736	203	279
22B	Davidson, Davie	1,683	2,432	1,311	210	279
11A	Harnett, Lee	1,356	1,443	1,214	230	280
13	Bladen, Brunswick, Columbus	3,212	3,816	3,268	238	286
24	Avery, Madison, Mitchell, Watauga, Yancey	882	1,261	898	341	299
29A	McDowell, Rutherford	1,200	1,504	1,111	216	317
20A	Stanly	743	954	611	175	320
27B	Cleveland, Lincoln	3,306	3,401	3,848	271	321
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2,034	2,369	2,078	273	336
29B	Henderson, Polk, Transylvania	1,115	1,283	1,075	229	337
25	Burke, Caldwell, Catawba	3,440	4,432	3,651	223	366
6	Halifax, Bertie, Hertford, Northampton	1,485	2,218	2,009	433	374
2	Beaufort, Hyde, Martin, Tyrrell, Washington	1,583	2,165	1,746	286	402
22A	Alexander, Iredell	1,958	2,438	2,054	272	426
19B	Montgomery, Randolph	1,705	2,041	2,343	291	434

16B	Robeson	1,372	1,890	1,934	419	496
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Appendix E – Caseflow Improvement Strategies³⁴

Principle	Strategies
<i>Early Intervention and Triage</i>	Prompt arrest reports and evidence to prosecutor
	Improve defense counsel access to in-custody defendants
	Improve disclosure and discovery exchange
	Structured early judicial intervention
	Improve operation of initial arraignment docket
	Reform approach to preliminary hearings
	Develop specialized calendars to process selected cases expeditiously
	Expand early intervention to all felonies
	Expand differentiated case management (DCM) program
	Use risk/needs assessment instruments to aid pretrial release decisions
<i>Meaningful Events</i>	Create culture of having prepared lawyers at every court event
	Improve communication among all parties
	Address delays in crime lab evidence processing
	Improve criminal settlement conference process
	Greater control of failures to appear
	Improve management of plea negotiations
	Improve management of continuances
	Adopt written continuance policy
Strict court enforcement of timetables and expectations, with sanctions if appropriate	
<i>Trial-Date Certainty</i>	Resolve more cases before trial list
	Improve attorney estimates of trial date readiness
	Establish firm trial dates
	Make operational improvements in trial setting and assignment
<i>Post-Judgment Court Events</i>	Greater efficiency in handling probation violations
<i>Exercise of Court Leadership of Entire Criminal Justice Community</i>	Adopt and publish formal case management plan
	Improve court coordination with system partners
<i>Internal Court Relations and Practices Among Judges</i>	Build greater consistency among judges’ adjudication and courtroom practices
	Consider consistency and best practices in calendaring judicial work weeks
	Report caseflow timelines and measures by division to promote competition among judges in meeting goals
	Consider establishing local guidelines for voir dire to allow for improved consistency and compliance with rules

³⁴ Steelman, David (2014). *Rethinking Felony Caseflow Management*. National Center for State Courts.

Principle	Strategies
	Standardize use of court forms by judiciary
<i>Education and Training</i>	Include training sessions on caseflow management during judicial conference or at least once annually
<i>Court Organization</i>	Consider holding problem solving (drug court and DUI court) on civil days or certain criminal days
	Consider extension of chief judge term beyond two years so that priorities of court can be addressed
	Create pretrial services unit for felony cases
	Consider options to promote more early resolution of felony charges in limited-jurisdiction courts
	Explore possibility of hybrid-team assignment system
	Establish probation violation and bench warrant calendars
	Consider direct felony filing in general jurisdiction court
	Consider scheduling cases at staggered times, including at least a morning and afternoon docket, to reduce waiting times
<i>Human Resources</i>	Have circuit court judges make better use of their judicial assistants
	Encourage more active participation of calendaring hearings by judicial staff
	Improve indigent representation
	Improve court Interpreter system
<i>Information Resources</i>	Obtain a monthly report from the Sheriff about the pretrial detainee population
	Develop means to exclude warrant time from case aging
	Develop accurate, timely, and useful caseflow management data
	Develop plan for review of case age and reduction of backlogs
	Gather and analyze data on cases washing out before initial pretrial conference
	Consolidate proceedings to reduce redundancy
	Review algorithm for case assignment (allotment) to assure balance among all divisions
	Gather and regularly review failure-to-appear (FTA) and open warrant information
	Streamline management of multi-defendant cases
Reduce conflicts among courtrooms on availability of attorneys	
<i>Technology</i>	Consider options for electronic exchange of disclosure materials
	Improve delivery of information and reporting to Bond Court
	Expand use of audio-video appearances

