



ADMINISTRATIVE OFFICE OF THE COURTS

BAY AREA/NORTHERN COASTAL
REGIONAL OFFICE

Developing Effective Practices in Criminal Caseflow Management

Summary of Observations and Recommendations from Technical Assistance Engagements

Introduction

This is a short summary of observations and recommendations made by teams of outside consultants and California judicial branch personnel during three day visits to twelve superior courts during late 2005 and early 2006. The twelve courts requested assistance from the Administrative Office of the Courts. They are not necessarily representative of all fifty-eight California trial courts.

This summary combines recommendations made in the course of all twelve engagements. None of the recommendations reported applies only to one court. However, some apply to only a few courts. This list of recommendations is not intended as a "check list" for application in any court. Some recommendations apply only in master calendar courts, for instance. Some would not be applicable in smaller courts; others would not be applicable in larger courts.

Nonetheless, we deem it useful to present all of these ideas for review by participants attending the Follow-Up Workshops to stimulate their own ideas for improvements appropriate in their own jurisdictions.

Observations

In most courts, the lawyers, not the court, control the pace of criminal litigation. Whenever a time waiver is entered, the lawyers continue the case indefinitely until the defense declares it is ready for trial. Then the prosecution claims the right to postpone trial for a further

period, up to the ten day period allowed under PC 1382. This process gives the court little or no control over its own calendar – allowing the lawyers to determine when trial will actually occur. This places courts in a precarious position, always worried that they will not have an open courtroom on the day the lawyers choose to go to trial.

Many courts retain vestiges of the Municipal/Superior court dichotomy. Some are obvious – such as having pretrial felony departments whose role ends with the preliminary hearing and different departments that handle cases from the arraignment on the information through trial and sentencing. Others are more subtle, such as transferring a felony case in which a guilty plea is entered at or before the preliminary hearing to a different department for sentencing, or transferring competency to stand trial issues that arise at or before the preliminary hearing to a separate department, with a new case number and a new case file.

A number of master calendar courts make poor use of their trial departments; they are dark much of the time even though the court has a significant inventory of cases pending trial. These courts are not effective in ensuring a steady flow of cases to the trial departments.

Few courts have effective criminal caseflow management reports. Most that we visited do not have any reports that they regularly use to manage their criminal cases. Many courts have difficulty extracting reports in a useful format from their current case management applications and all are unwilling to invest significant resources in upgrading them pending installation of CCMS V2.

In some courts that have and use management reports, the data for them is gathered by hand from annotated court calendars. This can be an effective way to obtain core criminal case processing information until CCMS V2 can be rolled out statewide.

Most courts rely exclusively on the criminal calendar as the method for managing criminal cases. They ensure that pending felony and misdemeanor cases are always set on an upcoming calendar. The interval between settings is often short – two weeks to a month between hearings. The result is that significant court and lawyer time is devoted to calendar calls of cases that will merely be continued to the next setting. The time of the lawyers could more usefully be devoted to preparing cases for trial.

In every court in which we obtained an inventory of pending criminal cases, we found – to the surprise of the court in most cases – numerous cases over five years old. The oldest case we found was almost twenty years old. Relying exclusively on court calendars is not a sufficient process for managing criminal cases.

Few of the courts we visited had vital criminal justice collaboration processes. In most courts the criminal justice partners complain that the court acts unilaterally in making changes. They would welcome the opportunity to participate in a more consultative process.

Recommendations made in more than one court

Preface – These recommendations were made in more than one court, but are not necessarily universally applicable to all California trial courts. Readers will notice the strong parallels between the overall topics and themes of these recommendations and the seven principles of criminal caseflow management included in the manual for the Developing Effective Practices in Criminal Caseflow Management workshops, and the manual’s emphasis on the importance of leadership, collaboration and management data. Readers are also reminded that the Judicial Council, in June 2005, responding to the findings of the Trust and Confidence Report, established eight short term strategies, including three that are particularly applicable to criminal caseflow management:

1. Reduce case delays and continuances;
2. Emphasize quality service to court users in all court staff and judicial officer training programs; include an emphasis on procedural fairness, observance of code and rules of court, and appropriate applications of court orders in judicial officer training; and
3. Leverage jury service and other venues of contact with the public as a means of educating the public about the courts.

