

Committee Meeting March 11, 2016
Topic: Criminal Case Management

Present: Adams, Buck, Byrd, Davis, Holcombe, Jordan, Kemp, McLaurin, Murray, Seigle, Smith (Reporter), Wagoner (Acting Chair)

Approval of the minutes from the last Committee meeting was deferred until April.

The first presenter was Nial Raaen, Principal Management Consultant, National Center for State Courts, on the topic of criminal caseload management. The substance of his presentation is captured in his PowerPoint, attached to these minutes.

Brad Fowler, Research and Planning Division, NCAOC, spoke next, discussing performance measures in North Carolina. The substance of this presentation is captured in his PowerPoint, attached to these minutes.

The committee then heard from four focus groups on the issue. Judge Holcombe reported on the district court judges focus group. He noted that case management issues bleed over into the other topics that the Committee is addressing, including juvenile age, pretrial release, indigent defense and mediation. He also noted that although the Committee decided to pass on the issue of crime lab delay, those delays impact case processing. In district court, most of the issues pertain to impaired driving and domestic violence cases. He also noted that two significant areas of variation among the district courts are: whether the district court takes pleas in H and I felonies and whether it deals with probation violations for those crimes. In response to a question, Holcombe noted that probable cause hearings are a rarity. With respect calendar control, most trial dates are set based on an officer's court date and if the case is continued it is rescheduled on the officer's next court date. Thus, for cases involving officers there is less district attorney control in calendaring; it is more administrative. With respect to continuances, he noted that practices vary depending on local culture, for example whether they are done in open court. He also noted that district court practice varies with respect to taking control of the calendar once cases are listed on the docket. Finally, he noted that the Committee may want to think about more widespread availability of specialty courts, such as veterans courts.

Judge Wagoner reported back on the superior court judges focus group. She began by noting that criminal court calendaring was easier for her and as a district court judge because the officer's court date provided more certainty. She stated that her focus group consisted of judges from various parts of the state. They noted that Mecklenburg has a great criminal case management plan, but that none of the other jurisdictions come close to having the resources required to implement such a plan. Superior court judge rotation creates issues with respect to judge control over the docket. Wagoner reported that the focus group looked at a number of case management plans in effect throughout the state and found significant variations in plans and practice. For example, in some jurisdictions the district attorney may continue half the cases off the docket; in others the district attorney expects the judge to rule on continuances. She noted that superior court judges are willing to participate in criminal case management to make the system work more efficiently for everyone. In too many places victims and defendants are waiting an inordinate amount of time to have their cases tried. She suggested it's not right to make people wait 1 to 2 years for trial of a low level felony. Her focus group believes that we need uniform and realistic time standards for criminal case disposition. But in that respect North Carolina really is 3 different states and standards that may work for well-funded urban areas like Mecklenburg will not work in places where criminal court is held only once every 3 months. She emphasized: with respect to case management, one size does not fit all. She also noted the

need for additional personnel to implement criminal case management and noted that currently many superior court judges do not have the personnel to take on that work.

Bill Powers, a defense attorney and incoming president of the Advocates for Justice, reported on behalf of the defense focus group. He noted that when you have a good working relationship with the district attorney and the district attorney is willing to yield some authority to a court administrator, DA control of the calendar can work. He suggested that when considering this issue, it would be best to focus on evidence rather than on anecdotal stories of success or failure. He further noted that many of these issues have been studied before by groups such as the Bar Association and the Futures Commission and thus there is no need to reinvent the wheel. He further noted that there are existing laws and court rules that could be enforced to improve criminal case management. And he noted some improvements could save money, such as discontinuing printing of dockets. He emphasized that the issue directly relates to fairness of the proceeding.

District Attorney Maureen Kruger provided the report from the district attorney focus group. The substance of her presentation is contained in her PowerPoint, attached to these minutes.

Discussion ensued about district attorney control of the calendar, with Seigle asking Raaen about the "gold standard." Raaen responded that North Carolina is fairly unique in allowing a party to control the calendar. It was noted that in Mecklenburg, the court in fact has early and continuous control, with the trial court administrator being integrally involved in criminal case management. However, Murray noted that is possible because Mecklenburg has the resources to do it. One audience member on the defense side suggested that cooperative calendaring doesn't work in many parts of North Carolina because the prosecutor need only consult with others about calendaring but ultimately retains all authority. He also pushed back on the notion that the district attorney should control the calendar because the DA knows the case better than anyone else, suggesting that the district attorney knows the case only from one side. He reiterated that a cooperative defense-DA relationship on calendaring is not the norm in North Carolina.

Discussion also ensued about continuances, with Buck suggesting that district court continuances seem to be granted more liberally for the defense side. He suggested that there should be standards for continuances and that there should be no right to have a case continued because the lawyer has not been paid. Adams noted the problem of multiple continuances in impaired driving cases. Wagoner noted that her focus group was interested in continuance policies. Jordan stated that one of the biggest problems with continuances in superior court is that no communication is made to the defense lawyer in advance about which cases will be continued. Murray noted that some district attorney's offices lack the resources to do that.

Discussion also ensued about which jurisdictions have good case management plans. Peg Dorer from the District Attorneys Conference indicated that Committee might look at Johnston and Cumberland counties. Holcombe suggested that the statute could be amended to require that case management plans be set to the AOC, to ensure that they actually exist.

Regarding performance measures, some concern was expressed about data being abused, such as in political campaigns.

Commission Executive Dir. Will Robinson noted that the civil committee is discussing case management and that the technology committee wants to know about technology needs to implement initiatives.

The meeting concluded with the consensus that the issue continues to be an important one to examine.