Appendix F – Indicators and Benchmarks³⁵

Indicator	Definition	Benchmark
<i>Effectiveness</i>		
<i>CourTools</i> Measure 5, Trial Date Certainty	The likelihood that a case will be tried on or near the first scheduled trial date, as measured by the number of times cases listed for trial must be scheduled and rescheduled for trial before they go to trial or are disposed by other means.	Average number of trial dates per trial list case: <ul style="list-style-type: none"> • Acceptable: an average of 2.0 or fewer settings per case • Preferred: an average of 1.5 or fewer settings per case
Compliance with Court Orders, including <i>CourTools</i> Measure 7, Collection of Monetary Penalties	Payments collected and distributed within established timelines, expressed as a percentage of total monetary penalties ordered in specific cases.	Benchmarks set by court for following goals: ³⁶ <ul style="list-style-type: none"> • To hold defendants accountable for their actions • To improve the enforcement of court judgments • To reduce judicial and clerical efforts required to collect court-ordered financial obligations • To ensure prompt disbursement of court collections to receiving agencies and individuals • To achieve timely case processing
<i>Procedural Satisfaction</i>		
<i>CourTools</i> Measure 1, Access and Fairness	Ratings of court users on the court's accessibility and its treatment of customers in terms of fairness, equality, and respect.	<ul style="list-style-type: none"> • A survey on access and fairness is conducted at least once each year. • The survey results are discussed in a meeting of all judges each year, and any result less favorable than the prior year is a topic for appropriate remedial action.
<i>Efficiency</i>		
<i>CourTools</i> Measure 2, Clearance Rate	The number of outgoing cases as a percentage of the number of incoming cases.	100% clearance rate each year
<i>CourTools</i> Measure 3, Time to Disposition <ul style="list-style-type: none"> • Date of filing of complaint with court to date of sentencing 	The percentage of cases disposed or otherwise resolved within established time frames.	Model Time Standards for State Trial Courts (NCSC, 2011): <ul style="list-style-type: none"> • 75% within 90 days, 90% within 180 days, 98% within 365 days
<i>CourTools</i> Measure 4, Age of Pending Caseload <ul style="list-style-type: none"> • Age of all active pending cases • Percent of active pending cases that are “backlogged” 	The age of the active cases pending before the court, measured as the number of days from filing until the time of measurement. Cases that are “backlogged” are those that have been pending longer than the time standard for felony cases.	Model Time Standards for State Trial Courts (NCSC, 2011): <ul style="list-style-type: none"> • No more than 25% beyond 90 days, 10% beyond 180 days, 2% beyond 365 days

³⁵ Steelman, David (2014). *Rethinking Felony Caseflow Management*. National Center for State Courts.

³⁶ See Michigan State Court Administrative Office, *Trial Court Collections Standards & Guidelines* (July 2007).