Specific recommendations

Convene a criminal justice coordinating committee to discuss common problems with criminal caseflow management. Involve all criminal justice partners (with the possible exception of all local law enforcement agencies) on these committees. Ensure that the time of the participants is well used, by having and following agendas, recording minutes, and reporting on actions taken to implement decisions made.

- In some courts, we have recommended two tier collaboration structures. The first tier consists of the branch and agency heads and focuses exclusively on policy decisions. The second tier consists of operational managers and focuses on detailed implementation of those policies.
- In other courts, because of the political climate, we recommended creating only a second tier operational level coordinating body.

Ensure that there is an appropriate management structure within the court for criminal caseflow processing, including the appointment of a supervising criminal judge in courts whose size warrants such a position. In large counties with multiple courthouses, it may be appropriate to have supervising criminal judges in each courthouse and a countywide supervising criminal judge responsible for coordinating and maintaining consistency among the processes in each courthouse.

Convene regular meetings of all criminal judges

- to discuss and agree upon uniform procedures, including uniform procedures in different courthouses in the same county; it is difficult for lawyers and other criminal justice entities to deal with multiple different practices within the same court;
- to discuss sentencing issues with the objective of attaining more consistent sentencing to minimize judge shopping. Uniform sentencing is impossible and probably not desirable; avoiding noticeable disparity from judge to judge is possible and eliminates the need for lawyers to attempt to manipulate the system in order to obtain a judge more sympathetic to their point of view;
- to review monthly criminal caseflow management data reports; and
- to identify caseflow problems and devise solutions to them.

Devote resources to the earliest stages of felony and misdemeanor cases to dispose of them as early in the process as possible, by, among other things:

- Encouraging prompt filing of criminal complaints in all felony and misdemeanor cases by the District Attorney's Office;
- Implementing pre-preliminary hearings in felony cases to provide a forum for case settlement without subpoenaing witnesses;
- Implementing pretrial or early disposition conferences in misdemeanor cases to provide a forum for case settlement without subpoenaing witnesses;
- Ensuring that judges conducting these proceedings have calendars that are short enough to afford them the time needed to engage the lawyers in settlement discussions;
- Offering indicated sentences at misdemeanor arraignments and during post-arraignment, pre-preliminary hearing proceedings in felony cases; and
- Developing a list of guideline sentences for typically recurring misdemeanor situations.

Do not continue the arraignment in either felony or misdemeanor cases except to allow the defendant to obtain counsel. Continuing the arraignment for the purpose of settling cases has the effect of skewing the court's caseflow management statistics because time to disposition runs from the date the arraignment is held, not the date it is first scheduled.

Ensure that, barring exceptional circumstances, the defendant gets the best plea and sentence offer at the commencement of the case, not as the case matures.

- This process requires the active support of the District Attorney's Office.
- It also requires adherence by all trial judges. When a judge agrees to a more lenient sentence on the day of trial than the sentence indicated during preliminary proceedings (without a change in the position of the prosecution), s/he sends a signal to defense counsel and defendants that they should postpone resolving their cases until the day of trial in order to obtain similarly favorable case outcomes.

Reduce the number of hearings where possible, by

- With the consent of the parties, conducting the arraignment on the information at the close of the preliminary hearing, treating the complaint as an information. Courts implementing this procedure typically give the prosecution considerable leeway to file an amended information within the next two weeks.
- Sentencing the defendant at the same hearing at which a plea of guilty is accepted, unless there is clear need for a presentence report or the case will be transferred to another department for sentencing.

Do not request presentence or other probation reports if the court already has sufficient information to sentence the defendant. Have the prosecution or the county sheriff run a criminal history report for the defendant at the time of booking and filing of the complaint so that it is available in the case file for purposes of indicating a sentence or imposing sentence. Additionally, do not request a revised presentence report merely because a sentencing hearing has been continued; compute the additional days of credit for time served on the bench.

Send on to the next stage of felony processing only those cases that will actually use that process – i.e., set preliminary hearings and trials only for those cases in which they will be held. This means not setting dates for all subsequent proceedings early in a case, or setting trial and trial readiness conference dates at the time of the arraignment on the information. Setting dates prematurely clutters the court's calendars with trial and other settings that will not occur.

Reduce the number of continuances at all stages of the process, particularly after the preliminary hearing.

- When additional time is necessary for a particular case, grant a single, longer continuance rather than a number of shorter ones.

In some courts using master calendars, we proposed an alternative method for establishing firm, fixed trial dates described below:

- A. Create a realistic future trial calendar based on setting a specific number of cases to be tried each week. (Some courts, particularly for misdemeanors, may wish to create two calendars for each week, for instance one to

commence on Monday and one to commence on Wednesday.) The number of settings available for each week can be calculated as follows:

- the average number of criminal trial departments expected to be available at the beginning of any week. Based on the court's experience, one or more departments will be involved in a trial that carries over from the previous week.
 - reduced by the number of trial judges with planned leave that week
 - multiplied by the number of days available that week for trial (taking into account the existence of a holiday)
 - divided by the average number of days required for a trial (this is made more difficult by the inclusion of both felonies and misdemeanors on the master trial calendar)
 - divided by the percentage of cases set for trial that the court reasonably expects to try. Typically a court can expect that three of four or four of five cases set for trial will settle on the eve of or day of trial. If so, the court will be able to divide the number of available trial settings by .25 or .20.
 - minus the average number of last day cases the court experiences during a week
- B. Restrict the number of cases set for trial during a particular week to the number computed in this fashion.
- C. During the pretrial conference, the master trial calendar judge confers with counsel, determines the realistic time required for trial preparation, and chooses a future Monday as the realistic trial date based on trial preparation estimates and on the availability of future trial dates on the calendar. The court makes a record of those discussions – the representations by counsel concerning needed preparation time and the judge's rationale for the date set for trial.
- D. The date set at the pretrial conference for felonies and at the arraignment or early disposition conference for misdemeanors, will be the week the trial takes place, absent a showing of good cause by one of the parties. Given the representations made by counsel, the court will be justified in requiring a showing of extraordinary

circumstances preventing counsel from completing preparation within his or her own estimate.

- E. On Friday of each week, the master trial calendar judge identifies the cases that have settled, rules on any motions for continuance, and assigns groups of cases ready for trial to the available criminal trial calendar judges. He reassigns cases on Monday as needed when one department has several that do not settle and others settle all of the cases assigned. Criminal trial departments will choose one case to try and no more than one to trail if there is a realistic likelihood that the second can commence during that week. Priority will be given to last day cases and then to the oldest pending cases.
- F. In those instances in which too few cases settle and there are too many trials for the criminal trial calendar judges to try, the supervising criminal judge notifies the presiding judge of the need to assign criminal cases to one or more civil trial departments.

Reduce judge shopping by returning all cases except those found guilty after trial to the pre-preliminary hearing judge for sentencing. This is the "home court" model developed in Sacramento. Ensure that the defendant consents to sentencing by the pre-preliminary hearing judge as a condition of acceptance of the plea.

To the extent possible, create calendars that maintain the same team of judge, prosecutors and defenders for multiple cases. Successful examples are domestic violence, drug court, and mental health court calendars and calendars for special case types that are vertically assigned within the District Attorney's office, such as sex offenses.

In vertical calendaring systems in which judges alternate periods of trial and pretrial activities, do not routinely schedule more than one week for trials. If cases set for a two week trial schedule are not reached during that two week period, it may be six weeks before they can be rescheduled for trial.

If the court has a backlog of old pending cases, work with the District Attorney, Public Defender, Conflict Counsel, and private attorneys to develop a backlog reduction program, setting each old case for trial on a fixed date in the near future.