<p>Elapsed time between major case processing events:</p> <ul style="list-style-type: none"> • Date of arrest to date of first appearance • Date of filing of criminal complaint to date of arraignment on indictment or information • Date of filing of complaint to date of disposition by plea or trial 	<p>The percentage of cases meeting time standards for the elapsed time between key intermediate case events. (This indicator complements <i>CourTools</i> Measures 3 and 4.)</p>	<p>Model Time Standards for State Trial Courts (NCSC, 2011):</p> <ul style="list-style-type: none"> • In 100 % of cases, the time elapsed from arrest to initial court appearance should be within that set by state law appearance. • In 98% of cases, the arraignment on the indictment or information should be held within 60 days [filing to arraignment]. • In 98% of cases, trials should be initiated or a plea accepted within 330 days [complaint to plea or trial].
<i>Productivity</i>		
<p><i>CourTools</i> Measure 10, Cost per Case</p>	<p>The average cost of processing a single case, by case type.</p>	<ul style="list-style-type: none"> • Statewide average • Average for courts of like size in state
<p>Judicial and staff case weights by major case type</p>	<p>The average amount of time that judges and staff spend to handle each case of a particular type, from case initiation/filing through all post-judgment activity.</p>	<ul style="list-style-type: none"> • Statewide average • Average for courts of like size in state
<p>Meaningful court events</p>	<p>The expectation is created and maintained that case events will be held as scheduled and will contribute substantially to progress toward resolution. Courts that choose to monitor continuances routinely make a record of (a) the type of event continued; (b) which party made the request; and (c) the reason the request was granted.</p>	<ul style="list-style-type: none"> • The official purpose of any event (e.g., motion hearing, pretrial conference) is achieved more often than not, or else substantial progress is made toward case resolution, as through a plea agreement. • After arraignment on an indictment or information, more cases are settled by plea or other nontrial means before they are listed for trial than after being listed for trial. • The average number of settings for each kind of court event before trial is less than 1.5 per case. • The most common reasons for the grant of continuances are regularly identified by the court and discussed by court, prosecution and defense leaders to reduce the frequency of their occurrence.

Appendix G – Sample Training Program Agenda

(From NCSC/BJA Training and Technical Assistance Project)

Improving Felony Case Progress in Cuyahoga County, Ohio

June 13, 2013

SEMINAR AGENDA

Time	Topic	Faculty
8:00-8:30 AM	Arrival and Check-In	Host Staff
8:30- 9:15 AM	Welcome, Introductions <ul style="list-style-type: none">• Welcome by Neutral Court or Local Government Official• Seminar Purpose and Objectives• Initial Discussion of Participant Expectations	TBD NCSC Faculty All + Faculty
9:15 -10:30 AM	Basic Principles and Truths of Felony Case Management <ul style="list-style-type: none">• Essential Elements of Caseflow Management• Brief Group Discussion of Current Cuyahoga County Status• Dynamics of Changing Local Legal Culture	Steelman All + Faculty
10:30 –10:45 AM	<i>Break</i>	
10:45 –12:00 PM	Early Case Disposition and Beyond in Cuyahoga County <ul style="list-style-type: none">• Early Case Disposition in New Hampshire and New Jersey• Strengths and Weaknesses of Early Disposition in Cuyahoga County	Reis, Costello
12:00 – 1:30 PM	What’s in It for Me? For Other Stakeholders? <ul style="list-style-type: none">• Instructions for Small Group Discussions• Working Lunch and Small Group Discussions	Steelman All
1:30 – 2:30 PM	Reports of Small Groups	All + Faculty
2:30 – 2:45 PM	<i>Break</i>	
2:45 – 3:30 PM	Getting to “Yes”: Collaboration among Stakeholders <ul style="list-style-type: none">• Instructions for Small Group Discussions• Small Group Discussions: What can stakeholders in my position do (a) for ourselves, and (b) for other stakeholders to improve felony caseflow management in Cuyahoga County?	Steelman All
3:30 – 4:15 PM	Reports of Small Groups	All + Faculty
4:15 – 4:30 PM	Summing Up: Group Discussion of Possible Next Steps	All + Faculty
4:30 PM	Concluding Remarks and Adjournment	Seminar Host

Improving Felony Caseflow
February 7-8, 2013
National Center for State Courts Headquarters
Williamsburg, Virginia