“Bundle” all pending cases involving the same defendant, including probation violation charges, together and have all other cases “trail” the most serious charge.

Reduce clerical time by adopting one of the following processes for dealing with the trailing cases in such a “bundle:”

- a. Record all of the case numbers on the top of a single minute order and merely make copies of that order to place in each case file, or
- b. Enter an order in each of the trailing cases stating that this case is related to the identified lead case, giving its name and case number. The order will further provide that all procedural history of this case will be recorded only for the lead case. Persons interested in the history of this trailing case should consult the paper and electronic records for the lead case.

Information concerning the trailing cases should continue to appear on the court’s calendar so that the judge and lawyers handling the most serious charge do not lose sight of the fact that it has trailing cases. However, this data is merely information concerning the lead case; it no longer represents the actual appearance of each of the trailing cases on the calendar.

When the most serious charge is disposed of, the judge, with the lawyers, will call each trailing case, with or without the case file, and enter an appropriate disposition in each case. The staff will then generate the appropriate minute orders and other documents for filing in each case.

When the court identifies a vestige of the old Municipal/Superior Court dichotomy, determine whether it serves any current purpose. If not eliminate it. This can usually be accomplished by having the judge to which a case is assigned for preliminary felony matters perform functions previously reserved for Superior Court judges.

Eliminate backlogs of clerical work, including disposition reports to the state criminal history repository, bench warrants, and entries into the court’s case management system. While delays in any clerical function can jeopardize public safety, delays in entering hearing and calendaring information make it impossible for the court to maintain

complete and accurate future calendars for the guidance of the judges, lawyers, and sheriff's office personnel.

Implement a series of regular criminal caseflow management reports. We attach a sample of such management reports prepared for the Superior Court in Imperial County.

Implement data quality control procedures

- Review data entry codes to eliminate duplicate codes for the same event;
- Write definitions for the use of each code;
- Provide training for staff and judges on permissible data entry codes;
- Create a committee to approve the creation of new data entry codes; and
- Implement a data quality control function, with staff dedicated fulltime to this function.

Issues that may be appropriate for statutory change

- Amendment of PC 1382 sought by the Executive Committee of the Trial Court Presiding Judges Advisory Committee to provide the court with more control over the scheduling of criminal trials
- Amendment of the penal code to eliminate "bonus" good time credit for time served in jail pending trial in three strikes cases. PC Sections 1170.12(a)(5) and 667(c)(5) provide that the limitations on prison good time to 20% (or 15% according to the offense) do not apply to pretrial detention, which means that the default standard of PC Section 4019 (2 days of good time for every 6 days served) applies. The three strikes statutes should be amended to strike the phrase making them inapplicable to pretrial detention.

Developing Effective Practices in Criminal Caseflow Management

Imperial County Superior Court

Technical Assistance Engagement

Draft Management Reporting Forms

Introduction to proposed management reports

We have prepared a set of recommended management reports. Each form has a set of detailed notes defining the intended meaning of terms used in that report.

We recommend that the court executive officer provide these reports to all judges with criminal assignments at the beginning of each month and that they be the topic of discussion at a regular monthly criminal judges meeting. We also recommend that the reports be provided to the members of the court's criminal justice coordinating committee and discussion of them be a regular item on the committee's agenda.

Each of the inventory reports includes the number of continuances granted in each case. Drawing attention to those numbers is the best way to influence the behavior of the calendar judges. "What you count, counts."

Form 1. Composite Monthly Criminal Case Management Status Report. This is a summary report aggregating data by type of department, e.g., misdemeanor calendar, felony arraignment/preliminary hearing calendar, domestic violence calendar, and felony master calendar. The report's purpose is to display on a single page data on filings, preliminary hearings, dispositions, pending active cases, age of oldest active pending case, and pending review cases (disposed cases maintained on court calendars solely for the purpose of periodic review of a defendant's performance).

Forms 2 and 3. Pending Case Inventory. This form is intended to be produced for each of the criminal calendar departments, listing every case pending in the department in order of their age, with the oldest cases first. The report also shows the next scheduled event and its date and the number of continuances granted in the case. There are separate reports for felonies and for misdemeanors.

Form 4. Criminal Case Inventory Summary Report. The Form 2 and 3 inventory data for each department is compiled in this report. The data is also summarized for each court location. The report shows the total number of active and review cases pending in each department, and the number and percentage of those cases that are beyond their target age. We have recommended target ages for the court to use for felonies and misdemeanors. As the court uses the forms, it will undoubtedly adjust those dates to suit its needs based on its experience with the management reporting process.

Forms 5, 6 and 7. Criminal Case Processing Stage Inventory. This report is designed to show the number of active cases pending at various stages of the misdemeanor and felony process, together with the number of continuances granted to date. Because the stages are different for different types of criminal courts, we have recommended separate reports for the felony arraignment/preliminary hearing calendar, the misdemeanor calendars and the felony master calendar.

Form 8. Criminal Case Processing Stage Inventory Summary Report. Like Form 1, this report aggregates the processing stage data for all court locations.

Form 1. Composite Monthly Criminal Case Management Status Report
 End of Month _____, ____

Department	Filings		Preliminary examinations			Dispositions			Pending active cases on last day of month			Age of oldest case on last day of month		Pending review on last day of month	
	This month	Change from last month	Number conducted	Change from last month	% over target period	Number	Change from last month	% over target period	Number	Change from last month	% over target period	Age	Change from last month	Number	Change from last month
Felony															
Misdemeanor															
DV calendar															

Notes: Cases currently outside court control are not included. Active cases exclude DV, Proposition 36, and misdemeanor cases maintained for the purpose of review. Cases pending for review only are adjudicated DV and drug cases maintained for the purpose of review and misdemeanor deferred entry of judgment cases. Target age is based on Standards for Judicial Administration case disposition time goals – 120 days for misdemeanors and 365 days for felonies. Age is number of days from first arraignment excluding days outside court's control; cases currently outside court control do not appear on the list. Oldest case is oldest active case, not oldest case pending review. Change from last month is % change preceded by + or -, except for columns 14 and 16 in which it is the numerical difference preceded by + or -.

Form 4. Criminal Case Inventory Summary Report
End of Month _____, ____

Department	Pending Active Cases	Number Beyond Target Age	Percentage Beyond Target Age	Cases Pending for Review Only
Felony				
Misdemeanor total				
Brawley				
Calexico				
El Centro				
DV calendar				

Notes:

Active cases exclude DV, drug and misdemeanor cases maintained for the purpose of review. Cases pending for review only are adjudicated DV and drug cases maintained for the purpose of review and misdemeanor deferred entry of judgment cases.

Target age is based on Standards for Judicial Administration case disposition time goals – 120 days for misdemeanors and 365 days for felonies.

Form 6. Criminal Case Processing Stage Inventory
Felony Arraignment/ Early Disposition Calendar
 End of Month _____/____

Case number	Highest charge			Number of continuances	Awaiting arraignment on complaint	Awaiting pretrial conf	Awaiting PX	Days since filing of complaint	Age
	ST	Section	Level						

Notes:
 X appears in one and only one of the case status columns
 Age is number of days from first arraignment excluding days outside court's control.
 Cases currently outside court control do not appear on the list.
 Cases are ordered by age, with oldest case first, regardless of the stage at which it resides.

Form 8. Criminal Case Processing Stage Inventory Summary Report
End of Month, _____, _____

Department	Cases awaiting arraignment on cmplt	Cases awaiting PX	Number beyond 120 days	Cases awaiting arraignment on info	Number beyond 130 days	Cases awaiting pre trial conf	Number beyond 90 days	Cases awaiting trial	Number beyond target date
Courtwide									
Brawley									
Calexico									
El Centro									
Jail Court									

Notes:

Cases currently outside court control do not appear on the list.
 Inventories for felonies do not include adjudicated cases retained in a review status. Inventories for misdemeanors do not include cases in DEJ status.