WORKSHOP AGENDA

DAY 1 – Thursday, February 7, 2013

Time	Topic	Facilitators
8:00-8:30 AM	Arrival and Check-In: Conference Room	Judicial Education Staff
8:30- 9:15 AM	Welcome, Introductions <ul style="list-style-type: none">• Mary McQueen, NCSC President• Workshop Purpose and Objectives• Participant Introductions and Expectations	Griller; Steelman Faculty
9:15 – 10:00 AM	Unnecessary Delay: The Enemy of Justice	Griller
10:00 –10:45 AM	Participant Survey Results: Plenary Discussion ³⁷	Steelman; Webster
10:45 -11:00 AM	<i>Break</i>	
11:00 –12:15 PM	Basic Principles and Truths of Felony Case Management <ul style="list-style-type: none">• Time to Disposition Data: 1990's vs. Today• Costs of Delay and Substantive Savings• Eight Steps of Major Change	Griller Steelman Griller
12:15 - 12:30 PM	Instructions for Problem Scenario Discussions	Griller
12:30 – 2:30 PM	Working Lunch and Small Group Discussions: Problem Scenarios	All
2:30 – 2:45 PM	<i>Break</i>	
2:45 – 3:45 PM	Socratic Panel: Can Caseflow Management Promote Better Lawyering? <ul style="list-style-type: none">• Efficiency and Quality: Are They Mutually Exclusive• Judge Shopping – What's a Lawyer to Do?• Continuances – What are Workable Policies and Practices• How Do You Build Trust Between Adversaries?• Prepared Lawyers Settle Cases – How Do Courts Help Prompt Preparation?	TBD
3:45 – 4:15 PM	Plenary Discussion: Techniques in Developing an Action Plan	Steelman; Webster
4:15 – 4:30 PM	Debrief; Get Ready for Tomorrow's Program; Adjournment	Faculty

³⁷ Prior to attending the workshop, each participant was requested to complete a questionnaire answering 100 questions about felony case processing in their jurisdiction. During this session, we will discuss both overall and specific results.

DAY 2 – Friday, February 8, 2013

Time	Topic	Facilitators
8:00 – 8:30 AM	Arrival – Conference Room	Judicial Education Staff
8:30 – 8:45 AM	Briefing on Action Plan Assignment	Steelman; Griller
8:45 – 10:15 AM	Develop Action Plans by Jurisdiction (facilitated by faculty)	All + Faculty
10:15 – 10:30 AM	Break	
10:30 – 12 Noon	Presentation and Discussion of Action Plans	All + Faculty
12 Noon	Adjournment & Evaluation	

Appendix H - Meeting Participants

(in chronological order of interviews)

District Attorneys

- **Seth Edwards**, District 2.
- **Scott Thomas**, District 3B.
- **William (Billy) West**, District 12.

Magistrates

- **Hillary Brannon**, magistrate in Guilford County.
- **Keith Hempstead**, magistrate in Durham County.
- **Sherry Crowder**, chief magistrate in Union county.

Public Defender

- **Bert Kemp**, Pitt County Public Defender.

Appellate Judges

- **Justice Sam (Jimmy) Ervin**, Supreme Court.
- **Chief Judge Linda McGee**, Chief Judge, Court of Appeals.
- **Judge Donna Stroud**, Court of Appeals.

Court Services

- **Cynthia Easterling**, Director of Court Services, AOC.
- **Christi Stark**, Court Services.

AOC Leadership

- **Judge Marion Warren**, AOC Director.

Trial Court Administrators

- **Todd Nuccio**, Trial Court Administrator, Mecklenburg County.
- **Kathy Shuart**, Trial Court Administrator, Durham County.

District Court Judges

- **Judge Lisa Menefee**, Chief District Court Judge, Forsyth County (21st District).
- **Judge Jacquelyn (Jackie) Lee**, Chief District Court Judge, Harnett, Johnston, and Lee Counties (District 11).

Clerks of Superior Court

- **Jan Kennedy**, Clerk of Superior Court in New Hanover County.
- **Todd Tilley**, Clerk of Superior Court in Perquimans County.

Defense Attorneys

- **Kearns Davis** (NCCALJ member), Brooks, Pierce, McLendon, Humphrey & Leonard LLP.
- **Darrin Jordan** (NCCALJ member), Whitley & Jordan.

AOC Research and Planning

- **Brad Fowler**, head of AOC Research and Planning.
- **Danielle Seale**, senior research associate.

Superior Court Judges

- **Judge Anna Mills Wagoner** (NCCALJ member), Senior Resident Superior Court Judge, District 19C (Rowan County).
- **Judge Allen Cobb**, Senior Resident Superior Court Judge, 5th District (New Hanover and Pender Counties).